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Taxation -- Estate Tax -- Charities -- Gifts to Bar Associations

Frances H. Hall

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However, the North Carolina decision, whatever one may think of it on its facts, poses an even more serious question: will the construction of the word "homicide" be extended to include negligent killings of one human being by another? An example of such a situation would be where death is caused by the negligent operation of an automobile. The technical legal definition of the word clearly would include such an extension. It would be but a short step from the present North Carolina decision to a holding that there was a "homicide" where death resulted from gross negligence in a situation amounting to involuntary manslaughter. The Maryland court has suggested that the definition of "homicide" not be extended to include deaths resulting from negligent acts, but that it should be restricted to deaths resulting from voluntary acts. Should the North Carolina court refuse to follow the Maryland view, but choose instead to extend the definition of "homicide" to include death resulting from negligence, a double indemnity clause would be worthless in a large number of cases. Carried to its furthest extreme, only those persons dying from such natural causes as flood or lightning would be able to recover double indemnity. Whether this would be a desirable consequence or not, the public and the legal profession are entitled to be made aware of the dangers involved. It would seem that if insurance companies desire to be absolved from liability where death results from unintentional or negligent homicides, they should so specify in their policies. Perhaps definitive legislation is needed in this area.

THOMAS W. WARLICK

Taxation—Estate Tax—Charities—Gifts to Bar Associations

Testator bequeathed $5,000 to the Rhode Island Bar Association to be used "for the advancement and upholding of those standards of the profession which are assumed by the members upon their admission to the Bar, and for the prosecution and punishment of those members who

Ins. Co., supra; Wozniak v. John Hancock Mut. Life Ins. Co., supra. Compare in connection with both points of view this statement: "A policy of insurance and every clause and part thereof is the contract, and, like all contracts, should be construed so as to effectuate the real purpose and intention of the parties, giving to the language employed, when unambiguous, its ordinary and usually accepted meaning." Frontier Mortgage Corp. v. Heft, 146 Md. 1, 12, 125 Atl. 772, 776 (1924).

"An intention to kill the victim is not, of course, an essential of homicide in its ordinary and usually accepted meaning. There are accidental homicides, and homicides by misadventure, or involuntary manslaughter, as they are sometimes called, in which there is no intention to kill or harm at all." United Life and Acc. Ins. Co. v. Prostic, 169 Md. 535, 538, 182 Atl. 421, 422 (1936).

See note 9 supra.
violate their obligations to the court and to the public." His executor sought to recover the federal estate tax assessed on the transfer, alleging that the Commissioner of Internal Revenue erroneously refused to allow a deduction under section 812(d) of the Internal Revenue Code of 1939 as a transfer for charitable purposes. The district court held that it was immaterial whether the Association was organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes because the testator had manifested a clear intention to create an express trust to be used for the limited purposes specified. In deciding that these purposes were charitable, the court pointed out that the proper operation of our judicial system as well as the safeguarding of personal and property rights depends upon the maintenance of high ethical standards by the legal profession. In the absence of evidence that a substantial part of the activities of the Association involved the attempt to influence legislation, such a gift in trust qualified for the charitable deduction under the estate tax statute.

1 Rhode Island Hospital Trust Co. v. United States, 159 F. Supp. 204, 205 (D.R.I. 1958).

"For the purpose of the tax the value of the net estate shall be determined, in the case of a citizen or resident of the United States by deducting from the value of the gross estate—

"(d) Transfers for public, charitable, and religious uses. The amount of all bequests, legacies, devises, or transfers . . . to or for the use of any corporation organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes . . . no part of the net earnings of which inures to the benefit of any private stockholder or individual, and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation, or to a trustee or trustees . . . but only if such contributions or gifts are to be used by such trustee or trustees . . . exclusively for religious, charitable, scientific, literary, or educational purposes . . . and no substantial part of the activities of such trustee or trustees . . . is carrying on propaganda, or otherwise attempting, to influence legislation . . . ."

