Lee Brobst's

EYE OF THE EAGLE

THY WILL BE DONE IN ASSOCIATION

NEWSLETTER

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W-4 A WILL IN TRUST

A will is something we think of as something we do when we get older as a means of conveying our property to our children, grand children or other entities before we die but as we shall see; "a will is a instrument that goes beyond what we believe a will to be and is least governed by form"[1] the form being unimportant except as indicating the existence or absence of testamentary intent.[2] The general principle is that the character of an agreement or instrument as testamentary or otherwise, is determined by its substance and not by its form.[3] **Almost every conceivable form of obligation or writing by which men attempt to bind or declare the legal status of property has been adjudged to be a will.** The form of the instrument stands for little,[4]

No particular form of words or expressions is necessary to constitute a legal disposition of property by will.[5]

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[1] Schumaker v Schmidt, 44 Ala 454; Hopson v Ewing (Ky) 353 SW 2d 203, 91 ALR2d 733; Dixon v Dameron's Adm'r, 256 Ky 722, 77 SW2d 6; Peebles v Rodgers, 211 Miss 8, 50 So 2d 632.

[2] Re Kemp's Will, 37 Del 514, 186 A 890; Hopson v Ewing (Ky) 353 SW2d 203, 91 ALR2d 733; Peebles v Rodgers, 211 Miss 8, 50 So 2d 632; Re Holbrock's Estate, 213 Pa 93, 62 A 368

[3] Ferrara v Russo, 40 RI 533, 102 A 86.

[4] Sharp v Hall, 86 Ala 110, 5 So 497; Heaston v Krieg, 167 Ind 101, 77 NE 805; Dixon v Damerson's Adm'r, 256 Ky 722, 77 SW2d 6.

[5] Mitchel v Donohue, 100 Cal 202, 34 P 614; Noble v Fickes, 230 Ill 594, 82 NE 950; Gump v Gowans, 226 Ill 635, 80 NE 1086; Re Longer's Estate, 108 Iowa 34, 78 NW 834; Dixon v Dameron's Adm'r, 256 Ky 722, 77 SW2d 6; Re Dimmitt's Estate, 141 Neb, 3 NW2d 752. 144 ALR 704; Kerr v Girdwood, 138 NC 473, 50 SE 852; Fleck v Harmstad, 304 Pa 302, 155 A 875, 77 ALR 874; Re Gaston's Estate, 188 Pa 374, 41 A 529.

Conventual or technical terms need not be employed to render a writing testamentary.[6] Apt legal words need not be used,[7] and the language may be inartificial.[8] The absence of disposition words such as "give," "devise," or "bequeath" does not necessarily stamp an instrument as nontestamentary character to an instrument.[9]

An instrument need not be homogeneous in order to be valid as a will.[10] Since a person may act in animo testandi without knowing that he is making a will,[11] provisions in an instrument which is effective as an instrument inter vivos may be testamentary, notwithstanding that it did not occur to the person who signed the instrument that he was executing his will.[12] An instrument in another part in relation to other and distinct property,[13] or it can be a deed in one part and a will in another part, provided, of course, it meets the legal requirements as to execution necessary to both such formal documents which will be discussed later on under deeds.

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6 Re Kemp's Will, 37 Del 514, 186 A 890; Barber v Barber, 368 Ill 215, 13 NE2d 257; Wilson v Wilson, 188 Ky 53, 221 SW 874, 10 ALR 780; Langfitt v Langfitt, 108 W Va 466, 151 SE 715.

7 Kerr v Girwood, 138 NC 473, 50 SE 852.

8 Schumaker v Schmidt, 44 Ala 454; Kerr v Girwood, 138 NC 473, 50 SE 852

9 Langfitt v Langfitt, 108 W va 466, 151 SE 715.

10 Roberson v Schly, 6 Ga 515; Powers v Scharling, 64 Kan 339, 67 P 820; Carothers v Estate of Carothers, 227 Miss 659, 86 So 2d 855.

11 Merrill v Boal, 47 RI 274, 132 A 721, 45 ALR 830; Langfitt v Langfitt, 108 W va 466, 151 SE 715.

12 Carthers v Estate of Carothers, 227 Miss 659, 86 So 2d 855; Merill v Boal, 47 Ri 274, 132 A 721, 45 ALr 830.

13 Taylor v Kelly, 31 Ala 59; Carothers v Estate of Carothers, 227 Miss 659, 86 So 2d 855.

WILL v TRUST

The principle that there cannot be a valid bequest to an indefinite person and that there must be a beneficiary or a class of beneficiaries indicated in the will, capable of coming into the court and claiming the benefit of the bequest, applies to private, but not to public, trusts and charities.14 As viewed strictly from the law of wills but, as we shall see there is a totally different view when viewed from the law of trusts thus we read; a charitable trust has been defined as a **fiduciary** relationship with respect to property, arising as a result of a manifestation of an intention to create it, and subjecting the person by whom the property is held to equitable duties to deal with property for a charitable purpose.[15] In these respects, the trustees must depend primarily upon the terms and conditions of the trust, as in the case of trustees of private trusts. Substantially the same principles as to duties and liabilities govern both kinds of trusts.[16] Excepting that a charitable trust deals in General equity and a private two party trust deals in special equity. In other words, a charitable trust has 3rd parties meaning the public at large. A private trust has (2) parties meaning the public at large is not involved meaning non 14th amendment persons. A private trust becomes a public or charitable trust when 51% of the population of the country becomes involved; thus a private two party trust becomes a 3rd party charitable trust to form public policy. In summing up; much uncertainty or indefiniteness as to beneficiaries of a charitable trust is permitted under the law. In fact we read that a charitable trust will fail if there becomes a definite number of beneficiaries. The rule as stated in many cases is that a

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14 Clark v Cambell, 82 NH 281, 133 A 166, 45 ALR 1433.

