Lee Brobst's

EYE OF THE EAGLE

THY WILL BE DONE IN ASSOCIATION

NEWSLETTER

Volume I No. 11 March 1990

IMPLIED TRUSTS

The next series of trusts we will deal with are called "Implied Trusts" or what we might call "Trusts by Operation of Law". Before we begin this most important series of trusts there are a few things that we must keep in mind. Some of which might seem to be a rehash but is most important to be understood.

The 14th amendment changed our form of government from a free enterprise system of government to a private enterprise system of government. The 14th amendment took people out of the relm of the god given natural law and clothed him with a uniform to act not in a corporate capacity but in a quasi corporate capacity. According to Black's Law Dictionary 5th Ed. Quasi means "as if; almost as it were; analogous to. This term is used in legal phraseology to indicate that one subject resembles another, with which it is compared, in certain characteristics, but that are intrinsic and materially differences between them". What is meant by quasi corporate capacity? Before we explain let us define corporate capacity. Corporations enjoy two distinct advantages that do not exist in the natural law and that is perpetual succession and limited liability for the payment of debt. Perpetual succession meaning they live forever or as long as the sovereign power meaning the people permit them to exist. Second, they enjoy limited liability for the payment of debt. In other words, they are not responsible for the debts they create. Debts meaning all sorts of liabilities. If the debts become to much of a demand, they declare bankruptcy and the people must bare their burden.

People do not have perpetual succession, in other words, in the natural law they die. So when we use the term quasi corporate capacity, we mean people ('persons' within the meaning subject to the 14th amendment) enjoying limited liability for the payment of debt as per H.J.R. 192 on June 5, 1933. Put another way, 'persons' are not liable for what they do except by

permission or restriction of the legislature thus producing legislative morality. You could say that 14th amendment citizens are artificial. When things are artificial you treat the symptom and not the cause. The American Medical Association being the leading example. This is why the system is so against organic health treatment. You are inducing the natural vibrations of high energy into artificial low vibration beings meaning the res.

The 14th amendment did not have dramatic results until 1933 when public policy changed from "PAYMENT" of debt "in Law" to a "discharge" of debt in "executive equity" to become what is known today as "at Law" to be enforced by the legislative courts in executive equity.

Congress stated in H.J.R. 192 that due to the existing emergency, meaning there was more demands being placed upon the gold in the United States Treasury than there was gold to meet those demands, so in consequence, Congress said it is against public policy for the people to demand "PAYMENT" of their debt obligations. In other words, the gold was the "in Law" jurisdiction and the people no longer wanted their Law. Put another way, the people did not want the responsibility of controlling their own lives by issuing their own money thus determining what the law was by their controlling factor as members of the jury. We could combine this paragraph into saying the people no longer wanted separation of the powers of executive and the legislature nor did they want the Article III courts of Justice. Separation of powers was the governing factor of our Constitutional Republic. This is what made our Republic so unique.

Contrary to belief, the International Banking Cartel does not have our gold, meaning the gold "in PAYMENT" of debt. That gold is in Fort Knox.

The banking cartel's gold is in the Chase Manhattan Bank in New York, London, Hamburg and the gold fields of Northern Russia. (Yes Russian Communism is the biggest hoax ever perpetrated on the American people along with Japan and United States conspiring to due in Japans form of living during World War II to establish Owenism in Japan which in turn is to demolish our country, to set up the Combined World Order and that is a story in and of itself).

But let us proceed to carry H.J.R. 192 a little further. It could be said that congress created a trust by its act of H.J.R. 192 and therefore was the settlor of the trust but congress only did what it had to do because of the circumstances and that was to reflect what the people wanted and that was to suspend the "in" Law jurisdiction.

Or it could be said that by H.J.R. 192 the people created a trust therefore, the people was the settlor of the trust but then suppose that you are against being a member of a trust especially a public trust. The question becomes, can you be compelled to be a settlor of a trust whether it be private or public?? As we have read earlier the answer to this question is no because, as we shall see there is no settlor in an implied or constructive trust, but instead is constructed by the court of equity as produced by the evidence. The very act of H.J.R. 192 in itself is voluntarily as was discussed in the November issue of this newsletter.

RESULTING OR CONSTRUCTIVE TRUST

The phrase "implied trust" is usually employed in American legal terminology to mean either a resulting trust or a constructive trust.

