

N active or passive, it would be more accurate and precise to substitute the terms, "perfect" and "imperfect" for "executed" and "executory" trusts. 1 Hayes, Conv. 85.—**Executory trust.** One which requires the execution of some further instrument, or the doing of some further act, on the part of the creator of the trust or of the trustee, towards its complete creation or full effect. An *executed* trust is one fully created and of immediate effect. These terms do not relate to the execution of the trust as regards the beneficiary. *Martling v. Martling*, 55 N. J. Eq. 771, 39 Atl. 203; *Carradine v. Carradine*, 33 Miss. 729; *Cornwell v. Wulff*, 148 Mo. 542, 50 S. W. 439, 45 L. R. A. 53; *In re Fair's Estate*, 132 Cal. 523, 60 Pac. 442, 84 Am. St. Rep. 70; *Pillot v. London*, 46 N. J. Eq. 310, 19 Atl. 25.—**Express trust.** A trust created or declared in express terms, and usually in writing, as distinguished from one inferred by the law from the conduct or dealings of the parties. *State v. Campbell*, 59 Kan. 246, 52 Pac. 454; *Kaphan v. Toney* (Tenn. Ch.) 58 S. W. 913; *McMonagle v. McGlinn* (C. C.) 85 Fed. 91; *Ransdel v. Moore*, 153 Ind. 393, 53 N. E. 767, 53 L. R. A. 753. Express trusts are those which are created in express terms in the deed, writing, or will, while implied trusts are those which, without being expressed, are deducible from the nature of the transaction, as matters of intent, or which are superinduced upon the transactions by operation of law, as matters of equity, independently of the particular intention of the parties. *Brown v. Cherry*, 56 Barb. (N. Y.) 635.—**Imperfect trust.** An executory trust, (which see;) and see EXECUTED TRUST.—**Implied trust.** A trust raised or created by implication of law; a trust implied or presumed from circumstances. *Wilson v. Welles*, 79 Minn. 53, 81 N. W. 549; *In re Morgan*, 34 Hun (N. Y.) 220; *Kaphan v. Toney* (Tenn. Ch.) 58 S. W. 913; *Cone v. Dunham*, 59 Conn. 145, 20 Atl. 311, 8 L. R. A. 647; *Russell v. Peyton*, 4 Ill. App. 478.—**Involuntary trust.** "Involuntary" or "constructive" trusts embrace all those instances in which a trust is raised by the doctrines of equity, for the purpose of working out justice in the most efficient manner, when there is no intention of the parties to create a trust relation and contrary to the intention of the one holding the legal title. This class of trusts may usually be referred to fraud, either actual or constructive, as an essential element. *Bank v. Kimball Milling Co.*, 1 S. D. 388, 47 N. W. 402, 36 Am. St. Rep. 739.—**Ministerial trusts.** (Also called "instrumental trusts.") Those which demand no further exercise of reason or understanding than every intelligent agent must necessarily employ; as to convey an estate. They are a species of special trusts, distinguished from discretionary trusts, which necessarily require much exercise of the understanding. 2 Bouv. Inst. no. 1896.—**Naked trust.** A dry or passive trust; one which requires no action on the part of the trustee, beyond turning over money or property to the *cestui que trust*.—**Passive trust.** A trust as to which the trustee has no active duty to perform. *Goodrich v. Milwaukee*, 24 Wis. 429; *Perkins v. Brinkley*, 133 N. C. 154, 45 S. E. 542; *Holmes v. Walter*, 118 Wis. 409, 95 N. W. 380, 62 L. R. A. 986.—**Precatory trust.** Where words employed in a will or other instrument do not amount to a positive command or to a distinct testamentary disposition, but are terms of entreaty, request, recommendation, or expectation, they are termed "precatory words," and from such words the law will raise a trust, called a "precatory trust," to carry out the wishes of the testator or grantor. See *Bohon v. Barrett*, 79 Ky. 378; *Hunt v. Hunt*, 18 Wash. 14, 50 Pac. 578; *Aldrich v. Aldrich*, 172 Mass. 101, 51 N. E. 449.—**Private trust.** One established or created for the benefit of a certain designat-

