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NATURAL LAW

TRUST LAW

COMMON LAW

WILL YOU PUT YOUR FUTURE ON SOMEONE ELSE'S HANDS?

Do things at your own pace and your own way... Life's not a race.

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Trustees in Commerce: A way of Life

SECTION 1

Trustees in Commerce: A Way of Life

By Carlton A. Weiss

A while back I was asked to write a few paragraphs on the specific advantages of living your life as a trustee in everything you do, as opposed to as a sovereign or secured party. I was asked to cover all related bases. That included a comparison to show how each choice would hold up in commerce. What I came to realize is that there is only one way of life, in its own category, that enhances all others. All the others are actually disadvantages in commerce.

At that time, I had just developed a surefire way of piercing pure trusts, and I was on my way to finally uncovering the pivotal flaw in federal contract trusts. What my clients were asking from me at the time was a technology that would allow a statutory entity like a LLC to sniff out minimum contacts people had that bound them to legislative jurisdiction, which would obviously allow the client to overcome the burden of establishing jurisdiction in their lawsuits against those people. I had no guilt about this because my philosophy is that ignorance is never an excuse. Equity compels performance regardless.

I only assisted with cases that involved people claiming to be sovereigns, secured parties, general managers, managing directors and other players in entities like pure trusts, federal contract trusts and corporations sole. **In each instance, there was always a common theme: contradiction**. Every single one of the people I cracked had contradicted themselves by their stated position compared to their actual position; every single one of the non-statutory entities I helped pierce was a contradiction by its intended nature and its actual nature.

Sovereigns were nothing more than cestui qui trusts (beneficiaries). Secured parties were nothing more than people with split personalities reflected in a commercial recording—even though I understand where they went wrong, the way they went about it was so rife with contradictions—you got the sense they had a screw loose. They couldn't really be helped because they wanted to be respected as creditors when it suited their needs, yet they wanted to be absolved of liability like wards of the court when the pressure was too much.

Likewise, pure trusts were really nothing more than unincorporated associations calling themselves trusts, and most federal contract trusts were nothing more than partnerships wishing they had the protection of the Federal courts under Article 1, Section 10 of the Federal Constitution. They

were contracts indeed, but they contradicted the original intent of the constitutional clause they sought protection under because the participants were exercising a franchise either during the formation or life of the trust.

These strategies I was seeing, and continue to see, place all the eggs in one basket. The really sad thing is the basket was made to hold bread, so the eggs never make it to market whole.

Sovereignty: Mission Impossible

The "sovereigns" I studied with during my research initially had a good point, and the good case law to back up the point. However, as I sicced my investigative dogs on the case, I peeled back one layer after another of confusion. I saw the truth about the strict confines of any sovereign's role in the nation or kingdom of which he is the head.

I was somewhat transplanted into the mind of the judges who had decided the cases most "sovereigns" rely on today. It became apparent that the case law actually shot sovereigns in the foot by holding over their head an internationally recognized standard they couldn't practically live up to with their limited financial and natural resources in today's commercial arena.

In the end, I didn't even need to cite legal authorities to prove this to them, though articles like George Mercier's *Invisible Contracts*, Richard Lancial's *Benefits Accepted Equals Jurisdiction*, James Montgomery's*The United States is Still a British Colony*, the Informer's *Fallacy & Myth of the People Being the Sovereign*, and timeless classics like William Whiting's *War Powers* certainly hit home.

The problem most of them face is they invested a lot of time and funds into something that turns out to be false. **They thought they held sovereignty but they could now see they voluntarily contracted themselves under suzerainty at best**.

To be truly sovereign in olden times you needed nothing less than—

- A plot of land that you have absolute dominion over;
- A fortified castle strategically placed on the land so as to protect you, the sovereign;
- A military to protect the castle and land;
- Workers to do maintenance on the castle and land;
- A stockpile of weapons high powered enough to wipe out any threat inside or outside your castle and plot of land;
- A stockpile of gold and silver or material or natural resources to pay the militia, workers and sustain the economy that develops out of daily needs people have when living in self-sustaining communities. This

includes a stockpile of financial or natural resources to build up your reserves for tough times; and to top it all off

- A full sense of how to negotiate with other people who are in the same position as you (sovereigns), especially those who have bigger weapons than yours and might want to take your castle by force or fraud to consolidate their own empire.

Today, not much has changed except for what electronic technology has made possible. To be truly sovereign nowadays you need nothing less than—

- A plot of land that you have absolute title to, even stronger than the protections granted under the castle doctrine in Texas. It has to be a title so strong that it is recognized all over the world, not just in one state or country, because real sovereignty is an international quality;
- A fortified compound;
- A militia to protect the compound and land. It has to be more than just guard dogs. It must be an actual military presence that sends a clear message to all within earshot of your land not to invade, much less trespass;
- Workers to maintain the compound and land;
- A stockpile of weapons or technology powerful enough to stop a modern military offensive against you;
- A stockpile of coined gold and silver to keep you from having to use Federal Reserve Notes or Ameros. You need sufficient natural resources to live on and pay your people with so as to not have to engage in commerce as a sovereign, otherwise you reduce yourself to the status of a merchant and your sovereignty is lost; and to top it all off
- A full understanding of trust law as it pertains to sovereigns as trustees and merchants as beneficiaries, contract law, national security law and negotiable instruments law, as well as the laws of power relating to sovereigns and other heads of state so that you can negotiate with the United States and State governments in a way that doesn’t get you dead, conquered or in prison because those sovereigns had more powerful weapons than yours. Otherwise, you’ll end up like the Native American nations, many of which gave up their sovereignty to engage in commerce via gambling halls and casinos.

The problems you immediately face are all issues of practicality, such as—

- While you can remove land from the incorporated city or county, your title is not absolute. You cannot effectively exercise absolute title to land as an individual, at least not land that isn’t in the middle of

nowhere. This kind of isolation leaves you at risk of invasion and limits your flexibility in the information age. In isolation you have no "eyes & ears" out in the rest of the world to stay ahead of other sovereigns looking to expand or consolidate their empire. "Eyes & ears" are what give you intelligence to avoid being checkmated;

- A compound is very expensive to build and difficult to maintain. Independent power, utilities and services need to be installed off-the-grid. For internet access you would need to build your own satellite, maintain your own servers, etc. Regardless, however, if the fort goes so do you because the eggs are all in one basket;
- Having a private military is a direct threat to the United States and State governments who are far too corrupted to appreciate the absolute right of self-defense, much less the right to bear arms on a individual or nationalistic level;
- A stockpile of weapons will attract some unwanted attention. It will deter other sovereign men, but sovereigns like the United States who stockpile tanks and missiles might not deter so easily. Though stockpiling can be done with prudence, especially with some ingenuity, the more firearms you have, the more suspicious other sovereigns will be of your motives behind stockpiling. An arms race then ensues and you face the likelihood of invasion or preemptive strike;
- Using gold and silver as money with third-parties is very difficult at this point because most third-parties are still under the misconception that Federal Reserve Notes are worth something. You would have to wait until the US economy collapsed, at which time you could use commerce to conquer by buying up property for a fraction of the cost in gold. Even so, when you do so you are technically acting as a merchant, and you are no longer sovereign. Even if the gold is pre-1933 lightly circulated coin, or the silver is pre-1965 ninety-percent ("junk") monetary silver, the sovereign is whoever minted the coin, which would be the United States of America in this case; and
- If you truly understand trust law as it pertains to sovereigns and merchants, contract law, national security law and negotiable instruments law, as well as the laws of power relating to sovereigns and other heads of state, you will quickly realize that the people’s sovereignty never truly existed. What’s more, times have changed even more since the idea was first entertained. Our times now make sovereignty a disadvantage in commerce because the moment any sovereign sets foot into the rest of the world to get things done, unless you do business by the barrel of a gun or barter using no currency or coin at all, you automatically give up whatever sovereignty you had by

acting as a merchant. This includes use of a license, social security number, registration of an automobile or weapon, etc.

Secured Parties: Nobody's Creditor

A UCC Financing Statement (UCC-1) is a very mighty financial instrument indeed, but only when used for the right situation. Filing a lien on a trust you did not create and did not act as trustee for is inherently fraudulent because **you're demanding a debt from an entity that owes you nothing**. If the US government decided to issue you a social security account number and thereby create a revocable living trust naming you the beneficiary, you have no grounds to file a lien on that trust. No commercial gain was had at your expense, even if the trust is identified based on the name of the cestui qui trust, such as using your name in all capital letters (e.g., JOHN WAYNE DOE).

I can create a thousand trusts, naming all of them based on the cestui qui trust, and the beneficiaries don't even have to be told they are beneficiaries for the trusts to be legally and lawfully enforceable. It happens all the time. People discover they inherited an estate from a distant relative and as long as they accept the benefit when it comes time to distribute the trust, the trust does what it was created to do. Beneficiaries are merely there to benefit, not to decide. Beneficiaries don't need to be trusted by anyone to do anything because regardless of what they do, by virtue of the graciousness of the settlor or grantor, they stand only to benefit from the decisions of the people put in control of the trust— the trustees.

Therefore, one who is a beneficiary, one who benefits from a trust created by the US government has no recourse to file a lien when he discovers he's been made the beneficiary of a trust identified based on his name. There is not even a copyright violation because, generally, names alone are not intellectual property; the substance represented by the name is the intellectual property. A registered mark cannot be infringed upon in name alone, but the substance connected to the mark must also somehow be subjected to the infringement. I can call anything *ANYTHING* as long as the substance is original, which is why you have many different books by the same title.

To approach the commercial aspects of the creditor-debtor relationship, for instance with a 1099 Original Issue Discount (1099-OID), without understanding the pivotal role trust law plays in all this is useless. There is no room for a UCC-1 or even a 1099-OID. The simplest way to say it is that these are inadequate to fix the problem.**A resignation, discharge of duty, disclaimer or rejection of beneficial interest are the only tools you need to remedy any issue relating to holding an unwanted position in a trust**. **If you don't want the duty then resign**. **If you don't want**

the benefit then reject it. Filing to become a secured party creditor, besides being fraudulent, is actually accepting a benefit— the benefit associated with the Secretary of State publishing your commercial recording.

Trustee in Commerce: Body Armor for Commercial Warfare

Now, take all that and place a simple barrier between the "sovereign" or "secured party" and commerce. The barrier is called an **Express Trust under the Common Law**. Throw out the fragile sovereign crown and give the man a bulletproof trustee helmet. Now, instead of him owning a plot of land with a castle, having a royal army and a royal staff of workers, stockpiling his own weapons, having Federal Reserve Notes or minted coins in his personal possession, and understanding all applicable bodies of law to protect himself— he now does these things on behalf of a trust. Problem solved.

He needs to eat, but does he buy directly from the store with his own Federal Reserve Notes or silver dimes?

No. He buys on behalf of the trust and works out a private contract with the trust that enables him to eat the trust's food and offset his trustee compensation the trust owes him for carrying out his daily duties.

He sees an advantage to owning a ranch in a certain jurisdiction, but does he make an offer to purchase in his own name and thereby acquire personal ownership of the property?

No. He draws up an Offer to Purchase (or Offer to Buy if the trust has the gold on hand). The trust acquires the property and the beneficiaries of that trust benefit from his wise decision. He can then contract privately with the trust as to how he may use the property, offsetting his compensation if that use involves anything outside of his duties as trustee. Even so, there are ways to keep things strictly within trusteeship if you are really serious about living a trustee's life.

Let's say he needs to travel to the state to do the deal. Does he get behind the wheel of his motor vehicle with license in hand as though he's about to transport goods or passengers like any "driver" would?

No. He's a trustee, so he gets into a trust-owned automobile with a certified copy of the manufacturer's certificate of origin and bill of sale and his trustee identification, and he travels to that state on official trust business.

Whatever contract he works out with the trust regarding offsetting things along the way with his trustee compensation is a private contract that actually *is* protected under Article 1, Section 10. There are no questions as to the validity of such a blatant trust relationship. Who's asking? Another trust? The Constitution for the United States of America creates an Express

Trust under the Common Law, as did the Articles of Confederation, to act as a limited governing entity.

Article 4, Section 2 provides a clear protection to the trustees of such trusts to do business on behalf of the trust while not being subjected to foreign business entity laws. The protection is real. If the host state tried to stop you, the trust could actually sue and the state would likely settle out of court.

The state constitutions do the same for each individual territory. Therefore, the United States corporation (and all its DBAs) and State corporations are, in essence, nominee trusts created under international law by the original Express Trusts that were created back at the moment each constitution was ratified. Anytime one of these entities has questions for an Express Trust under the Common Law, they are asking an equal to show deference not legally required.

Article 1, Section 10 and Article 4, Section 2 can therefore be invoked anytime one of these entities looks as though it might impair the obligations you have to the trust or block your ability to administer trust affairs in a certain state as trustee. There is no need to run or hide like you would with a pure trust or federal contract trust. There is no fear of even being prosecuted: how many constitutional courts do you see these days? It takes someone like you to invoke constitutional jurisdiction. That's power.

The extent of the protection may not have dawned on you yet, so allow me to point out that your obligations to the trust are as extensive as everything you do in your daily life. A trustee in commerce eats, drinks and sleeps wearing his trustee helmet. His clothes, his toothbrush and even his trousers are trust property. When he has Federal Reserve Notes or Ameros, they are in the trust's possession by virtue of his trusteeship— never in his personal possession.

It's a lot simpler than some would expect. A simple document binder to hold your trustee identification, authorization papers, the trust's debit cards and Federal Reserve Notes is all that is ever in your possession. Possession is nine-tenths of the law, but at the same time **it is only nine-tenths**. **There is one-tenth remaining for situations such as this**. The document binder has the trust's name and a private property notice embroidered on the outside to designate ownership. The notice also names the trustee authorized to have the document binder in his possession.

At that point, everything within the document binder belongs to the trust. It may be in your possession as trustee, however the contents are in the trust's possession to the extent of nine-tenths of the law. They are in your personal possession only one-tenth by virtue of physically being on you. You are absolved of any liability associated with having the debit card or, even

worse, Federal Reserve Notes. So, for all intents and purposes you have not reduced yourself to a merchant.

I can go on and on like this, but I am merely trying to illustrate a point. What good is it to be the sovereign or a secured party creditor when you're status is practically useless in everyday commerce? Not to mention, how well do you sleep knowing that the game isn't over until the king is checkmated? How many "sovereigns" are backed into a corner by the Federal or State governments every year? On the other hand, the trustee sleeps well every night because he literally can't give up what he doesn't have (and doesn't need to have). **He owns nothing**. **Yet, he controls it all**.

As long as you maintain a strict separation in this manner, paying close attention to the nuances in possession, you will avoid co-mingling of trust property and you will never diminish the protection. The commercial environment you are confronted with is as hostile toward sovereigns today as the American Republic always was toward poor Whites and free Negroes. They were without legally enforceable rights. They had no protections. What they couldn't do for themselves would not get done, and there was no universal sense of justice toward them.

As a result, they were easily conquered over time and became today's shining examples of 14th Amendment citizens: beneficiaries in mind and spirit. They became the exact opposite of today's shining examples of trustees in commerce because benefits accepted equal jurisdiction even if the man accepting them happens to be an internationally recognized sovereign. However, whose jurisdiction are you under if you don't accept any benefits? Can you see why trustees in commerce are in a league of their own?

Weiss's Concise Trustee Handbook

SECTION 2

WEISS'S
CONCISE TRUSTEE
HANDBOOK

A Guide to the Administration of an Express Trust under the COMMON LAW, functioning under the GENERAL LAW-MERCHANT

BY
CARLTON ALBERT WEISS

NACRS Edition
Jan. 2006

WEISS'S CONCISE TRUSTEE HANDBOOK

A Guide to the Administration of an Express Trust under the Common Law, Functioning under the General Law-Merchant

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**With updates, revisions, additions, and added sample forms*

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INTRODUCTION

THIS HANDBOOK is about the administration of Express Trusts created under the original American common law and functioning under the General Law-Merchant, i.e., the unique system of commerce in the American states, as it stands in twenty-first century America.

The material presented herein has been reduced from various sources which the reader is encouraged to examine for his own knowledge and further understanding. The material herein has been rendered into a concise handbook format, intended to allow the reader to refer to each section for guidance on decisions regarding the most pertinent aspects of the administration of an Express Trust. So, only secondary attention has been given to all other matters.

All in all, the author's objective by this handbook is to devise a simple guide, with clearly outlined methods and sample forms, for the effective handling of affairs of Express Trusts, while also showing the many options for growth and prosperity, and profound protections afforded by Express Trusts (when created and administered properly). This book is written in a somewhat unconventional manner in order to accommodate this objective.

If the reader should find, after examining the sources, that this work has failed in its objective, then let it be attributed to a fault of the author, not to any supposed faultiness of the sources or the Express Trust itself, for it will be admitted by all honest and learned[1] lawyers (as it once was when "lawyers" were, by definition, "[any] person learned in the law"[2]) that the Express Trust, especially one created with proper care to its trust instrument, is a far superior method of carrying out any voluntary contractual organization between individuals *sui juris*.

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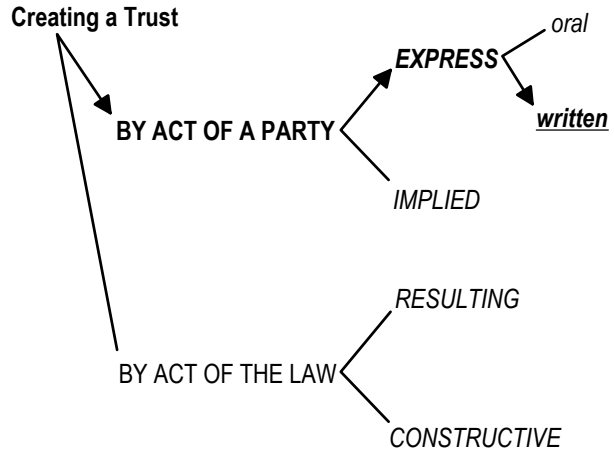
[1] It was the strongly held belief of U.S. Supreme Court Chief Justice Warren E. Burger that seventy-five to ninety percent of all trial lawyers are either incompetent, dishonest, or both. See 102 Reports of the American Bar Association, 205-206 (1978).

[2] Black's Law Dictionary, p. 695 (1st ed. 1891).

TRUST BASICS

FIRST, it must be understood that any trust, regardless of the many designations applied to them, is, in its most basic sense, "a property interest held by one person (the *trustee*) at the request of another (the *settlor*) for the benefit of a third party (the *beneficiary*)."[3] The classification applied to a trust is based upon its mode of creation, in which it may be created either by act of a party (*express* or *implied*), or by act of the law (*resulting* or *constructive*).