A resulting trust exists because of inferred or presumed intent of a property owner, as distinguished from a trust based on intent which is directly and clearly expressed.

A constructive trust is a remedial device of the court of equity for taking property from one who has acquired or retains it wrongfully and vesting title in another in order to prevent unjust enrichment. It is not based on intent of the parties, but rather is created by the court in order to achieve an equitable result. This is princely what the IRS or

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any other authority does and that is construct a trust under executive and legislative authority to prevent unjust enrichment upon its beneficiaries.

Previously we have discussed the creation of express trust. The origin of resulting and constructive trusts, which are sometimes called implied trusts, will now be considered.

While there has been some difference of opinion as to the meaning to be given the phrase "implied trust", it is generally used by the courts and writers to include all trusts other than the private and charitable express trusts. Express trusts depend for their existence on the intent of a property owner which is directly and expressly stated. Implied trusts, on the other hand, either depend on implied or presumed intent of a property owner or are not concerned with intent at all.

The phrase "resulting trust" has been employed generally to cover cases where the court decrees a property holder to be a trustee, such as in the case of a 14th amendment 'person' either because it finds there has been an implied intent that he be such or because of a presumed or fictional intent. Discussion of the classes of resulting trusts and illustrations of them will make this meaning clearer.

The "constructive trust" according to general usage, is not based on expressed intent that it exist, or even on implied or presumed intent. It is a court ordered trust, fastened on a wrongdoing property holder in order to prevent his unjust enrichment and for the purpose of giving the property to those rightfully entitled to it. In other words, the powers of executive equity are re-distributing the trust wealth It is a mere piece of remedial machinery, similar to an execution or an injunction. Its characteristics and the causes for its origin will be discussed in later sections.

There is little reason in logic for grouping resulting and constructive trusts together under the single heading of "implied trusts". The classification of trusts has been discussed by able writers. Undoubtly a desirable division would be that of Professor Costigan, between "intent-enforcing" and "fraud-rectifying" trusts. Within the former class would be fall: (1) cases where the parties have clearly expressed an intent to have a trust exist; (2) cases in which the parties have used ambiguous language which the court construes as showing a trust intent; and (3) cases in which the parties have expressed no intent by word, but have performed acts from which the court infers that a trust was intended. In this latter case the court declares that as a result of these acts a trust exists. To the second class, that of "fraud-rectifying," would be assigned those cases now usually classed as constructive or involuntary trusts, in which the parties have expressed no intent to have a trust, nor does the court presume that any such intent existed, but the court uses the trust as the most convenient method of working out justice and preventing one party from unfairly enriching himself.

STATUTE OF FRAUDS

By section eight of the English Statute of Frauds and its American successors, resulting trusts are exempt from the provisions of the Statute of Frauds, and may be proved by oral evidence, whether the subject is reality or personalty.

Section eight of the original English Statute of Frauds provided that section seven (which required proof or manifestation of a trust of reality to be written evidence) should not apply to resulting trusts. This was a reasonable exception, since, as will be shown later, such trusts are by their very nature based on inferred or fictional intent which could never be written, and hence a requirement of a writing would have amounted to abolishing resulting trusts.

All American Statutes of Frauds make a similar exception, so that resulting trusts may be founded entirely on oral evidence, whether the subject-matter of the trust is real estate or personal property. In the case of one type of resulting trust, the purchase money resulting trust, the courts are cautious about accepting oral evidence and

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require clear and convincing proof, as will be shown later.

CONSTRUCTIVE TRUSTS

Constructive trusts are created by courts of equity whenever title to property if found in one who in fairness ought not to be allowed to retain it. They are often based on disloyally or other breach of trust by an express trustee, and are also created where no express trust is involved but property is obtained or retained by other unconscionable conduct. The court merely uses the constructive trust as a method of forcing the defendant to convey to the plaintiff. It treats the defendant as if he had been an express trustee from the date of his unlawful holding.

Plaintiff as the wronged party and in the case of taxes the plaintiff is the IRS or other authorities acting on your will because they have found enough evidence to make you subject to the 14th Amendment Trust. In other words, silence is consent on your part because you have created no evidence to prove otherwise. Plaintiff generally has one or more alternative remedies open to him, and must elect between them and a constructive trust. Such remedies being criminal proceedings or by equity, meaning any administrative action by authorities including tax court or outright seizure. These executive equity actions are under Article I courts of commissions that operate out of the legislature and NOT under Article III courts of justice. In order to secure a constructive trust he is not required to show the inadequacy of legal remedies, but he must do equity by performing such acts as the coukt in its discretion decides are necessary in order to do justice to the defendant such as unjust enrichment.