15 Restatment, Trusts 2d @ 348

16 Murphey v Dalton (Mo) 314 SW2d 726, 67 ALR2d 1278; State v Taylor, 58 Wash 2d 252, 362 P2d 247, 86 ALR2d 1365. Restatments, Trusts 2d @ 379, 386.

charitable trust will not fail on account of any uncertainty as to the persons to whom it is to be applied, if there is someone appointed to make a selection and thereby render certain the beneficiaries who are to enjoy the testator's bounty. Here is another example of no separation of law thus producing the double talk that we are faced with when we go into those courts of general equity and why everything squirts out from under us just about the time we think we have something nailed down.

CONTRACT OR WILL

Although contracts and wills are so unlike, they may be and sometimes are combined so as to give a testamentary character to what purports to be a contract, or to convert what purports to be a will into an irrevocable agreement.[17] It affords no insurmountable objection to the testamentary character of an instrument that it contains provisions of a contractual nature.[18] Thus, a writing reciting that it is executed and founded on a designated consideration may be upheld as a will.[19] The reader is reminded that the consideration could either be the seal on the birth certificate (deed) or that you are giving a gift to the trust. The gift (consideration) is your voluntarily performance; ala IRS.

By signing a W-4 or any such forms, you convey by will a gift absolute to the charitable trust. You then receive income from the trust whether it is called income or wages or any other name, it is still income. This is why the taxing authorities can levy a tax and of course you have no remedy in Law. **The right to take and receive property (your income from the trust) under a will is neither a natural and inalienable right, nor one guaranteed by the (s)tate or Federal Constitutions,[20] but is a privilege [21] granted by the (s)tate upon such conditions as it may impose, subject to regulation [22] and control by the state [23] and to the power of taxation.[24] Most courts are in accord with the view that the right to receive property through the will of a person living presently may be abridged or abrogated, as well as extended, by**

July's issue will unravel the mystery behind the income tax in its two step operation.

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17 Duemer v Duemer, 86 Ohio App 192, 41 Ohio Ops 52, 55 Ohio L abs 33, 88 NE2d 603; Re Crawley's Estate, 136 Pa 628, 20 A 567; Grubb v Anderson (Tex Civ App) 38 SW2d 847, error Dismd woj.

18 As discussed on page 2, first paragraph.

19 Schumaker v Schmidt, 44 Ala 454; Robinson v Brewster, 140 Ill 649, 30 NE 683; Grubb v Anderson (Tex Civ App) 38 SW2d 847, error dismd woj.

20 Magoun v Illinois Trust & Sav. Bank, 170 US 283, 42 L Ed 1037, 18 S Ct 594; United States v Perkins, 163 US 625, 41 L Ed 287, 16 S Ct 1073; Moody v Hagen, 36 ND 471, 162 NW 704, affd 245 US 633, 62 L Ed 522, 38 S Ct 133; Re Leet's Estate, 104 Or 32, 202 P 414, different results reached on reh 104 Or 51, 206 P 548; McDermid v Bourhill, 101 Or 305, 199 P 610, 22 ALR 428 (ovrld on other grounds United States Nat. Bank v Daniels, 180 Or 356, 177 P2d 246, 171 ALR 644).

21 Re Knowless' Estate, 295 Pa 571, 145 A 797, 63 ALR 1086.

22 Taylor v Paine, 154 Fla 359, 17 So 2d 615, 154 ALR 677, app dismd 323 US 666, 89 L Ed 541, 65 S Ct 49, reh den 323 US 813, 89 L Ed 647, 65 S Ct 113; Hazard v Bliss, 43 RI 431, 113 A 469, 23 ALR 826.

23 Re Knowless' Estate, 295 Pa 571, 145 A 797, 63 ALR 1086.

24 Hazard v Bliss, 43 RI 431, 113 A 469, 23 ALR 826.

the legislature.[25] However, authority is not wanting to support the principle that the right to take property by inheritance or will is a natural right protected by the Constitution[26] against impairment by the legislature,[27] although subject to reasonable regulation and taxation.[28] When a person gives a gift to the public trust, that person has conveyed his property and absolute rights to the legislature. There are no guarantees you will get anything in return except that you must perform to the black letter law of the trust. It is hoped the reader sees what appears to be double talk by the courts but here is a perfect example of the evidence as to what law is chosen by you. We must remember that these decisions are based upon 14th amendment 'persons' trust property. (public policy).

At any rate, the privilege of taking under a will is usually accorded to all persons, with certain exceptions and limitations. It is the policy of the law to favor freedom in the testamentary disposition of property.[29] The common law permits an alien to receive and hold personal property as a legatee,[30] and to take real property by devise, subject to defeat by the state by inquest of office; in many instances treaties or state statutes authorize aliens to take land by devise the same as citizens. Bare in mind that the court's ruling public policy with its equitable ownership as a relative right and not as absolute ownership in "Law". "Foreigners cannot own land in absolute ownership. In other words, foreigners cannot have title to the land. 14th amendment 'persons' are foreigners to the Law. No distinction is to be drawn in this regard between alien enemies and alien friends when there is nothing in the terms of the statutes to require any such distinction, although in the case of the alien enemy the property is subject to seizure by the Federal Government and any other property of and alien enemy. More on this in future articles.

