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Trusts - Charitable Trusts: Illegal Purpose - In re Robbins' Estate, 57 Cal. Rep.2d 765, 371 P.2d 573 (1962)

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However, when a minor is operating a motor vehicle as in the *Betzold* and *Dellwo* cases, that minor should be judged by the standards of an adult.[15] The Minnesota Court, in the *Dellwo* opinion, made a fine statement of reason for the difference.

> To give legal sanction to the operation of automobiles by teen-agers with less than ordinary care for the safety of others is impractical today, to say the least. We may take judicial notice of the hazards of automobile traffic, the frequency of accidents, the often catastrophic results of accidents, and the fact that immature individuals are no less prone to accidents than adults. While minors are entitled to be judged by standards commensurate with age, experience, and wisdom when engaged in activities appropriate to their age, experience, and wisdom, it would be unfair to the public to permit a minor in the operation of a motor vehicle to observe any other standards of care and conduct than those expected of all others. A person observing children at play with toys, throwing balls, operating tricycles or velocipedes, or engaged in other childhood activities may anticipate conduct that does not reach an adult standard of care or prudence. However, one cannot know whether the operator of an approaching automobile, airplane, or powerboat is a minor or an adult, and usually cannot protect himself against youthful imprudence, even if warned. Accordingly we hold that in the operation of an automobile, airplane, or powerboat, a minor is to be held to the same standard of care as an adult.[16]

[15] Wittmier v. Post, 78 S.D. 520, 105 N.W. 2d 65 (1960) dictum. Also see RESTATEMENT OF TORTS, TENTATVE DRAFT No. 4, § 283, comment c.

[16] Dellwo v. Pearson, 259 Minn. 452, 458, 107 N.W. 2d 858, 863 (1961).

TRUSTS–CHARITABLE TRUSTS: ILLEGAL PURPOSE

In his will, the testator set up a trust "to be used for the care, support, medical attention, education, sustenance, maintenance or custody of such minor Negro child or children, whose father or mother, or both, have been incarcerated, imprisoned, detained or committed in any federal, state, county, or local prison or penitentiary as a result of the conviction of a crime or misdemeanor of a political nature."[1] A violation of the Smith Act[2] would constitute such a crime. A grandnephew, hoping to derive the trust proceeds through the law of intestate succession, now challenges the validity of the trust. The District Court upheld the Superior Court's decision that the trust was invalid. Upon appeal to the Supreme Court, the order was reversed in favor of the administrator. *In Re Robbins' Estate*, 57 Cal. Rep. 2d 765, 371 P. 2d 573 (1962).

[1] *In re* Robbins' Estate, 57 Cal. 2d 765, 766, 371 P. 2d 573 (1962). The Court quotes from the trust.

[2] 18 U.S.C. § 2385. This act deals with advocating the overthrow of the U.S. Government.

As stated in *Estate of Henderson*:[3]

A bequest is charitable if: (1) it is made for a charitable purpose; its aims and accomplishments are of a religious, educational, political or general social interest to mankind. (2) The ultimate recipients constitute either the community as a whole or an unascertainable and indefinite portion thereof.[4]

Although the wording may differ in various states, the definition of a charitable trust remains generally standard.[5]

Determining this trust in question to be valid, the Court merely applied the definition of a charitable trust to the facts contained in this case. The Court held that the provisions of the trust are "unquestionably of social value."[6] It is also evident that the beneficiaries of the trust constitute an unascertainable portion of the community, thus meeting the second requirement.

After a close scrutiny of the dissent, the following conclusions can be made: First, by making no reference to or mention of the majority decision, the dissent indicates its agreement with all that was contained therein. Second, the dissent's assertion of additional positive matter is an indication of its desire to go one step further—to probe deeper into the trust.

In essence, the dissent adds: "[a] trust cannot be created for a purpose which is illegal. The purpose is illegal if . . . the trust tends to induce the commission of crime or if the accomplishment of the purpose is otherwise against public policy."[7] The Restatement of Trusts states that "a trust which tends to induce a breach of the criminal law is invalid. Thus, a trust of property to be applied to the payment of fines of persons convicted of criminal offenses, such as offenses against the game laws, or traffic laws or liquor laws, is invalid."[8]

The point of dispute, then, is centered around the *purpose* of the trust. Or to state the issue more precisely, what is the purpose of the trust—to aid the children or to encourage and offer an inducement for violation of the criminal law?

In support of its decision that the purpose of the trust was to aid the children, the Court calls attention to the *Estate of Butin*.[9] In this case

[3] 17 Cal. 2d 853, 112 P. 2d 605 (1941). [4] *Id.* at 857, 112 P. 2d at 607.

[5] RESTATEMENT (SECOND), TRUSTS § 348, Illinois Annotations (1961).

"A charity, in a 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 hearts under the influence of education or religion, by relieving their bodies from disease, suffering or constraint, by assisting them to establish themselves for life, or by erecting or maintaining public buildings or works, or otherwise lessening the burdens of government."

[6] *In re* Robbins' Estate, 57 Cal. 2d 765, 770, 371 P. 2d 573, 575 (1962).

[7] *Id.* at 775, 371 P. 2d at 577, quoting from 4 Scott, Trusts § 377 (2d ed. 1956).

[8] RESTATEMENT (SECOND), TRUSTS § 377b (1959).

[9] 81 Cal. App. 2d 76, 183 P. 2d 304 (1947).