Constructive trusts do not arise because of the expressed intent of a settlor. They are not "intent informing" trusts, but in a general way may be called "fraud-rectifying" trusts, if the word "fraud" is used in the sense of any kind of wrongdoing and not confined to an intentional false representation.

It would seem preferable to treat these trusts as created by courts of equity, rather than to regard them as being brought into being as a result of acts of the parties. Whenever equity finds that one has title to property, real or personal, originally acquired by any kind of wrongdoing or, although innocently obtained, now held under such circumstances that retention of the title will result in unjust enrichment, equity may declare such title-holder to be the trustee of a trust constructed by it for the purpose of working out justice, which is merely a convenient means of remedying a wrong. It is not a trust in which the trustee is to have duties of administration lasting for an appreciable period of time, but rather a passive, temporary trust,such as the public trust that the individual joins from year to year. See November 1989 issue of this newsletter page 9 in which the trustee's sole duty is to transfer the title and possession to the beneficiary.

The decree establishing the constructive trust amounts to a holding that the defendant ought to be treated as if he had been trustee for the plaintiff from the time the defendant began to hold the property unconscionably. The constructive trust does not exist merely because of the wrongful holding, but requires a court decree for its origin and this decree is retroactive in effect to the date when the unlawful holding began. A court decree does not apply to a public charitable trust because the issue has already been decided because the trust is for your benefit.

For example, if A, an agent of P, converts money which belongs to P and buys land in the name of A with the converted money, one remedy available to P is to have A declared by the court of equity to be a constructive trustee of the land for P, and a decree to that effect will mean that he is deemed to have such a trustee from the time he took title to the land.

The right to a constructive trust is generally an alternative remedy. The wronged party has a choice between a trust and other relief at law or in equity. At law meaning 'willful failure to file'. Equity meaning any civil action on the part of the IRS or other authorities representing compelled performance. He has a right to the constructive trust from the time of the wrongful holding, but he may elect not to take advantage of it, and he is the beneficiary of such a trust only from the date when he secures a court decree to that effect. Thus in the case above, P could sue A for the recovery of the amount of money wrongfully taken, or he could elect to fasten a constructive trust on the land, but he could not get both types of relief.

Although there has been some difference of opinion, the better view would seem to be that

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the party seeking a constructive trust does not have to prove that he has no adequate remedy at law. Thus we have willful failure to file that is not based on positive law.

A constructive trust must have definite subject-matter, and in the case of the public trust a res within the District of Columbia, just as an express trust must meet this requirement of a res. It cannot be based on mere possession of property, or on breach of contract where no ownership of property is involved.

If a person has a cause of action for the establishment of a constructive trust and he dies, his right to obtain the trust passes to his successors by intestacy or by will, and if the property is realty his heirs or devisees may secure a decree, or if the res is personalty his next of kin or legatees may secure the constructive trust.

A wronged party seeking the aid of a court of equity in establishing a constructive trust must himself so equity. The court will exercise its discretion in deciding what acts are required of the plaintiff as conditions precedent to the securing of a decree. For example, if the defendant has obtained title to property of the plaintiff by means of fraud, the plaintiff will be required to return any consideration received from the defendant, just as he would if he proceeded on the theory of recession. And if the defendant has, during his period of wrongful retention of the property, expanded money for the preservation of protection of the property, for example, by paying taxes or the principal or interest on a mortgage, reimbursement may well be required of the plaintiff. And if the defendant has made improvements or performed services in managing the property, some courts have been induced to require the plaintiff to compensate the defendant to the extent that the plaintiff will secure a benefit from these acts if he secures a constructive trust, especially in cases where the defendant was not an intentional wrongdoer but rather acted under mistake or ignorance.

A plaintiff may not secure a constructive trust where he and the defendant were engaged in an illegal transaction at the time of the alleged wrongdoing of the defendant toward the plaintiff.

The decree establishing the constructive trust will require the defendant to deliver possession and convey title to the property and to pay to the plaintiff profits received or rental value during the period of wrongful holding, and other wise to adjust the equities of the parties after taking an accounting.