Without getting into the various subclasses of express and implied trusts, the basic difference between one created by express act of a party and one created by implied act of a party is that the former is stated fully in language (oral or written), while the latter is inferred from the conduct of the parties. These are very generalized definitions so presented for want of space, since there are many intricacies concerning the true meaning of the term *implied*. (It has been shown that, in a sense, the classification of "express" trust can only be applied based on what is "implied" by the language of the instrument giving rise to the trust.)[4] So, we won't get into that. Our focus is on a particular written express trust type, and even though the above definition is essentially accurate, it does little to define the Express Trust as it is known in its fullest sense under the protections of the common law.

EXPRESS TRUSTS UNDER THE COMMON LAW

THE MOST adequate definition of the Express Trust is to be understood from the earlier case law which has been eloquently summed up and restated into a clear, concise definition by Alfred D. Chandler, Esq.[5] in the first of his two papers submitted as a report to the Tax Commissioners of Massachusetts on "voluntary associations"[6] as

[3] Black's Law Dictionary, p. 1513 (7th ed. 1999). An even more basic definition is provided therein as "[t]he right, enforceable solely in equity, to the beneficial enjoyment of property to which another person holds the legal title[.]" There are many more sub-definitions, as well as expansions upon the nature of a trust relationship, being a fiduciary one, but we won't get into them for want of space.

[4] See George P. Costigan, Jr., *Classification of Trusts*, 27 Harv. L. Rev. 437, 438-439 (1914).

[5] *Express Trusts Under the Common Law: A Superior and Distinct Mode of Administration, Distinguished from Partnerships, Contrasted with Corporations* (1912).

[6] Mr. Chandler lucidly brought to the attention of the Massachusetts Tax Commission the misapplication of the term

part of a legislative investigation into their economic effect on the state in 1911. At page 6, he offers the following definition:

> **Express Trusts . . . put the legal estate entirely in one or more [persons], while others have a beneficial interest in and out of same, but are neither partners nor agents**. **This simple, adequate, common-law right, any person or group of persons *sui juris* may exercise**, the Trustees issuing certificates of beneficial [and capital] interest divided into shares, as well as issuing bonds and other obligations, as freely as they open a bank account, have a pass book, and draw and circulate checks, **or make whatever contractual relations are allowed to persons as a natural right**. [Italics emphasis supplied in original; bold emphasis and bracket information added.]

What becomes clear from this definition is that the Express Trust is not merely a property interest held by one for the benefit of another, but rather a private contract for the holding of a divisible property interest accepted by one at the offer of another, having full power to do whatever he may naturally do for himself as an individual *sui juris*,[7] for the benefit of a third party of his choosing. What has been created here is a trust organization, purely *sui juris*. "As a general proposition, it may be asserted that one who creates a trust may mold it into whatever form he pleases, and that whatever one may lawfully do himself he may authorize another to do for him[,]"[8] without receiving any benefit, privilege or franchise from any government or other outside-party;[9] and, therefore they owe no duty to any government or other outside-party to the extent that no common-law criminal or civil wrong is the purpose of the contract.[10] If this is so, then the trust is afforded all the common-law protections ordinarily given to private contracts, particularly the obligation of them.[11] Now, the question is whether the parties

voluntary association to the Express Trust. It is well-settled that "[t]he term 'association' for income tax purposes taxable as a 'corporation' embraces 'business trusts', and what Congress did not intend to embrace within the term 'association' was a pure [express] 'trust', that is a trust of traditional pattern where property is conveyed by will, deed, or declaration to a trustee[.]" *Pennsylvania Co. for Insurance on Lives and Granting Annuities v. U.S.*, 138 F.2d 869 (C.C.A.3 (Pa.) 1943). In *Crocker v. Malley*, 249 U.S. 223, 63 L.Ed. 573 (1919) the court made it clear that a pure Express Trust, active and functioning as such, has standing in law as a trust, not an association.

[7] See Pres. Woodrow Wilson's address before the American Bar Association, at Chattanooga, Tenn. (Aug. 31, 1910), entitled *The Lawyer and the Community*. He says that "Liberty is always *personal*, never aggregate; always a thing inhering in individuals taken singly, never in groups or corporations or communities. The individual unit of society is the individual." It has long been held that trustees of Express Trusts have greater latitude than ordinary trustees, simply because such trusts, created by individuals *sui juris*, may do whatever individuals *sui juris* may do.

[8] *Harwood v. Tracy*, 118 Mo. 631, 24 S.W. 214, 216; also see *Shaw v. Paine*, 12 Mass. 293; "The person who creates a trust may mould it into whatever form he pleases." Perry on Trusts, I, §§ 67, 287 (4th Amer. ed.); Underhill on Trusts, p. 57 (Amer. ed.).

[9] See *Hale v. Henkel*, 201 U.S. 43, 74 (1906).

[10] *Lawson on Contracts* § 294, p. 381 (3d ed. 1923).

[11] In *Berry v. McCourt*, 204 N.E.2d 235, 240 (1965) the court held that the Express Trust is a "contractual relationship based on trust form"; and in *Smith v. Morse*, 2 Cal. 524, it was held that any law or procedure in its operation denying or obstructing contract rights impairs the contractual obligation and is, therefore, violative of Article I, Section 10 of the Constitution. Because the Express Trust is created by the exercise of the natural right to contract, which cannot be abridged, the agreement, when executed, becomes protected under federally enforceable right of contract law and not under laws passed by any of the several state legislatures.

In *Eliot v. Freeman*, 220 U.S. 178 (1911), the court made it clear that the Express Trust is not subject to legislative

to the contract are truly acting *sui juris*, i.e., of their pure, unadulterated common-law rights, because if the parties have prior contractual obligations which grant an outside party a vested interest in all their personal relations, then the contract has acquired a third-party overseer/intervenor.[12]

DECLARATION OF THE EXPRESS TRUST[13]

THE DECLARATION OF TRUST is the trust instrument that constitutes the trust. It has been noted in trust law that no technical expressions are required to create a valid declaration, so long as the words used make clear the settlor's intent to create the trust or confer a benefit of some sort that would be best carried out by means of a trust.[14] A trust instrument doesn't necessarily need to be a declaration either, for a trust may be, and often is, formed out of a simple agreement or even a will.[15] But with an Express Trust, the declaration has been preferred since the beginnings of trusts under the common law of England. This is where careful attention to detail is most crucial, because in order to properly construe the intent of the settlor, the objects, property, and manner in which all is to be carried out, the terms and provisions must be set forth in unambiguous, precise language so as to particularly create the Express Trust; and where the intent of the settlor is unclear, under equity, interpretation is required to construe the intent of the parties, and the trust may, depending on the degree of ambiguity, be deemed invalid.[16] However, when all is done properly, obviously there can be no lawful impairment of the obligations of contract created thereby.[17]

Moreover, the declaration, by its terms and provisions, serves to establish the entire contractual arrangement, including the identities and positions of the parties, the trust's name, jurisdiction and situs, and all particulars of administration, all of which the courts of equity will fully support by the principle that equity compels performance.[18] The

control. It went further to acknowledge the right-wise stance of the United States Supreme Court that the trust relationship comes under the realm of equity, based upon the common-law right of contract, and is not subject to legislative restrictions as are corporations and other organizations created by legislative authority. To clarify the equity and common-law distinctions, the basis for Express Trusts under the common law in this instance, is not that such organizations are creatures of common law, as distinguished from equity, but that they are created under the common law of contracts and do not depend upon any statute.

[12]See Lee Brobst et al., *U.S.A. The Republic, Is The House That No One Lives In*, available at <http://www.usa-the-republic.com/Lee%20Brobst/USA%20The%20Republic.htm> (last visited Aug. 6, 2005).

[13]This is sometimes referred to as the *trust indenture* for the purpose of denoting that it outlines the terms and conditions governing the conduct of the trustee (referred to in this sense as an *indenture trustee*) as an indentured servant to the beneficiary under contractual arrangement.

[14]See Underhill, *supra* at art. 3, p. 10; also see *Chicago M. & St. PR. Co. v. Des Moines Union R. Co.*, 254 U.S. 196, 65 L.Ed. 219 (1920).

[15]Underhill on Trusts, art. 5, p. 19 (Lond. ed. 1878).

[16]*Id*. at p. 11.

[17]See the Constitution for the United States of America, art. I, § 10 (1789): "No State shall . . . pass any . . . Law impairing the Obligation of Contracts[.]"

[18]See *Clews v. Jamieson*, 182 U.S. 461, 21 S.Ct. 845, 45 L.Ed. 1183 (1901).

ultimate result is the creation of a *bona fide* legal entity,[19] having a separate and distinct juridical personality,[20] standing to sue and be sued[21] and to function as a natural (contrasted with artificial) person in commerce by and through its trust officers. The term *natural person* has been applied to Express Trusts by courts of equity because of its mode of creation and administration, being by way of the exercise of natural rights and not franchises (i.e., civil rights).[22] However, this implied right of contract of the trust is alienable, whereas its creators' right of contract is unalienable.[23] But it nevertheless possesses *inter alia* the right to all enjoyments stemming from the contracts into which it enters, as well as all the obligations imposed under such contracts. Needless to say, the Express Trust possesses the ability to own property, engage in business transactions, and to incur liabilities (including tax liabilities depending on the activity which renders it liable to pay the tax, which I will get into in a later section).

THE TRUST CORPUS

THE BODY of the trust is the property being held in trust for the beneficiary(s), the very subject-matter of the declaration. It should be noted that virtually any *thing*[24] may be held in trust, however, there are certain things which, given their innate traits recognized in Law, make for better subject-matter, so to speak.

Initially, the legal minds who perfected the Express Trust in America did so to accommodate for the great obstacles in procuring special charters for corporations intended to deal in real estate, which trusts eventually came to be known as the "Massachusetts Land Trusts". It was when those individuals came to realize the immense benefits of employing the trusts for the purpose of holding land, that they

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[19]See *Burnett v. Smith*, S.W. 1007 (1922); and *Muir v. C.I.R.*, 182 F.2d 819 (C.A.4 1950).

[20] See *Brigham vs. U.S.*, 38 F.Supp. 625 (D.C.Mass. 1941), appeal dismissed 122 F.2d 792 (reported in Title 26 I.R.C. 31, p. 356).

[21]See *Waterman v. MacKenzie*, 138 U.S. 252 (1891).

[22]The trustee(s) of an Express Trust are protected under the Constitution as "citizens" throughout the *continental* United States. The trustee(s) under a will or declaration of an Express Trust are natural persons, "citizens" within the meaning of Article IV, Section 2 of the Constitution, and are therefore entitled to all the "privileges and immunities" of same. *Paul v. Virginia*, 75 U.S. 168 (1868). Even though, in today's economic situation, the term "citizen" is presumed to signify the 14th Amendment citizen, the term cannot be applied to the Express Trust which is specifically created under the original common law. The trust is a *natural* person because of how and by whom it was created. And even under common law, the officers having natural rights, acting for a corporation can only do what they are permitted to do by the state in which they seek to act, because they are not such "citizens" entitled to those "privileges and immunities," and hence the foreign corporation statutes of the several states. Corporations, as *artificial* persons, are "citizens of the United States," within the meaning of the 14th Amendment, which should give the reader an idea of the meaning of the term *person* as primarily used today. See *Santa Clara County v. Southern Pacific R. Co.*, 118 U.S. 394, 396 (1886).

[23]Man's right of contract is considered so fundamental that even under Roman law, in its system of domestic slavery, all men, citizen or not, retained this fundamental right *ius gentium*. It is understood to derive from a man's Creator, and therefore is unalienable without his consent/waiver (i.e., a man's right of contract can only be contracted away). The trust's implied right of contract is alienable, i.e., transferable to another person, by the trustee or a court of equity in the event that the trustee should choose, or by such court should equitable jurisdiction arise.

[24]The "thing" held in trust is referred to as the trust *res*, the subject-matter of the trust.

eventually expanded their utility to include the holding of personal property, which trusts eventually came to be known as the "Massachusetts Electric Companies," and their perfection attributed to one time Attorney General and later United States Secretary of State Richard Olney;[25] but the fact that the Express Trusts were initially, primarily utilized for purposes of holding and handling real estate is very significant, especially to our present situation.

The significance derives, in pertinent part, from the integral relationship between the law and the land. It is a fundamental principle of law that the land and the law go hand in hand; and, in America, without the 14th Amendment, the Law of the Land is the Constitution with its common-law principles—and its substance of gold and silver.[26] Without getting too deep into the operation of common law, it is this principle regarding the relationship of land and law that, by its operation, threw up an obstacle to corporate real estate ownership, for in order to charter a statutory (civil law) entity to handle the substance of the common law (land), special, if not extraordinary, legal circumstances must exist, which, prior to the removal of the fixed gold standard in 1933,[27] i.e., the removal of the substance of the law, were nonexistent.[28] A statutory entity is inherently accountable to courts of civil (legislative) jurisdiction, deriving subject-matter jurisdiction from the corporate charter. Whereas, an Express Trust is obviously inherently accountable to courts of equity,[29] deriving subject-matter jurisdiction from the trust instrument.

This brings us to today. In the jurisdiction of the 14th Amendment United States public trust, what is the substance of the common law is merely a commodity. But, back in the Republic the substance still remains the staple for payment of debts[30] (though in considerably lesser quantity and without a fixed standard upon which to be traded). The Express Trust under the common law, holding real estate, silver or gold, is holding the very substance of the law under which it was created, thus ensuring that bond between law and land, and the powers and guarantees that come with it.[31]

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[25]See John H. Sears, *Declarations of Trust as Effective Substitutions for Incorporation*, § 1, p. 4 (1911).

[26]Referred to in this sense, it is regarded in law as *portable land*. The basic principle of law is that the land includes everything extracted from it.

[27]See House Joint Resolution 192 of June 5, 1933; Pub. L. 73-10. Prior to that, silver had already been de-monitized, in practice but not in fact, by the Coinage Act of 1873 (commonly referred to as the "crime of '73," which, it is blatantly obvious, would have been unconstitutional if done in-fact. It is said to have been a tactic of congress to place in the public mind the perception of the currency as being solely backed by gold, presumably for the purpose of the eventual passing of H.J. Res. 192, which congress knew would effect a removal of the substance of law). Silver was later withdrawn from circulation in certain coins by the Coinage Act of 1964, and was removed entirely by amendment to the Coinage Act of 1964 by the Bank Holding Company Act of 1970. Then, all silver-backed certificates were discontinued in 1972.

[28]See Lee Brobst et al., *The Law, The Money and Your Choice* (2003), available at <http://www.usa-the-republic.com/Lee%20Brobst/The%20Law.html> (last visited Sept. 29, 2005).

[29]It should be noted that though the Express Trust is created under common law, it is not a creature of the common law as distinguished from equity, but rather, it is created under common law of contracts and not dependent upon any statutes; Equity supplements the common law. See *Schumann-Heink v. Folsum,*328 Ill. 321.

[30]See Constitution for the United States of America, art. I, § 10 (1789).

[31]See Constitution for the United States of America, amend. VII (1791).

THE CERTIFICATES

WHAT MAY come as a surprise is that any trust may divide its trust property into shares and issue certificates.[32] The power to issue certificates and bonds, and employ the use of a seal[33] never has been restricted to corporations.[34] It is well-settled law that whatever else most corporations possess beyond their artificial entity and right of suit in the corporate name is a mere incident or consequence of incorporation, and not a "primary constituent".[35] This may include the power of issuing transferable shares, limiting liability of its officers, using a seal, making by-laws, purchasing lands and chattels—all of which are merely the recognition and adoption of natural common-law rights any person *sui juris* may exercise without permission (much less a charter) from the state. The court in *Warner v. Beers*[36] clarified this principle most effectively:

> There are several very useful and beneficial *accessary* [also spelled *accessory*] powers or attributes, very often accompanying corporate privileges, especially in moneyed corporations, which, in the existing state of our law, as modified by statutes, are more prominent in the public eye, and perhaps sometimes in the view of our courts and legislatures,[37] than those which are *essential* to the being of a corporation. **Such added powers, however valuable, are *merely accessary*. They do not in themselves alone confirm a corporate character, *and may be enjoyed by unincorporated individuals***. Such a power is the ***transferability of shares***. . . . Such, too, is the ***limited responsibility*** [***liability***]. . . . So, too, the ***convenience of holding real estate for the common purposes, exempt from the legal inconvenience of joint tenancy or tenancy in common***. Again: There is the ***continuance of the joint property for the benefit and preservation of the common fund, indissoluble by death or legal disability*** of any partner. ***Every one* of these attributes or powers, though commonly falling within our notions of a moneyed corporation, *is quite unessential to the legality of a corporation, may be found where there is no pretense of a body corporate; nor will they make one if all were combined, without the presence of the essential quality of legal individuality***[.] [Italics and bold emphasis, and bracket information added.]

The trustee of an Express Trust is empowered by the terms and provisions of the trust instrument to issue certificates not only of beneficial interest,[38] but also of capital

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[32]See *Hart v. Seymoure*, 147 Ill. 598, 35 N.E. 246; and *Venner v. Chicago City Ry. Co.*, 258 Ill. 523, 101 N.E. 949.

[33]As a side-note, the right of an individual using a seal has never been challenged, based upon the universal understanding that it is used as a matter of right. Once the trustee has adopted the seal and has used it, it is automatically presumed that the use is lawful, until proven otherwise. See *Johnson v. Crawley*, 25 Ga. 316, 71 Am.Dec. 173; and *Mullanphy v. Schott*, 135 Ill. 655, 26 N.E. 640.

[34]See *Thompson-Business Trusts* § 23; *Sears Trust Estate* § 105 (2d ed.); and *Phillips v. Blatchford*, 137 Mass. 510.

[35]See *Wald's Pollock on Contracts*, pp. 126, 296.

[36]23 Wend. 103, 145-146 *et seq.*

[37]I will show you in the conclusion why this is the state of affairs today, as it was back then, and why the principles interpreted by the court in this case apply now more than ever.

[38]Also referred to as *trust certificates* or *certificates of trust units*.

interest.[39] Generally speaking, beneficial interest is that which is held by the beneficiary(s) of the trust, who is entitled to a certain proportional share of the trust profits during the life or at the termination of the trust; while capital interest is that which is held by the exchanger(s) who has invested property into the trust, and thus becomes entitled to a certain proportional share of any profits and assets remaining at the termination of the trust.

