

# Definition and Historical Development of Trusts

Posted on [May 5, 2021](#) May 5, 2021 Written By [Opeoluwa Sanni](#) Posted in [Equity and Trust](#)

The oft quoted and predominantly accepted definition of a trust is that provided by Keeton. According to him:

All that can be said of a trust therefore, is that it is the relationship which arises whenever a person called the trustee is compelled in equity to hold property, whether real or personal, and whether by legal or equitable title, for the benefit of some persons (of whom he may be one and who are termed as *cestui que* trust) or for some object permitted by law, in such a way that the real benefit of the property accrues, not to the trustee, but to the beneficiaries or other objects of the trust.

## Historical development of trusts

The trust was created as an answer to a unique legal problem. Under the English feudal land holding system, the highest interest that an individual could obtain in land was the estate. This estate may be fee simple, fee tail or life estate. Originally, estate was granted to a tenant upon undertaking to fight for the landholder in times of war but from the 11<sup>th</sup> century downwards and the steady reduction of armed conflict, this arrangement became less lucrative for the landholder.

Due to this, landholders developed other ways to benefit off the land they had pledged to the tenant such as requiring rent. Two notorious devices that landholders used to benefit off land were the Escheat and Wardship. Escheat occurred where a tenant died intestate. In such instance, reversionary interest would operate on the land and the overlord was free to grant it to another tenant. While Wardship occurred where the tenant died with an heir that was still a minor and the overlord took wardship of the land and child. The overlord was entitled to all the profits and income from the land under this scheme, until the minor became an adult. He was in turn responsible for the upbringing of the minor.Â

So these arrangements ensured that the overlord would be entitled to enjoy the land of his tenant if either of the envisaged scenarios occurred. It would have been a simple thing to avoid these consequences by disposing of the land appropriately by will. However, testamentary disposition of land was prohibited at the time as land was considered personal to the holder and could therefore not survive him. This meant that a landholder could not create a devise of land in favor of his heirs, neither could he transfer them to heirs that were below the age of majority. He was thus open to the operation of either the Escheat or the Wardship.

Due to this hard situation that the tenants found themselves in, the Use was created. The principle behind the Use was simple. The tenant (now called a feoffor) would transfer his fee simple interest in the land (in a transaction called a feoffment) to another called a feoffee, who would be bound to hold it for the use of his heirs. Thus, in one stroke, the Use was able to beat both the Escheat and Wardship as well as the Common law rule that prohibited testamentary disposition of land especially as a feoffment made during oneâ€™s life would achieve the same effect as a will.Â

It must be noted that the entire feoffment was informal. If the undertaking of the feoffee to use the land for the benefit of the heir was made a formal condition, the land would automatically revert to the feofforâ€™s heir (aka the landlord) upon breach, thus frustrating the feofforâ€™s attempts to make a testamentary disposition to a third party, if that was his wish.

And if the right of the beneficiary was made a legal condition, the contract would be void at law. However, this informal nature was also the Achilles heel of the Use. It meant that the beneficiary would have no legal recourse if the feoffee reneged on his promise (and it was no more than a mere promise).

Equity and the courts of Chancery stepped in and began to enforce the use, thereby instituting the principle of trusts.Â