6. Formality, perpetuity, and illegality: trust creation and public policy I

Trusts property apparently belongs to the person who is not the true owner despite having all the forms and powers of ownership. Thus, a trust creates an illusion of ownership that may prejudice trade creditors when the trustee becomes insolvent and deceive the state's tax collection agencies. However, there are a number of safeguards designed to prevent the undesirable creation and operation of trusts. For example, the disposition of equitable interests under trusts must be made in writing and the creation of trusts of land must be evidenced in writing. This chapter discusses the ways in which the creation of trusts is influenced by special considerations of public policy, focusing on formality, perpetuity, and illegality. It also considers rules against perpetuities—the rule against remoteness of vesting, the rule against inalienability of capital, and the rule against accumulation of income—and finally, looks at the Perpetuities and Accumulations Act 2009.
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