As a rule, the terms and provisions of the trust instrument control the manner in which beneficial and capital interest are to be administered, and determine the rights of interest-holders, who, incidental to their acceptance of the interest, are bound under the trust instrument as such.[40] But there are certain principles which govern these interests in construing the fundamental classification of the trust. For instance, it is held that where the certificate-holders have control over the trust property and/or administration of the trust's affairs, the trust arrangement is deemed a partnership, in which the shareholders become liable for the acts of the trust.[41] The basic principle is that if it is free from the control of its interest-holders, then it is an Express Trust.[42] This is commonly referred to by courts of equity as the "Control Test,"[43] in which, control must ultimately rest with the trustee(s) of the trust in order for it to be properly classified as an Express Trust. The well-settled principle applied by courts of equity is that interest-holders, by full legal title and control over the trust property being vested absolutely in the trustee(s), cannot be considered partners nor agents,[44] and therefore cannot be held liable for the debts of the trust in the manner so done with partnerships and agencies.[45]

Furthermore, the certificates have no determinable fair market value, and, therefore, no gain or loss is recognized until the cost or other basis of the property disposed of has been recovered.[46] In *Commissioner of Internal Revenue v. Marshman*,[47] the court held that fair market value is determined by property received by the taxpayer,

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[39]Also referred to as *capital certificates* or *certificates of capital units.*

[40]See *Hardee v. Adams Oil Assn.*, 254 S.W. 602 (1923); *Todd v. Ford*, 92 Colo. 392; and *Weimer & Co. v. Downs, Inc.*, 77 Colo. 377.

[41] See *Rand v. Morse*, 289 Fed. 339 (C.C.A.8 (Mo.) 1923); *Goldwater v. Oltman*, 210 Cal. 408; *Schumann-Heink v. Folsom*, *supra*; *First National bank v. Charter*, 305 Mass. 316; and *Neville v. Clifford*, 242 Mass. 124. For examples of what will constitute a co-partnership see *Taft v. Ward*, 106 Mass. 518; and *Phillips v. Blatchford*, *supra*.

[42]*Id.*

[43] See *Bank of America Nat. Trust & Savings Ass'n v. Scully*, 92 F.2d 97 (C.C.A.10 (Colo.) 1937); *Rand v. Morse, Id.*; *Goldwater v. Oltman*, 210 Cal. 408; *Schumann-Heink v. Folsom*, *Id.*; *First National Bank v. Charter*, *Id.*; *Commercial Casualty Ins. Co. v. Pearce*, 320 Ill.App. 221; *Rosemaond v. March*, 287 Mich. 580 (Rehearing denied, 287 Mich. 270); *Nelville v. Clifford*, *Id.*; *Carling v. Buddy*, 318 Mo. 784 (*In re Winter*, 133 N.J.Eq., 245); and *Rhode Island Trust Co. v. Copeland*, 39 R.I. 193.

[44]See *Mavo v. Moritz*, 151 Mass. 481, 484, 24 N.E. 1083 (1890); *Mason v. Pomeroy*, 151 Mass. 164, 7 L.R.A. 771; *Johnson v. Lewis*, 6 Fed. 27, 28 (C.C.Ark. 1881); *Taylor v. Mayo*, 110 U.S. 330, 334-335, 28 L.Ed. 163, 165 (1884); *Lackett v. Rumbaugh*, 45 Fed. 23, 29 (C.C.N.C. 1891); and *Smith v. Anderson*, L.R. 15, Ch. D, 247, 275-276, 284-285.

[45]See *In re Conover*, 295 Ill.App. 443; and *Greco v. Hubbard*, 242 Mass. 37.

[46]See Master Tax Guide, para. 910. In regard to Capital Certificates, the courts have long upheld the doctrine of exchange, in that certificates in exchange are not taxable until a realized gain has occurred. See *Burnet v. Logan*, 283 U.S. 404 (1931); and *Trenton Cotton Oil Co. v. Commissioner*, 147 F.2d 33 (C.C.A.6 1945).

[47]279 F.2d 27 (C.A.6 1960).

not the fair market value of the property transferred by the taxpayer unto the trust. What's more is that certificates are considered not necessarily as chattels, but as documentary evidence of ownership and intangible rights;[48] and, in and of themselves, they are the personal property of the holder,[49] not the actual interest or share itself.[50] This is contrasted with the certificate of stock, which courts have held may be dealt with in the market as a "commercial document of value"; but the courts also hold, almost unanimously, that the presence of a certificate of stock within the jurisdiction gives no power to take the rights evidenced by the certificate.[51] Unlike stock, however, the interest in an Express Trust, cannot be traded without the prior approval of the trustee(s) of the trust.

TRUSTEE BASICS

FIRST AND FOREMOST, any person (man, sovereign, trust, corporation, etc.) capable of taking legal title to property can be a trustee.[52] And there is no limit to the number of trustees who may serve on any one trust. Generally, where there are more than one trustee, the trustees, with respect to each other, are referred to as co-trustees,[53] and when acting jointly as a collective body are referred to as the Board of Trustees.

Furthermore, there is no law prescribing the character of a trustee, and while it has been held that a trust cannot be invalidated simply due to the incompetence of the trustee, the trustee should be a person capable and fit for executing the powers and duties honorably.[54] (This is the basis for the general rule that beneficiaries are not desirable as trustees, though there is no law to forbid such appointment. Equity will generally avoid all temptation to a breach of trust.) The trustee should have his residence within the jurisdiction of the court of equity in which the estate is located, if indeed the trust corpus is an estate. But where the trust corpus is *portable land*, the trustee need not be resident within any single jurisdiction, which non-residency will not disqualify or preclude the trustee from carrying out his position.[55]

As far as accepting the appointment is concerned, acceptance should be made formally, expressly in writing, though it will always be implied "if the individual intermeddles with the trust property, or performs any act to carry out the trust."[56] Once

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[48]See *Goodhue v. State St. Trust Co.*, 267 Mass. 28.

[49]See *Parker v. Mona-Marie Trust*, 278 S.E. 321; and *In re Pittsburg Wagon Works' Estate*, 204 Pa. 432, 54 A. 316.

[50]See *Malley v. Bowditch*, 259 Fed. 809 (C.C.A.1 (Mass.) 1919).

[51]See Joseph H. Beale, *The Exercise of Jurisdiction In Rem to Compel Payment of a Debt*, 27 Harv. L. Rev. 107, 111 (1913), citing *Stern v. Queen*, (1896) 1 Q.B. 211; *Pinney v. Nevills*, 86 Fed. 97 (C.C.Mass. 1898); *et cetera*.

[52]See Beach's Commentaries on the Law of Trusts and Trustees, vol. I, ch. III, § 23, p. 30 (1897).

[53]This term is sometimes used to denote that the *co-trustee* has less authority than the *trustee*. In that sense, the co-trustee is called a *passive trustee*, and the trustee an *active trustee*. But Express Trusts usually employ the term *co-trustee* simply to denote that there are several trustees of that trust.

[54]*supra.* Beach describes this concept as "in such a manner as to subserve the interests of the beneficiary[.]"

[55]*Id.* at § 19, p. 28.

[56]August P. Loring, *A Trustee's Handbook*, pt. I, § 3, p. 5 (1898).

the acceptance has been tendered, no court of equity can prevent the trustee from holding that office, except for breach of trust[57] or good cause dependent upon the merits of that particular case.[58] Removal must be procured pursuant to the provisions of the declaration, or, where no such provisions are made, by decree of a court of equity.

But the office of trustee is not always a desirable one when the trust instrument conveys an unreasonable obligation. (Again, this is where careful attention to detail is most crucial in preparing the trust instrument.) The trustee has a duty of care toward the beneficiary(s), and must harbor no biases in administration. The best rule is that the trustee should be given enough discretion to carry out his position to the best of his ability and responsible creativity. To put it plainly, the settlor must *trust* the trustee to carry out his duties, and use his powers justly.

POWERS & DUTIES OF THE TRUSTEE

THE POWERS of a trustee are divided into general, special and discretionary ones. The general are all those inherent in trustees *virtute officii*, i.e., conferred by law; the special are all those conferred by the trust instrument; and the discretionary are all those arising out of necessity of personal judgment by way of circumstance (though ample discretion may also be conferred by law and under the trust instrument).[59]

Moreover, it is well-settled law that under a declaration of trust, the trustees have all the powers necessary to carry out the obligation of that private contract which they have assumed.[60] Furthermore, it is settled that the trustees of an Express Trust are afforded greater latitude of power and activities than ordinary trustees.[61] The trustees are empowered to control every aspect of the trust according to the trust instrument and equity, and retain the power to eject even the beneficiary(s) from the premises.[62] These powers include, but are in no way limited to—

- The power to bind the trust in a contract, especially where such obligation is implied-by-law,[63] and the power to contract with the beneficiary(s).

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[57]See *In re Tempest*, (L.R. 1 Ch. 487), 31, 1431: Lord Justice Turner settled the rule of law that "[f]irst the court will have regard to the wishes of the persons by whom the trust has been created, if expressed in the instrument creating the trust, or clearly to be collected from it. . . . If the author of the trust has in terms declared . . . a particular person . . . [t]he court in those cases conforms to the wishes of the [creator]." A Breach of Trust does not include a technical breach of trust, e.g., one made through mistake.

[58]See Loring, *supra* at § 8, p. 19. The reasons are generally for guilt of willful breach of trust, waste or mismanagement of trust property, refusal to account to beneficiary, lunacy, drunkenness, bad habits or carelessness which endangers the trust property, or improvidence.

[59]See Beach, *supra* at vol. II, ch. XXI, §§ 427-435, pp. 986-1006.

[60]See *Boyd v. U.S.*, 116 U.S. 616 (1886); and *Silverthorne Lumber Co. v. U.S.*, 251 U.S. 385 (1920).

[61]See *Ashworth v. Hagan Estates*, 181 S.E. 383 (1935).

[62]See *Deven v. Hendershott*, 32 Iowa 192.

[63]See *Durkin v. Langley*, 167 Mass. 577; Perry on Trusts, *supra* at § 437, p. 120; *Hapgood v. Houghton*, 10 Pick. 154; Comp. Law Dak. (1887), § 3946; Rev. Code N. Dak. (1895), § 4289; and Civ. Code Cal. (1885), § 2267.

- The power to partition, exchange, sell, pledge or mortgage the trust property, either in whole or in part;[64]
- The power to lease trust property;[65]
- The power to issue, change, or otherwise dispose of securities of the trust;
- The power to support the beneficiary(s) in all reasonable manner;
- The power to prosecute and defend in the trust's name or trustee's name;
- The power to make gifts out of trust property;
- The power to delegate all unessential powers and duties; and
- The power to exercise personal judgment and every discretionary power not prohibited by the trust instrument,[66] and, as already shown, to do whatever is allowed to persons as a natural right.

The fundamental principle of law is that for every power there is a correlative duty. The trustee, as a fiduciary to the beneficiary(s), assumes certain basic duties outside of the management of trust property, and certain duties aside from whatever specific duties may be conferred upon the trustee in the trust instrument. These duties include, but are not limited to—

- The duty to support the beneficiary(s) in any essential needs which it may have, out the funds which would otherwise be paid to it in distribution. And if such funds are not available, the duty to accumulate any balance needed;[67]
- The duty to refrain from taking advantage of peculiar knowledge or position when dealing directly with the beneficiary(s);
- The duty to exercise the utmost good faith in all concerns of the trust, whether dealing with the trust property itself, or directly with the beneficiary(s) in matters concerning the trust,[68] including to care for, protect and secure the trust property;
- The duty to preserve, protect and further the trust's interests, including pressing all reasonable demands and prosecuting and fending off all claims, and claiming all available exceptions and taking all available advantages in such matters;
- When delegating unessential powers and duties, the duty to exercise at least a general supervision of the trust affairs, and to perform any ministerial acts which require the exercise of discretion or judgment;[69]

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[64]See Loring, *supra* at pt. II, § 3, pp. 54-69. It should be noted that even though the trustee may have sold the entire trust estate, the trust is not necessarily terminated until all obligations of the trust arrangement have been fulfilled, especially the transferring of the proceeds to the interest-holder(s).

[65]It is a general rule that the if the trustees lease property outside of the powers granted to them by the trust instrument, such an act will constitute breach of trust. Again, it all comes back to the design of the trust instrument.

[66]See James Hill, *A Practical Treatise on the Law Relating to Trustees, their Powers, Duties, Privileges and Liabilities*, pt. III, div. I, ch. II, § 3, pp. 471-495.

[67]See Loring, *supra* at pt. II, § 4, p. 69. "[The trustee's] fealty is to the trust, and all his acts must be governed by strict loyalty to it and the interests of the beneficiaries; and any act which is not in the [best] interest of the beneficiaries is a breach of trust."

[68]*Id.* at p. 72.

[69]See Perry on Trusts, *supra* at § 409, p. 49. It is completely lawful and equitable for a trustee to appoint an Authorized Representative to act as agent in collecting rents and dividends, keep books and minutes, and, in general, act for the trustee wherever there is a moral or legal necessity to employ such an agent. (Necessity may be determined to exist where the ordinarily prudent business man would employ an agent in his own affairs.) See *Ex Parte Belchier*, Amb. 219.

- The duty to keep minutes, and separate accounts of the trust, even if kept in a book with other accounts, with minutes showing decisions and resolutions reached, and accounts showing the state of the trust and pertinent details of transactions (generally in the form of schedules of income received, income paid, additions to principal, deductions from principal, principal on hand, and changes in investment consisting of debtor and creditor sides);[70]
- Upon acceptance of the trusteeship, the duty to accept the trust property and trust documents;[71]
- When investing trust funds, the duty to invest them securely, "so that they shall be preserved intact for the remainderman," and to invest productively, "so that they shall yield [at least] the current rate of interest to the life tenant";[72] and
- The duty to concur with all co-trustees, except where authorized to act individually.[73]

PRIVILEGES & LIABILITIES OF THE TRUSTEE

IN ADDITION to the powers and duties of trustees, there are certain privileges (including allowances), rights and liabilities of the trustee. These are all those which are enumerated in the trust instrument and naturally extended to the trustee of an Express Trust. As was noted before, certain restrictions placed upon trustees of ordinary trusts do not apply to the trustee of an Express Trust pursuant to the doctrine of greater latitude.[74] These, aside from those allowed by the trust instrument, include, but are not limited to—

- The inherent, unquestionable right to full compensation, including reimbursement of all out-of-pocket and other expenses incurred in the discharge of duties. (And unduly withheld reimbursement results in a lien on the trust for the amount plus interest);[75]
- The privilege of residing in the trust estate and allowance of rates and taxes "although he has the benefit of residing in the house";[76]

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[70]This is not required, but the rule of thumb is that the more detail kept, the better the accounting. The trustee is accountable to the beneficiary(s), and the accounts must ultimately balance out in the end. And an account settled in a court of equity is final; it cannot be reopened except to correct a mistake or fraud, and its correctness cannot be questioned in a collateral proceeding in equity or in a court of law. See *Stetson v. Bass*, 9 Pick. 26, 29; *Dodd v. Winship*, 144 Mass. 461; *Sever v. Russell*, 4 Cush. 513; and *Parcher v. Bussell*, 11 Cush. 107.

[71]See *Hallows v. Lloyd*, 39 Ch. Div. 686, 691; Underhill, *supra* at p. 219.

[72]Loring, *supra* at pt. II, § 4, p. 95. Generally, where it is impossible to comply with the investments required by the trust instrument, a trustee has recourse to apply to a court of equity for directions. See *McIntire's Adm'rs v. Zanesville*, 17 Ohio St. 352.

[73]See James Hill, *supra* at pt. III, div. I, ch. I, § 1, pp. 305-309; *Brown v. Donald*, 216 S.W.2d 679 (1949); *Meldon v. Devlin*, 31 App.Div. 146, 53 N.Y.Sup. 172; *Barroll v. Foreman*, 88 Md. 188, 40 A. 883; and *Appeal of Fesmire*, 134 Pa. 67, 19 A. 592.

[74]See *Ashworth v. Hagan Estates*, *supra*.

[75]James Hill *supra* at pt. IV, div. II, ch. IV, pp. 570-571. "Such is the rule of courts of equity, and such also is the rule at common law." Quoting Lord Cottenham in the case of *Att.-Gen. v. Mayor of Norwich*, 2 M. & Cr. 406, 424. Also see *Rex v. Inhabitants of Essex*, 4 T.R. 591; and *Rex v. Commissioners of Sewers*, 1 B. & Adolph 232.

[76]*Id.* "However a trustee who employs a park-keeper, or other servant, for his own purposes, must pay him himself,

- The right to employ a solicitor[77] for assistance and guidance in the administration of the trust, and, in the case of any doubt or difficulty, to seek the opinion of competent counsel, and, in the case where the trust's accounts are intricate and complicated, to seek the assistance of an accountant—all to the charge of the trust;
- The right to apply to a court of equity for directions in the execution of the trust, or to obtain a declaratory judgment in order to establish the meaning and intent of the trust instrument;[78]
- The right to carry on in separate business for the benefit of the trust given certain conditions;
- The allowance of remuneration for loss of time under certain circumstances;
- The right not to be compelled by subpoena or review to produce and show records or books to outside parties;[79]
- The right to further limit his liability in particular contracts, even beyond the limitation made in the trust instrument, i.e., by operation of law;
- The right to relocate, move trust property, or change the trust's domicile;[80] and
- The inalienable right to disclaim the office at the execution, or resign at a later date.

With regard to the personal liabilities of a trustee, they encompass what the trustee is and is not liable for. Basically, the inherent liabilities (and non-liabilities) are all those incident to ownership at law[81] and imposed or exempted under contract law, for it is a maxim of law that "*le contrat fait la loi*."[82] (I will show in a later section the several methods for limiting one's liability completely, regardless of how un-limitable the following may seem, but for now we will entertain the basic liabilities saving those methods for later.) These include, but are not limited to—

- Liability on all contracts made, whether signing as "trustee" or signing individually;[83]

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and will not be allowed his wages out of the estate. And so a trustee, with the most ample powers of management, cannot of his own authority keep up a mere pleasurable establishment, such as gamekeepers, &c."

[77]This is defined as "[a] person who conducts matters on another's behalf; an agent or representative." Black's Law Dictionary, p. 1399 (7th ed. 1999).

[78]See *Dunbar v. Redfield*, 7 Cal.2d 515.

[79]See *Boyd v. U.S.*, *supra*; and *Silverthorne Lumber Co. v. U.S.*, *supra*.

[80]See Beach, vol. I, *supra* at § 19, p. 28; *Rice v. Houston*, 80 U.S. 66 (1871); Fost. Fed. Pr. Sec. 19; and Story, Fed. Pr. Sec. 19. Also, in *New Orleans v. Whitney*, 138 U.S. 595, 34 L.Ed. 1102 (1891) the court said "[w]e have repeatedly held that representatives may stand upon their own citizenship in the federal courts irrespective of the citizenship of the persons whom they represent—such as executors, administrators, guardians, trustees, receivers, [etc.]"

[81]See Loring, *supra* at pt. II, § 1, p. 23.

