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CASE COMMENTS

CHARITABLE TRUSTS AND INDUCEMENTS TO VIOLATE THE LAW

In order to establish a valid charitable trust it is, of course, necessary that the trust funds are to be used for a charitable purpose.[1] The courts have had considerable difficulty in delineating the field of activities to which the term "charitable" may properly be applied. There is general agreement that gifts for the promotion of health, education, religion, relief to the poor and governmental purposes will be upheld as satisfying the charitable purpose requirement.[2] Unless the gift falls within one of these categories, a finding that the gift will result in some definite advantage to society is required.[3] The standards for determining what constitutes a significant social advantage are by no means clear as courts may readily disagree on what is or is not beneficial to the community.[4]

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[1]A charitable purpose is the most fundamental requirement necessary for the valid creation of a charitable trust; that is—the legal justification for these devices is that they confer a substantial benefit on some part of society. While private trusts require tht the trust instrument designate definite beneficiaries, charitable trusts are designed to benefit a segment of society. Hence, the beneficiaries must be an indefinite number or class of people. Otherwise the elements of a charitable trust are essentially the same as those of a private trust. La Societe Francaise De Bienfaisance Mutuelle v. California Employment Comm'n, 56 Cal. App. 2d 534, 133 P.2d 47 (1943); Scripps Memorial Hospital v. California Employment Comm'n, 24 Cal. 2d 669, 151 P.2d 109 (1944); People v. Young Men's Christian Ass'n, 365 Ill. 118, 6 N.E.2d 166 (1937). See generally 2A Bogert, Trusts and Trustees §§ 361-62 (1953); 4 Scott, Trusts § 348 (2d ed. 1956); Restatement (Second), Trusts § 348 (1959).

[2]In re Henderson's Estate, 17 Cal. 2d 853, 112 P. 2d 605 (1941); Mitchell v. Reeves, 123 Conn. 549, 196 Atl. 785 (1938); Andrews v. Young Men's Christian Ass'n, 226 Iowa 374, 284 N.W. 186 (1939); In re Weeks' Estate, 154 Kan. 103, 114 P.2d 857 (1941); 2A Bogert, Trust and Trustees §§ 373-78 (1953); Scott, 4 Trusts §§ 367-74 (2d ed. 1956); Restatement (Second), Trusts §§ 368-77 (1956).

[3]In addition to gifts for the promotion of health, education, religion, relief to the poor and governmental purposes the following purposes have been held to be beneficial to the community and hence charitable: Promotion of temperance, People v. Dashway Ass'n, 84 Cal. 114, 24 Pac. 277 (1890); Dirlam v. Morrow, 102 Ohio St. 279, 131 N.E. 365 (1921); relief of animals, In re Coleman's Estate, 167 Cal. 212, 138 Pac. 992 (1914); patriotic purposes, Sargent v. Cornish, 54 N.H. 18 (1873); In re De Long's Estate, 140 Misc. 92, 250 N.Y.S. 504 (Surr. Ct. 1931); promotion of minority causes, Tainter v. Clark, 87 Mass. (5 Allen) 66 (1862).

[4]The problem of deciding what is socially beneficial in many cases becomes a matter of degree. Thus, one court upholds a trust seeking to disseminate the doctrines of socialism, Peth v. Spear, 63 Wash. 291, 115 Pac. 164 (1911), while another

The recent case of *In re Robbin's Estate*[5] from the Supreme Court of California illustrates the problem of assessing the social value of a trust established for an unusual purpose. The testator left a fund in trust to be used for the support, maintenance, medical attention and education of Negro children whose father or mother, or both, have been imprisoned, detained, or committed "as a result of the conviction of a crime or misdemeanor of a political nature."[6] In order to aid the trustees in determining what was meant by crimes of a political nature the testator mentioned prosecutions and convictions under the Smith Act; appearances before the House Committee on Un-American Activities and Internal Securities Committee and prosecutions under the Taft-Hartley Act and McCarran-Walters Immigration Act.[7]

By a vote of four to three the California Supreme Court upheld the trust saying

> Any risk that a parent might be induced to commit a crime he otherwise would not commit because of the possibility that his child might become a beneficiary of this trust is far outweighted by the interest of the innocent children involved and society's interest in them. To hold otherwise would ... 'incorporate into the law of the land as legal precepts the sayings that the sins of fathers are visited upon their children ...'[8]

The majority, then, took the view that this trust had sufficient social value to be considered "charitable." The primary consideration, under the majority analysis, is the benefit bestowed on the children involved and the resulting benefit on society as a whole. The majority went on to point out that, even though the testator's motive, at least

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invalidates a trust which advances the precepts of spiritualism. In re Hummeltenberg [1923] 1 Ch. 237. Generally trusts to erect monuments are charitable only if they pay tribute to distinguished leaders. Owens v. Owens' Ex'r, 236 Ky. 118, 32 S.W.2d 731 (1930); Eliot v. Attwill, 232 Mass 517, 122 N.E. 648 (1919). An English court concluded that a monument to philosopher John Locke was not charitable, In re Jones, 79 L.T. 154 (1898). However, an American court found that a monument paying tribute to a man virtually unknown outside his own community was charitable, Lawrence v. Prosser, 89 N.J. Eq. 248, 104 Atl. 772 (1918).

