Unincorporated Associations as Beneficiaries of Private Trusts

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a reasonable man at the time\textsuperscript{21} and it is immaterial that the parties in settling the controversy reach a different result than the law would have reached or that the merits ultimately prove to be on the other side.\textsuperscript{22}

It is submitted that the Kentucky court is in line with the majority and better view and that it follows the rule of the Restatement of Contracts in requiring both the subjective requisite of a bona fide claim and the objective requisite that it must be reasonably doubtful. It has been said that it is the duty of courts to encourage rather than discourage parties in resorting to a compromise as a mode of adjusting conflicting claims and the nature or extent of the rights of each party should not be closely scrutinized.\textsuperscript{23} So far as it can be done legally and properly, the courts should support such agreements having as their object an amicable settlement of doubtful rights. Litigation is always burdensome and the courts should look favorably upon settlement out of court.

\textbf{JOHN W. MURPHY, JR.}

\textbf{UNINCORPORATED ASSOCIATIONS AS BENEFICIARIES OF PRIVATE TRUSTS}

It is generally recognized that an unincorporated association can be the beneficiary of a private trust,\textsuperscript{1} although the courts have used several theories to reach this conclusion. Courts are faced with two problems in upholding a private trust made in favor of an unincorporated association. First, since the trust is a private one and must have a definite beneficiary, who holds the equitable title? Secondly, does such a trust contravene the rule against private indestructible

\textsuperscript{21} Adequacy of the consideration given is not inquired into so long as there is something of detriment to one party or benefit to the other, however slight, Nuckols v. Nuckols, 293 Ky. 603, 169 S.W. 2d 828 (1943); Dexter v. Duncan, 205 Ky. 344, 265 S.W. 832 (1924); Barr v. Gilmour, 204 Ky. 582, 265 S.W. 6 (1924); even though the amount is greatly disproportionate to what a party would be legally bound to pay. Bates v. Todd's Heirs, 14 Ky. 177 (1823).

\textsuperscript{22} Murphy v. Henry, 311 Ky. 799, 225 S.W. 2d 662 (1949); Forsythe v. Rexroat, 234 Ky. 173, 27 S.W. 2d 695 (1930); Berry v. Berry, 183 Ky. 481, 209 S.W. 855 (1919); Gray v. U. S. Savings and Loan Co., 116 Ky. 967, 77 S.W. 200 (1903); Mills' Heirs v. Lee, 22 Ky. (6 Mon.) 91, 97 (1827).

\textsuperscript{23} Moore v. Sutton, 311 Ky. 174, 223 S.W. 2d 737 (1949); Childs v. Hamilton, 308 Ky. 203, 214 S.W. 2d 106 (1948); Nuckols v. Nuckols, 293 Ky. 603, 169 S.W. 2d 828 (1943); Provident Life and Accident Ins. Co., of Chattanooga, Tenn., v. Ramsey, 256 Ky. 126, 75 S.W. 2d 781 (1934).

\textsuperscript{1} P-H WILLs, ESTATES AND TRUSTS SERV. sec. 3663 (1950).
trusts? The primary purpose of this note is to discuss the first question; the second will be treated only collaterally.

Historically courts would not enforce a private trust created for an unincorporated association because it was thought that such associations were incapable of taking the equitable title, and it was conceived that the trust failed for want of a definite beneficiary. Later such trusts were upheld on the theory that the title vested in the members of the association. Another theory was that the association itself took as beneficiary, giving recognition to the association as a separate entity capable of holding the equitable title independently of its individual members. Other courts have simply upheld such trusts without explanation as to theory.

The whole problem historically was complicated by the lack of legal capacity in such organizations. For centuries the position of unincorporated associations before the law was rather awkward because they could not hold property except in the names of the individual members, nor could they sue or be sued except in the names of the members. The typical early associations were the partnership and

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3 Kain v. Gibonney, 101 U. S. 862 (1879); Mayfield v. Safe Deposit & Trust Co. of Baltimore, 150 Md. 157, 152 A. 594 (1926); Lane v. Eaton, 69 Minn. 141, 71 N.W. 1031 (1904); German Land Association v. Konstantine Scholler, 10 Minn. 260 (1865); Miller v. Rosenberger, 144 Mo. 292, 46 S.W. 167 (1898); Murray v. Miller, 178 N. Y. 316, 70 N.E. 870 (1904); Stewart v. Green, 11 R. 5 Eq. 470, 481 (1870).

4 The third thing to be respected is, the cestui que use; for to every good use, as there must be a person seised to use, so there must be a person to whose use he is seised, and he must be capable also. And if a feoffment be made to I. S. and his heirs, to the use of the parishioners of Dale; this use is void, for they are incapable by this name: and it shall be to the use of the feoffer, [by resulting use]" Sheppard's Touchstone of Common Assumptions 509 (7th ed. 1821).