[82]"The contract makes the law." See Bouvier's Law Dictionary, pp. 770-790 (1928). The basic principle is that all man's law is contractual in nature, regardless of the particular classification of the law, and can acquire force only by consent: "Consensus facit legem."

[83]See Loring, *supra* at pt. II, § 3, p. 65. Simply using the title "trustee" will not sufficiently limit liability. That without express stipulation (such as that which I have provided in the later section) he is personally bound is well-settled law. See *Feldman v. Preston*, 194 Mich. 352, 160 N.W. 655; *Bried v. Mintrup*, 203 Mo.App. 567, 219 S.W. 703; *Hussey v. Arnold*, *supra*; *Carr v. Leahy*, 217 Mass. 438, 105 N.E. 445; and also *Knipp v. Bagby*, 126 Md. 461, 95 A. 60.

- Liability of removal for breach of trust, waste, mismanagement, or good cause shown in an action for removal in a court of equity,[84] or according to trust instrument;
- Liability for losses sustained by the trust as a result of negligence;[85]
- Liability for torts and common-law criminal and civil wrongs;[86]
- Liability in all cases of co-mingling of trust funds;[87] and
- Liability for all mischief of his agents contracted to exercise discretionary powers.[88]

But, the trustee is not at all liable for any losses sustained in the proper discharge of their duties,[89] and, with the case of other losses due to negligence or tort, the trustee may be able to be bonded in the manner ordinarily used by trustees, executors and administrators. Nor, are they liable for—

- Contracts in which liability was properly limited (by the methods to be shown later). Such contracts may also encompass the codes and statutes of various jurisdictions, given that all manmade law is, by its nature, fundamentally contractual;
- The debts of the trust incurred requiring the creditor to look solely to the trust for payment[90] (and the trust is not liable for the personal debts of the trustee,[91] except to the extent of attachability of the trustee's interest in the trust[92]);
- The independent, non-preventable acts of co-trustees, of which he had no prior knowledge;[93]
- The acts of his agents when properly contracted;
- Taxes on income of the trust;[94] and

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[84]Any such action would have to be instituted by an interest-holder, as a last resort. And the burden of proof rests with the party bringing the action.

[85]See *Holmes v. McDonald*, 226 Ill. 169, 80 N.E. 714; and *Norling v. Allee*, 10 N.Y.Sup. 97. But it must also be noted that this, as with all of the others can be limited. In *Fisheries Co. v. McCoy*, 202 S.W. 343 it was held that it is lawful for liability to be limited in certain cases of tort and negligence, except where the relation of master-servant or passenger-carrier exists.

[86]See Loring, *supra* at § 1, p. 26. However, in torts and civil wrongs, limitation of liability is amply available as per *Fisheries Co.*, *supra*. But, as it is with corporations, common-law crimes are strictly of an *in personam* nature, going against the officer personally.

[87]Generally, in cases of co-mingling of the trustee's personal funds with trust funds, courts will follow the trust property, unless co-mingled beyond separation, in which case the courts will treat the trust as the alter-ego of the individual acting under the assumed title of "trustee," and will ignore the trust arrangement completely. See *Gregory v. Helvering*, 293 U.S. 465 (1935), XIV-1 C.B. 193; and *Helvering v. Clifford*, 309 U.S. 331 (1940). Mixing trust property with personal property is co-mingling. See Perry on Trusts, vol. I, ch. XV, § 447 (6th ed.).

[88]See Beach, vol. II *supra* at ch. XXV, § 548, p. 1243; and *Winthrop v. Att.-Gen.*, 128 Mass. 258.

[89]Equity will always follow the law. And the trustees can never be penalized for properly discharging their duties.

[90]See *Taylor v. Mayo*, 110 U.S. 330, 4 S.Ct. 147, 28 L.Ed. 163 (1884); and *Frost v. Thompson*, 219 Mass. 360, 106 N.E. 1009.

[91]See *Wright v. Franklin Bank*, 59 Ohio 80, 51 N.E. 876.

[92]See Loring, *supra* at pt. II, § 1, p. 41; *Mavo vs. Moritz*, *supra*; and *Hussey v. Arnold*, 70 N.E. 87 (1904).

[93]See James Hill, *supra* at pt. III, div. I, ch. I, p. 309. If the acts were indeed preventable, and he had prior knowledge, then the trustee is co-liable and accountable for the loss. Also see *In re Adams' Estate*, 221 Pa. 77, 70 A. 436; and *In re Cozzens' Estate*, 15 N.Y.Sup. 771.

[94]Again, the trustee must be indemnified by the trust instrument from taxation for trust gains. If the trustee holds interest in the trust, he is taxable only at the realization of an actual gain, not at the point of investment (see *Burnet v. Logan*, *supra*; and *Trenton Cotton Oil Co. v. Commissioner*, *supra*).

- Lawsuits against the trust.

AUTHORIZED REPRESENTATIVES

AS SHOWN ABOVE, it is well within the power, discretion, and often times duty (trust instrument notwithstanding), to contract an Authorized Representative or Managing Agent to deal with certain affairs of the trust. And the basic rule which courts of equity have laid down is that a trustee may contract an agent to handle all affairs which require no discretion, be they ministerial or not, and he may not delegate the essential part of a power given to the agent (unless, of course, permitted by trust instrument).[95]

In clarifying the discretionary power rule, it must be noted that there is no law against delegating discretionary powers to agents. The rule is simply that a trustee who does so, "does so at his own peril,"[96] for he is liable for all resulting losses, if any. To clarify what constitutes the essential and unessential parts of a power, the essential part is defined as "the exercise of . . . discretion . . . , the [determining of] need[s] of [the trust], or the appropriateness of [an action]." The unessential part is that "not requiring the exercise of discretion." However, there is a simple solution, allowing for greater flexibility in this rule, which is to "authorize the agent to contract subject to the assent of the trustee."[97] And if the trust instrument makes provisions for the contracting of an Authorized Representative or Managing Agent, then the trustee cannot be liable for his acts.

Now, the method for contracting an Authorized Representative may be either by formal appointment, execution of a limited power of attorney, letter of authorization, or even verbal authorization (preferably documented by minutes). The most effective, secure method of contracting such an agent would obviously be an actual appointment with written contract setting forth the specific powers authorized, terms of the arrangement, extent to which the liability of the agent shall be limited by the trustee, etc. But, a letter of introduction is, for most purposes, sufficient.[98] This is the case with all individuals and organizations, however constituted.

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[95]See Loring, *supra* at pt. II, § 2, p. 49.

[96]*Id.* at § 4, p. 74.

[97]*Id.* at § 2, pp. 48-49.

[98]I have supplied the reader with a sample multipurpose letter of introduction and letter of authorization for opening a bank account in the sample forms section. All the reader need do is modify the letter to encompass the particular purpose for which the authorization may be necessary. A sample limited power of attorney is also provided in that section. I have also provided a sample Authorized Representative contract (which can be used for Managing Agents as well), specifying the particular authorization, power, and limitation of liability, etc., for said agent. (When used with Managing Agents, modification to the contract's language may be necessary.)

EXPRESS TRUST vs. CORPORATION

FIRST, I must clarify that though I am referring primarily to corporations, included in the reference are all organizations which owe their existence to legislative acts, not limited to Limited Liability Companies, Limited Partnerships, Agencies, Co-Partnerships, etc., which, though not classified as corporations, avail themselves of benefits, privileges, and franchises of the state for their very creation and existence.

Second, since we have already shown the distinct juridical personality of the trust as a legal entity,[99] we will not reexamine it until we consider its personality under the Roman civil law of the 14th Amendment in a later section. But it must be noted the well-settled law that the Express Trust is a lawful,[100] legal, valid business organization,[101] possessed of the right to hold property and sue in its business name.[102] And its uses in modern business have some of their strongest roots in England, Germany and many of the United States where it has been recognized for its superiority, and even praised by such notable authorities as the Ohio Supreme Court for its effectiveness in the business of life insurance.[103]

The declaration of trust has been held to be an effective substitute for incorporation, for its many advantages, which will undoubtedly shine though to the reader by the following table. I have prepared this table based upon the work by John H. Sears who, after discussing the impact of the twin landmark cases[104] on the grave lack of profitability of using corporations for, *inter alia*, dealing in real estate, went to task in outlining the distinct benefits of Express Trusts, and the works by William C. Dunn,[105] Guy A. Thompson,[106] and Sidney R. Wrightington.[107] Mr. Sears says:[108]

> The decision of the United States Supreme Court . . . holding that **the [Express] Trusts are not subject to the Federal excise tax on corporations**, has emphasized this method of conducting business as compared with corporations. . . **[T]he best legal talent was soon impressed into the service of devising a means of affording the usual advantages belonging to a corporation without**

[99]See *Brigham vs. U.S.*, *supra*; and *Burnett v. Smith*, *supra*.

[100]The lawfulness of the Express Trust is obvious, however, the allegation to the contrary has often been made in the past, and is occasionally made by the ignorant nowadays. Among the long list of precedents confirming its lawfulness is *Palmer et al. v. Taylor et al.*, 269 S.W. 996 (1925), offered here simply to add to the collection.

[101]See *Baker v. Stern*, A.L.R. 462; *Reeves v. Powell*, 267 S.W. 328 (1924); *Weeks v. Sibley*, 269 Fed. 155 (D.C.Tex. 1920); *Phillips v. Blatchford*, 137 Mass. 510 (1884); and *Burnett v. Smith*, *supra*.

[102]See *U.S. v. Carruthers*, 219 F.2d 21 (C.A.9 (Or.) 1955).

[103]"There was no class of business, the transaction of which, as a matter of private right, was better recognized at common law than that of making contracts of insurance upon the lives of individuals." *State v. Ackerman*, 51 Ohio St. 163, 37 N.E. 828, 24 L.R.A. 298.

[104]*Eliot v. Freeman*, *supra*; and *Maine Baptist Missionary Convention v. Cotting et al.*, 220 U.S. 178 (1911).

[105]*Trusts for Business Purposes* (1922).

[106]*Business Trusts as Substitutes for Business Corporations* (1920).

[107]*The Law of Unincorporated Associations and Business Trusts* (2d ed. 1923).

[108]*supra* at § 1, p. 3.

> **the authority of any legislative act**. A method of placing the property into the hands of trustees, who held the legal title and issued certificates, similar to shares of stock, to the *cestui que trust*, showing the interest owned by each, possessed nearly all the advantages desired. [This excluded the use of limited liability companies, joint-stock associations, and co-partnerships, which are] **organized under enabling statutes** which [merely] enlarge the privileges possessed at common law, and they are, therefore, subject to State regulations, which may be equally burdensome to those imposed on corporations. [Italics emphasis supplied in original; bold emphasis and bracket information added.]

*Preliminary note: While the mortality rate of corporations and the like have historically remained high, Express Trusts remained, and indeed to this day, continue to remain vital.[109] But, again, the table will show you why.

Express Trust	**Corporation**
Life-span of 20-25 years at a time, in order to avoid rule against perpetuities. Death of grantor has no effect on life or affairs of trust.	Perpetual or certain number of years, in most cases legislative requirements govern.
Governed under equity. Trust law is most well-settled body of law in America.	Governed under statute. Forever subject to burdens of inquisitorial legislation.
Limited liability of trustee determined by trust instrument. In any given contract, only property in hands of trustee is answerable. Remember *Boyd* and *Silverthorne*—Not subject to subpoena.	Corporate officers personally liable for all ambiguous indorsements. Remember *Enron* and *Global Crossing*—Must answer in legislative court for all acts.[110]
Business name protected by injunction. (May use trade-name or trademark for legitimate purposes.)[111]	Must apply for and secure fictitious firm name, and must register all trade-names and trademarks.

[109]See Chandler, *supra* at p. 11. The reportedly oldest Express Trust in America is the North American Land Company, formed by Patrick Henry, with the aid of John Nicholson and James Greenleaf, for Robert Morris of Virginia (popularly known as the "Financier of the American Revolution," distinguished from Virginia Colony Governor Robert Morris), circa 1764, roughly a decade prior to the signing of the Declaration of Independence (1776) and Mr. Henry's compelling address to the Virginia Legislature, *Give Me Liberty* (1775). North American Land Company was later expanded in 1795, but was dissolved in 1798, at which time its land holdings consisted of roughly 4 million acres scattered over Georgia, the Carolinas, New York, and the states in between. See *Plan of Association of the North American Land Company: Established February 1795* by Peter Force (1795).

Another, and possibly more noteworthy, Express Trust was the Merchants Bank of New York, formed by Alexander Hamilton, circa 1810. As an aside, this Express Trust made full use of transferability of shares, i.e., certificates, and limited liability (see *Hamilton's Works*, Congressional ed., VII, 838), whereas Mr. Morris ultimately served time in debtor's prison after the trust revenues from installment sales and share sales did not come in quickly enough to meet the loan and tax deadlines. George Washington is reported to have had many a dinner in debtor's prison with Mr. Morris, where he visited him frequently—the two were good friends.

[110]Although corporate officers reserve the "right" to "plead the fifth," they have merely the relative-right to plead the congressionally interpreted "spirit" of the amendment, not the letter of the law, due to their 14th Amendment citizenship. Trustees of an Express Trust have the absolute-right to refuse self-incrimination. See Lee Brobst et al., *supra*; *Boyd v. U.S.*, *supra*; and *Silverthorne Lumber Co. v. U.S.*, *supra*.

[111]See *People v. Rose*, 219 Ill. 46, 76 N.E. 42; *YWCA v. YWCA*, 194 Ill. 194, 62 N.E. 551; *McLean v. Fleming*, 96 U.S. 245 (1877); *Lane v. Brothers, etc.*, 120 Ga. 355; *Aiello v. Montecalfe*, 21 R.I. 496; and *Rudolph v. Southern Beneficial League*, 23 Abott's N.C. 199.

Trust is Article IV § 2 citizen of the United States via its trustee, not a 14th Amendment citizen, unless trust contracts under the amendment.[112] This citizen is understood in constitutional law as the *private* citizen.[113]	Corporation is 14th Amendment citizen,[114] regardless of citizenship of corporate officer. Generally state corporations require officers to be citizens as well. This citizen is inherently public due to the nature of the amendment.[115]
Not required to obtain business license.[116]	The opposite is the case.
Trustees issue certificates in the manner prescribed by trust instrument. Certificate holders cannot transfer without approval of Board of Trustees.	Must go "public" in order to issue stock. Stockholders may dispose of shares of stock, but corporation and stockholder alike are taxed indirectly in more ways than one can count.
May bring and defend litigation in trust name and entity, or in trustee name. Same rules as to parties and procedure at law and in equity are applicable.	May bring and defend litigation in the corporate name and entity only.
Trustees afforded more leverage, and powers are generally more broad than corporation, as it may provide for whatever any individual may do. The sky (nature) is the limit.	Relatively broad powers, as in the example of holding companies. But corporation may not do whatever any individual may do. The statute (legislature) is the limit.
All Federal excise tax and state organization and franchise taxes are avoided.	The opposite is the case, except for state taxes in certain states. In either respect, all corporations are taxed indirectly via inflation.[117]
Trustees are not required to file reports with any authority, and are accountable only to beneficiary, governed strictly under principles of equity.	Required to file reports, quarterly, etc.
Not subject to foreign corporation laws of any state. Not inherently subject to commercial regulation, but for income derived from corporate stock and physical franchises under Article I § 8 Clauses 1 and 3. Express Trust is valid in all States of the Union.[118]	Inherently subject to all foreign corporation laws and commercial (public policy) regulation.

[112]See *Farmers Loan & Trust Co. v. C. &. A. Ry. Co.*, 27 Fed. 146 (C.C.Ind. 1886); and *Shirk v. City of LaFayette*, 52 Fed. 857 (CC.Ind. 1892). For an understanding of the profound superiority of Article IV § 2 citizenship over 14th Amendment citizenship, see Lee Brobst et al., *supra*.

[113]See *Hale v. Henkel*, *supra*.

[114]See *Santa Clara County v. Southern Pacific R. Co.*, *supra*.

[115]14th Amendment citizens, under the Roman civil law (private international law/admiralty-maritime law), are inherently public, with only relative-privacy.

[116]See *People v. Rose*, *supra*. Once trust is executed, it is an existing "express business," and, unless the trust instrument requires the trustee to obtain a business license, one is not needed except for new (i.e., heretofore nonexistent) express business.

[117]"[I]nflation is a 'method of taxation' which the government uses to 'secure the command over real resources, resources just as real as those obtained by [ordinary] taxation'. 'What is raised by printing notes,' . . . is just as much taken from the public as is . . . an income tax.'"*1980 Annual Report*, Federal Reserve Bank of Richmond, p. 10, quoting John Maynard Keynes' *The Economic Consequences of the Peace*.

[118]See *Jones v. Habersham*, 107 U.S. 174, 27 L.Ed. 401 (1883); *Fellows v. Miner*, 119 Mass. 541; *Sohier v. Burr*, 127 Mass. 221; *Sewall v. Wilmer*, 132 Mass. 131; and *Cross v. U.S. Trust Co.*, 131 N.Y. 330, 349, 30 N.E. 125. A trust invalid where created, but valid where to be administered will be upheld where made. *Hope v. Brewer*, 136 N.Y. 126, 143, 32 N.E. 558.

No legal obligation to maintain the capital and refrain from paying dividends out of capital. Trust instrument governs.	The opposite is the case.
Units of beneficial and capital interest in trust are not personal property of holder, and give holder no control over the administration or *res* of the trust.	Shares of stock are personal property in hands of owner, and taxes issue on same property against corporation and then against the stock-owner.
Trustees have absolute-rights and privileges to engage in interstate commerce under protection of the Federal Constitution.[119]	Corporate officers have relative-right and privileges to do so, and incur more taxability by doing so.
Trustee(s) have exclusive management, except where Managing Agents are contracted, or a Board of Directors is elected.	Board of Directors are managers with limited, defined powers to conduct business, hold regular meetings, etc.
Interests of the beneficiary(s) well protected by courts of equity. Power to secure information as to the actions of the trustees and status of trust fund is, no doubt, superior to the rights and remedies of stockholders in corporation.	Protected by the basic impersonal nature of corporations, yet corporate veil is regularly pierced.[120] The elite attorneys are well aware of this.
Dissolution or changes may be effected without formality.	The opposite is the case.

These advantages and more have been and are still seized by some of the shrewdest, wealthiest individuals and families in America and from abroad. But the widely perceived, yet absolutely untraceable, wealth of such individuals and families like the Rothchilds, Rockerfellers, Kennedys, Forbes, and many of the American founding fathers, plus countless modern day politicians, are strong circumstantial evidence of this. One may find many articles and information, as well as quotes,[121] attesting this.

