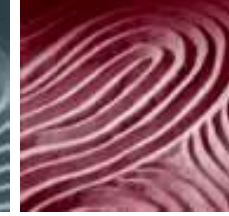




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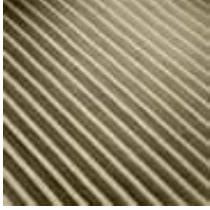
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MONTRÉAL

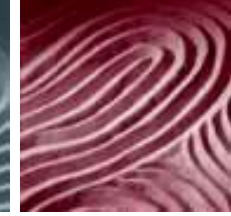
## TRUSTS 101: WHAT, WHEN AND WHY

By Rachel L. Blumenfeld

NOVEMBER 2, 2004



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## TRUSTS 101: What, When and Why

**Peel Institute, November 2, 2004**

**Rachel L. Blumenfeld**

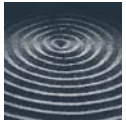
**B.A., M.A., LL.B., TEP**

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# What is a Trust?



- Concept comes from English law, developed over many centuries, particularly since the early 19<sup>th</sup> c.



- Definition:



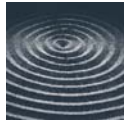
*Underhill's Law of Trusts:*

...an equitable obligation binding a person [the Trustee] to deal with property over which he has control [the Trust Property], for the benefit of persons [ the Beneficiaries], of whom he may be one himself, and any one of whom may enforce the obligation.

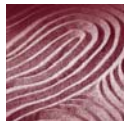
- Not a legal entity, but it is a taxpayer



# Parties to a Trust



**Settlor/Testator:  
Donates the property**



**Trustee: Holds legal  
title to property  
(legal ownership)**

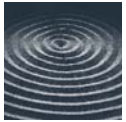
**Beneficiary: Holds  
equitable title to  
property (beneficial  
ownership)**

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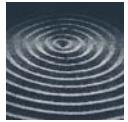
# The 3 Certainties



- Certainty of intent
  - the intention of the Settlor must be clear -- words, actions
- Certainty of subject
  - the property given must be certain, ascertainable
- Certainty of object
  - the beneficiaries must be ascertainable (class of beneficiaries)



# Duties of the Trustees



- Duty of care – act prudently



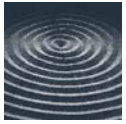
- No conflict of interest



- *Trustee Act*
  - Prudent Investor Rule
  - Some delegation permitted
- Duty to account
- Even Hand Rule
- Exercising discretion



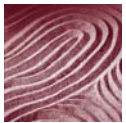
# Some uses of Trusts



- Asset protection



- Minor, spendthrift beneficiaries



- Disabled beneficiaries (including self)

- Tax planning

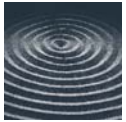
- Income splitting

- Probate planning





# Some types of Trusts



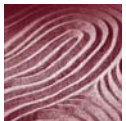
- Testamentary Trust

- Trusts for minors, other beneficiaries
- Spousal trusts



- Insurance or Pension Trust

- In a Will, Declaration
- “Springing” or executory trust



- Alter Ego Trust and Joint Partner Trust

- Probate planning
- Disability planning

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**Questions?**

**Thank you**



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## **TRUSTS 301: The Taxation of Trusts**

**Peel Institute, November 2, 2004**

**Rachel L. Blumenfeld**

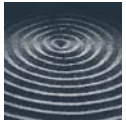
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# Inter vivos family trusts



- *Inter vivos* – during lifetime



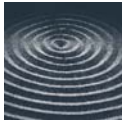
- Context



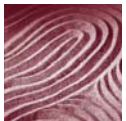
- Family business
- In the course of an estate freeze
- Allows for some income splitting
- Transfers growth to the next generation, while maintaining control
  - Important to determine who are the Trustees



# Taxation of Trusts-some basics

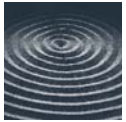


- Transfers to Trust – may be taxable
- Considered a separate taxpayer
  - Tax rates – *inter vivos* v. testamentary
  - Must file a return (Trustee's obligation)
- Income that arises in the trust taxed in the trust or, under certain circumstances, allocated out to beneficiaries
  - Flow through of income, deducted by Trust
  - “Paid or payable”
  - Income splitting
- 21-year deemed disposition
  - Rollout of property of trust





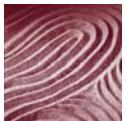
# Tax considerations



- Residence of the trust



- Some attribution rules

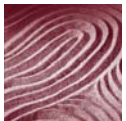
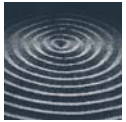


- Restrict income splitting
- Subs. 75(2) and 107(4.1)

- 21-year rule

- If 75(2) applies then no rollout of property from trust

- Kiddie tax

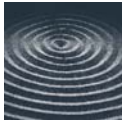


# Putting it all together...Case study

- Dan, 63, has been married and divorced twice and is currently in a common law relationship with Diane, 50, which has lasted some 4-5 years.
- Dan has one child from his first marriage and 3 from his 2<sup>nd</sup>:
  - Mark – 40
  - David - 24, John - 17 and Sally - 14. Sally has cerebral palsy.
- Dan will be paying spousal support to his 2nd wife, Grace, for the rest of her life, as she never worked. He is required to maintain an insurance policy for her benefit and the benefit of the kids.



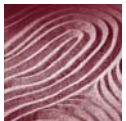
## Case study (con't)



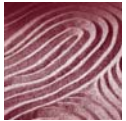
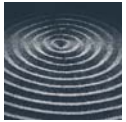
- Dan has a successful retail clothing business, with 4 stores in Toronto -- 3 are in malls, the 4th is on Avenue Road. He has the opportunity to purchase the building on Avenue Road, which also has an apartment above it. He and Diane are considering moving into the apartment.



- He has been able to accumulate funds in an RRSP and currently has \$2M. He also has some non-registered investments.
- His son Mark is a lawyer and has little to do with his father.
- David has worked in the stores since he was in high school. He has an MBA and has begun to take on a management role in the business.





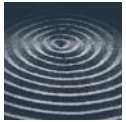


## Case Study (con't)

- John is interested in sciences and is expected to go to medical school -- but his grades have been slipping the last year as he spends more time playing guitar in a band.
- Sally is in a private school and receives a significant amount of therapy. She is becoming more independent.
- Dan and Diane love to travel and sail and have been talking about a half-year trip to Australia.



# Case Study



- Where can trusts assist Dan?



- In his Will

- trust for Diane

- Trustees?

- Sally?

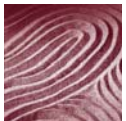
- John?

- Insurance trust

- Alter Ego or Joint Partner Trust in a few years?

- *Inter vivos* trust: Is his business ready for an estate freeze?  
Shift of control to David?

- Ownership of the building?



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