



Trusts Overview

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What We Will Discuss (at Private Information Share)

- How the contract trust is set up
- The 3 different kinds of liability that you are exposed to
- How to use Trusts to limit that liability
- How to use statutory entities with a Trust

Jurisdiction

- **“All subjects over which the sovereign power of the state extends are objects of taxation, but those over which it does not extend are exempt from taxation. This proposition may also be pronounced as self-evident. The sovereignty of the state extends to everything which exists by its authority or its permission.” McCullough v Maryland, 17 U.S. [4 Wheat] 316 (1819).**

Taxation

- **“The taxing power, being in its nature unlimited over the subjects within its control, would enable the state governments to destroy the above-mentioned rights...”**
Crandall v Nevada 73 U. S. 35 (1867)

Taxation

- **“Tax - an impost; a tribute imposed on the subject; an excise; tallage. In public law, taxation signifies the system for raising money for public purposes by compelling the payment by individuals of sums of money called taxes.**
- **Some general principles of taxation have been said to be:**
 - 1) **The subjects of every State ought to contribute to the support of the government as nearly as possible in proportion to their respective abilities; that is, in proportion to the revenue which they respectively enjoy under the protection of the State. In the observation or neglect of this maxim consists what is called the equality or inequality of taxation. Smith Wealth of Nat., c. 2; 5 Mill, Pol. Econ., cc. 2, 3).”** The Dictionary of English Law, Sweet and Maxwell Ltd., London, 1959. [emphasis added]

Taxation

- “License, contracts, is a right given by some competent authority to do an act, which without such authority would be illegal. The instrument or writing which secures this right is also called a license. Vide Ayl.Parerg. 353; 15 Vin.Ab 92; Ang. Wat. Co. 61, 85. A license is express or implied. An express license is one in which in direct terms authorizes the performance of a certain act; as a license to keep a tavern by public authority. An implied license is one which though not expressly given, may be presumed from the acts of the party having the right to give it.” Bouvier’s Law Dictionary 1843 Edition, Volume 2, page 53 [emphasis added]

Taxes & Licenses

- **“2. The requirement of payment for such licenses is only a mode of imposing taxes on the licensed business, and the prohibition, under penalties, against carrying on the business without license is only a mode of enforcing the payment of such taxes.”**
- **5. The recognition by the acts of Congress of the power and right of the states to tax, control, or regulate any business carried on within its limits is entirely consistent with an intention on the part of Congress to tax such business for national purposes.”** License Tax Cases 72 U.S. (5 Wall.) 462 (1866),

Taxes & Licenses

- **“Mark can support the existence of an implied license agreement [see *Wells' Dairy Inc. v. UL Canada Inc.* 2000 CanLII 15538 (FC), (2000), 7 C.P.R. (4th) 77 (Fed. T.D.)]. [...] stated that the Original Applicant is not an operating company; it exists for accounting purposes only - its role is to gather Canadian income, report it and pay taxes on it.”**
Mueller Industries, Inc. v Mueller International Inc.
2009 CanLII 90386 (CA TMOB) – 2009-05-13

Taxes & Licenses

- **“Evidence of control by the trade-mark's owner can support the existence of an implied license agreement [see *Well's Dairy Inc. v. UL Canada Inc.* 2000 CanLII 15538 ([...] [35] Mr. Segal is an associate of the Toronto law firm Baker & McKenzie LLP, which specializes in tax law [§ 1].” *Hillstone Restraunt Group, Inc. v Houston Canada Inc.*, 2011 TMOB 154 (CanLII) - 2011-08-31**

Taxes, Licenses & Representation

- **“If it were true that, according to the spirit of our Constitution, the power of taxation must be limited by the right of representation, whence is derived the right to lay and collect duties, imposts, and excises, within this District? If the principles of liberty and of our Constitution forbid the raising of revenue from those who are not represented, do not these principles forbid the raising it by duties, imposts, and excises, as well as by a direct tax?” Longborough v Blake 18 U.S. 317 (1820), [emphasis added],**

Taxes, Licenses, and Representation

- **“legislature expressly and clearly authorizes the imposition of a tax by a delegated body or individual, then the requirements of the principle of "no taxation without representation" will be met. [...] 73 The issue is therefore whether the principle of no taxation without representation is respected by the EQIA. In Eurig, supra, the requirements necessary to satisfy this principle were left [...] Whether the preamble may be relied on to import the principle of no taxation without representation into jurisdictions that have repealed s. 53 is best decided in a case directly” Ontario English Catholic Teachers Association v Ontario (Attorney General), 201 SCC 15 2001, 1 SCR 470 – 2001-03-08,**

Taxes, Licenses, and Representation

- “...Revolutions have been fought over taxation without representation.”