[5]21 Cal. Rptr. 797, 731 P.2d 573 (1962).

[6]371 P.2d at 573.

[7]The testator also mentioned in the trust instrument any statute, "seeking to proscribe, limit, abolish, enjoin or regulate the teaching, advising, adopting, advocating or implementing any political, geopolitical, or social political doctrine" and any conviction or prosecution "resulting from any activity in the organization, or assisting in the organization, of any trade union movement; or from the violation of any injunction of any court, restraining, enjoining or limiting in any way the activities of any union of working men and women in the United States, or restricting and limiting the right to collectively bargain or go out on strike." 371 P.2d at 574.

[8]371 P.2d at 575.

in part, was to encourage violations of laws of a political nature, the purpose for which the property is to be used rather than the motive of the testator determines whether a trust is a valid charitable trust.[9]

It is not clear if the minority concurred in the view that the testator's motives, however improper should not invalidate the trust.[10] In any event they believed the trust was invalid because it tended in fact to induce violations of the law. The minority position is that a court cannot uphold a trust that tends to induce such violations, regardless of whatever other benefits the trust may confer on society or any of its parts, and without regard to the testator's motives. The majority takes a more liberal approach and declares that the trust in the *Robbin's* case is valid because of the benefits accruing to the class of children involved and despite the fact that it contains a possible inducement to violate certain laws.

It is well settled that a court, in deciding whether or not a trust is for a charitable purpose, will not accept the motives of the settlor as controlling.[11] The court instead will consider the result and effect of the trust upon society and mankind generally.[12] The entire court in the *Robbin's* case recognized that the testator's motive in establishing the trust was to encourage challenges to "political" type laws of which he disapproved and that he hoped that these challenges would, in some way, lead to their removal.[13] What prompted the

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[9]In re Butin's Estate, 81 Cal. App. 2d 76, 183 P. 2d 304 (1947).

[10]The minority apparently considered the motives of the testator an irrelevant consideration. Since there is no express declaration it may be inferred that they agreed with the majority that the motives of the settlor are not controlling, since that is the established law of California and the generally accepted view. See notes 9 supra and 11 infra.

[11]Eliot's Appeal, 74 Conn. 586, 51 Atl. 558 (1902); French v. Calkins, 252 Ill. 243, 96 N.E. 877 (1911); Massachusetts Institute of Technology v. Attorney General, 235 Mass. 288, 126 N.E. 521 (1920); Bills v. Pease, 116 Me. 98, 100 Atl. 146 (1917); First Camden Nat'l Bank & Trust Co. v. Collins, 110 N.J. Eq. 623, 160 Atl. 848 (1932); In re Smith's Estate, 181 Pa. 109, 37 Atl. 114 (1897); 2A Bogert, Trusts and Trustees § 364 (1953), 4 Scott, Trusts §§ 348, 368 (2d ed. 1956); Restatement (Second), Trusts § 368, comment d (1959).

[12]In re Loring's Estate, 29 Cal. 2d 423, 175 P.2d 524 (1946); Baker v. Hickman, 127 Kan. 340, 273 Pac. 480 (1929); Chamberlain v. Van Horn, 246 Mass. 462, 141 N.E. 111 (1923); Jackson v. Phillips, 96 Mass. (14 Allen) 539 (1867); Woodstown Nat'l Bank & Trust Co. v. Snelbaker, 136 N.J. Eq. 62, 40 A.2d 222, aff'd 133 N.J.L. 256, 44 A.2d 210 (1944); In re Frasch's Will, 245 N.Y. 174, 156 N.E. 656 (1927); In re Archambault's Estate, 308 Pa. 549, 162 Atl. 801 (1932).

[13]The testator expressly declared his purpose in his declaration of trust. "It is because I wish to preserve the right to dissent, the right to differ and to be different, that I have created the trust estate set up in this will." He also stated that he believed "in full, complete and unabridged freedom of expression in a democratic society..." 371 P.2d at 575.

minority to invalidate the trust was the vice of actually inducing illegality and not the fact that the testator's motive was to remove or change certain laws.

