**Abstract**

The trust is a unique legal tool. It enables the trustee to act with property for the benefit of a beneficiary, or for some other purpose. Thus, the trust can be used in cases where there is a need to manage a beneficiary’s assets for him, in cases where the settlor seeks to distribute assets over time and sparingly, as opposed to granting them to the beneficiary fully in one-time, and, the settlor may order that the grant of the assets in trust be made possible only for the beneficiaries set out in the trust deed, and for such purposes as are prescribed by the settlor. A trust created in the lifetime of the settlor, and which survives after his death, would make redundant the need to apply for probate or an inheritance decree, with all the time and costs involved in this procedure, and the costs to the deceased’s assets, which may arise due to the time lag between the death of the owner of the assets, and granting them to the recipient (an heir or a legatee under a will). The redundancy of the need to apply for an inheritance order or for probate, allows the settlor to maintain the confidentiality of the trust, and obviate lengthy discussions, after the settlor’s death, concerning the settlor’s legal competence or questions of whether he created the trust under duress or undue influence, as well as reduces the number and complexity of future debates relating to the interpretation of the trust deed. It is easier to prove these claims during the settlor’s life, in contrast to attempts to prove a person’s legal capacity, the existence of undue influence, or to interpret a vague will when the testator, the central and most important witness, is no longer alive. A trust created during the life of a settlor, and which is expected to survive after his death, will allow the settlor to observe the manner of the trustee’s work, and ensure that the trust is indeed being managed as instructed. An indeed, a trust created during the lifetime of the settlor, for the benefit of the settlor himself, will facilitate devoted attention to the settlor’s assets in cases where he might find it difficult to manage his assets independently. Even trusts created by a will have many advantages: It may facilitate overcoming various limitations appearing in the Inheritance Law of the legal jurisdiction in question: For instance, one may, by agency of a trust, define beneficiaries that the respective inheritance law does not define as heirs (such as an animal), and one can, in legal systems that permit it, grant rights which cannot be granted by way of inheritance, and even overcome certain morphological limitations which apply under the respective inheritance law of various legal jurisdictions. A person wishing to create a trust under Israeli law may review the Trust Law and learn the rules that apply to the manner of its creation, management, and supervision. However, a person seeking to determine whether the Trust Law limits the duration of the created trust, will not find an answer from studying the language of the law: The Trust Law is silent on, and completely ignores, this point.

 Despite the silence of the Trust Law, this study seeks to argue that one can create a perpetual trust under Israeli law, and recommends revoking the proposal appearing in the Civil Code Bill, 5771-2011, which seeks to limit the duration of a trust to 100 years, thus allowing a trust created in the present, to continue its life. In this way, a settlor may be confident that the creation of a trust in the present, will allow it to be managed in perpetuity, if the settlor seeks to do so. The study is constructed in two tiers: In the first, the study seeks to argue that the Trust Law does not prohibit the creation of a perpetual trust, and therefore that such a trust can be created under existing law. In the second, the study seeks to argue that the proposal to limit the duration of the trust, as appearing in Section 588(b) of the Civil Code Bill, should be revoked. Thus, the creation of a perpetual trust would be possible, which would begin its life in the present, under the existing Trust Law, and would survive the entry into force of the Civil Code Law. The study is constructed in four aspects, facilitating four points of view, from different angles, which together bring about the full prism of this work.

The first part of the study depicts the universal legal reality permitting the creation of a perpetual trust: Many legal systems permit the creation of long-term and even perpetual trusts, by eliminating the historical rule against perpetuities which limited the duration of a trust to the lifetime of a person who lived at the time of the death of the settlor, plus another 21 years. Close examination, of many legal systems, depicts sweeping changes made with regard to the implementation of the classical rule against perpetuities. This change is characterized by developments in two central directions with regard to changing the duration of the trust: One direction of change completely eliminates the rule against perpetuities, thereby permitting, in that legal system, the creation of perpetual trusts. A second direction of change also revokes the time limit prescribed in the classic rule against perpetuities, but limits the duration allowable for a trust to periods varying, in most cases analyzed herein, from 80 to 150 years. It is impossible to ignore the fact that these changes will not elude the Israeli financier, seeking to invest his money by agency of a trust, and who may even want to create a perpetual trust. Limiting the duration of the trust in Israeli law, may lead him to conclude that the State of Israel is not the optimal place for such an investment, and he will seek to invest his money under a foreign legal system that enables the creation of perpetual trusts as he wishes.

