basic trust law in one paragraph

A trust comes into existence when one person transfers property to others, as trustees, who are to hold it for beneficiaries or a charitable cause. The trustees are the legal owners of the property, or whatever rights have been passed to them, but for the benefit of the beneficiaries or charitable cause and not for their personal benefit. Trust law very strictly prevents from benefiting personally from the trust unless permitted by the trust document: this rule does not apply to pension scheme trustees (Pensions Act 1995, s39). The basic structure of a simple classic family trust consists of one document (trust deed or will) and three parties, who are (1) the settlor, who appoints trustees, transfers property to them and determines the purposes of the trust and the trustees' duties and powers, (2) the trustees, who are the legal but not beneficial owners of the trust property and administer the trusts according to the trust document and (3) the beneficiaries, who are volunteers whose role is passive, to receive benefits in accordance with the trust document.

pension scheme trusts

The Finance Act 1921 provided favourable tax treatment for superannuation funds (the equivalent of today's occupational pension schemes) established under irrevocable trusts. There has been no tax law requirement from 6 April 2006 for occupational pension scheme to be established under trust. The main reason for the use of trusts, both long before the Finance Act 1921 and today, is that putting the pension fund in trust puts it out of reach of the employer and its creditors.

The structure of a pension scheme trust is only approximately similar to that of a typical family trust: it (simplified) still consists of one document and three parties, but the roles of two of them differ significantly from those in a family trust. The employer is a settlor, but it is also a beneficiary, because, if there is a surplus of assets, after all beneficiaries' interest have been secured, the surplus or part of it usually belongs to the employer so it is also a possible beneficiary. The members are not mere volunteers but (a) they accrue benefits only as part of ther remuneration from the employer and (b) they are settlors to the extent that they too pay contributions. There are therefore associated contractual in addition to trust relationships between the employer and members.

pension trustee's main duties

- to know the terms of the trust;
- to act solely in the interest of the beneficiaries;
- to receive contributions;
- to hold and invest the scheme's assets;
- to pay benefits in accordance with the trust documents;
- to consider whether and if so how to exercise ther powers; and
- to wind the scheme up as required by the trust documents.

the exercise of powers and discretions

In addition to duties, which they must perform, trustees have discretions, which they must decide whether or not to exercise and, if they decide to exercise them, how to do so. The discretions can arise because they are required by the terms of the trust, eg a decision which of a number of possible beneficiaries is to receive all or a part of a lump sum payable on a member's death. Discretions can also arise in deciding how to perform, eg, investment duties or even because the trust document do not state clearly what is intended. The main principles about the exercise of discretions are the following.

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(a) Trustees must ascertain the extent of their powers and their purpose.
(b) Discretionary trusts and powers must be exercised in good faith for the purpose for which they are conferred, and not for any collateral purpose.
(c) Trustees, when exercising a discretionary power, must take into account all factors which are relevant, not take into account irrelevant, irrational or improper factors.
(d) A judge may disagree with the manner in which trustees have exercised their discretion, but, unless they can be seen to have taken into account irrelevant, improper or irrational factors, or unless their decision can be said to be one that no reasonable body of trustees properly directing themselves could have reached, the judge cannot interfere.

trustees' duty of care

Trustees must take "in managing trust affairs all those precautions which an ordinary prudent man of business would take in managing similar affairs of his own" (re Speight (1883) 9 App. Cas. 1, with the addition by Lindley LJ in re Whitely, (1886) 33 ChD 347, "The duty of trustee is not to take such care only as a prudent man would take if he had only himself to consider: the duty rather is to take such care as an ordinary prudent man would take if he were minded to make an investment for the benefit of other people for whom he felt morally bound to provide". In other words they must act carefully and reasonably.

trustees' personal liability

Trustees have unlimited personal liability. They are accountable for all property that they receive or ought to have received into the trust fund and must account to the trust fund for any shortfall. The first and foremost means of avoiding liability is for trustees to ensure that they act within their authority and that they act prudently and avoid negligence. Following that there are the following principal further defences:

(a) directions from the court under the Trustee Act 1925, s57;
(b) relief from liability by the court under the Trustee Act 1925, s61;
(c) exclusion of liability clauses in the trust deed;
(d) clause in the trust deed for indemnity by the employer;
(e) clause in the trust deed for indemnity out of the trust fund;
(f) consent by the beneficiary; and
(g) insurance.

personal or corporate trustee

A limited liability company may be a trustee, in which case the persons who would have been trustees would be directors of the company. The requirement for one third of the trustees to be member nominated also requires one third of the directors of a corporate trustee to be member nominated.

Where a company is the trustee, it is the company and not its directors which is liable as summarised above. The directors' duties are to the company not the trust.

Other advantages of a corporate trustee is continuity and not need to change contracts or transfer property on changes of the directors, the ease of changing directors (as opposed to trustees) and changing the decision making procedures.

Disadvantages are that civil penalties are higher on corporate than individual trustees, (respective maxima of £50,000 and £5.000) there are company law restrictions on exoneration and indemnity clauses and, assuming that the trustee company is not trust corporation, a second trustee is needed to give a valid receipt on the sale of land: Law of Property Act 1925, s27.