The modern trend in the United States is to hold valid charitable trusts which have a change in law as their purpose, as long as the methods used to effect the change are peaceful and lawful.[14] Trusts for improvement in government,[15] promotion of women's rights[16] and prohibition of liquor sales[17] have all been upheld despite the fact that the accomplishment of these purposes involved peaceful changes in existing laws. The English courts and some American courts take the opposite view basing their position on the theory that the presently existing laws must be considered correct until they are changed.[18] This rationale has been severely criticized, and most writers support the more liberal American view.[19] It would appear anomalous for a court which values democratic processes to support the proposition that all laws now on the books are correct and not subject to criticism and evaluation by those who advocate that they should be changed by lawful means. This would appear to be true whether or not one is speaking in the context of charitable trusts.[20] It is similarly apparent that a court in holding a trust invalid for the reason that it seeks to change the law by peaceful methods would implicitly deny the social value of the right to dissent. Thus the reluctance of many American courts to reach such a result is understandable.

Until the *Robbin's* case, however, no court had upheld a charitable trust which induces or might possibly induce violations of the law, regardless of whether its purpose, express or implied, is to change the

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[14]Collier v. Lindley, 203 Cal. 641, 266 Pac. 526 (1928); Garrison v. Little, 75 Ill. App. 402 (1898); George v. Braddock, 45 N.J. Eq. 757, 18 Atl. 881 (Ct. Err. & App. 1898); Buell v. Gardner, 83 Misc. 513, 144 N.Y.S. 945 (Sup. Ct. 1914); Taylor v. Hoag, 273 Pa. 194, 116 Atl. 826 (1922).

[15]Collier v. Lindley, 203 Cal. 641, 266 Pac. 526 (1928).

[16]Garrison v. Little, 75 Ill. App. 402 (1898).

[17]Girard Trust Co. v. Commissioner, 122 F.2d 108 (3d Cir. 1941); Sherman v. Congregational Home Missionary Soc'y, 176 Mass. 349, 57 N.E. 702 (1900).

[18]Inland Revenue Comm'rs v. Temperance Council, 42 T.L.R. 618 (P. 1926); Bowditch v. Attorney General, 241 Mass. 168, 134 N.E. 796 (1922); Jackson v. Phillips, 96 Mass. (14 Allen) 539 (1867); In re Kellen's Will, 124 Misc. 720, 209 N.Y.S. 206 (Surr. Ct. 1925).

[19]Comment, 16 Calif. L. Rev. 478 (1928); Comment, 71 U. Pa. L. Rev. 89 (1922); 4 So. Cal. L. Rev. 418 (1931); 37 Va. L. Rev. 988 (1951); 32 Yale L.J 295 (1922); See also 2A Bogert, Trusts and Trustees § 378 (1953); 4 Scott, Trusts § 374.4 (2d ed. 1956).

[20]An obvious example of the well recognized right to campaign for peaceful change in law is shown by the prevalence of lobbyists and pressure groups attempting to influence legislators at both federal and state levels.

law.[21] The inducement in the *Robbin's* case is at least indirect in the sense that the benefit goes to the child of the offender rather than to the offender himself. The case nevertheless represents an expansion of the scope of permissible purposes in the field of charitable trusts.

The question arises as to what extent the *Robbin's* holding authorizes the California courts to uphold trusts which contain inducements to violate any law. It at least authorizes a court to balance the harm of a possible indirect inducement against the benefits bestowed on the direct beneficiaries. It is hardly likely that the decision will be construed as generally allowing the settlor of a charitable trust to induce violations of the law purposely and actually so long as he bestows some socially desirable benefits on some other group. If this is the case then every political nonconformist could, with sufficient financial backing, devise a technically valid trust which would, in effect, promote incessant illegal acts. The courts for obvious reasons should not encourage such devices. This is not to suggest that a trust which seeks to change the law by lawful means should be declared invalid.

As an isolated proposition the rule of the *Robbins* case does not appear harsh or extreme. Clearly, society will receive subtantial benefit through the provisions for the care and support of the children involved. Therefore, it is not per se inequitable for a court to uphold such benefits even in the face of a possible inducement to violate the law, especially if the court considers the inducement remote. Moreover, countenancing such an indirect inducement is by no means tantamount to approving a direct inducement in which the one who is induced also benefits. As a practical consideration trusts containing characteristics of the type presented in the *Robbins* case may survive because no one will attack them if they are created inter vivos. However, this would not normally be true in the case of testamentary trusts where the heirs or the executor are likely to challenge the legality of the trust, as in the principal case.