Whitbourne (Town) v. Whitbourne Cottage Developers Ltd., 2005 CanLII 51786 (NL-PC) – 2005-02-25 [emphasis added]

Taxes, Licenses & Representation

- “the fundamental constitutional principle that there shall be no taxation without representation (see Birks, at c. 6; Hogg, at p. 55-16; and Hogg and Monahan, at pp. 246-47). [...] This principle of "no taxation without representation" is central to our conception of democracy and the rule of law. [...] This principle of "no taxation without representation" is central to our conception of democracy and the rule of law.” Kingstreet Investments Ltd. V New Brunswick (Finance), 2007 SCC 1, [2007] 1 SCR 3 – 2007-01-11 [emphasis added],

Trusts

- **“Trust - A right of property, real or personal, held by one party for the benefit of another. See Goodwin v. McMinn, 193 Pa. 646, 44 A. 1094, 74 Am.St. Rep. 703; Boyce v. Mosely, 102 S.C. 361, 86 S.E. 771, 773; King v. Richardson, C.C.A.N.C., 136 F.2d 849, 856, 857.” Black’s Law Dictionary, 4th Edition, page 1680**

History

- Trusts are derived from the law of England, and they go back to Roman Law.
- In old England they were called a “Use”

Usufruct

- **“USUFRUCT, civil law. The right of enjoying a thing, the property of which is vested in another, and to draw from the same all the profit, utility and advantage which it may produce, provided it be without altering the substance of the thing.”** Bouvier’s Law Dictionary 1856 Edition p 1198
- A usufruct is a type of a trust

Usufruct

- “6. On the other hand, we can of our own free will make land religious by conveying a corpse into a place which is our own property, provided only that the burial of the corpse devolves on us. 7. But it has been generally held that on provincial soil land cannot be made religious, because in such land the ownership belongs to the Roman people or to Caesar" and we are considered to have only the possession and usufruct. Still, however, such a place, although it be not religious, is considered as religious, because that also which is consecrated in the provinces, not by authority of the Roman people, is strictly speaking not sacred, and yet is regarded as sacred.” The Commentaries of Gaius and Rules of Ulpian, Translated with Notes by J. T. Abdy, L.L.D., and Bryan Walker, M.A. L.L.D., 1874, Book 2, Section 6-7, page 72

Usufruct – Capitis diminutio

- “83. To take an instance, when a person *sui juris* has given himself in adoption, or a woman has passed under *manus*, all their property, incorporeal and corporeal, and all that is due to them, is acquired by the adopting father or *coeinptorator*, except those things which perish by a *capitis diminutio*, of which kind are an usufruct, an obligation to services on the part of freedmen contracted by oath, and matters enforceable by a statutable action.” The Commentaries of Gaius and Rules of Ulpian, Translated with Notes by J. T. Abdy, L.L.D., and Bryan Walker, M.A. L.L.D., 1874, Book 2, Section 83, page 199

Usufruct

- **“12. Further some things are corporeal, some incorporeal. 13. Corporeal things are those which can be touched, as a field, a man, a garment, gold, Silver and, in a word, other things innumerable. 14. Incorporeal things are such as cannot be touched: of this kind are those which consist in a right, as an inheritance, an usufruct, or obligations in any way contracted.”** The Commentaries of Gaius and Rules of Ulpian, Translated with Notes by J. T. Abdy, L.L.D., and Bryan Walker, M.A. L.L.D., 1874, Book 2, Section 12-14, page 73

Usufruct

- “32. Also, since it is possible for an usufruct to be established over slaves and other animals, we must understand that usufruct over them can be established by cession in court even in the provinces. 33. Now when we said that usufruct admitted of cession in court only, we were not speaking at random, although it may be established by mancipation also, inasmuch as it may be withheld in a mancipation of the property: for in such a case the usufruct itself is not mancipated, although the result of its being withheld in mancipating the property is that the usufruct is left with one person and the property with another.” The Commentaries of Gaius and Rules of Ulpian, Translated with Notes by J. T. Abdy, L.L.D., and Bryan Walker, M.A. L.L.D., 1874, Book 2, Section 32-33, page 79

Usufruct

- **“MANCIPATE. To enslave; to bind; to tie.”** Black’s Law Dictionary 4th Edition, page 1113
- **“EMANCIPATION. The act by which one who was unfree, or under the power and control of another, is rendered free, or set at liberty and made his own master. *Town of Plainville v. Town of Milford*, 119 Conn. 380, 177 A. 138, 140.... The term "emancipation" has been borrowed from the Roman law, and is constantly used in the law of parochial settlements. 7 Adol. & E., N.S., 574, note.”** Black’s Law Dictionary 4th Edition, page 613