The second part of the study argues that both the Inheritance Law (some of the provisions of which affect the rules for the creation of trust in a will), and the Trust Law, do not prohibit the creation of a perpetual trust. This claim is based on two sub-arguments: The first argument, which concerns the Inheritance Law, is that it is impossible to determine, from the language of Sections 3, 42(d) and 8 of the Inheritance Law, from a review of the case law that accompanies them, and from a through perusal of the documents in the State Archives that accompanied the inception of the Inheritance Law, that the Inheritance Law and its specific sections, relevant to this study, prohibit the creation of a perpetual trust. Furthermore, even if it were possible to conclude that such a prohibition, explicit or implicit, does exist, if a contradiction were generated between the Trust Law and the Inheritance Law – the Trust Law would prevail. The second argument is that from a thorough examination of the language of the Trust Law, the case law accompanying it, and documents in the State Archives that accompanied the enactment of the Trust Law, it cannot be determined that the Trust Law prohibits the creation of a perpetual trust. Broad understanding can be gleaned from perusing the language of the Trust Law, other laws that impact on its application, case law, and relevant academic studies, as well as from reviewing the documents found in the State Archives, which concerned the enactment of the current Trust Law, and which also include, *inter alia*, correspondence, minutes of meetings of the *Knesset* Constitution, Law and Justice Committee, minutes of *Knesset* sessions, and various other documents. In the opinion of this author, one can conclude that the wording of the Trust Law does not limit the duration of the trust, and that a careful examination of all the relevant documents in the State Archives – both documents relating to the issue of the existence of the institution of the private trust prior to the enactment of the current Trust Law – as well as the documents that favored the creation of such an institution within the framework of Israeli law, or which opposed its adoption, as well as the documents that included the opinions, the various letters, and minutes of the various discussions in the path towards the enactment of the Trust Law, shows that the vast majority of those documents did not include references to limiting the duration of the trust. Only few documents were found, from several jurists, commenting that there is a need to limit the duration of the trust. Those comments, as reproduced herein, were not acted on by the legislature. In addition, there were proposals to limit the duration of the trust which existed in previous drafts of the Trust Law that was adopted. In this section, I shall discuss the question of why did the idea to limit the duration of the trust arose, and was then “buried”, and not included in the provisions of the Trust Law? Although this question cannot be answered from the existing theoretical materials, two facts can be learned: One is that a small number of documents found in the State Archives, which accompanied the inception of the existing Trust Law, did indeed raise the question of limiting the duration of the trust; and the second, is that even though the subject was on the agenda, and even discussed for a brief period, it did not gain momentum, and was not adopted at the end of the day. One possible explanation for the paucity of documents relating to limiting the duration of the trust, and the disregard that members of the various committees that dealt with the bill over the years had to comments and opinions on the subject submitted for their review, is that most of the participants in the legislative process were not aware of the rule against perpetuities, and therefore did not consider the possibility of proposing such a limitation. This hypothesis is reinforced when examining the legal education of the participants in the legislative process. Such a review indicates that the jurists who proposed limiting the duration of the trust gained their legal education in common law countries. Their legal worldview was based on common law, and therefore they were aware of the rule against perpetuities and proposed a time limit that would apply to the trust. In contrast, most of the participants in the Trust Law’s enactment process, did not hail from such backgrounds. Later in this section, the study argued that Israeli case law on time limits in the Inheritance Law and the Trust Law, did not relate to a limitation on the duration of the trust. This section analyzed verdicts from four different angles: Court discussions with respect to the directive: “It is a commandment to uphold the words of the dead”, the courts’ discussion with respect to “The control of the dead hand”, the courts’ rulings regarding the change and rescission of the duration of the trust, and the courts’ deliberations with respect to the relationship between the Trust Law and the Inheritance Law. In none of these angles did the court refer to limiting the duration of the trust.