3 There are obvious difficulties in attempting to define the term "charity." Zollmann, Charities §§ 185, 187 (1924). The court selected as a guide the definition of a charitable gift used in United States v. Proprietors of Social Law Library, 102 F.2d 481, 483 (1st Cir. 1939), viz., "any gift not inconsistent with existing laws, which is promotive of science, or tends to the education or enlightenment, benefit, or amelioration of the condition of mankind, or the diffusion of useful knowledge, or is for public convenience . . . . Missouri Historical Soc'y v. Academy of Science, 94 Mo. 439, 466, 8 S.W. 346, 348 (1888)."


Here a bequest to a foundation was held to be exempt from a state inheritance tax. The court determined that it was the testatrix's intent to create a trust for charitable purposes; therefore the status of the foundation was immaterial. But see Alfred A. Cook, 30 B.T.A. 292 (1934). Here a contribution to the Association of the Bar of the City of New York to be used by a special investigating committee was held not to be deductible for federal income tax purposes. The Association had intervened in a grand jury investigation of alleged irregularities in the administration of the bankruptcy laws. As a result of the investigation, procedural
In determining the nature of the legal interest created, the court resorted to local law in accordance with the rule that state law is binding as to what legal interests are created, while the federal revenue acts govern what interests, so created, shall be taxed. Rhode Island follows the general rule that no particular words are necessary to create an express charitable trust and that the absence of the words "trust" or "trustee" is immaterial. It is sufficient if there is a manifestation of an intention that the property should be held subject to a legal obligation to devote it to purposes which are charitable. In concluding that this was a gift to the members of the Association as trustees, the court recognized the distinction between the public, which is the real beneficiary of a charitable trust, and the human beings who are the mere conduits of the social benefits to the public.

It has been asserted that deductions are allowed under the federal estate tax provisions when the object of the charity would likewise be a proper object for the expenditure of the proceeds of taxation; whereas formerly, charity was considered almost anything which tended to promote the well being of mankind. When such bequests are devoted to objectives which otherwise would be accomplished at public expense, their deduction from taxation is not a matter of grace but an act of justice. Furthermore the purpose of the deduction provisions is to encourage gifts for such objectives. The maintenance of the standards of the legal profession and the prosecution and punishment of those members who violate their professional obligations are proper subjects for the expenditure of public money. Therefore a gift in trust for such purposes should qualify for the charitable deduction.

Earlier, in Dulles v. Johnson, a district court held that an absolute bequest to three New York bar associations was not deductible for federal estate tax purposes. In this case the court determined that reforms were instituted and disciplinary action taken against certain attorneys. The petitioner's claim that his contribution was a gift to a trust fund was rejected on the grounds that the committee was neither a trust nor a fund, and that the Association was not a tax exempt charitable organization under provisions of section 23(n)(2) of the Revenue Act of 1928, 45 Stat. 791.

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6 Morgan v. Commissioner, 309 U.S. 78, 80 (1940).
6 Wood v. Hartigan, 59 R.I. 333, 195 Atl. 507 (1937); Tillinghast v. Boy Scouts of America, 47 R.I. 406, 133 Atl. 662 (1926); 1 Bogert, Trusts and Trustees § 45 (2d ed. 1951); 1 Scott, Trusts § 24 (2d ed. 1956).
7 2A Bogert, Trusts and Trustees § 362 (2d ed. 1953).
8 Rockefeller, How to Get Maximum Benefits from Gifts and Bequests to Charity, in 1 Estate Tax Techniques ¶ 447 (Lasser ed. 1955).
10 Baker-Boyer Nat'l Bank v. Henricksen, 46 F. Supp. 831, 834 (W.D. Wash. 1942), aff'd, 139 F.2d 877 (9th Cir. 1944); Knoernschild v. Commissioner, 97 F.2d 213, 214 (7th Cir. 1938).
these associations were non-charitable organizations since (1) they existed primarily for the benefit of their members, as distinguished from the public, and (2) a substantial part of their activities was aimed at attempting to influence legislation in violation of the statutory restriction. The court admitted however, that many of the activities of these organizations were charitable, scientific, literary, or educational.