The only importance of great importance in the field of constructive trusts is to decide whether, in the numerous and varying fact situations presented to the courts, there is a wrongful holding of property and hence a potential unjust enrichment of the defendant. An attempt will be made in subsequent sections of this chapter to consider some of the more important instances in which constructive trusts have been created or seriously considered.

Constructive trusts are sometimes called "involuntary trusts."

STATUTE OF FRAUDS

The Statute of Frauds has no application to constructive trusts. The precise reason why you cannot plead fraud in tax cases. Constructive trusts are created by equity, whether the evidence on which they are based is oral or written, and whether the property involved is real or personal. However, equity requires that the constructive trust claimant prove his case by clear and convincing evidence.

By the express provisions of the eighth section of the English Statute of Frauds trusts arising "by the implication or construction of law" are not subject to the Statute of Frauds. The American Statutes have universally adopted this exception, and decision that no written evidence is necessary as a basis for constructive trusts are numerous.

However, due to the public policy in favor of the security of titles, the courts are reluctant to disturb recorded title or other apparent ownership, and hansel they require the case for a constructive trust to be proved by "clear and convincing evidence". In practically all cases of suits to establish constructive trusts the defendant appears to the world, by virtue of records, deeds, wills, or otherwise, to be the full and complete owner of the property. The plaintiff is seeking to get a decree that this appearance of ownership is false and that the defendant is to be adjudged a mere trustee for the plaintiff. Hence the courts reject the claim if the evidence is vague, conflicting, or otherwise dubious. Some courts have gone to the extent of requiring proof beyond a reasonable doubt or conclusive evidence, but

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this would seem to be unreasonable in a civil suit.

In past articles we have discussed quasi-contracts, the various express trust, resulting and constructive trusts and we used this type of print as a build up to the next and final category and the most important trust, is the charitable trusts. It is the charitable trust that has established the public trust of 1933 by operation of law. As we progress we will understand why the founding fathers were so emphatic upon establishing the 1st amendment as the 1st amendment to the bill of rights. **A public charitable trust is a constructive trust. Constructive meaning constructed not by Law but by the equity powers of the executive and legislative branches of the parliamentary democracy. The Public Charitable Trust as we will see is a combination of every segment of the law creating quasi law meaning when you look at it one way it is admiralty-maritime, another way contract law, laws of commerce, law of wills, express trust, constructive trust, civil law, roman law, common law, law of real property etc., thereby abolishing the separation of powers of the legislative, and executive, branches of government to create the Article I legislative courts ruling in executive equity thereby; creating the massive problems in our society today. In brief, the people must regain control over there own lives, it is not only their right but their duty to come away from the 14th amendment. It cannot be done overnight and there are a lot of people who are caught up in the system but regardless of your situation, we must start somewhere to educate the future generations because as it stands today there is no future for them.**

CHARITABLE TRUSTS

"A charitable trust is a trust the performance of which will, in the opinion of the court of chancery, accomplish a substantial amount of social benefit to the public or some reasonably large class thereof". (Editors note: You will see the term 'chancery' used and also equity. Chancery refers to the chancellor who sits as a judge in a court of equity ruling upon his conscience. In other words, the chancellor is the judge jury and executioner. He decides what is just).

"It is immaterial that the settlor had motives in creating the trust, if the trust has charitable effects, but the purpose must not include profit-making by the settlor, trustees, or others".. As stated before, there is no settlor in a constructive trust.

A charitable trust is to be distinguished from an absolute gift to a charitable corporation.

A trust for "benevolent" objects may be declared a valid charitable trust, if the word "benevolent" is used as a synonym of "charitable," but not if "benevolent" is construed to mean any object which indicates merely good will toward mankind or merely liberality". Restatement, Trust Second, @ 348, 368, 375, 376.

A charitable trust is frequently called a public trust, Appeal of Eliot, 74 Conn. 586, 51 A 558. or merely a charity. In re Centennial & Memorial Ass'n of Valley Forge, 235 Pa. 206, 83 A. 683.

Courts and legislatures have been disinclined to limit themselves by a definition of a charitable trust, but instead have been given specific examples of admitted charitable purposes and then referred to the "accomplishment of other purposes" . . . "beneficial to the community". Some rather vague abstract definitions have been given.