Given the private nature of the Express Trust, there is virtually no lawful method by which to pierce the trust without the express permission or implied consent of the parties, or some unlawful activity on the part of the trust giving rise to a *bona fide* cause of action. As a result, virtually no direct evidence of the trust's existence can be found unless it is made to be found—and even then it can only be heard by a court of competent jurisdiction, which, as you shall see in the sections ahead, is very hard to find nowadays. This is protection at its finest, hiding in plain sight, so to speak; and it is well understood by the powerful elite that "*bene vixit, qui bene latuit*."[122] In many ways, the

[119]Any statute enacted by a state which prohibits this right is in conflict with the Constitution. See *Bruant v. Richardson*, 126 Ind. 145, 25 N.E. 807; *Robey v. Smith*, Ind.Sup. 30 N.E. 1093; and *Farmers' Loan & Trust Co.*, *supra*.

[120]Collections attorneys know this very well. All one need do is look no further than the Global Crossing or Enron scandals to see how every corporate veil is able to be pierced when the effort is backed with enough incentive. And when it's pierced, who bites the bigger bullet(s)? Stockholders—they have no real recourse but to cry in public.

[121]One such quote is that of John D. Rockerfeller who is reported to have said that the key to *true* wealth and power is to "own nothing and control everything." Your author is confident that the reader will see the self-evidence of this truth; and the Express Trust throughout the relatively short history of America has served to facilitate this practice. A search for the assets of the Rockerfeller family will prove the truth of this philosophy.

[122]"He lives well who conceals [his assets] well." Ovid, c.43 B.C. - A.D. 18.

common law itself, with its precious substance, is hiding in plain sight (or is well hidden, depending on the perspective).

UNDERSTANDING COMMERCE

HERE IS WHERE we begin to address the Express Trust in action. As shown above, the trust may engage in all manner of trade and commerce,[123] but before taking the step of doing so, the reader would greatly benefit the trust by understanding the nature of commerce in twenty-first century America. And for my brief explanation of the subtle intricacies involved, I will rely upon the two works by Lee Brobst et al.[124] I will not go into a detailed explanation of the constitution or the history of commerce for want of space, but I would suggest that the reader read the works relied upon herein.

When the trustee is engaging in trade or commerce in behalf of the trust, acting under general common law, the trust is within the jurisdiction over which the literal and absolute protections of the Bill of Rights extend, and he has no direct contact with the federal government. And, under right of contract law protected under the Federal Constitution, the trustee may enter into the 14th Amendment jurisdiction via contract, i.e., by willfully availing the trust of benefits like the quasi-corporate privilege/franchise of limited liability for the *discharge* of debts with Federal Reserve Notes under H.J. Res. 192. (Contrast this with the *payment* of debts with standard gold-backed currency under the original Coinage Act of 1792.) Under this jurisdiction, the federal government (Congress) has full and direct contact with the trust, "as they see fit, for the benefit of public policy regulations (known as codes & statutes) of this jurisdiction."[125] This makes the federal government a third-party intervenor in the affairs of the trust by operation of law,[126] because the trust (as with the 14th Amendment citizens) is being allowed to get away with not truly fulfilling its commercial contracts as is required under the common law of contracts. (I will show how this can all be avoided, in a later section.)

The resulting nexus or "confederacy developed under [H.J. Res. 192] . . . is an affiliation known better as an association[127]." "And the 'common enterprise' of this unincorporated society, is to offer all Americans a so-called 'privilege,' in the form of what is better known as a '[quasi-contract],' to participate in commerce without

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[123]"The words 'commerce' and 'trade' are often used interchangeably; but, strictly speaking, commerce relates to intercourse or dealings with foreign nations, states, or political communities, while trade denotes business intercourse or mutual traffic within the limits of a state or nation, or the buying, selling, and exchanging of articles between members of the same community." Black's Law Dictionary, p. 336 (4th ed. Rev. 1968).

[124]*supra*, see footnotes 12 and 28.

[125]*The Law, the Money and Your Choice*, p. 3.

[126]The federal government's power of regulation in this manner is fully constitutional, deriving its authority from art. I, § 8, cl. 1 and 8, being one of the general legislative powers. The relationship between congress and the 14th amendment citizen is controlled under art. IV, § 3, cl. 2 because there is no physical federal or state charter issued to regulate the relationship.

[127]Brobst et al., *supra* at pp. 7-8. An association is defined as "[a]n unincorporated society; a body of persons united and acting together without a charter, but upon the methods and forms used by incorporated bodies for the prosecution of some common enterprise." Black's Law Dictionary, p. 156 (4th ed. Rev. 1968).

'Payment of [D]ebts' for 'social security' purposes. Moreover, this unincorporated society is outside the literal common-law principle that demands the 'Payment of [D]ebts' as stated in Article 1 Section 10, but is allowed, upheld and protected by Article 1 Section 10 that upholds [the] 'Obligation of Contracts.'"[128] This amounts to a "federated unincorporated society by operation of law [which] is contractually protected by the Constitution [in the same way the Express Trust and its trustee(s) are]." And the trust and/or trustee reserves the right to "domicile themselves in . . . the Union under Article IV Section 3 [C]lause 1, [and] thus to contract under Article I Section 10 despite the fact that [they] . . . cannot 'Pay' [their] . . . debts. In other words, Congress cannot compel [the trust or its trustee(s)] . . . to participate in a federal interstate unincorporated banking association under Article IV Section 3 [C]lause 2 and [H.J. Res. 192] . . . for the *NON* payment of debts. The choice of law is up to each person still."[129]

With corporations, they are "artificial creations of the state or federal government under physical charter (franchise) issued via state or federal civil law for commercial regulation under Article I Section 8 [C]lauses 1 & 3. They are not under the literal common law because of the charter (franchise). Any legal action against the corporation is legally called an '*in rem*' action, because it is against the *thing* or property (also called *res*) of the corporation under charter. The courts have automatic subject[-]matter jurisdiction, because the physical charter is the *subject*[-]*matter*."[130]

"Under the letter of the constitutional law there is no commercial regulation, but [H.J. Res. 192] . . . along with 15 USC brought in a third party for commercial regulation for the social security public policy. Remember, 'equity compels performance.' The law views unincorporated associations as a danger to the substance of the common law, because of their debt/credit system. This is because there is no counter[-]balance to the demands the association puts on the substance of the earth, thus the reason for all the federal and state regulatory agencies. In other words, there is a presumption by implication in the civil law that a charter (a metaphysical/abstract/unreal type) exists, because persons are availing themselves (volunteering) of the privileges pertaining to [H.J. Res. 192]. Therefore, these persons come under a 'quasi in rem' jurisdiction of the civil law in order to regulate, control (including compel) those that are outside the literal common[-]law principles."[131]

The many participants under this system, especially the 14th Amendment citizens from each state, together form an unincorporated federation of state associations operating under interstate commerce as addressed in Article IV § 3 cl. 2, and reinforced by the landmark *Erie R. Co. v. Tompkins*[132] decision. This is the basis for the federal government's, including state governments', compulsion of persons to its public international law (i.e., the spirit, not the letter, of the common law mixed with public Roman civil law, under Law of Nations per Article I § 8 cl. 3 and 10, and Article VI cl. 2)

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[128]Brobst et al., *Id.*

[129]*Id.*

[130]*Id.* at p. 9.

[131]*Id.* at pp. 9-10.

[132]304 U.S. 64 (1938).

nowadays commonly known as codes and statutes (state or federal), to regulate everything as a matter of commerce.[133]

Without getting into the history of religion, and speaking purely from an analytical perspective, the Roman civil law, as a base-model for commerce regulation, was developed out of necessity of the church to avoid political scrutiny for its handling of ever increasing amounts of precious metals. It had become a "'storehouse' for the money and property the people were persuaded to give in exchange for limited liability [in the form of tithing] — [i.e.,] go directly to heaven instead of hell. As the people became more educated and saw what was really behind the power of religion [in generating wealth], the Roman Church fell under greater and greater criticism. This led to the development of a banking system to handle and control church wealth and take the critical focus [away from the church.]"[134]

"The bank learned from the church about limited liability. If you could get people to borrow money beyond their ability to pay back, you could get them to keep performing [paying interest in one form or another] on a debt (liability) without ever demanding it [the principal] back, thereby, loaning out that same credit to more than one individual or company. This meant that the bank was limiting the liability of the borrower so he was not fully responsible for the debt as long as he continued to perform to paying the interest. This way[,] real money (gold) became credit (paper money) by loaning to more than one person. Being involved in this sort of commerce was called 'private commerce.' With the church's control over wealth, this private commerce became standard practice in world trade upon the sea — private international or admiralty/maritime law became known as Roman civil law as it began to figure heavily in the politics of every city and country it touched through international commerce."[135]

By operation of this body of law, all persons subject to its jurisdiction are regarded as vessels, having a distinct quasi-corporate, juridical personality, capable of suing and being sued *in rem*.[136] 14th Amendment citizens of the United States, whether state or federal chartered corporations or metaphysical-chartered corporate-colored public persons, therefore, are public vessels of the United States within the broad meaning of the Public Vessels Act, and are regulated. The United States, as with the

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[133]This can be better understood from *Propeller Genesee Chief v. Fitzhugh*, 53 U.S. 443, 451-453 (1851), wherein the court said that, within the letter of the constitution, "[t]he law contains no regulations of commerce. . . . It merely confers a new jurisdiction on the district courts; and this is its only object and purpose. . . . It is evident . . . that Congress, in passing [the law], did not intend to exercise their power to regulate commerce. . . . The statutes do no more than grant jurisdiction over a particular class of cases. . . . Now the judicial power in cases of admiralty and maritime jurisdiction, has never been supposed to extend to contracts made on land and to be executed on land. But if the power of regulating commerce can be made the foundation of jurisdiction in its courts, and a new and extended admiralty jurisdiction beyond its heretofore known and admitted limits, may be created on water under that authority, the same reason would justify the same exercise of power on land."; also see *Verlinden v. Bank of Nigeria*, 461 U.S. 496 (1983). Roman civil law is also why the I.R.S. continually refers to income taxes as voluntary although, to the ignorant, it appears to be the exact opposite.

[134]*U.S.A. The Republic, Is The House That No One Lives In*, p. 9.

[135]*Id.*

[136]See *The China*, 74 U.S. 53 (1868); and *The Barnstable*, 181 U.S. 464 (1901). Also see *Why We Are in Admiralty* (April 18, 2004), available at <http://www.wealth4freedom.com/law/Admiralty.htm> (last visited Sept. 30, 2005).

Roman Church, is the "ship of state". The Express Trust, then, is a private vessel of the united States of America, navigating through the often hostile waters called interstate commerce (which is international commerce via the United States treaties).

DOING BUSINESS

EVEN THOUGH the Express Trust is technically not a "business trust"[137] within the established meaning of the term, this in no way prevents or inhibits the trust from engaging in all manner of business the trustee is permitted to under declaration, and it need only obtain the franchise of a business license if it anticipates doing express business in the above-described jurisdiction.[138] The trust may operate a business, acquire a business, sell or otherwise dispose of its business, or even contract under the limited liability system and become a taxable entity—the choice is yours. The only thing which may bar the trust from conducting a particular kind of business in any certain jurisdiction is the public policy of that jurisdiction, regarding which, it has been admitted, most states have not passed upon the subject directly.[139]

Regardless of the business, there is a due notice rule, which confers a duty upon the trustee under equity, whenever doing business. The rule consists of two parts:

The first is that he should sufficiently distinguish and represent the nature of the trust to the party with whom he is doing business. It is of the utmost importance, in the forming of business contracts, that full disclosure be made—on all letterheads, business cards, checks, bills and order blanks, papers, etc.—so as to prevent any claims of lack of disclosure from arising in the future. But prudence recommends that a trustee must

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[137] *Pennsylvania Co. v. U.S.*, *supra*.

[138] See *People v. Rose*, *supra*.

[139] No state has ever made any attempt to prohibit Express Trusts (i.e., impair the contract rights of persons *sui juris*). However, many states have attempted successfully to prohibit associations, the most notable being the Ohio Attorney General in *State v. Ackerman* (*supra*), against C.F. Ackerman and ninety-nine other persons who were transacting business of guarantee and accident insurance in the state under the name of the Guarantee and Accident Lloyds, New York. The Attorney General alleged that they were doing business without having complied with the laws of the state or receiving proper authority from the state to do business of that kind. The court found that because the defendants were acting under mere association (as opposed to under declaration of trust), they were an association unlawfully exercising a franchise within the state, acting as a corporation therein without being legally incorporated. The court indirectly affirmed the well-understood principle scarcely in need of restatement that Express Trusts may engage in any manner of business allowed to individuals a natural right. In fact, to restate this principle over and over again would be "ostentatious." *Chisholm v. Georgia*, 2 U.S. 419, 453 (1793).

As public policy is a form of regulation, it should be noted the case of *Munn v. Illinois*, 94 U.S. 113, 126 (1876) in which the court expounded on the principle of regulation. Because the trust is of private property, and its business is private as well, the trust business is not "affected with a public interest." It does not become affected with a public interest until the trustee participates in behalf of the trust in the unincorporated interstate banking association, obtains a business license or other franchise, contracts under it, or conducts the private business of the trust in a "manner to make it of public consequence, and affect the [14th Amendment] community at large. When, therefore, one devotes his property to a use in which the public has an interest, he, in effect, grants to the public an interest in that use and must submit to be controlled by the public [policy] . . . to the extent of the interest he has thus created. He may withdraw his grant by discontinuing the use; but, so long as he maintains the use, he must submit to the control."

not disclose every immaterial fact regarding the trust, its declaration, and its affairs. The first part of the due notice requirement can be sufficiently accomplished simply by employing the designation "An Irrevocable Express Trust Organization," or "An Express Trust Organization," or "A Trust Organization," or "Organized under Declaration of Trust," beneath or next to the trust's name. It must not be excessively revealing about the trust (the trustee has a duty to protect the privacy of the trust), but it also must not be misleading (the trustee has a duty to not compromise the integrity of the trust, though he is in no way prohibited from exercising the utmost shrewdness).[140]

The second is that he should stipulate in plain and certain language, in all written contracts and obligations that the trust only is liable for its obligations and that neither the trustee nor interest-holders are to be held to any personal liability in the contract.[141] He may also wish to cite the provision of the trust which so limits his and/or the interest-holders' liability, but this is often unnecessary. And the trustee should always designate his title either under or immediately next to his name and signature.[142]

The trustee should obtain a mailing address for the trust, and though he is the principal and holder of the trust property, I would recommend that he refrain from mixing the trust's affairs with his own. He should also obtain all separate business necessities (telephone service, etc.) for the trust. (I would argue that he should do these things regardless of whether he is operating trust business or not. He should, for all intents and purposes, maintain a strict separation of the trust's identity from his own.)

LIMITING THE LIABILITY OF THE TRUSTEE

IN ALL CONTRACTS, as we have already noted, though it is best to always apply it, the trustee's mere designation of title is not sufficient to limit his liability. Instead, he must employ the proper language either within the terms of the contract or above or beneath his signature, or in any proper place where it will appear unambiguously, indicating something to the effect of—

- "The property and funds of the Trust Organization only are liable for contract obligations, individual Trustee(s) or interest-holders are not personally liable";
- "John W. Doe, acting as Trustee under the Declaration of Trust dated October 1, 2005, establishing the Trust Organization therein called ABC123 Training Group and not individually";
- "John W. Doe as Trustee and not personally";
- "As Trustee but not individually"; or

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[140]See McCoy, *supra* at p. 1.

[141]*Id.*

[142]It has been suggested that whether the trustee designates his title or not, he is in-fact acting as trustee, because the substance not the form is what controls. However, for security purposes, I would argue that the designation should be applied in all situations, regardless. Doing so will avoid any superficial confusion.

- "Without recourse to Trustee".

Any form of words that will convey in certain, unmistakable language the fact to the other contracting party that he is dealing with an Express Trust is sufficient notice under the rule. Whether it is necessary to also cite the provision of the trust instrument which limits his liability is a decision left to the discretion of the trustee. To quote Mr. Justice Woods in the case of *Taylor v. Mayo*:[143] "If a trustee contracting for the benefit of a trust wants to protect himself from individual liability on the contract, he must stipulate that he is not to be personally responsible, but that the other party is to look solely to the trust estate." And in the case of *Shoe and Leather National Bank v. Dix*[144] the court held, with regard to the promissory note made by the trustees under such limited liability, that it was not within the power of the court to change the trust liability on the note into a personal one of the trustees; that liability on a contract must be determined by the terms of the contract itself; and that a contract entered into under such limited liability (be it a note, agreement, etc.) cannot be converted into one under personal liability by law. To do so would be to alter the terms of the contract itself. (Furthermore, any such stipulation is ultimately subject to the acceptance of the other party in order to gain validity in the contract.)

OPENING A BANK ACCOUNT

THE TRUSTEE may open any business checking account, financial account, trust account, etc., which he is authorized by declaration to open, but he must keep in mind that by doing so, the trust will be participating directly in that unincorporated interstate banking association with all its limited-liability consequences described above. There is only one type of account that avoids those consequences: the **non-interest bearing checking account**. When utilized in conjunction with the following banking practices, the trust and the trustee will remain out of reach of the tentacles of public policy. Unless the trustee intends to play within the system, the trustee should—

- Never contract for any credit cards, and if the trust has already obtained them, rescind and cancel the contracts;
- Open a non-interest bearing checking account in order to avoid the "privileges and immunities" associated with interest;[145]
- When transacting business, use that bank account solely for depositing the checks and keeping track of the trust funds;
- Never send or allow trust checks to be sent across state lines;
- Instead of writing checks, use postal money orders or the bank's corporate certified checks or corporate money orders when sending interstate payments; and
- Use an Authorized Representative to establish the account on behalf of the trustee.

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[143]*supra*. Also see *Mitchell v. Whitlock*, 121 N.C. 166, 28 S.E. 292.

[144]123 Mass. 148, 25 Am.Rep. 49.

[145]It should be noted that proof of the operation of law in the manner described in the preceding sections is that banks are not required to obtain a social or tax identification number, and may accept any kind of identification information they wish— only when opening non-interest bearing accounts.

When opening the bank account (non-interest bearing as well as any other), the following must be provided—

1. The **original, notarized letter of authorization** (or letter of introduction or a limited power of attorney) if being opened by an Authorized Representative;[146]
2. A **copy of the Affidavit of Trust**;
3. A **copy of the Trustee Appointment**;
4. A **copy of the settlor's acknowledgment of trust or Letter of Introduction** (introducing the trustee). There are usually two introduction or acknowledgment documents per trustee: one regarding his fiduciary powers specifically addressed to banking institutions and one regarding his general power to establish all other accounts;
5. A **copy of the recitals and signature pages of the declaration of trust**. The bank will almost always require evidence of a trust agreement, but the other documents may be sufficient depending on who you are dealing with. If you can open the account with only a few of the documents, great. Again, this is a non-interest bearing checking account, so scrutiny is not a priority. Accounts such as this have been downplayed by banks via advertised interest rates (on the indirect suggestion of the Federal Reserve via public policy and manipulation of the interest rates), so most people would rather open accounts that appear to have the prospect of interest earnings; and
6. Only if necessary to obtain an EIN, a **copy of the filed IRS Form SS-4**.