In the same case, the court held that a bequest to the Association of the Bar of the City of New York “for its library and for research and exposition in law, and for other legal purposes” did not qualify for the charitable deduction since, as previously determined, such an organization was non-charitable.

The court dismissed the argument that the latter bequest was a gift in trust for educational purposes because of the absence of express trust wording and a clearly limited charitable purpose. The New York courts follow the general rule that no express words are necessary to create a trust when such an intention is clearly manifested. Furthermore they have been liberal in construing bequests as trusts when there is a gift for charitable uses.

A gift in trust to a bar association for the preservation of the books in its law library has been held to be deductible for federal estate tax purposes as a transfer for exclusively literary and educational purposes.

In arriving at this conclusion, the court pointed out that the characterization of an organization by the state of its incorporation was entitled to weight in the absence of federal characterization. United States v. Proprietors of Social Law Library, 102 F.2d 481, 483 (1st Cir. 1939). The Brooklyn Bar Association, with a similarly worded certificate of incorporation, had been denied exemption from payment of a state employment tax on the grounds that it was not organized and operated exclusively for religious, charitable, scientific, or literary purposes. Smith v. Brooklyn Bar Ass'n, 266 App. Div. 1038, 44 N.Y.S.2d 620 (3d Dep't 1943), aff'd sub nom. Claim of Smith, 292 N.Y. 593, 55 N.E.2d 368 (1944). According to its certificate, the Association was incorporated for the purpose of cultivating the science of jurisprudence, promoting reforms in the law, facilitating the administration of justice, elevating the standards of integrity, honor, and courtesy in the legal profession, and cherishing the spirit of brotherhood among the members thereof.

The status of the bar association was immaterial. Exclusion from the use of the library of members not paying their dues and nonmembers not paying a fee was held to be reasonable. Such rules were held not to affect the purpose of the library and were similar to the rules requiring the payment of tuition at tax exempt educational institutions.

A law library to which use was restricted to subscribers and certain federal court officials was held to be exempt from a federal capital stock tax as an educa-
Likewise, "research and exposition in law" could be characterized as an educational purpose. However, "for other legal purposes" does appear uncertain. It is elementary that a trust for charity and private purposes with no division of capital must fail for uncertainty. Whether the term "other legal purposes" was meant to be limited to charity is a question of interpretation of the testator's intentions. If it is so limited, a charitable trust is created. It is reasonable to assume that the testator intended the term "other legal purposes" to mean other purposes of the same type expressly enumerated, i.e., literary and educational. By application of the *ejusdem generis* rule it would seem that a charitable trust was created and therefore that the deduction should be allowed.

In *Dulles v. Johnson*, a bequest to the William Nelson Cromwell Foundation for Research of the Law and Legal History of the Colonial Period of the United States of America, a trust established by the decedent, was held to be deductible for federal estate tax purposes. In characterizing the Foundation, the court looked at the only evidence of its character available, its indenture and expenditures. After deciding that the purposes listed in the indenture were not clearly disqualifying, the court stated that where a trust is involved the organization of the trust is not an important criterion. Implying that the determining factor is the actual use of the trust funds, the court held that in view of the