Mary Butin directed her executors to erect a granite tower in the courthouse park. An inscription on the tower was to read, "dedicated to the memory of all those who during the years 1891 and 19- strove to make [this] county all that it is."[10] Following the inscription appears the name of the deceased and her husband. In its decision the court held:

> [I]n determining whether a gift is charitable, the courts look to the nature and purpose of the gift, rather than to the donor's motives in making it; and hence, when the nature of the gift is such that it must be deemed to be for a public purpose, the fact that there is also a private motive in making it does not deprive the gift of its public character so as to render it noncharitable.[11]

A Pennsylvania Court,[12] in a case involving a trust providing for a free church pew which was intended as a memorial to the testator, stated that "the true test of a legal public charity is the object sought to be attained; the *purpose* to which the money is to be applied; not the *motive* of the donor."[13] In *Woodstown National Bank & Trust Co. v. Snelbaker*,[14] wherein the testator founded a cemetery as a lasting memorial to himself, it was stated:

> Courts start out with an attitude in favor of the attempt to create a charitable trust rather than with a hostile attitude toward that attempt. Charity is necessarily altruistic, and it involves the idea of aid or benefit to others, but given the latter, the *motive impelling it is immaterial.*[15]

The above cases were cited in support of the majority's position that the purpose was to aid the children though the motive might have been to induce a breach of the criminal law.

The dissenting opinion, on the other hand, tacitly attempts to indicate that the word "purpose" not only means (1) what the trust property is to be used for, but also (2) *the natural result of the use of the trust property*. This assumption appears evident from the dissent's statement that "recognition cannot be given to a trust as valid where its purpose is illegal,"[16] and that "a trust which tends to induce a breach of the criminal law is invalid."[17]

[10] *Id.* at 79, 183 P. 2d at 306.

[11] *Id.* at 83, 183 P. 2d at 308, quoting from *In re* Graves' Estate, 242 Ill. 23, 89 N.E. 672 (1909).

[12] Archambault's Estate, 308 Pa. 549, 162 Atl. 801 (1932).

[13] *Id.* at 555, 162 Atl. at 803 (emphasis added), quoting from Jackson v. Phillips, 96 Mass. 539 (1867).

[14] 136 N. J. Eq. 62, 40 Atl. 2d 222 (1944).

[15] *Id.* at 67, 40 Atl. 2d at 224 (Emphasis added).

[16] *In re* Robbins' Estate, 57 Cal. 2d 765, 775, 371 P. 2d 573, 577 (1962).

[17] *Id.* at 775, 371 P. 2d at 577, quoting from RESTATEMENT (SECOND), TRUSTS § 377 b (1959).

Is the dissent's assumption correct? Does the word "purpose" have another meaning? To support its position, the minority quotes two early English cases. The first involved a bequest to purchase the release of persons committed to prison for non-payment of fines under the game laws.[18] The bequest was held illegal since the natural result of the performance of the trust would be to induce the commission of crime. In the second case, a bequest to trustees, who were instructed to make seats for poor people in which to sit while begging by the highway, was held invalid because such begging was a criminal offense.[19] The above two cases are the only ones used by the dissent to substantiate its position.

A thorough search of the available authorities reveals but one American decision in point. This is the case of *Jackson v. Phillips*[20] which involves certain funds given by the testator to be used to secure the passage of laws granting women the right to vote; to hold office; to hold, manage and devise property, and granting them all other civil rights enjoyed by men. The Court held that the bequest was not for a charitable purpose since the object of the bequest was to effect a change in existing laws, which object could not be carried out except by changing the Constitution.

However, the will in the *Jackson* case also contained *another* trust; this one for the benefit of fugitive slaves who escape from the slave-holding states of the Union. At the time of the testator's death, the Constitution of the United States declared "no person held to service or labor in one state shall be discharged therefrom by escaping into another state."[21] As to these funds, the court said:

> [W]hether this bequest is or is not valid is to be ascertained from a fair construction of its language . . . by which the court is bound to carry into effect any charitable bequest in which can be seen a general intention consistent with the law, *even if the particular mode pointed out is illegal,* and there is no authority to constitute it to be void if it can be applied in a lawful manner consistently with the intention of the testator as manifested in the words by which it is expressed.[22]

It is difficult to reconcile why, under the law which then existed as to slavery and fugitive slaves, the trust last mentioned should be held valid and the one pertaining to women suffrage held otherwise. To completely refute the stand taken in *Jackson v. Phillips*[23] with relation to women suffrage, an Illinois court in *Garrison v. Little*,[24] wherein similar facts were concerned, held that a trust to promote women suffrage is not illegal even

[18] Thrupp v. Collett, 26 Beav. 125, 53 Eng. Rep. 844 (1858).

[19] 4 SCOTT, TRUSTS § 377 (2d ed. 1956).

[20] 96 Mass. 539 (1867).

[21] Subsequently abolished by U.S. CONST. AMEND. XIII.

[22] Jackson v. Phillips, 96 Mass. 539, 569 (1867) (Emphasis added).

[23] *Id.* at 539.

[24] 75 Ill. App. 402 (1897).

though it involves a change in the Constitution, and the change might be effected through illegal means.

Such an express rejection of the only American case in support of the dissent should dispel any skepticism there might still be to the stand taken by the majority of the Court. Finally, the deciding factor that must be considered in controversial cases involving charitable trusts is that a fundamental and established rule of law in Illinois, and in all other jurisdictions, is that bequests and devises for charitable purposes are looked upon with favor and all reasonable interpretations and inferences tending to uphold them are made by the courts.[25]

[25] In re Potter's Will, 307 N.Y. 504, 121 N.E. 2d 522 (1954); In re Pierce's Estate, 245 Ia. 22, 60 N.W. 2d 894 (1953); Ervin v. Davis, 355 Mo. 951, 199 S.W. 2d 366 (1947); In re Porter's Estate, 164 Kan. 92, 187 P. 2d 520 (1947); Caruthers v. Fisk Univ. 394 Ill. 151, 68 N.E. 2d 296 (1946).