Take into the account the state of ignorance of the law which prevails in America today. Give only the information needed to open the account, but do not arouse suspicion or fear from lack of understanding on the part of bank employees. If you are able to befriend someone in the institution who can establish the account more flexibly, then do it. You must be shrewd in your methods for establishing the account, since, regardless of which bank you choose, you will be dealing with trained employees who, usually, are just a few screws and bolts away from being human robots. You should consult the business tactics of successful negotiators, who will all attest that the individual who needs the service is at the mercy of the provider, but the individual whose confidence and attitude subtly convey that his business is in high demand is given services, gifts, perks, not to mention any kind of account—anything just to get his business. It is not my intention to state the obvious, for in all business dealings, which a bank account is, one must be persuasive (and even seductive) to get the desired results. And don't be hesitant to shop around—negotiate—bend perception—create competition.

In the event it becomes unavoidably necessary to the opening of a non-interest bearing account or if the trustee does see fit to obtain an interest bearing or other financial account, then he (or an Authorized Representative) must apply to the IRS for an Employer Identification Number (EIN) for banking purposes. This may be done in one of the following ways:

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[146]The Authorized Representative should set up a date with the bank for the trustee to come in and sign the bank card and give identification. The trustee should sign as trustee under limitation of liability if possible.

- Instantly, via telephone from 7:30 a.m. to 5:30 p.m. (local time only) by calling the **Foreign Business Tax Line** at **(215) 516-3990**;
- Instantly, online by going to **http://www.irs.gov/EIN.org** (or **http://www.irs.gov/businesses/small/article/0,,id=102767,00.html**), clicking "Apply ONLINE NOW," and filling out the online Form SS-4 Application for Employer Identification Number, and proceeding through the prompts. (Be sure to print all the pages for the trust's records); or
- By performing the same steps above, but instead of clicking "Apply ONLINE NOW," click "download the form SS-4," fill it out, print it, then either:
  - Send it via mail or carrier to the proper regional office or else the one designated for "entities with no legal residence, principal place of business, or principal office or agency in any state":

    Attn: EIN Operation
    Philadelphia, Pennsylvania 19255; or
  - Fax it to **Fax-TIN** at **(215) 516-3990**.

The form should be filled out according to the specifications of the trust. I have provided an example of how it has been filled out without a problem. In the event that there is a problem and the filing office needs additional information or clarification, they will indicate what is needed, either by fax, phone, or by mail, depending on the contact information given to them.

With both telephone and online applications, the trust will immediately be given a temporary EIN until the hard-copy application, which will be sent to the trust address for completion and indorsement, has been returned to that office within 15 days of the original online application. The EIN is valid 24 hours from the moment the voice or electronic application is submitted, but if the hard-copy application is not returned within the 15 days, the temporary EIN will expire, and cannot be used. In fact, it is not permanently registered into the Federal Tax ID database until the hard-copy has been processed.

With faxed applications, the trust will be given a temporary EIN by fax within 7 days, which will become permanent once the hard-copy application is sent in via the mail or carrier. And, with mailed in applications, the application is processed upon receipt, and an EIN is issued via the mail within 2 weeks. The other EIN application offices based on region can be found at the IRS internet address given above by clicking "Where to File" in the side menu.

TRANSFERRING TRUST ASSETS

THERE ARE two principal ways to transfer assets into the trust. It may be done via sale (in funds) or by exchange (based on the barter system). How it is done in any given situation makes all the difference, and there are certain guidelines to follow to insure that the transfer cannot be nullified and voided.

As a general rule, the trustee, as owner of legal title to the trust property, cannot purchase the trust property for himself, nor convert it to his own use contrary to the trust instrument. This is generally regardless of whether the property was purchased at a public, private or judicial sale, instituted by him,[147] for he has the unfair advantage, and any such sale, absent certain conditions, is deemed voidable *ab initio*, to be set aside at the option of the beneficiary(s). The only way the property may be obtained is where it can be shown that the beneficiary(s) acted intelligently, willfully, and without undue influence arising from the trust relationship.[148] In order to sustain a sale of trust property by the trustee to himself individually (on the ground that the interest-holder consented thereto) the evidence must show the good faith of the transaction, the adequacy of the consideration, a full knowledge of the facts, and an independent consent on the part of the interest-holder.[149] He may, of course, buy trust property in the discharge of his duty to protect the trust.[150] These same principles apply to the selling of the trustee's individual property to the trust, as well as to any barter between trustee and trust. (In the case of exchange there is an additional option which the trust provides, though it is not usually advisable to do so.) Simply put, if the contract is evidently "fair and reasonable, untainted by fraud and undue influence, [the] . . . conveyance of . . . property [by the trustee *sui juris* to the trust or interest-holder *sui juris*, or vise versa] will be upheld."[151]

The guidelines[152] for insuring that any transaction or property transfer between the trustee (or an agent) and the trust (or interest-holder) is non-voidable are that—

- The seller intends that the buyer shall buy, and the buyer intends that the seller shall sell, or both parties intend that each shall exchange one item for the other;
- The seller, especially if trustee, discloses to the buyer before the contract is made every fact he has learned in his fiduciary relation which is material to the sale or exchange;
- The seller, especially if trustee, exercises the utmost good faith in the transaction;
- No advantage is taken by misrepresentation, concealment of or omission to disclose important information gained as trustee (or agent); and
- The entire transaction is fair and open on its face.

Furthermore, the contract of transfer need not be a complex document, so long as the guidelines are strictly followed, with all necessary warranties made in the documents themselves in order to legitimize the deal. (I have provided a sample bill of sale and asset purchase agreement in the sample forms section.)

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[147]Since the trustee's advantage comes by virtue of his office, it has been ruled that he may lawfully buy trust property at a sale caused by a third party, over which he has no part in procuring and over which he can exercise no control. See *Steinbeck v. Bon Homme Mining Co.*, 152 Fed. 333 (C.C.A.8 (Colo.) 1907).

[148]See *Swift v. Craighead*, 75 N.J.Eq. 102, 75 A. 974.

[149]See *Clay v. Thomas*, 178 Ky. 199, 198 S.W. 762; and *French v. French*, 58 Ind.App. 621, 108 N.E. 786.

[150]See *Hardwicke v. Wurmser*, 180 S.W. 455; He may also apply to a court of equity, showing good cause, to obtain a decree for his purchasing of the property for protection purposes, if necessary.

[151]Dunn, *supra* at ch. IV, § 44, p. 78.

[152]Per *Byrne v. Jones*, 159 Fed. 321 (C.C.A.8 (Ark.) 1908).

What's more, there is an additional method by which the deal may be completed. This is by way of assignment— either of trustee compensation, venture proceeds or profits, or even the trustee's separate employment wages/salary to the trust as value consideration in the contract of transfer. Whatever the object assigned, that the value consideration shall be in the form of an assignment should be set forth as an express term or provision in the documents evidencing the transfer.[153] A trustee may issue a promissory note or bond to the trust, dividing his personal labor into shares of interest in his trustee compensation, wages, salary, etc., and assigning it to the trust in order to complete the contract. To do this, in addition to the note or bond, he must execute a formal assignment, and then give his employer, payor, etc. notice and instructions to send the instrument (check, money order, bills) to the trust, which is entitled to indorse the instrument in the name of the individual trustee per the assignment (an authorized signature). It may also be agreed that the trustee shall accept the payment personally, then deliver and sign over the instrument to the trust himself (a special indorsement). The former is akin to a private (quasi) garnishment, in which the employer, payor, etc. is noticed and instructed to send the payment(s) directly to the trust, or deposit the funds directly in the trust's account per the assignment. (I have also provided a sample assignment and notice of assignment and instructions in the sample forms section.)

ISSUING CERTIFICATES & BONDS

AS DISCUSSED in the earlier section, the trustees may issue certificates of beneficial or capital interest, or other obligations to any person whom they please.[154] There are a total of 100 units of beneficial interest, and a separate total of 100 units of capital interest in the trust. The trustees determine the number of units (percentage of total interest) to be held by any one beneficiary, and may issue the full 100 units (100%) to a single beneficiary. To issue a certificate of either interest, the trustees must act jointly as the Board of Trustees, unless there is only one trustee for the trust. They must execute (draw up and indorse under seal[155]), then deliver to the interest-holder(s) the actual certificate(s) evidencing the interest held. The Board should also record minutes of the meeting(s) in which it was resolved to issue the interest, and then record the act along with the interest-holder(s)' identification information in the appropriate schedule.

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[153]It should be noted that such an assignment can be done without any contract of transfer, rendering the object of assignment a gift. But, given the trustee's position, this is generally looked upon with great suspicion simply because of the absence of apparent value consideration for the trustee (the trustee would have to show that he gifted the thing in the spirit of charity and a warm heart, for instance). It gives the superficial appearance that the actual, ulterior motive was to avoid the liability of registered ownership, yet retain full and total ownership-in-fact, using the trust as a device to accomplish this. The property transfer must be a *bona fide* transfer on its face.

[154]It should be noted that a beneficial interest-holder, having such an interest in the trust property, has an inherent right to insist, in proper proceedings, that the trust be maintained and executed according to the terms of the trust instrument. At law, the trustees are considered the owners of the trust property, yet, in equity, the beneficial interest-holders are the absolute owners, hence their power to apply for the voiding of a voidable transaction or transfer of property as mentioned in the preceding section. See *Hill v. Hill*, 152 P. 1122; *Ex Parte Jones*, 186 Ala. 567, 64 So. 960; and *Cox v. Cox*, 95 Va. 173, 27 S.E. 834. And a beneficiary may apply to the court of equity to enforce their rights. See *Bingham v. Graham*, 220 S.W. 105.

[155]All certificates and official documents should be executed under seal. The sealing of an instrument is *prima facie* evidence that it has been duly executed. See *Johnson v. Crawley*, *supra*; and *Mullanphy v. Schott*, *supra*.

With certificates of capital interest the method is much different, though the procedure is the same as that for the trust certificates. Capital certificates work based upon exchange with investors called Exchangers, who may be any person the Board of Trustees wishes to exchange with. The Board of Trustees determines the number of units to issue in exchange for the property proposed for investment into the trust. This is a pure barter between the parties, and whatever number of units is agreed stands as the value in exchange for the proposed property.[156] The exchanger must issue a written Proposal (an example of which is provided in the sample forms section), which must be accepted by the Board of Trustees. Any negotiations which take place should be recorded in the minutes in which it is resolved to either issue the interest or refuse the proposal. If the Board of Trustees has resolved to issue the interest and make the exchange, the certificate(s) must be executed and delivered to the interest-holder(s), and the property(ies) in exchange must be delivered by the interest-holder(s) to the Board of Trustees. The final act should be recorded along with the interest-holder(s)' information, and the property inventoried, in their respective schedules.

With bonds, because a bond is merely an obligation or promise to pay money or to do some act upon the occurrence of certain circumstances, the trust need only issue the bond according to the particular transaction, e.g., to back the performance of a particular contract, to raise capital from outside investors in the form of "IOU's," etc. The distinguishing feature of a bond is that the document shows an obligation to pay some fixed amount of money or services, at a definite time, with stated interest. (I have provided some samples for various uses in the sample forms section.)

Now, there is no rule against a trustee (or agent) of the trust, exchanging his individual property for capital interest in the trust. And there is no rule against the trustee (or agent) holding beneficial interest either, though the holding of beneficial interest is generally regarded with greater suspicion than that regarding capital interest. The actual rule is that either transaction will be sustained as non-voidable if it clearly appears free of fraud, concealment, or undue advantage.[157] Any omission by the trustee (or agent) to disclose any material fact of the deal which is learned by the trustee by virtue of his office, and any misrepresentation, concealment, or other disregard of condition renders the issuance, exchange, and contract for it voidable at the option of the beneficial interest-holder(s). And one can wager that any accusation of invalidity of the trust by an outside party will be made on those grounds as well—a manifestation of the general suspicion.

This suspicion, however unreasonable without regard to the particular merits of the individual situation, stems from the many Express Trusts successfully dismantled based upon the unscrupulous and often foolish failing of the Control Test by trustees. In fact, the Express Trust graveyard is mostly populated with the dead corpuses of trusts who died from this mistake. When a trustee holds all or a majority of interest (beneficial or capital) in the trust, he is, in effect, an interest-holder exercising control over the affairs and *res* of the trust. He derives the sole benefit of his actions, and determines the

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[156]We have already covered the nature of the certificates in that previous section, so we won't reexamine it here.

[157]See *Murry v. King*, 153 Mo.App. 710, 135 S.W. 107; and *Mills v. Mills*, 63 Fed. 511 (C.C.Or. 1894).

actions which would cause him to derive that sole benefit. He is owner of the legal title to the trust property as trustee, as well as owner of the equitable title to the property as interest-holder. At best, the trust is his alter-ego, hence he may be proceeded against as though the trust does not even exist. This is why it is recommended that any transfers between trustee (or agent) and the trust (or interest-holder) be by sale as prescribed according to the guidelines, through a third party, or by outright exchange, with all documents in support of the transaction ready to repel the outside party who might attempt to come in under the guise of the Express Trust's Grim Reaper.

KEEPING MINUTES

AS MENTIONED EARLIER, it is the duty of the trustee(s) to keep minutes for all resolutions, decisions, and acts done in the administration of the trust. This is a form of accounting, and may suffice as the accounting, however, it is recommended that some separate, more detailed accounting always be kept.

It is generally best to keep minutes upon every Board of Trustees meeting, based upon the notes or report taken during the meeting, or, if there is only one trustee for the trust, on a decision-to-decision basis. How often and by what protocol minutes are kept is, of course, a matter of the trustee's discretion. The rule of thumb is that at least one Board of Trustees meeting should be held (and the minutes kept) annually. They should probably be held (and kept) at least quarterly, in conjunction with all other accounting. The more often the accounting, the more up-to-date, accurate, and reliable the records in administering trust business. Everything the trustee does should be clearly reflected in the minutes, which can be kept using any word-processing software (or even a typewriter). The minutes are stored in succession in the minutes book section of the trust binder. (I have provided 15 samples of minutes for various acts and resolutions by the Board of Trustees. The format and core language is always the same or similar.)

PREVAILING IN LEGAL AFFAIRS

HERE IS WHERE we shall get into legal action, the rare instance of public legal affairs, such as defending a court action instituted against the trust (or trustee), a private action against the trust (or trustee), etc., as well as the possible necessity of the trustee to take a public (however rare) or private (most preferable) action against an outside party. The reader must keep in mind that the chances of an action being taken against a trustee who has properly limited his liability without fail are slim to none. And if an action is taken against him anyway, generally, such cases don't make it past the crucial phase of determining jurisdiction. When one examines the definition of jurisdiction,[158] the fog begins to clear.

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[158]It is defined as "[a] government's general power to exercise authority over all persons and things within its territory. . . . A court's power to decide a case or issue a decree. . . . A geographic area within which political or judicial authority may be exercised. . . . A political or judicial subdivision within such an area." Black's Law Dictionary, p. 855 (7th ed. 1999).

There are two territorial jurisdictions created by the Constitution: the first is "the Territory,"[159] i.e., that designated portion of the earth's surface (the imperially extensive real estate holdings of the nation) over which all power must be exercised within the strict letter of the Constitution; the second is the "other Property,"[160] i.e., *a territory* unincorporated (not included) into the Union of states, over which all power may be exercised strictly according to the mere "spirit" of the Bill of Rights as interpreted by Congress outside the strict letter of guarantees of the Constitution and Bill of Rights. In the former, the federal government can have no direct control over the people but by way of bilateral contracts. But in the latter, the federal government can have full and direct control over people subject to its jurisdiction, "as they see fit, for the benefit of public policy regulations (known as codes & statutes) of this jurisdiction."[161]

Understanding that most courts currently in business in America are in fact, by the 1933 change in the operation of law, courts of limited jurisdiction,[162] limited to cases involving subject-matter of the 14th Amendment public trust, it becomes clear that whether they are distinguished as federal courts or state courts, such is a distinction without a fundamental difference—they are inherently federal. In order to get at how such courts may obtain jurisdiction over an Express Trust or its trustee(s) in a legal action, the nature of jurisdiction should be briefly, but sufficiently examined.

First, a court must have three essentials: jurisdiction to determine jurisdiction, jurisdiction over the subject-matter of the case (i.e., it must have the power/competence to decide the kind of controversy involved), and jurisdiction over the parties to the case (i.e., *in personam* or personal jurisdiction to compel the parties' performance). If either one is lacking in any way, the court is without power to decide the case;[163] and any order, decree or judgment, other than a dismissal, by such a court is void *ab initio*,[164] having only the semblance or appearance of validity,[165] and may be attacked directly or

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[159]Art. IV, § 3, cl. 2 in reference to the incorporated "Union" of states incorporated under clause 1 of the same section. The Articles of Confederation were also incorporated into the Constitution under clause 1, and the Union of states is also incorporated under the Articles of Confederation by reference.

[160]*Id.* This "other Property" is known as "a territory". Both "the Territory" and "other Property" signify property, since the language in that section is not "the Territory or Property"—the operative word is "other". Therefore, "other Property" must be interpreted to mean "a territory," as in a governmental subdivision which happened to be called "a territory," but which could have been called a "province," "colony," etc. It refers to an incomplete state. See *Ex Parte Morgan*, 20 Fed. 298, 305 (D.C.Ark. 1883); and *O'Donoghue v. United States*, 289 U.S. 516, 537 (1933).

[161]Brobst et al., *supra*, see footnote 126.

[162]Such courts are defined as having "[j]urisdiction that is confined to a particular type of case or that may be exercised only under statutory limits and prescriptions. Also termed *special jurisdiction*." Black's Law Dictionary, p. 856 (7th ed. 1999).

[163]See *Abelleira v. District Court of Appeal*, 17 Cal.2d 280, 109 P.2d 942 (1941).

[164]See *Holstein v. City of Chicago,* 803 F.Supp. 205; *Lubben v. Selective Service System Local Bd. No. 27,* 453 F.2d 645 (C.A.1 (Mass.) 1972); *Hobbs v. U.S. Office of Personnel Management,* 485 F.Supp. 456 (D.C.Fla. 1980); and *In re Adoption of E.L.,* 733 N.E.2d 846, (Ill.App. 1 Dist. 2000).