5 San Juan Gold Co. v. San Juan Ridge Mut. Water Ass'n, 34 Cal. App. 159, 93 P. 2d 582 (1939); Hart v. Seymour, 147 Ill. 598, 35 N.E. 246 (1893) (Massachusetts business trust); Comstock v. Dewey, 323 Mass. 583, 85 N.E. 2d 257 (1949); Howe v. Morse, 174 Mass. 491, 55 N.E. 213 (1899) (Massachusetts business trust); Turner v. Ontonagan River Imp. Co., 77 Mich. 610, 43 N.W. 1062 (1889) (business association); Venus Lodge No. 62, F. & A.M. v. Acme Benevolent Ass'n, Inc., 231 N.C. 553, 58 S.E. 2d 109 (1950); Clark v. Brown, (Tex. Civ. App.) 108 S.W. 421, 433 (1908). In some of these cases it is not clear whether it was the members of the association at the time of the trust's creation who took the title, or whether the members from time to time took. The latter interpretation is probably what the courts intended.

6 Ruddick v. Albertson, 154 Cal. 460, 98 P. 1045 (1908); Wilbur v. Portland Trust Co., 121 Conn. 535, 186 Atl. 499 (1936). In Amish v. Gelhaus, 71 Iowa 210, 22 N.W. 318 (1887) the court seemed to regard a congregation as an entity. Weaver v. First National Bank, 216 Ark. 199, 224, S.W. 2d 813 (1949); Appeal of Cox, 126 Me. 250, 137 A. 771 (1927) (trust upheld by implication); Normandy Consol. School Dist. of St. Louis County v. Harral, 315 Mo. 692, 288 S.W. 86, 92 (1926); Appeal of Woolford, 126 Pa. 47, 17 A. 524 (1889).


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the religious society. The former flourished, its economic advantages outweighing its legal disadvantages, and a separate body of partnership law developed which is similar in many respects to the law of non-profit associations but which is markedly different in other respects. Religious societies also flourished, and since they could usually be classified as charities they were able to enjoy the benefits of property through the device of charitable trusts which required no definite beneficiary. But in recent modern times, however, other types of associations have taken on increased importance socially and economically, such as labor unions, college fraternities, and fraternal organizations, but there has not been a corresponding development of their legal status.

As these newer types of associations increased in activity, size and wealth it became desirable to develop direct legal methods of protecting their rights and property. By statute business associations were allowed to take title to land and to sue and be sued in their own names. Under such statutes it would not seem difficult to uphold a trust made in favor of such an association as an entity. But these statutes do not apply to other types of associations.

Related to the problem of finding an appropriate theory on which to uphold a trust in favor of an unincorporated association is the question of whether such a trust needs a beneficiary at all, or to put it another way: how should such a trust be classified? A beneficiary is necessary to the existence of a private trust because there must be someone to enforce it against the trustee, whereas a charitable trust is enforceable at the suit of the attorney general. In this sense a

8 Much of partnership law stems from the Law Merchant which, of course, does not hold true for the non-business types of associations. CRANE, op. cit. supra note 6, at 5-7. An association will not be terminated upon the death, withdrawal or bankruptcy of a member or a group of members as in the case of a partnership. Miller v. International Union of United Brewers, Flour, Cereal, and Softdrink Workers of America, 187 Va. 389, 48 S.E. 2d 252 (1948). A member of an association has no authority to bind the others. Chastain v. Baxter, 139 Kan. 381, 31 P. 2d 21 (1934).

9 OKLA. STATS. sec. 361 e (1941) (farm co-ops); W. VA. CODE sec. 4671(1) (business associations). In states which have adopted sec. 8(3) of the Uniform Partnership Act real property can be held in the partnership name. See Unif. Laws Ann. 7-57 (1949) n. 4.

10 See Am. Jur. 486, 487; and cases cited at 496, notes 20, 1 and 2.

11 See I Scott, THE LAW OF TRUSTS 615 and 621-625. A notable exception to this rule is found in the case of so-called “honorary” trusts set up for the benefit of animals, or for the saying of masses, or the maintaining of graves or memorials. Such trusts have no beneficiary which can enforce the trust, nor are they charitable, but they are upheld nonetheless. Angus v. Noble, 73 Conn. 56, 46 Ad. 2d 278 (1900) (keeping a grave clean); Coleman v. O’Leary’s Ex’r., 114 Ky. 388, 70 S.W. 1068 (1902) (masses); In re Dean, 41 Ch. D. 552 (1899) (animals).

charitable trust does not need a beneficiary. But any private trust must depend on a beneficiary for its enforceability, and the critical problem is: can an unincorporated association meet this requirement? If there is some "person" who can enforce the trust there would be no difficulty in adjudging the trust valid. In the private trust the person or persons who can enforce the trust—the beneficiaries—are said to have the equitable title. In a trust for an association we shall see that this requirement of enforceability—this requirement of a beneficiary—is satisfied and the courts are fully justified in upholding them.