The United States may acquire property by devise,[31] in the absence of any restriction or limitation in the state statutes on the persons or class of persons who may take by devise.[32] **The prevailing American rule is that a city may receive a legacy or devise for the purposes of applying the property to a public use consistent with the purposes for which the city is organized.[33] The**

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25 Jones v Jones, 234 US 615, 58 L Ed 1500, 34 S Ct 937; Wilson v Storthz, 117 Ark 418, 175 SW 45; Re Darling's Estate, 173 Cal 221, 159 P 606; National Safe Deposit Co. v Stead, 250 Ill 584, 95 NE 937, Affd 232 US 58, 58 L Ed 504, 34 S Ct 209; Re Garlamnd's Will, 160 NC 555, 76 SE 486. It has been broadly stated that the legislature, if it pleases, may absolutly repeal the statute of wills and of descent and distrubtions, and declare that, upon the death of a person, his property shall be applied to the payment of his debts, and the residue appropriated to public uses. Eyre v Jacob, 55 Va 422.

26 Nunnemacher v State, 129 Wis 190, 108 NW 627.

27 Re Wilkins' Estate, 192 Wis 111, 211 NW 652, 51 ALR 1106 (ovrld on other grounds Re Will of Wilson, 5 Wis 2d 178, 92 NW2d 282).

28 Nunnemacher v State, 129 Wis 190, 108 NW 627.

29 Re Rahn's Estate, 316 Mo 492, 291 SW 120, 51 ALR 877, cert den 274 US 745, 71 L Ed 1325, 47 S Ct 591

30 The person to whom a legacy in a will is given. The term may be used to denominate those who take under will without any distinction between realty and and personalty. Brooker v Brooker, Tex Civ App., 76 SW 2d 180, 183.

31 Re Will of Fox, 52 NY 530, affd 94 US 315, 24 L Ed 192; Dickson v United States, 125 Mass 311, Pointing out that the Smithsonian Institution at Washington was created by the bequest of an Englishman, established by a decree of the Master of the Rolls.

32 United States v Fox, 94 US 315, 24 L Ed 192.

33 Jones v Habersham, 107 US 174, 27 L Ed 401, 2 S Ct 336; Clayton v Hallett, 30 Colo

same has been said to hold true of a county, school township,[34] an incorporated school district,[35] etc. Again the reader is reminded that a class of 'persons' means those who form the unincorporated association who have conveyed their property to the incorporated District of Columbia to be held in trust to be administered by congress and the state legislatures through its general equity powers.

But where a legacy is given to a public corporation on condition that the corporation perform some act which is beyond its legal capacity, the gift may be entirely invalid.[36]

While English mortmain provisions designed to prevent the accumulation of property by religious corporations have not generally been in force as part of the common law in this country, as has been discussed in past articles. Their influence has been felt and is responsible to a great extent for laws restricting the amount of property which a religious or charitable corporation may take and hold.[37]

Apart from the restrictions stated, **the courts favor devises and bequests for charitable uses.[38] It is the fixed policy of the law to uphold charitable bequests and trusts as valid whenever possible, and according to; the better although not the universal view, an instrument purporting to create a charitable trust may be substained as valid even though it does not point out the purpose of the trust with the same certainty as would be required in an instrument creating a private trust. The validity of a charitable trust is not affected by the inability or incapacity of the corporation named trustee in the will creating the trust to act as such; the court will appoint a new trustee in order to perfect and enforce the trust.** In the absence of a statute, an unincorporated association cannot take title to real estate under a charitable devise. To this I refer you back to Videl v Girard in the April 1990 issue.

In pursuance of the rule that in the absence of statute, unincorporated associations are incapable of taking testamentary gifts as was discussed in past issues of the "Eye of the Eagle Newsletter." It has been held that such a gift to an unincorporated political party is void. [39] It has also been held that a political party which was an unincorporated association was not organized for benevolent or like purposes within a statute authorizing unincorporated associations organized for such purposes to take testamentary gifts.[40]

231, 70 P 429; Succession of Meunier, 52 La Ann 79, 26 So 776; Barnum v Baltimore, 62 Md 275; Philadelphia v Heirs of Girard, 45, Pa 9.

34 Skinner v Harrison Tp. 116 Ind 139, 18 NE 529.

35 Vestal v Pickering, 125 Or 553, 267 P 821.

36 Bullard v Shirley, 153 Mass 559, 27 NE 766.

37 Crosby v Alton Ochsner Medicial Foundation (Miss) 276 So 2d 661; Bird v Merklee, 144 NY 544, 39 NE 645.

38 Ould v Washington Hospital for Foundlings, 95 US 303, 24 L Ed 450; Coit v Comstock, 51 Conn 352; Succession of Meunier, 52 La Ann 79, 26 So 776; Sanderson v White, 35 Mass 328; St James Orphan Asylum v Shelby, 60 Neb 796; 84 NW 273; St, John v Andrews Institute for Girls, 191 NY 254, 83 NE 981, remittitur amd 192 NY 382, NE 143, reh den 192 NY 583, 85 NE 1115 and error dismd 214 US 19, 53 L Ed 892, 29 S Ct 601; Re Kessler's Estate, 221 Pa 314, 70 A 770; Johnson v Johnson, 92 Tenn 559, 23 SW 114; Harrington v Pier, 105 Wis 485, 82 NW 345.