[165]See *Mills v. Richardson,* 81 S.E.2d 409 (N.C. 1954).

collaterally and vacated at any time.[166] It is settled law that "a tribunal has jurisdiction to determine its own jurisdiction,"[167] which brings us to the remaining two elements.

Subject-matter jurisdiction is like the hub around which the wheel turns: without the hub, the wheel cannot turn with any real credibility. It is comprised of two parts: the statutory or common-law authority of the court to hear the case and the appearance and testimony of a competent fact-witness (i.e., sufficiency of pleadings). It can never be waived, and it cannot be obtained by lapse of time, consent of the parties, or any event other than the sufficiency of pleadings by the party bringing the suit (i.e., the plaintiff must sufficiently show beyond reasonable doubt that the court has jurisdiction to hear the cause). However, although it may have been established by the pleadings, it can still be lost due to, *inter alia*—

- Fraud upon the court;[168]
- The judge's failure to follow proper procedure;[169]
- The unlawful activity or undisclosed conflict of interest of the judge (e.g., involvement in a scheme of bribery);[170]
- The court exceeding its statutory authority;[171]
- Violation of due process;[172]
- Improper representation of a party before the court, improper issuance of a summons, or defective service of process;[173]
- Proper notice not being given to all parties by the movant;[174]
- The court basing its order or judgment upon a void order or judgment;[175] and
- Violation of public policy.[176]

And when subject-matter jurisdiction is lacking or lost, the court must discharge its ministerial duty to dismiss on that ground on its own motion, whether it has personal jurisdiction or not.[177]

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[166]See *People v. Rolland,* 581 N.E.2d 907, (Ill.App. 4 Dist. 1991); *People v. Wade,* 506 N.W.2d 954 (Ill. 1987); and *In re Marriage of Welliver,* 869 P.2d 653 (Kan. 1994).

[167]*Albelleira*, *supra* at p. 302.

[168]See *In re Village of Willowbrook*, 37 Ill.App.3d 393 (1962); and *Rook v. Rook,* 353 S.E.2d 756, (Va. 1987).

[169]See *Armstrong v. Obucino*, 300 Ill. 140, 143 (1921).

[170]See Code of Judicial Conduct; and the *Alemann* cases, *Bracey v. Warden*, U.S. Supreme Court No. 96-6133 (June 9, 1997).

[171]See *Rosenstiel v. Rosenstiel*, 278 F.Supp. 794 (D.C.N.Y. 1967).

[172]See *Johnson v. Zerbst*, 304 U.S. 458, 58 S.Ct. 1019 (1938); *Pure Oil Co. v. City of Northlake*, 10 Ill.2d 241, 245, 140 N.E.2d 289 (1956); and *Hallberg v. Goldblatt Bros*., 363 Ill. 25 (1936).

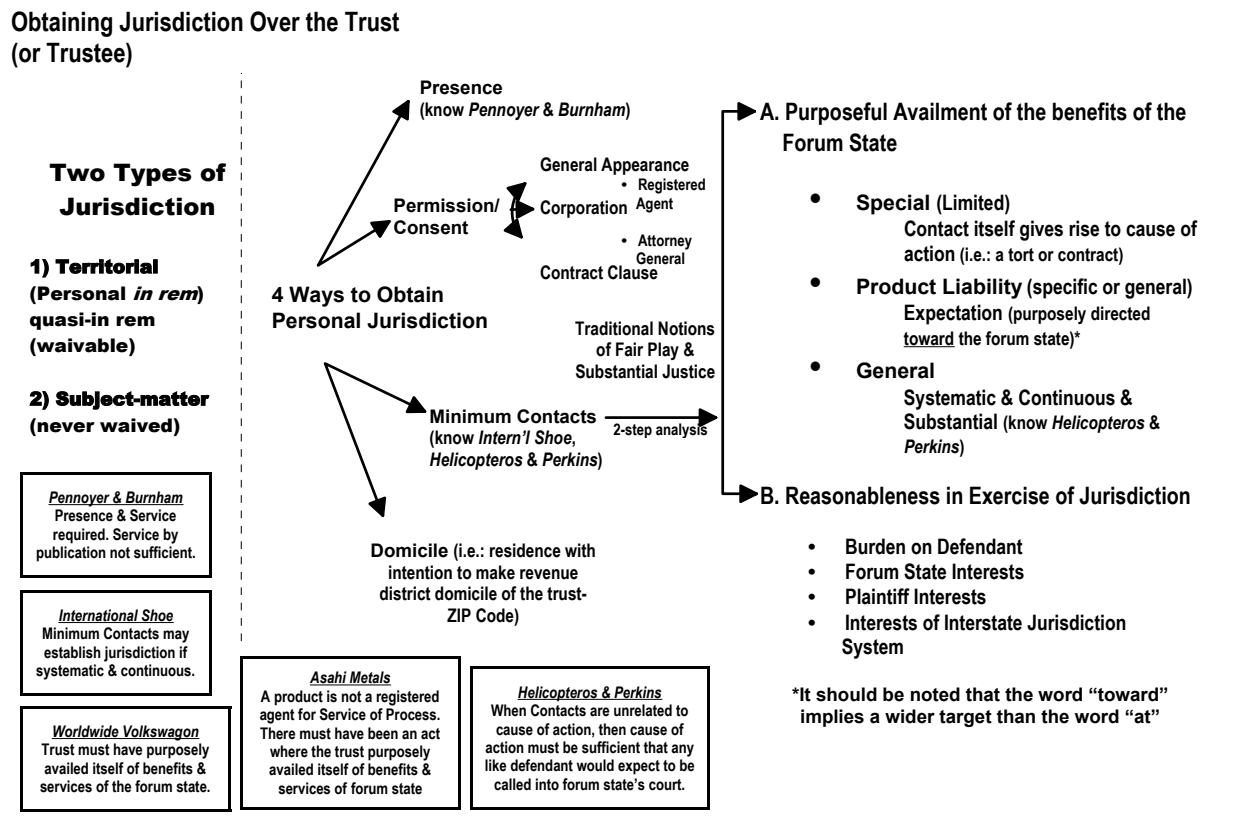
[173]See *Janove v. Bacon*, 6 Ill.2d 245, 249, 218 N.E.2d 706, 708 (1955).

[174]See *Wilson v. Moore*, 13 Ill.App.3d 632, 301 N.E.2d 39 (1st Dist. 1973).

[175]See *Austin v. Smith*, 312 F.2d 337, 343 (C.A.D.C. 1962); and *English v. English*, 72 Ill.App.3d 736, 393 N.E.2d 18 (1st Dist. 1979).

[176]See *Martin-Tregona v. Roderick*, 29 Ill.App.3d 553, 331 N.E.2d 100 (1st Dist. 1975).

[177]See *Morris v. Gilmer*, 129 U.S. 315, 326-327 (1889). Once a judge has knowledge that subject-matter jurisdiction is lacking, he has no discretion but to dismiss the action, and failure to do so subjects the judge to personal liability.



Given the preceding sections on the unincorporated banking association under H.J. Res. 192, and all of the above regarding the "other Property" nature of the states today, it is easy to see why these courts are *ipso facto* courts of limited jurisdiction, having no jurisdiction over subject-matter in "the Territory". But assuming for the sake of explanation that subject-matter jurisdiction did exist, then personal (or personal *in rem*)[178] jurisdiction over the trust and its trustee(s) can only be obtained in four ways, either by the trust's or trustee's—

- **Presence**[179] (i.e., its/his being served with a copy of the summons and complaint while physically present in the forum jurisdiction);
- **Domicile**[180] (i.e., residence alone is a basis for exercising jurisdiction. In the case of corporations, domicile is the state in which they are incorporated, and in the case of Express Trusts, the place of their situs);
- **Permission or Consent**[181] (i.e., a trustee either personally or on behalf of the trust, having not been properly served, can nevertheless give the forum court permission

[178]That is to say, "against the thing" as though it were a person vested with legal rights, as is the case with proceedings against vessels under admiralty-maritime law. In proceedings *in rem*, the standards of *Int'l. Shoe* regarding fairness and substantial justice that govern *in personam* actions are applicable. See *Shaffer v. Heitner*, 433 U.S. 186 (1977).

[179]The physical presence of a defendant in the forum is a sufficient basis for acquiring jurisdiction over him, no matter how brief his stay might be, as long as it is served while present. See *Pennoyer v. Neff*, 95 U.S. 714 (1877).

[180]See *Milliken v. Meyer*, 311 U.S. 457 (1941).

[181]See *Hess v. Pawloski*, 274 U.S. 352 (1927). Under this doctrine, a forum state can legislate that a nonresident

to exercise jurisdiction. Depending on the act of the trustee, permission can be given well in advance of any lawsuit filed and the consent can also be implied); and

- **Minimum Contacts**[182] (i.e., having sufficient dealings or affiliations with the forum jurisdiction which make it reasonable to require the trust/trustee to defend a lawsuit brought in the forum state. If the state has no contacts, ties or relations with the trust or trustee(s), personal jurisdiction cannot be obtained in this manner).[183] The four principles regarding minimum contacts are, that:
  1. The trust's or trustee's activity must be continuous and systematic in the forum jurisdiction, and the cause of action must be related to that activity;
  2. Sporadic or casual activity of the trust or trustee(s) in the forum jurisdiction does not justify the exercise of jurisdiction in a cause of action unrelated to that activity;
  3. If the trust's or trustee's contacts are sufficiently substantial and of such a nature as to make the exercise of jurisdiction reasonable, then *general*[184] jurisdiction may be exercised by the forum over the trust or trustee(s); and
  4. If the trust's or trustee's activity is sporadic or consists only of a single act, then *specific*[185] jurisdiction may be exercised by the forum only when the cause of action arises out of that activity or act.

Unlike subject-matter jurisdiction, once personal jurisdiction is obtained, it can never be lost. And if the trust (or trustee) permits or makes a general appearance, it cannot be later denied. Contrary to the general appearance which constitutes consent, the trust or trustee(s) may avoid personal jurisdiction by making a *special* appearance for the purpose of attacking the forum court's personal jurisdiction,[186] and may even attack, so to speak, subject-matter jurisdiction. Generally, a challenge to subject-matter jurisdiction constitutes consent, a waiver of personal jurisdiction for the purpose of

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motorist using its highways be deemed to have appointed a local official as his agent to receive service of process in any action growing out of the use of the vehicle within the state. But the state must have provided actual notice of this to the nonresident motorist beforehand. The obvious question is whether the trustee is a motorist, and whether the automobile is a vehicle— there is a significant difference. Nevertheless, consent comes in the form of a general appearance.

[182]See *International Shoe Co. v. Washington*, 326 U.S. 310 (1945). Under this doctrine, the trust or trustee who has never set foot in the forum may nevertheless be subject to valid personal jurisdiction so as to be compelled to defend a lawsuit there provided that it/he has minimum contacts with the forum such that would not offend traditional notions of fair play and substantial justice.

[183]The minimum contacts must have been had in the form of purposeful affiliation on the part of the trust or trustee(s). See *Hanson v. Denckla*, 357 U.S. 235 (1958).

[184]This is defined as "[a] court's authority to hear all claims against a defendant, at the place of the defendant's domicile or the place of service, without any showing that a connection exists between the claims and the forum state." Black's Law Dictionary, *supra*. In order for a court to assert general jurisdiction there must be substantial forum related activity on the part of the trust or trustee(s). See *Helicopteros Nacionales de Colombia v. Hall*, 466 U.S. 408 (1984).

[185]This is defined as "[j]urisdiction that stems from the defendant's having certain minimum contacts with the forum state so that the court may hear a case whose issues arise from those [specific] minimum contacts." Black' Law Dictionary, p. 857 (7th ed. 1999).

[186]See *Dickson v. Parker*, 212 P. 42, 59 Cal.App. 778 (1922); and *Brown v. Riner*, 496 P.2d 907.

arguing the merits, but this doctrine does not apply to cases involving Express Trusts over which subject-matter jurisdiction clearly does not exist.[187]

With presence, the trust is created and functioning in "the Territory," doing business under the general common law,[188] not the private international law of the unincorporated banking association. Presence can therefore only be construed to exist where the trust has become a member of the association via residence in a revenue district (indicated by ZIP code) or is engaged in a particular transaction. Even then, the trust or trustee(s) must be "present" by membership or transaction in that particular political subdivision ("State") and given notice "reasonably certain"[189] to reach them (i.e., service of process via either personal service, substituted service, or constructive service) as service by mere publication in a newspaper of general circulation has been held insufficient in such cases.[190] (And, as a side-note, mere physical presence in a courtroom during some phase or proceeding does not constitute an appearance.)[191]

With domicile, the situs of the trust is in the united States of America, designating "the Territory," the Union of states as the land of which the common law is supreme law. Unless the trustee(s), in behalf of the trust, adopts a principal place in the "other Property," establishes a residence in a place subject to the federal jurisdiction with the "intention to make it [its] domicile,"[192] personal jurisdiction is lacking in this respect. It must purposely establish an address directly in a revenue district (e.g., via post office box, or street address) to be liable in this way. But if the trustee(s) contracts with a private mail service provider or carrier, signing "without prejudice," then personal jurisdiction does not attach— this effects an exclusion of any third-party intervenor/overseer, and reserves the obligation to the course of the common law of contracts (i.e., bilateral contracts not trilateral ones).

With permission, it may seem tricky but it is rather simple. Any answer to any presentment from a forum jurisdiction constitutes giving them permission to exercise authority, unless it is specifically a special appearance for the sole purpose of challenging their authority (personal jurisdiction). If the trustee(s) do not answer in general, or subordinate themselves, then consent has not been given. And if the

[187]A challenge to the subject-matter jurisdiction of the court where it is clear on the face of the record that subject-matter jurisdiction is lacking is not inconsistent with a challenge to personal jurisdiction. Moreover, since the court must dismiss on its own motion, an appropriate challenge to subject-matter jurisdiction aids the court in performing its duty. The defendant should therefore be allowed to point out lack of subject-matter jurisdiction without making a general appearance. *Judson v. Superior Court*, 21 Cal.2d 11, 129 P.2d 361 is to the contrary, but it has often been criticized (see 31 Cal. L. Rev. 342; 1 Witkin, Cal. Procedure (1954), § 76, p. 346) and is overruled. *Goodwine v. Superior Court*, 63 Cal.2d 481, 485 (L.A. No. 28464. In Bank. Nov. 4, 1965).

[188]The general law merchant is embraced under general common law, i.e., the original and unique system of commercial law in the American states, in which there is no commerce regulation of Express Trusts accept in connection with income derived from corporate stock and physical franchises under art. I, § 8, cl. 1 and 3 of the Constitution. See William A. Fletcher, *The General Common Law and Section 34 of the Judiciary Act of 1789: The Example of Marine Insurance*, 97 Harv. L. Rev. 1513, 1514 (1984).

[189]*Mullane v. Central Hanover Tr. Co.*, 339 U.S. 306 (1950).

[190]See *Pennoyer*, *supra*; and *Burnham v. Superior Court of California, County of Marin*, 495 U.S. 604 (1990).

[191]See *Austin v. State ex re. Herman*, 10 Ariz.App. 474, 459 P.2d 753.

[192]Black' Law Dictionary, p. 1473 (4th ed. Rev. 1968).

trustee(s) (presumably under properly limited liability) enter into a contract under a forum-selection clause, then the forum selected will have personal jurisdiction. However, there are limitations to what constitute enforceable forum clauses, for if the clause is expressed in fine print, placed in the contract so as to avoid litigation,[193] unreasonable or ambiguous,[194] not "fundamentally fair,"[195] or if the clause could not have been disputed without impunity as a part of a freely negotiated contract, then it is invalid.

And with minimum contacts, the trust must purposely avail itself of benefits and services of the state[196] (e.g., operating a business via license, "owning" property there, contracting with the government there, availing itself of benefits or services of the legal system there—court actions, using state property, utilizing police or fire services, etc.—systematically and continuously, or sporadically but substantially enough so as to warrant the trust or trustee(s) being compelled to come into the forum).[197] I will not get into diversity of citizenship here, though it is wholly important to subject-matter jurisdiction in the federal courts, for it is highly improbable that it would even be necessary to bring it up in such an action, given all of the above "legal weapons" with which the Express Trust is naturally armed.[198]

As a final note, when the Express Trust is taking an action against an outside party, the preferable method is via the Commercial Process, i.e., a private (out of court) legal action instituted under the fundamental rules of commerce/trade (Business). Lawsuits should be regarded as a last resort to secure judicial enforcement of a private administrative judgment, for public suits confer full personal jurisdiction upon the court (taking a claim to a legislative court avails the trust of several benefits and services of that forum, and thereby establishes a substantial minimum contact). Even still, any action for judicial enforcement of a private judgment can be done out of court pursuant to the Commercial Process. In private actions, the maxims of commerce, the foundation of all commercial law and western legal systems, govern—

- **A workman is worthy of his hire**. Exodus 20:15; Lev.19:13; Matt.10:10; Luke 10:7; and II Tim. 2:6. Legal maxim: "It is against equity for freemen not to have the free disposal of their own property."
- **All are equal under the Law**. Law of God — Moral and Natural Law; Exodus 21:23-25; Lev. 24:17-21; Deut. 1:17, 19:21; Matt. 22:36-40; Luke 10:17; and Col. 3:25. Legal maxim: "No one is above the law." "Commerce, by the Law of Nations,

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[193]See *Johnson and Johnson v. Holland America Line-Westours, Inc.*, 557 N.W.2d 475.

[194]See *Deiro v. American Airlines, Inc.*, 816 F.2d 1360, 1364 (C.A.9 (Or.) 1987).

[195]*Carnival Cruise Lines, Inc. v. Shut*e, 499 U.S. 585, 595 (1991); *Hodes v. S.N.C. Achille Lauroed Altri-Gestione*, 858 F.2d 905, 908 (C.A.3 (N.J.) 1988); and *Shankles v. Costa Armatori, S.P.A.*, 722 F.2d 861, 866 (C.A.1 (Puerto Rico) 1983).

[196]See *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286 (1980); *Asahi Metal Industry Co., Ltd. v. Superior Court of California, Solano County*, 480 U.S. 102 (1987); also see Dick Lancial, *Benefits Accepted = Jurisdiction*.

[197]See *Helicopteros*, *supra*; and *Perkins v. Benguet Consol. Min. Co.*, 342 U.S. 437 (1952).

[198]A good case to review regarding the rule of "complete diversity" is *Strawbridge v. Curtiss,* 7 U.S. 267 (1806).

ought to be common, and not to be converted into a monopoly and the private gain of a few."