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1. See *Matter of Shattuck*, 193 N.Y. 446, 86 N.E. 455 (1908); *2A Bogert, Trusts and Trustees* § 372 (2d ed. 1953); *4 Scott, Trusts* § 398 (2d ed. 1956).
3. For applications of the rule in similar situations, see *Prime v. Harmon*, 120 Me. 299, 113 Atl. 738 (1921) (bequest in trust for a missionary society and aid society, and "other moral and useful associations" upheld on the grounds that the other associations were meant to be of the same type as those previously named); *Coffin v. Attorney General*, 231 Mass. 579, 121 N.E. 397 (1919) (bequest to missions "and like good objects" held to be entirely charitable); *Matter of Cunningham*, 206 N.Y. 601, 100 N.E. 437 (1912) (bequest to trustees to be "applied to charitable and benevolent associations and institutions of learning" upheld on the grounds that the words "charitable and benevolent were intended to qualify the word "institutions"); *Matter of Robinson*, 203 N.Y. 380, 96 N.E. 925 (1911); *Staines v. Burton*, 17 Utah 331, 53 Pac. 1015 (1898) (bequest in trust for church members to be used for certain charitable purposes and "anything else whereby the members may be benefited" upheld on the grounds that the testator intended charitable objects by his general expression); *Sutton v. Attorney General*, [1884] 28 Ch. D. 464 (bequest to "charitable and deserving" objects upheld on the grounds that the words were intended to describe one class of objects, i.e., charitable objects).
4. The defendant argued that certain of the purposes listed in the indenture were aimed at influencing legislation and enhancing the prestige of the legal profession. *Dulles v. Johnson*, 155 F. Supp. 275, 281 (S.D.N.Y. 1957).
fact that the only expenditures of the Foundation since its establish-
ment had been for a library, the bequest was for educational purposes.

In the light of these two decisions it would appear highly desirable
for draftsmen of wills in which bequests are made to non-charitable
organizations for charitable purposes to use unequivocal charitable trust
terminology in order to avoid litigation and possible unfavorable tax
consequences.

FRANCES H. HALL

Taxation—Sale of a Life Insurance Contract—Capital Gain or
Ordinary Income?

Under a literal interpretation of the capital gain section of the 1939
Internal Revenue Code an endowment or annuity contract would classi-
fy as a capital asset. Accordingly, if the owner of such a contract, having
held it for more than six months, transferred it by a bona fide "sale or
exchange," he would not be statutorily prevented from receiving long
term capital gain treatment on his profit.

This reasoning was followed by a majority of the Tax Court in the
recent case of Percy W. Phillips, where the taxpayer was allowed cap-
ital gains treatment. The transaction involved the sale by taxpayer of a
life insurance endowment contract thirteen days prior to maturity. Tax-
payer received $26,750 in cash for the surrender of all rights, title,
and interest in the contract which at maturity had a value of $27,000.
Although the majority recognized that the taxpayer’s paramount motive
for the transaction was to effect a tax saving, they held that the en-
dowment contract was a capital asset in taxpayer’s hands, that there
was a bona fide sale, that the transaction was not an “agency arrangement

Rev. Code or 1954 § 1221). This section lists only those assets which are not
capital assets. Because endowments and annuities are not listed, it follows that
they must be considered capital assets.
2 The words “sale or exchange” do not include surrender of a life insurance or
annuity contract to the obligor wherein the obligee receives payment of an obliga-
tion by terms of the contract. Blum v. Higgins, 150 F.2d 471 (2d Cir. 1945);
Bodine v. Commissioner, 103 F.2d 982 (3d Cir. 1939); Frank J. Cobbs, 39 B.T.A.
642 (1939).
3 “A capital asset under Section 1221 is any property held by the taxpayer
whether or not connected with his trade or business, with certain exceptions that
do not embrace insurance contracts. Since an insurance contract is property,
it must be a capital asset. Consequently, the capital gain provisions applying to
the sale or exchange of a capital asset must be available in respect to insurance
contract exchanges, and a long term capital gain should result if the exchanged
insurance contract has been held for six months or more.” Freyburger, Tax
Problems Relating to Life Insurance and Annuity Contracts, 389 Ins. L.J. 375, 386
(1955).
5 It is well accepted that a taxpayer may legally minimize his taxes or avoid