39 Re Grossman's Estate, 190 Misc 521, 75 NYS2d 335; Re Anderjevich's Estate (Sur) 57 NYS2d 86. Anno 41 ALR 3d 835 @ 3 (a).

40 Estate of Carlson, 9 Cal App 3d 479, 88 Cal Rptr 229, 41 ALR 3d 835, 836 @ 3 (b).

Real estate and personalty are universally subjects of testamentary disposition under modern statutes.[41] The kinds of property or interests therein which **may be disposed of by will are sometimes delineated in general statutory provisions.**[42] Regarding particular estates or **rights or interest** in real property that may be devised, it has been stated broadly that any estate which is **transmissible by operation of law or act of the owner** is devisable.[43] Rights or interest meaning relative rights or equitable interest as in the case of a public trust.

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41 Re Johns Will, 30 Or 494, 47 P 341, recalled 30 Or 532, 50 P 226.

42 Hill v Purdy, 46 App DC 495 (declaratory of statute announcing divisability of "all lands, tenements, and hereditaments, and personal estate whch might pass by deed or gift, or which would, in the case of the proprietor's dying intestate, descend to or devolve upon his or her heirs or other represenatives"); Sturges v Sturges, 126 Ky 80, 102 SW 884 (declaratory of statute providing that every person meeting certain qualifications as to age, mental capacity, etc., "may by will dispose of any estate, right or interest in real or personal estate that he may be entitled to at his death, which would otherwise descend to his heirs or pass to his personal representatives") Richs v Merchants Nat. Bank & Trust Co. 191 Miss 323, 2 So 2d 344; Myrick v Leedy (Tex Civ App) 37 SW2d 308; Irwin v Rodgers, 91 Wash 284, 157 P 690 ("every person . . . may by last will devise all his or her estate, real and personal").

43 Inglis v Trustees of Sailor's Snug Harbor, 28 US 99, 7 L Ed 617; Fisher v Wagner, 109 Md 243, 71 A 999.
It has been held that both at common law and under the pertinent statute, a vested emainder subject to be divisted is devisible, and title in such case passes subject to the conditions subsequent. First Nat. Bank v Tenny, 165 Ohio St 513, 60 Ohio Ops 481, 138 NE2d 15, 61 ALR2d 470.
"Contingent estates of inheritance will pass by descent are are also devisible." GArrison v Hill, 79 Md 75, 28 A 1062.

While writings of a testamentary character are found in various instruments, formal and informal. Not all instruments which are testamentary in content constitute valid wills. **The right to dispose of property by will is a creature of statute and is subject to legislative control** as has been stated earlier. **Statutes in effect in the various jurisdictions prescribe the observance of certain formalities in the execution of wills**[44] **which are intended to prevent fraud and uncertainty in the testamentary dispositions of property,**[45] **by rendering it certain that the testator is cognizant of the nature of the instrument which he signs.**[46] **These statutory requirements must be complied with,**[47] **in order to impart validity to an instrument as a will and entitle it to probate;**[48] **no essential**

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45 Re Seaman's Estate 146 Cal 455, 80 P 700; Re Andrews' will, 162 N.Y. 1, 56 NE 529; Re Maginn's Estate, 278 Pa 89, 122 A 264, 30 ALR 418; Ball v Miller, 31 Tenn App 271, 214 SW2d 446.

46 Re Bragg's Estate, 106 Mont 132, 76 P2d 57; Ball v Miller, 31 Tenn App 271, 214 SW2d 446.

47 Re Moro's Estate, 183 Cal 29, 190 P 168, 10 ALR 422; Brownfield v Brownfield (Mo) 249 SW2d 389, 41 ALR2d 387; Walton v Kendrick, 122 MO 504, 27 SW 872; Re Bragg's Estate, 106 Mont 132, 76 P2d 57; Re Hale's Will, 21 NJ 284, 121 A2d 511, 60 ALR2d 113; Hill v Davis, 64 Okla 253, 167 P 465 (ovrold on other grounds Re Nitey's Estate, 175 Okla 389, 53P2d 215); Re Maginn's Estate, 278 PA 89, 122 A 264, 30 ALR 418.
Ives, Suggestions for Modern Will Drafting. 47 Cornell LQ 227.

