This chapter examines some of the requirements for the creation of an express trust. These include certainty of intention to create a trust, certainty of identifiable subject matter, certainty of objects, the beneficiary principle, and the perpetuity rule. This chapter explains that the creator of the trust, whether an inter vivos or testamentary trust, is given a great deal of flexibility as to the terms and operation of the trust. The chapter examines when a trust may be invalid, particularly for failure to comply with the certainty requirements, why the certainty requirements have been recognized, and how the operation of these requirements may be satisfied through careful construction of the trust instrument. The chapter also considers when the creation of the trust can be considered to be an abuse of trust.
4. The Requirements of an Express Trust