"A charity, in the legal sense, may be more fully defined as a gift, to be applied consistently with existing laws, for the benefit of an indefinite number of persons, either by bringing their minds or hearts under the influence of education or religion, by reliving their bodies from disease, suffering, or constraint, by assisting them to establish themselves in life, or by erecting and maintaining public buildings or works, or otherwise lessening the burdens of government." A charitable trust included everything that is within the letter and spirit of the Statute of Elizabeth, considering such spirit to be broad enough to include whatever will promote, in a legitimate way, the comfort, happiness and improvement of an indefinite number of persons." "The word 'charity', as used in law, has a broader meaning and includes substantially any scheme or effort to better the conditions of society or any considerable part thereof. It has been well said that any gift not inconsistent with existing laws, which is promotive of science or tends to the education, enlightening, benefit or amelioration of the condition of mankind or the diffusion of useful knowledge, or is for the public convenience, is a charity." Wilson v First Nat. Bank of Independence, 164 Iowa 402, 145 N.W. 948, 952, Ann. Cas. 1916D, 481. We hear every day someone saying the government is doing this or the government is doing that etc. The truth of the matter is, 14th amendment citizens have no government. What they think is government is private enterprise enforcing their private code of regulations without recourse to the "in" Law jurisdiction thru the Article III courts of justice. An important thing to remember is that a charitable trust must have an indefinite number of persons. If United States has 250 million people and those 250 million are members of the public trust, then we have a definite number of persons and the trust will fail because there must be an indefinite number of persons to maintain a charitable trust. But if the trust expands to other nations with the hope of bringing in more people; then we have an indefinite number of people but now suppose those who are in control of the trust keep expanding the trust into nations they know will fail, then do we not have a profit making venture under the guise of a charity????

"Private trusts have been shown to have as their objectives the furnishing of financial benefits to human beings or corporations. This is not true of the charitable trust. In such trusts the purpose is to bring social benefits to some portion of the public. While money may be paid out by the trustee to or for various persons, the purpose is not to enrich them financially but rather is to advance the public interest in a spiritual, mental or physical manner. For example, if the trust is to relieve poverty and cash is paid out by the trustee to B, a poor man selected by the trustee, the trust is charitable because the relief of suffering and want is of social benefit, and the fact that B may receive cash or goods in course of administration of the trust is not because the settlor desired to benefit B financially but because the settlor wished to forword the cause of the relief of the impoverished, in which the state is interested. B is not a beneficiary of such a trust. Society is the beneficiary". In re Petroleum Research Fund, 15 Misc. 2d 23, 507, 184 N.Y.S. 2d 413, 421; McKee's Estate, 378 Pa. 607, 108 A.2d 214. "The beneficiary of charitable trusts is the general public to whom the social and economic advantages accrue." Pruner's Estate, 390 Pa. 529, 108 A.2d 214, 232. B is merely the instrumentally through which the public interest is promoted. "While human beings who are to obtain advantages from charitable trusts may be referred to as beneficiaries, the real beneficiary is the public and the human beings involved are merely the instrumentalities from whom the benefits flow." In re Freshour's Estate, 185 Kan. 434, 345 P.2d 689.

The social interest needed to qualify a trust as technically charitable must be substantial and not trifling or insignificant. Charitable trusts are accorded by the law a very favorable situation as to taxation and given special privileges in many other

ways. In order to justify a court of equity in validating a trust as charitable and thus sanctioning certain social disadvantages (such as freedom from taxation), the court must be convinced that there will be social advantages which will more than counterbalance the social disadvantages. A trust to aid one boy or girl to secure an education may be held to fail as a charity because of lack of a substantial amount of public benefit. The size of the class through whom the community advantages are to flow may be determinative.

While the courts favor charitable trusts and will strive to support them and to find a charitable intent wherever possible, the court must scrutinize the alleged charity and weigh its social benefits. It cannot accept without examination the settlor's view that the trust is charitable. It must consider the amount of social advantage which will come from it. In these days of search for sources of tax revenue and consequent efforts to evade or avoid taxation, the courts are careful to make sure that a doubtful trust which is alleged to be charitable is not a mere tax avoidance device. Of course this is why the IRS goes to the bank etc. and that is to create the evidence that you are subject to the 14th amendment.

In some cases the charitable intent of the settlor is inferred from the nature of the work of the donee to whom property is given, as where funds are transferred to a church authority and an implication is found that the gift is to be used for religious purposes, although this is not expressly stated.