48 United States v Fox 94 US 315, 24 L Ed 192; Darby's Lessee v Mayer, 23 US 465, 6 L Ed 367; Re Emart's Estate, 175 Cal 238, 165 P 707; Re Manchester's Estate, 174 Cal 417, 163 P 358; Re Carpenter's Estate 172 Cal 268, 156 P 464; Hatheway v Smith, 79 Conn 506, 65 A 1058; ASW2d 644, 134 Appeal of Lane, 57 Conn 182, 17 A 926; Potts v House, 6 Ga

formality may be dispensed with.[49] For those of you who are having tax problems; numbers 44 thru 49 is a good defense. The taxing authorities are probating your will. Remember, you died a civil death in the "Law" and now your are under general equity or under the conscience of another. In conscience all things are possible but not all things are possible in "Law". In the "Law" the land cannot become the sea nor can the sea become the land. In conscience the land can become the sea and ;the sea can become the land but that doesn't alter the truth of the matter. We have overstepped the balance between the two to create quasi law, (the will of the legislature). Even as 14th amendment persons, the taxing authorities are under certain legislative controls. The Commissioners on Uniform States Laws have promulgated a Model Execution of Wills Act and a Uniform Probate, both of which contain provisions on the formal requisites for wills. Check to see if your state has joined these acts. That word **commissioners** should ring a bell as in Videl v Girard as was explained by Joesph Story in the April 1990 issue of this newsletter and also in the US v Fierra case as discussed in the October 1989 issue.

ENGLISH STATUTE OF WILLS

In early times, when but few persons could read or write, the only way of making a will was by words or signs, and by the ancient law of England an oral will was as valid in respect to personal estate as a written testament. The English Statute of Wills, 32 Hen VIII c 3, (1509-1547) authorized devises of real estate to a limited extent and prescribed that they be in writing. Following the enactment of this Statute, real property could pass only by a will in writing, whole personal property could be bequeathed orally, without any formality whatever. With the growth of learning and the progress of letters, the necessity for oral wills ceased to exist. In addition to the lack of necessity, many fraudulent practices grew up in setting forth such wills, which led to the enactment of the Statute of Frauds, 29 Car II, (1649-1685) putting these testaments under very strong restrictions.

It is elementary that a will may be comprised of two or more separate documents.[50] A man can have only one will, but that will may consist of several different testamentary papers of different dates.[51] It is the aggregate or the net result of several testamentary writings left by a decedent that constitutes his will, or in other words, the expression of his testamentary wishes.[52] Such is the case not only where one instrument is a codicil to the other, or is incorporated in the other by reference, but also where the

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324; Pyle v East, 173 Iowa 165, 155 NW 283, 3 ALR 885; Robertson v Robertson, 232 Ky 572, 24 SW2d 282; Re Will of Moody, 155 Me 325, 154 A2d 165, 73 ALR2d 1225; Re Will of Penniman, 20 Minn 245; Wyers v Arnold, 347 Mo 413, 147 SW2d 644, 134 ALR 876, Cert den 313 US 589, 85 L Ed 1544, 61 S Ct 1112; Re Noyes' Estate, 40 Mont 190, 105 P 1017; Stevenson v Earl, 65 NJ Eq 721, 55 A 1091; Re Hale's Will, 21 NJ 284, 121 A2d 511, 60 ALR 2d 113; Chafee v Bapist Missionary Convention (NY) 10 Paige 85; Re Wolcptt's Estate, 54 Utah 165, 180 P 169, 4 ALR 727. To bring a writing to the full development of a will, it must be a legal declaration, a lawful disposing of the testator's estate, and any paper not possessing the requisites to make it a legal declaration or a lawful disposition would fall short of the definition of a will. Limbach v Bolin, 169 Ky 204, 183 SW 495.

[49] Ball v Miller, 31 Tenn App 271, 214 SW2d 446; Davis v Davis (Tex Civ Apop) 45 SW2d 240; Re Probate of Will of Ladd, 60 Wis 187, 18 NW 734.

[50] Bradshaw v Pennington 225 Ark 410, 283 SW2d 351; Derr v Derr, 123 Kan 681, 256 P800, 53 ALR 515; Merrill v Boal, 47 RI 274, 132 A 721, 45 ALR 830.

[51] Bradshaw v Pennington, 225 Ark 410, 283 SW2d351; Re Fox's Estate (Pa) 55 Montg Co LR 110; Harmon v Ketchum (Tex Civ App) 299 SW 682, Error dismd woj.

[52] Bradshaw v Pennington, 225 Ark 410, 283 SW2d 351.

instruments are executed and attested as wills independently of one another with the formalities prescribed by statute, provided the one does not revoke the other, expressly or by reason of inconsistency between the instruments, in respect of their provision. It is undisputed that a testator may, at his volition, make a number of testamentary documents each dealing with a separate portion of his propriety.[53] A testator may with propriety execute one testamentary instrument disposing of his property at his domicile and another disposing of property located elsewhere.[54]

Signing a W-4 form conveys a power of attorney in fact in the form of a will. The W-4 is only part of the will because it does not contain the legal conveyance to import a full will but the birth certificate contains the language and symbolism to complete the will. In reality the W-4 is the will and the birth certificate is a deed that acts in conjunction with the W-4 to perform its full function to create the subject to the public trust. The W-4 is revokable but the birth certificate is not absent a statute to do so. The birth certificate by itself does not make you subject to the 14th amendment trust. It is the belief of this editor that to destroy the birth certificate if that is possible, would destroy your ability to go to the bank and borrow credit. To use the credit of the banks does not make you liable to the public 14th amendment trust. As a non 14th amendment citizen, you deal with the banks as an arms length contractual obligation that does not bring in the 3rd party public trust. This might seem confusing but, we must remember that as a 14th amendment 'person', any contractual relations with the banks credit involves a conveyance in trust; because you have conveyed the gift absolute to the District of Columbia, thus producing quasi law which in turn destroys the separation of powers. In other words, 'persons' operate out of the trust in general equity and not in the "Law". Being there is only private credit or if you will, money in circulation there has to be a means of consideration and the birth certificate provides that consideration because of being a sealed instrument. The only time the birth certificate plays a part in the 14th amendment trust is if the bureaucracy can find a testamentary will such as voting or signing W-4 or other such government forms that create the evidence whereby you conveyed your absolute rights to the public trust to bring about a constructive trust and of course the birth certificate fulfills the legal meaning to bring in the charitable trust of the District of Columbia. In other words, the birth certificate in itself does not create the res.

