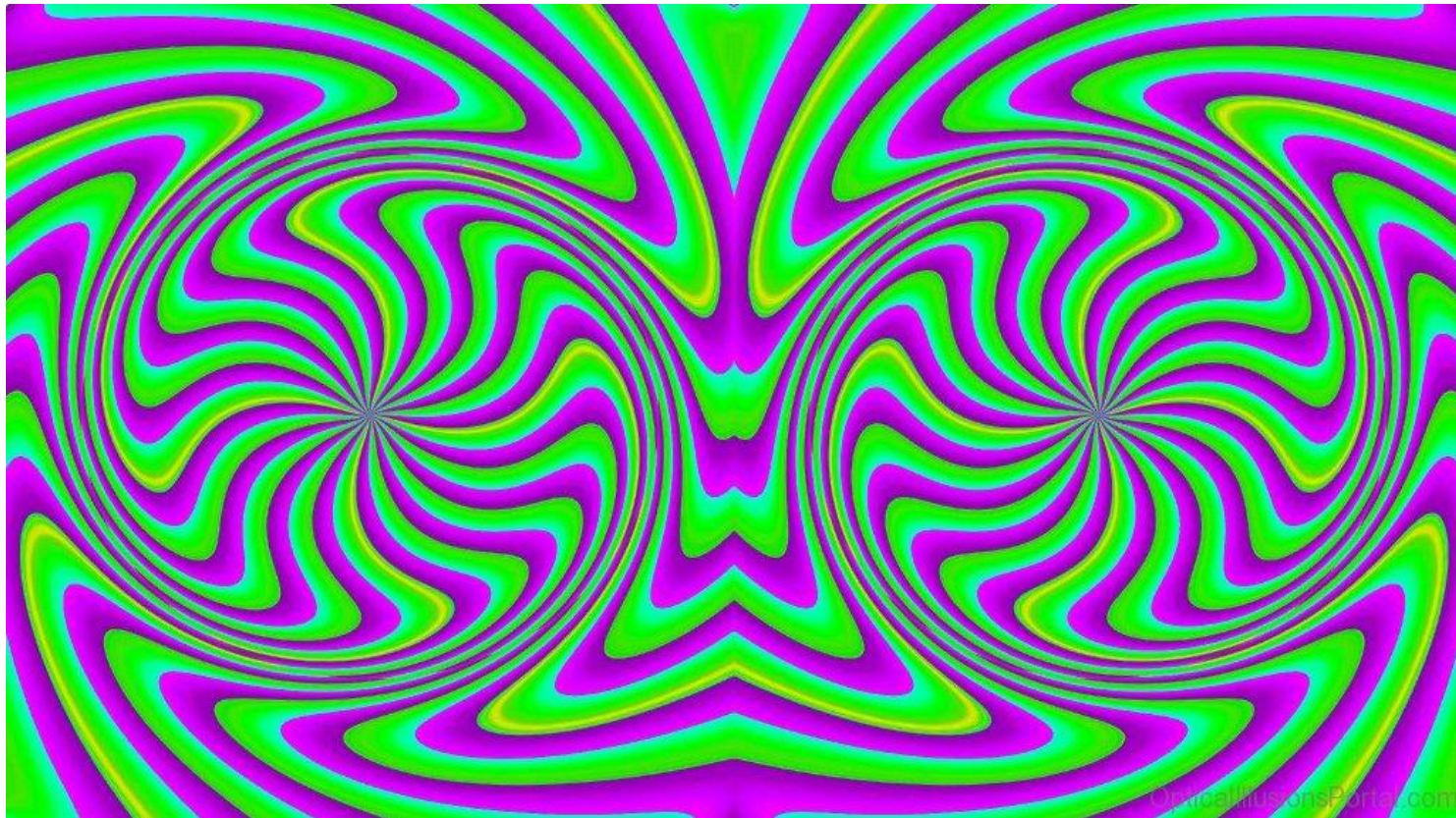


## “Illusory” Trusts (1)





## “Illusory” Trusts (2)

### Narrow

- No accountability
- Trustee usurpation

### Wide

- Reality of control
- No meaningful accountability



## *Re AQ Revocable Trust*

*“...the cumulative effect of the trust documents, when taken with the de facto situation, means that the settlor as trustee could not effectively be called to account during his lifetime. Crucial to this conclusion is art VIII H, which allows the settlor to absolve himself as trustee from any and all breaches of trust. While it may be that I would not have come to that conclusion had art VIII H been coupled with a distinct and independent trustee, in this case it is the combination which pushes it over the top...”*



## *Clayton v Clayton*

### Family Court:

- No accountability

### High Court:

- Reality of control

### Court of Appeal:

- *“...there is either a valid trust or there is not.”*

### Supreme Court:

- *“...a matter of some complexity on which the Court does not have a concluded unanimous view.”*

## *Pugachev (1)*





## *Pugachev (2)*

*“The case [Clayton v Clayton] shows that when considering what powers a person actually has as a result of a trust deed, the court is entitled to construe the powers and duties as a whole and work out what is going on, as a matter of substance. Even though the VRPT deed in that case named more than one Discretionary Beneficiary and named Final Beneficiaries which did not include Mr Clayton, when the deed is examined with care, what emerged is that in fact Mr Clayton had effectively retained the powers of ownership.”*



### *Mezhprom Bank v Sergei Pugachev (3)*

*“I conclude...that on their own terms these trusts do not divest Mr Pugachev of the beneficial ownership he had of the assets transferred into them. In substance the deeds allow Mr Pugachev to retain his beneficial ownership of the assets.”*



## Issues

- Taxation
- Insolvency
- Matrimonial finance
- Hague Trusts Convention
  - “Control”/“Accountability”
- Trusts (Special Provisions) Act 1989