In a public charitable trust both houses (congress or state legislatures) vote on a bill and if passed, the bill then becomes law. At the point of passing by both houses, the law has been adjudicated creating the Parliament Democracy. All that is needed is for the executive branch to collect the evidence that you OKed the act of the legislature by partaking the benefits offered. This is why section IV of the 14th amendment says the public debt shall not be questioned. The law concerning 'citizens' works from the bottom up meaning the evidence that you created. The evidence as created by you works its way up through the bureaucracy in an inverted pyramid fashion to the 14th amendment and when that happens, you are guilty. Any arguments on your part is adjudicated by the Article I courts ruling upon a constructive trust in executive equity.

The American courts do not require that the social benefit be local or domestic, but will support a charity for the inhabitants of a foreign country. Thus foreign aid to those who are members of the foreign jurisdiction of the District of Columbia thru treaties. However in some states tax exemption is limited to local charities. MacGregor v Commissioner of Corporations and Taxation, 327 Mass. 484, 99 N. E.2d 468.

The motive of the donor is not important in determining whether a certain gift is charitable. The effect of administration of the gift is the vital matter. The settlor may have had as his principal purpose the glorification of himself or his family or the satisfaction of his vanity in making a gift for the operation of a hospital, but if the relief of disease and suffering is to be brought about by the gift the trust is charitable and the motives of the settlor are treated as minor and immaterial. Thus it is immaterial that the donor described his gift as "a memorial" for himself or others.

The purpose of the settlor of a charitable trust must not be to enrich others, even though he incidentally seeks to confer some public benefits. "It is not charity to aid a business enterprise", as a distinguished judge has stated. Cardozo, J., in Butterworth v Keeler, 219 N.Y. 446, 449, 114 N.E. 803. A trust to aid a private hospital and thus benefit its stockholders is not charitable, although the operation of such an institution will undoubtly help the

sick and suffering; and the same would be true of a trust to advance the interests of a private school run by a stock corporation or to aid a bank or insurance company. The settlor in his instrument must exclude the notion that he intends to aid a money making business, but this can be done inferentially, as where he makes no provision for the disposition of any profits. However, a trust otherwise charitable is not rendered non-charitable because it is to charge fees, provided such income goes to aid in the operation of the charity and is not paid out as profits to stockholders or others in a similar position. Parks v Northwestern University, 218 Ill. 381, 75 N.E. 991, Harter v Johnson, 122 S.C. 96, 115 S.E. 217. See Morgan v National Trust Bank of Charleston, 331 Ill 182, 162 N.E. 888 (interest may be charged on interest loans.) Of course this is why the bureaucracy is licensing every 'person' in business because the business represents profit. A Public Charitable Trust cannot be for profit making but must be for the benefit of the Public Charitable Trust. therefore, to prevent unjust enrichment on the part of the business.

A charitable trust is not confined to alms giving. It includes relief of the poor, but also connotes the social advancement of rich and poor in education, religion, culture, and civilization. A charitable trust is not confined to alms giving, or the relief of poverty and distress, but has a wider signification, which embraces the improvement and promotion of the happiness of man. New England Sanitarium v Inhabitants of Stoneham, 205 Mass. 335, 342, 91 N.E. 385.

If a gift is made to a charitable corporation for any or all of its purposes, with the intent that full title shall vest in the corporation, subject only to the duty of the corporation to keep within the purposes of its charter, no trust is created. The property will be devoted to charitable purposes, but not through the medium of a trust. Trust law regarding investments and accountings, for example, will not apply. The corporation can be compelled to apply the property to its corporate purposes through a quo warranto suit by the attorney general. It is often difficult to determine the intent of a donor to a charitable corporation was to have the corporation act as trustee or to have it own the property outright.

Sometimes a settlor describes the purpose of his trust as "benevolent". Some courts have construed this word to mean a disposition merely to seek the well being and comfort of others and so not to be necessarily equivalent to "charitable."

The Massachusetts court, speaking through Justice Gray, has said, "The word 'benevolent,' of itself, without anything in the text to qualify or restrict its ordinary meaning, clearly includes not only purposes which are deemed charitable by a court of equity; but also many acts dictated by kindness, good will, or disposition to do good, the objects of which have no relation to the promotion of education, learning or religion, the relief of the needy, the sick or the afflicted, the support of public works or the relief of public burdens, and cannot be deemed charitable in the technical and legal sense." Chamberland v Stearns, 111 Mass. 267, 268.