DEED OR WILL

Whether an instrument is a deed or a will depends primarily on its operation, and not on its form or manner of execution.[55] Wills and deeds are distinguished by the power of revocation residing in the maker in the case of a will, whereas a deed once executed and delivered is irrevocable [56] in the absence of the reservation of the right to revoke,[57] in which case the reservation may be indicative of the character of the instrument as a deed, as revealing the grantors intention that it should otherwise presently operate as a conveyance to take effect in the future.[58] Delivery is also ~

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53 Bradshaw v Pennington, 225 Ark 410, 283 SW23d 351.

54 Bradshaw v Pennington, 225 Ark 410,, 283 SW2d 351; Thompson v Parnell, 81 Kan 119, 105 P 502.

55 Wellborn v Weaver, 17 Ga 267; Blackwell v Lee, 160 Okla 73, 15 P2d 574.

56 Sharp v Hall, 86 Ala 110, 5 So 497; McReynolds v McReynolds, 147 Mont 476, 414 P2d 531.

57 Rickets v Louisville, S.L. & T. R. Co., 91 Ky 221, 15 SW 182; Eaton v Husted, 141 Tex 349, 172 SW2d 493.

58 Wall v Wall, 30 Miss 91.
The reservation of a lefe estate, and a power to revoke during the grantor's lifetime, will not postpone the vesting of the remainder in fee, and a reservation of a power to revoke in itself

requisite to the validity of a deed but not of wills.

GIFTS BY IMPLICATION

A bequest or devise **may be made by mere implication,**[59] unless the implication violates public policy or some established rule of law.[60] See also Videl v Girard Ex'rs 2 How. 127, 11 L Ed 205 as discussed in April 1990 issue of the 'Eye of the Eagle Newsletter". Testamentary gifts have been **implied**, or the **contention has been made that they should be implied**, with respect to various specific situations involving the form, contents, or particular language of wills or **codicils.** "Codicils being a supplement or an addition to a will; it may explain, modify, add to, or qualify." In re Crooke Estate, 388 Pa. 125, 130 A.2d 185, 187. In the case of the W-4 ; the codicil is the birth certificate. Being the charitable trust resides in the District of Columbia; signing one of its forms such as the W-4 conveys a gift absolute to the charitable trust creating the res under the principle that it is better to give than receive.

JURISDICTION

Questions as to the jurisdiction of various courts to hear controversies with respect to the construction of testamentary instruments is, in the last analysis, of course, dependent upon the terms of the controlling statutes or constitutional provisions.[61] Under many circumstances, ordinary courts of general legal jurisdiction may decide questions of testamentary interpretation, as in **ejectment actions** where the title to the real property involved depends upon the **construction of the provisions of a will.**[62] The interpretation of wills is made the subject of judicial declarations under many declaratory judgment statutes, and in some jurisdictions special proceedings for the construction of testamentary instruments are provided by statute, or at least entertained as a matter of practice.[63]

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does not make a deed testamentary. St. Louis C09ounty Nat. Bank v Fielder, 364 Mo 207, 260 SW2d 483.

59 Bond v Moore, 236 Ill 576, 86 NE 386; Connor v Gardner, 230 Ill 258, 82 NE 640; Porter v Union Trust Co. 182 Ind 637, 108 NE 117; Galloway v Durham, 118 Ky 544, 81 SW 659; Succession of Allen, 48 La Ann 1036, 20 So 193; Bishop v McClelland's Ex'rs, 44 NJ Eq 450, 16 A 1; Masterson v Townshend, 123 NY 458, 25 NE 928; Heard v Horton (NY) 1 Denio 165; Jackson ex dem. Decker v Merill (NY) 6 Johns 185; Stephens v North Carolina Nat. Bank, 12 NC App 323, 183 SE2d 287, cert den and app dismd 279 NC 620, 184 SE2d 114; Re Glavkee's Estate, 76 ND 171, 34 NW2d 300; Nyce's Estate (Pa) 5 Watts & S 254; Gallagher v O'Brien (Tex Civ App) 158 SW2d 345; Gay v Ft. Worth (tex Civ App) 4 SW2d 268, error dismd woj.; Earle v Coberly, 65 W Va 163, 64 SE 628; Barlett v Patton, 233 W Va 71, 10 SE 21; Re Donge's Estate, 103 Wis 497, 79 NW 786.

60 Calloway v Calloway, 171 Ky 366, 188 SW 410; Ball v Phelan, 94 Miss 293, 49 So 956.

61 Re Chapman's Estate, 70 Conn 363, 39 A 734; youngson v Bond, 69 Neb 356, 95 NW 700; Daniell v Hopkins, 257 NY 112, 177 NE 390, 76 ALR 1367; Snodgrass v Snoggrass, 107 Okla 140, 231 P 237, 52 ALR 1213; Pabst v Goodrich, 133 Wis 43, 113 NW 398. Interpretation of the will of a non resident, it has been said ordinarily not within the province of the courts of a particular state. Hutchens v Commissioner of Corps. & Taxation, 272 Mass 422, 172 NE 605, 71 ALR 677.