The third part of the study sought to address the provisions of Section 588(b), which appear in the Civil Code Law Bill, which seeks to limit the duration of the trust to 100 years. The study argues that this proposal is problematic because it does not correspond to global developments related to changing the rule against perpetuities and even its revocation, and also does not correspond to the existing legal reality in Israel. Furthermore, the study claims, that a perpetual trust is not offensive to public policy, and therefore there is no reason to prevent creation of such a trust in Israeli law. In this section, the study seeks to respond to the opponents’ arguments, which arise in the setting of broad academic writing, which seek to argue that the perpetual trust should not be permitted, by means of the following statements: **A**. The number of perpetual trusts that would be established will be relatively small, and therefore even if an injury is caused to the next generation, it would be minor. **B**. It is possible to perpetuate the inequality between generations not only by way of a perpetual trust, and therefore perpetual trusts will not increase inequality. **C**. The historical separation that permits the perpetual trust for the benefit of the public, and the prohibition of perpetual trusts for a private trust, is not always justified. **D**. Perpetual trusts are in some cases the only tool for achieving the settlor’s goals. **E**. One must compare the proprietary rights of a person during his lifetime, to those rights of his upon his death. **F**. Limiting the duration of the trust is not enforceable in instances in which the world has different legal systems: As long as there are legal systems that allow it, then whoever wants to, will invest his fortune in the legal system that allows the creation of a perpetual trust. **G**. The criticisms of the perpetual trust can be met. **H**. The perpetual trust does not have a sweeping impact on public policy. **I**. The control of the dead hand is not always negative.

The fourth and final part of the study seeks to answer the main argument raised by the opponents of the existence of the perpetual trust, which touches upon the great difficulty in predicting the changes in circumstances that are likely to apply to trusts lasting many years, and offers a solution to the difficulties that may arise over time, in management of a multi-year or even perpetual trust. This concerns the difficulty of predicting the variety of changes that could apply, that could prejudice the trust itself, the benefits accrued to the beneficiaries, and the possibility of managing it in the best possible way. The difficulty in predicting future changes that may affect trust management, such as changes to the trust’s assets, economic, legal, moral, and other changes that are likely to change the reality in which the trust is operating, or changes to the identities of the beneficiaries, their number and their meeting the terms of the trust, is posited as the central criticism of the perpetual trust. According to the opponents of the perpetual trust, the difficulties of prediction may affect the effectiveness of the trust, its goals, and the beneficiaries, and therefore, since it is impossible to predict all the changes that may occur, the longer the life of the trust, the greater the chance that the change in circumstances will impair the proper management of the trust, and even render it inefficient or irrelevant. Those who oppose the existence of the perpetual trust will argue that the solution to the prediction problem is not to permit the creation of such a trust in the first place. In this chapter, the study argues that the problem of predictability can be dealt with by providing flexible and wide-ranging tools to the courts, that will facilitate dealing with changing future circumstances. Such tools will address the issues that will arise, while preserving the life of the trust as far as possible. The solution will be the existence of supervisory mechanisms that will operate “on the go”. In the first part of the chapter, the study sought to argue that even without interfering with the legal reality existing in Israeli trust law, the Trust Law imposes extensive obligations on the trustee in all matters related to the management of trust assets, preserving them, and with respect to the trustee’s duties to the beneficiaries. The Trust Law further provides the courts with flexibility with respect to changing the terms of the trust and even terminating it. As part of this section, the comment was made, that the law should enable the courts, and not the beneficiaries, to demand the termination of the trust, in instances which justify that. In the second part of the chapter, the study sought to argue that although the Trust Law imposes obligations on the trustee and allows the court to issue the trustee with instructions to change the terms of the trust, and even to order its termination, the law in its current form does not bestow sufficient flexibility, and does not permit sufficiently broad discretion for the court when dealing with the wide range of transformations that could embrace a perpetual trust. The proposed solution included a number of recommendations: Cancellation dispositive clauses in the current Trust Law, establishment of a widely applicable system supervising trustee action, which includes, *inter alia*, the existence of regulations mandating the requisite manner of administration, provisions relating to investment of trust funds, provisions regarding accountability, and the existence of designated forms for the filing of reports. As part of the regulations, the trustee will be required to submit to the courts applications for instructions in predetermined fields. It is proposed that a duty to register trusts be applied, and that a Public / General Trustee body be established to coordinate the supervision of trustees, that the Trust Law require the appointment of a trust protector, and that the appointment of two or more trustees be mandated. In addition, it is proposed that the courts’ powers be extended, so that they may order the replacement of the trustee in charge, revoke the rights of a beneficiary for disgraceful behavior, and that the court be allowed to order a change in the terms and conditions of the trust, and even to terminate the life of a perpetual trust, under certain conditions to be prescribed in the law. The proposed provisions are more comprehensive and more flexible than those currently existing in the Trust Law, and with respect to the perpetual trust, the courts be permitted to determine that conditions which are abusive, capricious, or prejudicial to public policy, could be rescinded. These changes will constitute a comprehensive response to the claims of those who oppose the existence of the perpetual trust, and would facilitate the proper management of any trust over many years.