In a number of cases where the gift has been to "charity and benevolence," it has been held that the use of "benevolence" was merely as an explanatory term, amplifying the meaning of "charity," and that therefore the trust was a valid charitable trust. De Camp v Dobbins, 29 N.J. Eq. 36; People v Powers, 147 N.Y. 104, 41 N.E. 432, 35 L.R.A. 502; In re Dulles' Estate, 218 Pa. 162, 67 A 49, 12 L.R.A., N.S., 1177. In cases where the gift was to "charitable or benevolent" objects, there has been a marked difference of opinion as to whether the gift could be substained as a charitable trust. Some cases have held that the use of "benevolent" was to be qualified by its connection with "charitable.", and that it was practically synonymous with

"charitable". Luthern Home. v Board of County Commissioners, 211 Kan. 270, 505 P.2d 1118; Salton v Sanders, 11 Allen, Mass,462; Weber v Byrant, 161 Mass. 400, 37 N.E. 203; Pell v Mercer, 14 R.I. 412. "Whatever, therefore, may be the meaning, in the law of Massachusetts, of the word 'benevolence' by itself, there can be no doubt that, when used in connection with 'charity,' as in this will, it is synonymous with it; and the connecting 'or' must be taken in the sense of defining and limiting the nature of the charity intended, and of explaining one word by the other." Salton v Sanders, 11 Allen, Mass., 462, 470.

In other cases it has been held that the use of the words "benevolent or charitable" indicates an intent to provide for purposes not technically charitable, in other words, for purposes consistent only with a private trust. Hence in these cases it has been held that the trust is for mixed charitable and private purpose, with no separation of funds to be applied to each, and therefore the whole trust must fail of perpetual duration.In re Macduff, (1896) 2 Ch. 451; Smith v Pond, 90 N.J. Eq. 445, 107 A. 800.

It is submitted that the word "benevolent" in a trust instrument should be given a reasonable construction for the purpose of ascertaining the meaning which the settlor intended to give it. If the other gifts and statements in the instrument and the surrounding circumstances show that he meant by "benevolent" the equivalent of "charitable trust. The modern tendency is toward considering the word "benevolent" as a synonym of "charitable." Smith v U.S. Nat. Bk. of Denver, 120 Colo. 167, 207 P.2d 1194; In re Snell's Will, 154 Kan. 654, 121 P.2d 200; Moore v Sellers, 201 S.W..2d 248. And see Scott, Trusts for Charitable and Benevolent purposes, 58 Harv. L.R. 548.

In a English case of In re Macduff, (1896) 2 Ch 451, 464,.the trust was for the "purposes charitable or philanthropic." The court held the trust invalid as a charitable trust and said: "Then what is the meaning of the word 'philanthropic'? He means by that something distinguished from charitable in the ordinary sense; but I cannot put any definite meaning on the word. All I can say is that a philanthropic purpose must be a purpose which indicates good will to mankind in general". But another court has treated philanthropy as equivalent to charity. Thorp v Lund, 227 Mass. 474, 116 N.E. 946.

Gifts have been held charitable when they provided for the "well being of mankind", or for humanitarian" purposes, or for "public welfare" objectives. But the use of the words "utilitarian", "liberality", or "deserving" or "worthy" have been held not to show a charitable intent.

> "It is often stated by the courts that indefiniteness of beneficiaries is not an objection in the case of a charitable trust and in fact that charitable trusts must have indefinite beneficiaries. These statements are based on the misconception that the persons to or whom the trustee applies the trust fund are its beneficiaries. They are in fact merely the conduits through whom benefits flow to the public which is the real beneficiary. While the persons through whom the public is to receive charitable benefits are usually unidentified when the trust is created, and are usually to be selected by the trustee later, it is not believed that this characteristic is vital. The important requirement is that an appreciably large amount of social benefit accrue. This may come about in rare cases through a trust for a large group of indefiniteness persons, but usually it can only come through having the benefits pass to a large class whose membership is not fixed and who are to take over a long period.

The furnishing of educational or eleemosynary benefits to the relatives of the settlor is not generally regarded as a charitable object.

Trusts set up by group contributions to a mutual aid fund are private in their nature.

If the settlor states the purpose of his trust in such vague language that the court cannot tell whether it is charitable or non charitable, no enforceable trust is created.

Trusts to aid charity in general or one particular type of charity without any description of methods are sufficiently definite, since the trustee has a power of selection among charitable purposes". Restatement, Trust, Second, @ 364, 375.