62 Although under the local practice, a county court has exclusive jurisdiction over the probate of wills, this does not operate to exclude teh jurisdiction of other courts in cases in which the construction of a will is only incidentally involved and the relief demanded does not call for a direct exercise of probate power. Byrant v Fingerlos, 138 Neb 867, 295 NW 896, 132 ALR 1467.

63 Fisher v Wagner 109 Md 243, 71 A 999; Pennington v Pennington, 70 Md 418, 17 A 329 Menard v Cambell, 180 Mich 583, 147 NW 556; Cole v Covington, 86 NC 295; Pabst v Goodrich, 133 Wis 43, 113 NW 398.

Certain broad declarations as to jurisdiction generally in the construction of wills are sometimes laid down by the courts. It has been said, for example, that a will will not be construed before the necessity for taking action under it arises,[64] nor will it be construed to decide mere moot points or abstract or experimental questions.[65] For those of you who have IRS problems and publish your declaration and the IRS continues it's assault upon you; go to the the State court and get a declaratory judgment based upon the declaration and Expatriotation Statute of the United States Statute at Large Volume 15 page 223-224 which automatically ;shifts the court to the Law side and further we read; language may be found in the decisions indicating that where the rights of a party are injuriously affected through the misconstruction of a will by the executor (taxing authorities) thereof, such a party is entitled to have his case heard by a **COURT OF JUSTICE.**[66] This is not true in the case of 14th amendment citizens involved with the public trust because you have no remedy in Law.

PROBATE COURTS

Although statements frequently appear in the decisions to the effect that the construction of a will is not a proper subject for consideration on an application for or in connection with its probate,[67] these are not to be interpreted as meaning that probate courts have jurisdiction under any circumstances to indulge in testamentary interpretation. While it may be stated as a general rule that probate courts have no such jurisdiction in the **absence of constitutional or statutory** authorization,[68] the jurisdiction is frequently conferred upon them either expressly or by **implication.**[69] but under many **statutes probate courts and equity courts** are held to have **concurrent jurisdiction.** More on this in the next paragraph under "Equity Courts". Of course if the government is constructing a constructive trust, the 14th amendment is being judicially noticed and all the enforcement is being done for your benefit to form a more subtle form of slavery.

EQUITY COURTS

In the absence of any express bestowal by statute or constitution of power to construe wills upon courts of equity, (which is what the 14th amendment does and that is break down the separation of powers) and apart from instances in which some ground for equitable intervention exists other than the mere construction of a testamentary instrument, the cases reflect conflicting views as to the jurisdiction of chancery courts to hear actions for the construction of wills. In many jurisdictions the view is taken that a court of equity will not entertain jurisdiction of a suit brought for the sole purpose of obtaining construction of a will

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64 Walker v First Trust & Sav. Bank (CA8 Mo) 12 F2d 896, 75 ALR 757, later app (CA8 Mo) 42 F2d 613, cert den 282 US 896, 75 L Ed 790, 51 S Ct 181; May v May, 5 App DC 552, affd 167 US 310, 42 L Ed 179, 17 S Ct 824.

65 Pennington v Pennington, 70 Md 418, 17 A 329; Bullard v Chandler, 149 Mass 532, 21 NE 951.

66 Pray v Belt, 26 US 670, 7 L Ed 309.

67 Cartwright v Cartwright, 158 Ark 278, 250 SW 11; Bell v Davis, 43 Okla 221, 142 P 1011; Huston v Cole, 139 Tex 150, 162 SW2d 404; Harris v Harris' Estate (Tex Civ App) 276 SW964.

68 State use of Trustees of Methodist Episcopal Church v Warren, 28 Md 338; Riggs v Craig, 89 NY 479; Bevan v Cooper, 72 NY 317.

69 Culver v Union & New Haven Trust Co. 120 Conn 97,179 A 487, 99 ALR 663; Higgins v Beck, 116 Me 127, 100 A 553, ALR 1245; American Bible Soc. v Healy, 153 Mass 197, 26 NE 404; Welch v Adams, 152 Mass 74, 25 NE 34; Re De Bancourt's Estate, 279 Mich 518, 272 NW 891, 110 ALR 1346; Ragland v Wagener, 142 Tex 651, 180 SW2d 435, 152 ALR 1232.

without seeking any other relief,[70] especially where the will disposes merely of legal estates, in land in which no trust is involved.[71] By some courts, however, the construction of wills is considered to be an independent ground of equitable jurisdiction. [72]

The jurisdiction of courts of equity to construe wills has been recognized, conferred, or enlarged by statute in some states, while in other states such jurisdiction has been given by statute concurrently to courts of probate, whether acting in their strict capacity as probate courts **or as probate courts with equity powers.**[73] Emphasis means that whenever the bureaucracy purses your performance, (public trust) probate courts thru general equity are probating your will which is in trust.