Probably the best modern explanation of the problems involved in upholding private trusts in favor of unincorporated associations is given by Scott. He sees no difficulty in vesting the equitable title in the association or its members as beneficiaries since in either case the trust is enforceable against the trustee. He indicates the only real difficulty arises where a trust for the association as such is to continue beyond the period of the "rule against perpetuities." He is of the opinion if the trust were to last the life of the association it would exceed the period and be invalid. To avoid such invalidity he would require that the trust by its terms be capable of being consumed or terminated within the period of the rule. He would not require that such a disposal be made within the period, but only that it be possible. This is the English rule, and has been incorporated into the Restatement of Trusts. Bogert does not mention the perpetuities problem in his treatment of such trusts, but he does point out the various theories which have been used to support them, and he approves the modern trend of upholding them.

Let us assume a trust "To T for the benefit of X Brotherhood (Fraternity Chapter, Lodge, etc.)," and assume that it has provisions for its exhaustion or termination within the period of the rule. A court looking for a resting place for the equitable title of such a trust has several choices. It may determine that the title vests in the individual members of the Brotherhood as it is constituted at the time of the creation of the trust. This solution meets the enforceability requirement since those members can enforce it, and it constitutes no problem under the rule against perpetual private trusts since the duration necessarily will be measured by lives in being. However, the solution

14 Ibid. at 599.
15 Ibid. at 599-601.
16 Ibid. at 604, see n. 24.
17 In Re Drummond, 2 Ch. 90 (1914).
20 See cases cited supra note 3.
is inconsistent with the intention of the settlor since it was probably his intention that the trust be capable of existing so long as the association exists in its present general form with its present general objects (subject, of course, to the Brotherhood's power of termination). If he had intended for it to cease upon the death of the last old member he could easily have indicated that intention in more explicit terms. Most laymen seem to consider an association as a distinct entity existing apart from the individual membership in much the same manner that they consider the distinctness of a corporation. With this thought in mind when he created the trust, he probably intended that it last the life of the Brotherhood.

On the other hand, a court may determine that the equitable title vests in the members of the Brotherhood as they exist from time to time. This solution will satisfy the settlor's intention since the trust could exist as long as there is a membership in the association, though it does not satisfy it in quite the manner that he had in mind, and it will satisfy the requirement for definite beneficiaries. But, there is an air of artificiality about this rationalization. The "beneficiaries" do not really have much to call their own. The interest they possess is dependent upon their continued membership in the association; they lose this "interest" without compensation when they cease being members. The interest is of no economic value to them since there is no market for it, and it would probably not be transferrable at all since it is so intimately bound up with membership. A member has very little individual control over his beneficial interest except in conjunction with other members; the members can exert no control over associate property except in their associate capacity. They stand toward the Brotherhood as sort of trustees of the beneficial interest for it. Their position is much the same as the attorney general in a charitable trust. The critical issue arises when it is effectively voted to terminate the trust and sell the corpus—to whom will the proceeds be distributed? Since the individual members are termed the "beneficiaries" of the trust they could convincingly argue that they should

21 See Bancroft v. Cook, 264 Mass. 343, 162 N.E. 691 (1928) where a college fraternity was held ineligible under a trust since it had altered its form and objects.
22 See Stewart v. Green, 1 R. 5 Eq. 570 at 481 (1870), and see Laski, Personality of Associations, 29 Harvard L. Rev. 404, 404-405 (1916), and Crane, op. cit. supra note 6 at 12.
23 See cases supra note 3.
26 See cases cited supra note 24.
personally receive the proceeds. But, this was not the settlor's intention; we have shown that he had the association in mind when he created the trust and not the individual members. It would be his intention that if and when the trust was properly terminated the proceeds should go to the association and to no one else.

It would seem that to recognize an unincorporated association as a separate entity capable of holding equitable title would be the most simple and direct solution of our problem. The settlor's intentions would be satisfied since the beneficial interest is in the association where he intended it to be and the trust will exist as long as he intended. It will be subject to the will of the association in exactly the manner which he had in mind, i.e., the association can control the trust according to its customary procedures without any objections by individual members of infringement of their "personal rights." The title vests once and for all in the association and is not even ambulatory. The rule against perpetual trusts is not violated because the unincorporated association, as in the case of corporations, should be permitted to be the beneficiary of a private trust despite the fact that it might exist in perpetuity. We assume, of course, that the trust could not of its terms be one of perpetual indestructibility. A trust set up for the benefit of an unincorporated association should conform to the normal rules governing private trusts so far as destructibility is concerned. The mere fact that the trust has a potential existence of infinity should not vitiate it.

In conclusion it would seem that to recognize the ability of an unincorporated association to be its own beneficiary is the most desirable solution of the problems presented by such private trusts. It squares with the intention of the parties involved and it is the easiest to legally justify and administer. Unquestionably it represents the modern attitude toward unincorporated associations.

CHARLES N. CARNES

CRIMINAL PROCEDURE—PROTECTION ACCORDERED THE OFFICER WHO ARRESTS UNDER A DEFECTIVE WARRANT

In any examination of the effect of an arrest under a defective warrant upon the rights of the arresting officer it is necessary to give some consideration to the nature of the warrant. Though there are numerous

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27 As was done to no avail by the individual members in Crawford v. Gross, 140 Pa. 297, 21 A. 356 (1891).
28 See cases supra note 4.
30 Ibid. at 392-393.