The courts have sometimes stated that indefiniteness of beneficiaries is not only a defect in the case of a charitable trust but also that charitable trusts must have indefinite beneficiaries, and that a charitable trust cannot exist for persons who are known and defined at the time the trust begins. Harrison v Barker Annunity Fund, C.C.A. Ill., 90 F.2d 286; Dwan, Charities for Definite Persons, 82 U. Pa. L.R. 12. Thus, under this view a trust to aid the poor of Jonesville, a hamlet of 50 people, indefinitely into the future, would undoubtedly be good, although there might at present be only one poor family in the village. The persons to be aided would be those to be selected by the trustees for years to come out of now existing persons and those to be born. However a trust to aid John Brown and his wife and children, who constituted a small group of poor persons, would be invalid as a charity, although it might be a good private trust.

These statements ignore the fact that the human beings who are aided by the administration of a charity are not technically beneficiaries but rather the intermediaries through whom an advantage to the public is achieved. The state or community or public is the beneficiary. The important element is not the definiteness or indefiniteness of the persons to be aided, but rather the amount of social benefit which flows to the public. If the group is small, and consists of named living persons, aid of them will bring about a relatively small amount of social benefit, and the court will not be justified in calling the trust charitable and giving it all the special privileges which charitable trusts have, such as tax exemption. But if the group is reasonably large, even though its members are identifiable and a list of them could be made, then provisions for them may cause sufficient social advantage to make the trust charitable. Thus a trust to aid suffers from a certain flood, fire, or mine explosion has been held as charitable. An investigation would disclose to the trustee at the beginning of the trust all the persons who were eligible to receive help in such a case, and thus the human beings to be affected would be definite or identifiable. Yet their large number and the character of the aid to be rendered gives the state an interest sufficient to justify calling the trust charitable.

While it has been established in England that a trust to relieve poor relations of the settlor is charitable, and this doctrine has been unwillingly followed in later cases, the contrary position has been by the American courts in many cases because of the lack of substantial public benefit, and the same position has been taken with regard to a trust to educate descendants of the testator. Here the class to receive benefits might be large in number, if the trust were to continue for many generations, so that the amount of social advantage would be substantial; but some courts have been impressed with the lack of public spirit on the part of the settlor and with the fact that he might well have been seeking tax avoidance by giving his trust a surface appearance of a charitable nature.

If the members of a large group make contributions toward a common fund, to be administered by trustees, the income and capital to be used to furnish help to the contributors or their relatives if they are sick, disabled, or out of work, the courts do not treat the trust as charitable. but rather as a private trust or as giving contractual rights in the nature of insurance. They lay stress on the fact that the beneficiaries in effect have purchased their benefits. It is sometimes said that in the case of a true charitable trust those to be aided must be "suppliants" and must take their benefits gratuitously. This seems to lay undue stress on the source of the funds, and insufficient emphasis on the effect which the trust would have on the community.

If any conveyance or contract or other legal transaction is so uncertain in its terms that its meaning cannot be ascertained by a court, the court will declare it void for uncertainty and will not enforce rights claimed under it. A trust public or private, is no exception to this rule. If the court cannot tell what the settlor meant to be done by the trustee, it cannot tell whether the trustee has performed his duty, it cannot direct the trustee, and it will decline to sustain the trust. It may be doubtful whether the settlor intended a charitable or a private trust, or what type of charitable aid he desired to secure.

The following directions concerning charitable trusts have been held to be sufficiently definite as to purpose and class and, therefore, to create enforceable trusts: To the vestrymen of a church, to be used as they seem best for the interests of the church; to be devoted perpetually to human beneficence and charity; for the support of the poor of a certain county; for the diffusion of useful knowledge and instruction among the institutes, clubs or meetings of the working classes, or manual laborers, working by the sweat of their brows; to be used in the dissemination of the gospel at home and abroad; in trust to be used purely and solely for charitable purposes, for the greatest relief of human suffering, human wants, and for the good of the greatest number; to the cause of Christ, for the benefit and promotion of trust evangelical piety and religion; for the promotion of the Christian religion among the heathen.

It is well settled that a gift to charity or a trust fro charity, without any further description, or a trust for one type of charity in general, for example, a trust for the poor, or a trust to aid in educational work, is not indefinite or vague. The trustee has power to apply the property to specific objects. The general description is sufficient to enable the court to decide whether the trustee's administration, is proper. If the gift is "to charity", or "to the poor", it is implied that the testator must have contemplated a trust as a means of administration.

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