Even those courts which take the position that equity will not entertain jurisdiction of a suit brought solely to obtain construction of a will recognize an exception to this principle where the **will involves a trust**, and in many instances **equity courts have assumed jurisdiction of actions involving the construction of wills upon the theory that the administration** of an express, **or the establishment and enforcement of a resulting, trust was involved.**[74] as was discussed in March 1990 issue of this newsletter. Courts of equity in a public trust (quasi law) is general equity where the conscience of the judge is not bound by the equity that follows the "Law" but what is fair and just for the members of the trust. Again this editor wants to impress upon you that when dealing with a public trust there is no separation of powers in quasi law. The chancellor constructs a trust upon parts of the law of wills, parts of the law of trusts, parts of contract law, the commercial law, and most certainly the common law, admiralty-maritime, roman law, civil law, law of bailment, law of deeds, the list is endless. Just as is the conscience and with no "Law" to bind it, it can become anything your conscience wants and in fact that is what the whole system is all about and that is to serve your WANTS. In dealing with the law of wills etc you will notice that the decisions deal sometimes with the death of the testor which means a physical death but in conscience there could be a another type of death and that is you die a civil death in relation to the "Law" and now the conscience of another has taken over. After all, how do you know what the chancellor is ruling in if there is no separation of powers?????; and one thing is for certain, he will never disclose how he is ruling because as a member of the public trust; it is for your benefit and as we have learned, the courts will always favor charitable purposes especially where you are the beneficiary. Erie Railroad v Tompkins 304 US 64 says "there is no

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70 Frank v Frank, 88 Ark 1, 113 SW 640; Toland v Earl, 129 Cal 148, 61 P 914; Anderson v Anderson, 112 NY 104, 19 NE 427; Simmons v Hendricks, 43 NC 84; Re Johjn's Will, 30 Or 532, 50 P 226; Bussy v M'Kie, 7 SC Eq 23; Hart V Darter, 107 Va 310, 58 SE 590; Snyder v Grandstaff, 96 Va 473, 31 SE 647.

71 Frank v Frank, 88 Ark 1, 113 SW 640. Even though an equity court has no jurisdiction to construe wills where no trust is involved, a decree in such a case is not void but is binding until reversed on appeal or writ of error. Wakefield v Wakefield, 256 Ill 296, 100 NE 275.

72 See Videl v Girard Ex'ers, 2 How 127, 11 L Ed 208. April issue of Eye of the Eagle.

73 Sherman v Flack, 283 Ill 457, 119 NE 293, 5 ALR 456; Wakefield v Walefield, 256 Ill 296, 100 NE 275; Mann v Jackson, 84 Me 400, 24 A 886; Whittemore v Russell, 80 Me 297, 14 A 197; Read v Williams, 125 NY 560, 26 NE 730; Domestic & Foreign Missionary Soc. v Eells, 68 Vt 497, 35 A 463.

74 Cross v De Valle, 68 US 5, 17 L Ed 515; Warrick v Woodham, 243 Ala 585, 11 So 2d 150, 144 ALR 1223; Heisman v Lowenstein, 113 Ark 404, 169 SW 224; Wakefield v Wakefield, 256 Ill 296, 100 NE 275; Read v Williams, 125 NY 560, 26 NE 730; Anderson v Anderson, 112 NY 104, 19 NE 427.

general federal common law but a common law that is applied by the courts to each case as they come into the courts" If there is no federal statute or code law then the federal court will resort to the law of the state. But as we have learned from the April and May 1990 issue of this newsletter, the GENERAL EQUITY of the District of Columbia is the same as the GENERAL EQUITY of the several states and this is the precise reason why the development of the Commissioners on Uniform States Laws have promulgated the Uniform Probate Code, The Uniform Commercial Code, Model Execution of Wills Act etc. General equity is not to be confused with special equity. Special equity is used to follow the "Law" of the non 14th amendment individual. In other words, general equity follows the law of the public trust whereas special equity follows your "Law" if, you are NOT subject to the 14th amendment. The courts wear three hats, Law, special equity, and general equity. General equity being the same as executive equity, administrative law (equity) commissioners, legislative under Article I of the United States Constitution.

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QUESTIONS AND ANSWERS

If one comes away from the 14th amendment trust; is it possible to still have corporate stock in a private corporation? The answer is yes. Basically you will be going back under the Brushaber case in principal at 340 US 1. Coming issues will unravel the mystery behind the the income tax as it has never been exposed before. This is why this editor wants people to understand how the scheme of the law or Law operates so as to be able to pick ones self up and move on. Its sad to see people going to prison and loose everything they have because their argument is based on say the 16 amendment when in fact and in law the 16th amendment hasn't applied to tax law for 57 years. Proof of this will be revealed in the July issue that will expose the two step process that enacts the liability for the income tax and how one can legally discard the liability as it is today and step into a new era of taxation that will be under your control because you will know the law and facts surrounding the issue. This new era is already in the law, all we have to do is apply it.

Next months issue will contain the proof in the law about voting and adopting resolutions as was discussed in the November 1989 issue of this newsletter.

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Due to the lack of conservation in agriculture soil many of the foods we now eat have reduced levels of life substaining minerals. Even plants which appear to thrive in depleted soil with the aid of commercial fertizers cannot suppoprt animal life like before due to the reduction of trace minerals and/or humus in the soil. In certain cases, some foods contain only 10% of the nutritional value they contained just 40 years ago. Taken from a phamplet printed by "The Rockland Corporation 12215 East Skelly Drive, Tulsa, OK. 74128. Is it any wonder why crime has become a growth industry and why it will continue until we treat the cause and not the symptom. But we must remember that there is no money in a crimeless society.

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