ed individual or individuals, or a known person or class of persons, clearly identified or capable of identification by the terms of the instrument creating the trust, as distinguished from trusts for public institutions or charitable uses. See *Pennoyer v. Wadhams*, 20 Or. 274, 25 Pac. 720, 11 L. R. A. 210; *Doyle v. Whalen*, 87 Me. 414, 32 Atl. 1022, 31 L. R. A. 118; *Brooks v. Belfast*, 90 Me. 318, 38 Atl. 222.—**Proprietary trust.** In Scotch law, a naked, dry, or passive trust. See *supra*.—**Public trust.** One constituted for the benefit either of the public at large or of some considerable portion of it answering a particular description; to this class belong all trusts for charitable purposes, and indeed public trusts and charitable trusts may be considered in general as synonymous expressions. *Lewin, Trusts*, 20.—**Resulting trust.** One that arises by implication of law, or by the operation and construction of equity, and which is established as consonant to the presumed intention of the parties as gathered from the nature of the transaction; as, for example, where one person becomes invested with the title to real property under circumstances which in equity obligate him to hold the title and exercise his ownership for the benefit of another, a familiar instance being the case where a man buys land with his own money but has the title put in the name of another. See *Sanders v. Steele*, 124 Ala. 415, 26 South. 882; *Dorman v. Dorman*, 187 Ill. 154, 58 N. E. 235, 79 Am. St. Rep. 210; *Aborn v. Searles*, 18 R. I. 357, 27 Atl. 796; *Fulton v. Jansen*, 99 Cal. 587, 34 Pac. 331; *Western Union Tel. Co. v. Shepard*, 169 N. Y. 170, 62 N. E. 154, 58 L. R. A. 115.—**Secret trusts.** Where a testator gives property to a person, on a verbal promise by the legatee or devisee that he will hold it in trust for another person, this is called a "secret trust." *Sweet*.—**Shifting trust.** An express trust which is so settled that it may operate in favor of beneficiaries additional to, or substituted for, those first named, upon specified contingencies. *Civ. Code Ga.* 1895, § 3154.—**Simple trust.** A simple trust corresponds with the ancient use, and is where property is simply vested in one person for the use of another, and the nature of the trust, not being qualified by the settler, is left to the construction of law. It differs from a *special trust*. *Perkins v. Brinkley*, 133 N. C. 154, 45 S. E. 541; *Cone v. Dunham*, 59 Conn. 145, 20 Atl. 311, 8 L. R. A. 647; *Dodson v. Ball*, 60 Pa. 500, 100 Am. Dec. 586.—**Special trust.** Where the machinery of a trust is introduced for the execution of some purpose particularly pointed out, and the trustee is not a mere passive depositary of the estate, but is called upon to exert himself actively in the execution of the settlor's intention; as, where a conveyance is to trustees upon trust to sell for payment of debts. Special trusts have been divided into (1) ministerial (or instrumental) and (2) discretionary. The former, such as demand no further exercise of reason or understanding than every intelligent agent must necessarily employ; the latter, such as cannot be duly administered without the application of a certain degree of prudence and judgment. 2 Bouv. Inst. no. 1896; *Perkins v. Brinkley*, 133 N. C. 154, 45 S. E. 541; *Flagg v. Ely*, 1 Edm. Sel. Cas. (N. Y.) 209; *Freer v. Lake*, 115 Ill. 662, 4 N. E. 512; *Dodson v. Ball*, 60 Pa. 496, 100 Am. Dec. 586.—**Spendthrift trust.** See SPENDTHRIFT.—**Transgressive trust.** A name sometimes applied to a trust which transgresses or violates the rule against perpetuities. See *Pulitzer v. Livingston*, 89 Me. 359, 36 Atl. 635.—**Trust company.** A corporation formed for the purpose of taking, accepting, and executing all such trusts as may be lawfully committed to it, and acting as testamentary trustee, trustee under deeds of settlement or for married women, executor, guardian, etc. To these functions are sometimes (but not necessarily) added the business of acting as fiscal agent for corporations,