Trusts

- **There are many different types of trusts;**
 - **Constructive trusts**
 - **Cestui que trusts**
 - **Contract trusts**
 - **Living trusts**
 - **Express trusts**
 - **Implied trusts**

Trusts

- There are 2 basic categories of trusts
 - Revocable
 - Irrevocable

Background

- **The first trust I ever set up was in 1992, and I have been using Trusts in various ways for asset protection ever since then.**

Background

- In the early 2000's, a friend of mine, from Toronto, introduced me to a guy from Georgia, that had an interesting story to tell
 - Was an articling attorney for the Colorado Attorney General's Office in the early 1980's
 - When a principal (owner) of a discount house (third party debt collector) disappeared with approximately \$1 Billion, the articling attorney was assigned the job of finding the money
 - He said he actually found a couple of \$million
 - That was when he learned about these structures

Background

- I had first hand knowledge of that because I had \$1000.00 invested with a discount house called Consolidated Business Consultants, and one of the partners disappeared with about \$1 billion.
- The articling attorney set up structures for people until the late 1990's when he sold the business to some people from California

Background

- The people from California had a website called Financial Fortress Associates, and held seminars until 911 happened
 - One of the people from FFA told me that they had seen a trust that was set up by William Penn, that is still operating today
- I think that most of the huge corporations in USA are actually trusts
 - There is no stock on any stock exchange for Fidelity Investments

Background

- The friend from Ontario set up 3 trusts for me, and I still manage them to this day
- In 2006 I was working for US Airways engineering department in Phoenix, Arizona
- The IRS had essentially garnisheed my pay and was taking about 25%
- I filed a lawsuit, and criminal complaints and a commercial lien
- During this time I got a job working for Eaton Corporation in Fort Worth, Texas

Background

- **Because of the IRS issues I did not want to leave US Airways and then have to start the battle all over again with Eaton**
- **The people from California set up a trust and a Limited Liability Company**
- **The people from California offered to set up banking and provide signed checks and a debit card, but I declined**

Background

- I have been doing aerospace engineering for all sorts of companies, including classified military programs, through the LLC, ever since.
- The ONLY issue I ever had with the IRS is when I used the wrong form
- The friend from Ontario is still managing Trusts and Limited Partnerships, in Ontario and elsewhere in Canada, since then.
- The ONLY issues the people in Ontario had, was with the bank accounts

Pure Trusts are Contract Trusts

- **The phrase Pure Trust is another name for a “Contract Trust”.**
- **A Pure Trust is a contractual relationship in Trust form. Berry vs. McCourt, 204 NE 2d 235 (1965)**

Pure Trusts

- **“A Pure Trust is not illegal if formed for the express purpose of avoiding taxation.”** Weeks vs. Sibley, D.C. 269 F 135, Phillips vs. Blanchford, 137 Mass 510
- **“Dignity of contract cannot be set aside because a tax benefit results either by design or accident.”** Edwards vs. Commissioner, 415 F2d 578, 582, 10th Cir. (1969)
- **“An association does not become illegal simply because another very like it is taxed.”** Phillips vs. Blanchford, 137 Mass 510

Pure Trusts

- **“It is established by legal precedent that Pure Trusts are lawful, valid business organizations.”**
Baker vs. Sterns, ALR 462
- **“Trust or trust estate is a legal entity for almost all purposes as are Common Law Trusts.”** Burnett vs. Smith SW 1007 (1922)
- **A Pure Trust is established by contract, and any law or procedure in its operation, denying or obstructing contract rights impairs contractual obligation and is therefore violative of the United States Constitution.** Smith vs. Morse, 2 CA 524

Pure Trusts

- **A Pure Trust organization, consists of a US constitutional right to contract which cannot be abridged. The agreement when executed becomes a federal organization and not under the laws passed by the several legislatures. Crocker vs Malley, 249 US SUP 39 at 270**
- **A Pure Trust is not subject to legislative control. The United States Supreme Court holds that the Trust relationship comes under the realm of equity, based upon the common law, and is not subject to legislative restrictions as are corporations and other organizations created by legislative authority. Elliot vs. Freeman, 220 US 178**

Pure Trusts

- **The basis for “Common Law Trust” in this connection, is not that such organizations are creatures of common law, as distinguished from equity, but that they are created under the common law of contracts and do not depend on any statute. Shumann-Heink vs. Folsom, 159 NE 250**
- **If it is free from control by Certificate Holders, then it is a Pure Trust. Shumann-Heink vs. Folsom, 159 NE 250**