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[21]There are very few cases on the subject for the obvious reason that few people are inclined to dispose of their funds in such a way as to encourage or induce violations of the law. In an early English case a bequest which sought to purchase the freedom of those imprisoned for failing to pay fines for violations of game laws was held invalid as tending to encourage violations of those laws. Thrupp v. Collette, 26 Beav. 125, 53 Eng. Rep. 844 (Ch. 1858). Professor Scott makes the following comment on the subject. "Where a policy is articulated in a statute making certain conduct a criminal offense, then, of course, a trust is illegal if its performance involves such criminal conduct, or if it tends to encourage such conduct." 4 Scott, Trusts, § 377 (2d ed. 1956); cf. Attorney General v. Guise, 2 Vern. 266, 23 Eng. Rep. 772 (Ch. 1692); Mormon Church v. United States, 136 U.S. 1 (1890); In re Sterne's Estate, 147 Misc. 59, 263 N.Y.S. 304 (Surr. Ct. 1933).

At any rate, the courts whose function is to secure adherence to the law as well as to mould and interpret the law should be extremely reluctant to approve any legal device which tends to encourage or induce illegality. For many years the principle that any trust which tends to induce a breach of the law is invalid has been firmly entrenched in the law of trusts.[22] Or, conversely stated, any trust containing such an inducement has been viewed as harmful enough to society to contravene any other social value the trust may include. It is one thing to visit the sins of the father upon his children and quite another to entice the father to commit the sins.

This would be especially true in the case of the charitable trust which the law treats with considerable favor. Such trusts are accorded liberal rules of construction,[23] they are permitted to be perpetual in duration,[24] and, in many cases, they are exempt from taxation.[25] These advantages, along with many others,[26] make the charitable trust a favorite of the law. Thus, a court in upholding any charitable trust must find that its social values more than offset "... the detriments which arise out of the special privileges accorded to that trust."[27]

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[22]See Note 21 Supra.

[23]In re Chucovich's Estate, 103 Colo. 104, 83 P.2d 328 (1938); Woodruff v. Marsh, 63 Conn. 125 (1893); Coit v. Comstock, 51 Conn. 352 (1884); Webb v. Webb, 340 Ill. 407, 172 N.E. 730 (1930); Morgan v. National Trust Bank, 331 Ill. 888, 162 N.E. 188 (1928); Wilson v. First Nat'l Bank, 164 Iwoa 402, 145 N.W. 948 (1914); Gearhart v. Richardson, 109 Ohio St. 418, 142 N.E. 890 (1924); 4 Scott, Trusts § 369 (2d 1956).

[24]Colonial Trust Co. v. Waldron, 112 Conn. 216, 152 Atl. 69 (1930); Montgomery v. Carlton, 99 Fla. 152, 126 So. 135 (1930); Stewart v. Coshow, 238 Mo. 662, 142 S.W. 283 (1911); Merrill v. American Baptist Missionary Union, 73 N.H. 414, 62 Atl. 647 (1905); Webster v. Wiggin, 19 R.I. 73, 31 Atl. 824 (1895).

[25]City of Waycross v. Waycross Sav. & Trust Co., 146 Ga. 68, 90 S.E. 382 (1916); In re Altman's Estate, 87 Misc. 255, 149 N.Y.S. 601 (Surr. Ct. 1914); In re Hunter's Estate, 147 Wash. 216, 265 Pac. 466 (1928). For example of a typical statutory exemption see Minn. Stat. Ann. § 309.51 (1961).

[26]Charitable trusts are accorded lenient treatment in the application of the rules of vesting, power of alienation and accumulations. Kasey v. Fidelity Trust Co., 131 Ky. 609, 115 S.W. 739 (1909); In re Brown's Estate, 198 Mich. 544, 165 N.W. 929 (1917); Williams v. Williams, 215 N.C. 739, 3 S.E.2d 334 (1939); Moore v. Sellers, 201 S.W.2d 248 (Tex. Civ. App. 1947). See 2 Bogert, Trusts and Trustees § 353 (1953).

Also the liberal Cy Pres doctrine is applicable only to charitable trusts. Generally the doctrine allows a court to substitute a charitable purpose other than the one originally provided for in the trust where the original purpose is impractical or impossible to accomplish. For general discussion of the applicability and scope of this unusual doctrine see Bradway, Tendencies in the Application of the Cy Pres Doctrine, 5 Temp. L.Q. 489 (1931); Cy Pres: A Suggested Approach, 1 Ala. L. Rev. 217 (1949); 2A Bogert, Trusts and Trustees § 431 (1953); 4 Scott, Trusts §§ 395-99 (2d ed. 1956).

[27]2A Bogert, Trusts and Trustees § 361 (1953).