Non-taxable Exchange of Certificates

- **“Fair Market Value is determined by property received by the taxpayer and not the Fair Market Value of the property transferred by the taxpayer to the Trust.”** Commissioner vs. Marshman, 6 C.A. 279 F2d 27 (1960)
- **“Certificates are personal property and convey no interest in the Trust Property.”** Parker vs. Mona-Marie Trust, 278 SE 321
- **“Certificates in exchange are not taxable until a realized gain has occurred.”** Burnet vs. Logan, 283 U.S. 404 (1931)

Non-taxable Exchange of Certificates

- **“Even bad bargains in genuine business transactions do not result in taxable gifts.”**
Estate of Anderson, 8 T.C. 706 (A) (1947)
- **“Certificates are without determinable fair market value, no gain or loss is recognized until the cost or other basis of the property disposed of has been recovered.”** Master Tax Guide, para. 910.

Non-taxable Exchange of Certificates

- **“Exchange is the giving of one thing for another in kind and excluding money as a basis of measure.”** Trenton Cotton Company vs. Commissioner, 147 F2d 33 (1945)
- **“Certificates are not chattels, but are evidences of intangible rights.”** Goodhue vs. State St. Trust Co., 267 Mass 28

Pure Trusts not subject to Subpoena

- **“The Trustees of a trust have all the power necessary to carry out their obligations which they assume and their books and records are not subject to review or subpoena.”**

Boyd vs US, 116 US 618, Silverthorne
Lumber Co. vs US, 1251 US 385

Piercing a Trust

- The 3 main ways to pierce a Trust
 - fraudulent conveyance,
 - co-mingling of funds
 - alter-ego

Fraudulent Conveyance

Badges of fraud

- Evidence of actual intent is rarely available to a creditor for it would require proof of someone's inner thoughts. Because of that, creditors often have to rely on circumstantial evidence of fraud. To prove actual intent, the courts have developed “badges of fraud,” which, while not conclusive, are considered by the courts as circumstantial evidence of fraud: (Source: Wikipedia)

Fraudulent Conveyance

Badges of fraud

- Becoming insolvent because of the transfer;
- Lack or inadequacy of consideration;
- Family, or insider relationship among parties;
- The retention of possession, benefits or use of property in question;
- The existence of the threat of litigation;
- The financial situation of the debtor at the time of transfer or after transfer; (Source: Wikipedia)

Fraudulent Conveyance

Badges of fraud

- The existence or a cumulative effect of a series of transactions after the onset of debtor's financial difficulties;
- The general chronology of events;
- The secrecy of the transaction in question; and
- Deviation from the usual method or course of business. (Source: Wikipedia)

Fraudulent Conveyance

- A Trust is a pre-emptive measure
- The longer the Trusts exists, the more powerful it becomes
- After 4 years is almost impossible for anyone to claim fraudulent conveyance
- The ONLY way they will find out anything about the trust is if YOU tell them
- The ONLY reason anybody will be asking about the trust, is if somebody feels unfairly treated

Co-Mingling of Funds

- The easiest way to pierce a trust is to prove co-mingling of funds
- Co-mingling of funds is when you mix personal money with trust money

Alter-ego

- These structures are ONLY as powerful as YOU make them!
- If the Trustee approves everything in writing, and you are ALWAYS operating under the approval of the Trustee, then it will be very difficult for anyone to claim it is an alter-ego.

What We Will Discuss (at the Private Information Share)

- How the contract trust is set up
- The 3 different kinds of liability that you are exposed to
- How to use Trusts to limit that liability
- How to use statutory entities with a Trust

What will be Available (at the Private Information Share - additional cost)

- Trust Document templates
- Limited Partnership Articles of Organization templates
- Limited Partnership Operating Agreement templates
- Court citations

What will be Available (at the Private Information Share - additional cost)

- Trust Manual that provides
 - instructions on how to set Trusts up,
 - Several scenarios where Trusts could be used
 - Farmer, Retail store, Dental office, Insurance Agent, Real Estate Brokerage, etc.
 - how to limit liability
 - Dozens of Trust Minute templates for the Trustee to sign, covering numerous scenarios of exchanging property into the trust, with instructions

What will be Available (at the Private Information Share - additional cost)

- Document preparation – if desired
 - I am available for document preparation
 - If I prepare your documents, it comes with 2 coaching webinars
 - If you prepare your own documents, it comes with 1 coaching webinar
 - I am available to setup the Limited Partnership but the cost is dependent on statutory fees and costs in your jurisdiction

Ongoing Costs

- The Trusts will need an Annual Meeting of the Board of Trustees, and the usual cost is usually \$200.00 each, set by Trustee
- The Limited Partnership will need annual renewal fees determined by statute, usually the statutory fees +\$200.00 each, set by General Partner
 - If a Tax Return is required, the General Partner will need to sign it.

Private Information Share

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