- **In Commerce Truth is Sovereign**. Exodus 20:16; Ps. 117:2; John 8:32; and II Cor. 13:8. Legal Maxim: "To lie is to go against the mind." Oriental Proverb: "Of all that is good, sublimity is supreme."
- **Truth is expressed by means of an affidavit**. Lev. 5:4-5; Lev. 6:3-5; Lev. 19:11-13; Num. 30:2; Matt. 5:33; and James 5:12.
- **An unrebutted affidavit stands as the Truth in Commerce**. 1 Pet. 1:25; Heb. 6:13-15. Legal Maxim: "He who does not deny, admits."
- **An unrebutted affidavit becomes the Judgment in Commerce**. Heb. 6:16-17. Any proceeding in a court, tribunal, or arbitration forum consists of a contest, or "duel," of commercial affidavits wherein the points remaining unrebutted in the end stand as the truth and the matters to which the judgment of the law is applied.
- **A matter must be expressed to be resolved**. Heb. 4:16; Phil. 4:6; and Eph. 6:19-21. Legal maxim: "He who fails to assert his rights has none."
- **He who leaves the field of battle first loses by default**. Book of Job; and Matt. 10:22. Legal maxim: "He who does not repel a wrong when he can, occasions it."
- **Sacrifice is the measure of credibility**. One who is not damaged, put at risk, or willing to swear an oath on his commercial liability for the truth of his statements and legitimacy of his actions has no basis to assert claims or charges and forfeits all credibility and right to claim authority. Acts 7, Life and Death of Stephen. Legal maxim: "He who bears the burden ought also to derive the benefit."
- **A lien or claim can be satisfied only through rebuttal by counter-affidavit point-for-point, resolution by jury, or payment**. Gen. 2-3; Matt. 4; and Revelations. Legal maxim: "If the plaintiff does not prove his case, the defendant is absolved."

MAINTAINING PROPER I.R.S. RELATIONS

LAST BUT NOT LEAST, due attention must be paid to the Internal Revenue Service, for they are the lawful, legal entity, duly authorized to collect association dues (income taxes) from 14th Amendment citizens and other persons volunteering and availing themselves of the nonpayment of debt "privileges and immunities" under H.J. Res. 192, 12 USC § 95a, and 15 USC, ch. 41, § 1602(c)(d)(e). "They are considered as a debtor/creditor in a social security association (unchartered, unincorporated commune) whereby each person insures everybody else in the association by agreeing never to demand payment for debts. [It is] [u]nder this volunteer arrangement [that] these persons become primarily a U.S. citizen, secondarily a state citizen, 'subject to' [C]lause 1 of the 14th Amendment, while the literal 10th Amendment rights are forfeited."[199]

Persons under this system have only relative rights to life, liberty, and property, as they are converted into "privileges and immunities" and "civil rights". As debtors, they

[199]Brobst et al., *supra*.

have no absolute literal property ownership, for it has thus been converted to mere privilege of possession.[200] Plainly put, IRS taxes serve the function of dues for the privileges and immunities associated with participating in the "federated unincorporated interstate banking association for the *non* 'Payment of Debts.'"[201] What's more, the collection of income taxes is crucial to maintaining order within the association, more so than for any proposed funding of the association.[202]

But that has no bearing on a properly created and administered Express Trust. It is well-settled that a trust, created by parties not availing themselves of such privileges and immunities, is not illegal even if formed for the purposes of limiting or avoiding taxes altogether.[203] Nor is the Express Trust subject to federal excise taxes imposed on corporations.[204] Nor is an Express Trust taxable merely because it possesses all the accessory powers possessed by corporations.[205] Nor can the dignity of its trust instrument be set aside simply because a "tax benefit" results, whether by design or by accident.[206] Frankly, unless it incurs a tax liability in the United States via a valid forum clause in a contract, membership in the unincorporated banking association, becoming an employer, employee, or worker, or corporate entity, deriving income from corporate stocks or physical franchises, accepting other "privileges and immunities" under the 14th Amendment, or availing itself of any other services or benefits of public policy invoking the doctrine of reciprocity, it has nothing to do with the IRS.

However, as it might stand as a beacon of organizational liberty, the IRS has a reasonable interest in making sure the Express Trust example does not upset compliance on the part of the participants in the system, and the IRS, thus, takes every precaution to shoot down trusts of any kind which even hint at having origins lying outside of its jurisdiction, i.e., the "other Property". The IRS also takes every opportunity to construe every instance (however rare) in which such a trust is dismantled in court as being attributable to some purported inherent unlawful nature of non-statutory trusts, going so far as to classify all as "abusive trusts," though any trust (statutory or common-law, express, implied, resulting or constructive) which abuses the fundamental

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[200]"Debts . . . are not the property of the debtors; they are obligations of the debtors, and only possess value in the hands of creditors. With the creditor they are property [absolute][.]" *Jones v. New Pittsburgh Courier Pub*., 364 A.2d 1315, 469 Pa. 157, quoting *In re State Tax on Foreign-Held Bonds*, 82 U.S. 300, 320, 21 L.Ed. 179 (1872). Also see Beale, *supra* at p. 114.

[201]Brobst et al., *supra* at p. 14.

[202]"If . . . government refrains from regulation [i.e., taxes] . . . the worthlessness of the money [i.e., credit] becomes apparent, and the fraud upon the public can be concealed no longer." John Maynard Keynes*, The Economic Consequences of the Peace*, p. 225 (1920 ed.). It has been argued that in 1930s America, with the outcry for quick-fixes as opposed to independent recovery, the public requested (democratically) any "fraud" which might be construed to have occurred, and is therefore a party to it, collaterally.

[203]See *Weeks v. Sibley*, *supra*; and *Phillips v. Blatchford*, *supra*.

[204]See *Eliot v. Freeman*, *supra*.; and *Maine Baptist Missionary Convention*, *supra*.

[205]See *Phillips v. Blatchford*, *supra*; *Gleason v. McKay*, 134 Mass. 419 (1883); *O' v. Somerville*, 190 Mass. 110 (1906); and Opinion of the Justices, 196 Mass. 603, 627 (1908). Also see *The Personality of the Corporation and the State*, 21 L. Qtly. Rev. 365, 370 (Oct. 1905).

[206]See *Edwards v. Commissioner*, 415 F.2d 578, 582, (C.A.10 (Okl.) 1969).

principles upon which equity rests is, technically, abusive. Yet, they never speak of them. The reader should be keen to know how to discern good information from dis- and misinformation.

In the event that the IRS takes an action against a purported "common law trust" or "pure trust," (a.k.a. "poor trust") it is generally a lawful action, actually in response to some unlawful activity on the part of the parties or defect in their relation. And your author has never seen an action taken against a properly drawn Express Trust, i.e., one drafted from the perfected language and form of that "best legal talent" to which the power and superiority of the Express Trust is attributed. Even in those cases, a thorough analysis of jurisdiction, such as the one treated in the previous section, sheds light on the blatant limitations of the IRS's jurisdiction. The fact that they manage to establish subject-matter jurisdiction *and* personal *in rem* jurisdiction attests to the ignorance of the defendants, and indeed, personal jurisdiction usually would never have been obtained without the defendants' unwitting consent.[207] It is no secret that all actions of the IRS are commenced as proceedings in admiralty.[208]

CONCLUSION

THE ONLY WAY to thrive in twenty-first century America is to "own nothing and control everything." And though any trustee is the legal owner of the property in trust, the trustee(s) of Express Trusts do not experience the incidents of *personal* ownership due to properly limited liability via trust instrument and the utter shrewdness of the trustee(s). It is this limited liability that makes the Express Trust equal to a corporation; but it is the flexibility of choice of whether to function in the common law venue with absolute rights in commerce under the general law-merchant or in the Roman civil law venue with only relative rights in commerce under private international law that makes the Express Trust, *inter alia*, far superior and unique. Under the aegis of the Express Trust, the trustee is clothed in a veil impenetrable but from within. This suit of armor is the trust instrument, which molds to the trustee in all his good-faith dealings in behalf of the trust, fully compensating him for his services, privileging his use of trust property, and enabling his exercise of creativity in business endeavors, all without the excessive weight of inquisitorial legislation. When one is trustee, he is in a fiduciary position looked upon with respect for the integrity inherent in the position. This has always been the case, except where the power has been abused. But even so, history is clear that there are far more abuses of power via corporations than Express Trusts.[209]

Given the statistics, and the fact that all governments in twenty-first century America are corporations themselves, it becomes clear that the extensive recognition

[207]In fact, Judge Robert H. Bork, from whose name the phrase "bork'd in the senate" was derived, is reported to have openly acknowledged, during one of his Senate confirmation hearings, that every prisoner in America today is there because he gave his permission to be imprisoned, in one way or another. (Supposedly, this is the reason why the Senators "bork'd" him so badly.)

[208]It is highly recommended that the reader read *Are You Lost At Sea* (1995), available at <http://www.friends-n-family-research.info/FFR/Merrill_AreYouLostAtSea.pdf> (last visited Aug. 10, 2005).

[209]See Chandler, *supra* at p. 10, *et seq*.

given to corporations by the state is simply because of the special-interest relationship between the two. In a way, it is the same relationship between the "John" and the prostitute,[210] and it is therefore in the best interest of the prostitute to take measures to keep the "John" in business in order to indirectly protect her own "job security". This is the cause for the general sentiment towards Express Trusts operating in the statutory world. It is this relationship that has bred the irrational view that "*some* trusts have been created independent of statute; *some* non-statutory trusts are said to have done harm; *therefore* public policy demands that hereafter *all* trusts shall be regulated." The irrationality of this line of reasoning will be more apparent if the syllogism is paraphrased thus: "*some* lawyers have been Presidents of the United States; *some* Presidents are said to have done harm; *therefore* public policy demands that hereafter *all* lawyers shall be prohibited."

The bottom line is that the Express Trust relation is the most flexible means to owning nothing and controlling everything, and when utilized shrewdly, affords its participants with all the ingredients to live well, *naturally*. It is also true that no matter how many arguments are made against the Express Trust, the learned reader will always see through the propaganda and spin, knowing from his own knowledge and independent study that an Express Trust, in reality, can only fail due to some misgiving or impropriety on the part of the trustee— the trustee must also *trust* himself.

[210]Governor Fernald of Maine, in his address to the Maine Legislature in 1909, referring to reformation of the corporation laws said, "[w]hile it is true that the State is receiving large revenue from this source, it is also true that, in a considerable measure, *it is the price of prostitution*. I hope you will take steps to remodel them, along evident lines of reform, thus restoring to Maine her self-respect." [Italics emphasis added.]

SAMPLE FORMS

Asset Purchase Agreement
Assignment
Authorized Representative Contract
Authorized Representative Introduction Letter
Authorized Representative Letter of Authorization
Authorized Representative Limited Power of Attorney
Basic Management Agreement
Bill of Sale
Bonds
Exchange Proposal
IRS Form SS-4 Sample
IRS Form SS-4 (with instructions)
Lease Proposal
Minutes of Meetings
Motor Vehicle Lease Agreement
Notice of Assignment and Instructions for Payment
Private Property Bill of Exchange Contract
Property Management Agreement
Standard Independent Contractor Agreement
Universal Independent Contractor Agreement

What is a PMA

Private Membership Association

SECTION 3

PMA = A Private Membership Association

Since 1803, and a famous Supreme Court case Marbury v. Madison, the Constitution as interpreted by the U.S. Supreme Court, is the Supreme Law of the Land.

If you are a doctor, medical technician, nurse, other health care practitioner, dentist; or if you are in the field of finance, a non-attorney trying to assist others with their legal needs, business owner, any field of human interest, or a homeschooling parent looking to protect your educational activities, a Private Membership Association will allow you to practice with the added protection of the Universal Declaration of Human Rights (UDHR) and our Constitutionally guaranteed Rights.

Over the past several decades, due to favorable rulings, opinions and interpretations by the Supreme Court, the law of the land has highlighted our constitutionally guaranteed rights to conduct business in a PMA, or private membership association. Private membership associations exist under many different titles including PMA, Private Education Association, Private Ministerial Association, Private Health Association, Private Social Club, Private Drinking Club, and many more, When operating under a properly formed PMA, we are operating in the private domain versus the public domain.

In the public domain you must operate under the jurisdiction of the regulatory agencies designed to protect the public. In the private domain you can operate outside the jurisdiction of those same agencies, as long as there is not clear and present danger of substantive evil.

Preamble to the Constitution of the United States of America:

"We the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquility, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America."

The Preamble to the Constitution is an introductory, succinct statement of the principles at work in the full text. It is referred to in countless speeches, judicial opinions, and in a song from Schoolhouse Rock. **Courts will not interpret the Preamble to confer any rights or powers not granted specifically in the Constitution.**

You Can Protect Your Practice and Yourself With

A PMA

or

Private Membership Association

Did You Know?

- Since 1990 over 1,000,000 adverse and disciplinary reports were filed against physicians, dentists, technicians and other health care workers
- Some of the reports were correct, many of the reports were inaccurate, false, or made in error
- Some of these professionals' licenses were ultimately revoked, some even went to prison
- **Regardless of their innocence or guilt, all of them** were reported to and have a permanent record in the **National Practitioner's Data Base (NPDB)** in Washington D.C.
- These records, all entered without allowing any argument or defense whatsoever, can never be removed

What Is the NPD?

- The NPDB (National Practitioner Data Base) is a confidential information clearinghouse created by Congress to improve healthcare and "protect the public"
- No one has access to the NPDB unless you are an "eligible entity"

Protection of the Public?

- The public, who is supposedly being protected, does not have access to the NPDB
- **All** board actions are reported to the data base
- Once the reports are input, they don't ever get deleted
- What results from this program?
- There is no hearing, there is no follow up report of good standing if the charges or reported action are dismissed
- This causes doctors to practice what is called "Defensive Medicine"
- It is the art of performing unnecessary tests simply to "protect the doctor"
- From Jackson Healthcare's ongoing research:
- *Physicians estimate the cost of defensive medicine to be in the $650-$850 billion range, or between 26 and 34 percent of annual healthcare costs in the U.S.*

Legal Background

While not explicitly defined in the Constitution, the Supreme Court has acknowledged that certain implicit rights, such as association, privacy, and presumed innocence, share constitutional protection in common with explicit guarantees such as free speech. Specifically, the Supreme Court has described the right to associate as inseparable from the right to free speech.

The right of association under the Constitution was heavily litigated in the 1950's and 1960's, and association members' rights were consistently upheld by the Court. In fact, the right of association became a cornerstone of the civil rights movement.

In general, members of an association do not fall under the jurisdiction of local, state, and federal governments and corresponding laws and

regulations. The exception to this general rule is when the activities of the private membership association "present a clear and present danger of substantive evil".

A simple example of private associations is drinking clubs in Texas. Since prohibition was repealed in 1933, regulation of the alcoholic beverage industry was delegated to individual states. Some states, such as Texas, allow individual counties and cities to govern the sale of alcohol. As a result, 46 out of Texas' 254 counties are dry, meaning that sale of alcohol is forbidden. However, you can go to virtually any restaurant in the dry counties and simply by joining their private associations or "drinking clubs", they can sell you and other members alcohol even though it is prohibited by local law!

It is important to note that the right to associate is not limited to social or political activities. According to the Supreme Court, this right can be utilized for business activities (e.g. sale of alcohol). Members of a private membership association have the right to private contract under the due process liberty clause of the 5th and 14th Amendments, and states may not pass laws that impair the obligation of a contract.

In Thomas v. Collins, 323 U.S. (an important Supreme Court case) it was determined: *"Great secular causes, with small ones, are guarded. The grievances for redress of which the right of partition was insured, and with it the right of assembly, are not solely religious or political ones. And the rights of free speech and a free press are not confined to any field of human interest".*

Under the guarantee of the First and Fourteenth Amendments of the U.S. Constitution and equivalent provisions of your State Constitution, you have the right to associate with fellow members and offer benefits and services that are outside of the jurisdiction, venue and authority of State and/or Federal agencies. What could come under scrutiny and in some cases be considered a criminal act outside the association can be perfectly legal within the protection of a private association.

Most Common Benefits of Operating Under a Private Membership Association

- Operate a health (or other type of business) association outside the jurisdiction and authority of federal and state government and agencies involving association activities.
- Maintain greater privacy of financial and business affairs of your association activities.
- Greater security of being able to continue operation in a world of changing laws and politics.
- Increased profits due to unrestricted and beneficial structuring and strategies not available to regulated health association.
- Instead of conducting business under a legal loophole, operate under a legal exemption decided by the supreme law of the land, i.e., the Supreme Court decisions interpreting the U.S. Constitution.

Medical Practitioners Work In Fear

Many Restaurants in Texas Have Drinking Clubs

Private Membership Associations Thomas v. Collins, 323 U.S, 516 (1945)

"The idea is not sound therefore that the First Amendments' safeguards are wholly inapplicable to business or economic activity".

Why is a Private Membership Association right for me or maybe you?
A PMA does not need any authority or permission, of any kind whatsoever,

from any government for its creation or in order for it to continue to exist and function.
A PMA is created by and exists upon the contract authority and power that people have reserved for themselves.
PMA members are free to exchange any information whatsoever on any topic they choose and can speak or write about, listen to, or read any information, use or obtain any information, product, or service on any terms agreeable to any member who chooses to provide that information, product, or service within the private membership association.
PMAs are under no general lawful/legal obligation to recognize any statutory title of public competency,
education or training (licensed persons/experts).
Public Law, Regulations and internal Rules of administrative agencies that regulate the public do not generally reach a PMA because they would impair, impede, obstruct or defeat the PMA members' ability to discuss, hear, read or speak about, print, obtain and use things which may be prohibited to be disclosed to or used by the public unless the private membership association commits a nefarious act which means some form of human rights violation or evil act against another human.

A PMA generally falls outside the jurisdiction of Public Law, Regulations and internal Rules of administrative agencies including, but not limited to, the Public Law that created the FDA and other agencies.

A Private Membership Association is men and woman collectively asserting and standing upon their secured perfect rights to assemble and associate; their reserved authority; their pre-existing claim to absolute authority and control over the health of their own body, mind and spirit and rights (hereinafter collectively referred to simply as "rights") A PMA functions by the members acting as people, in their real private character and capacity, "No State can make a law that impairs the obligation of a contract" and therefore is without jurisdiction.

All businesses and industries have the ability to remove the business from the jurisdiction of public law and to implement the protections of operating within the private domain. In todays world, business leaders are not taught

to seek these protections and are educated to operate their business in compliance with and subject to public law. This compliance typically comes in the form of requesting a business license or forming a corporation or an LLC.

The definition of license is “written permission, from a competent authority, to do something that would otherwise be illegal”. Any business operating under a state or county issued business license is operating only under the permission of that governmental entity. If we continue to ask permission to operate our business or continue to ask permission (license) to conduct our own activities, we will be subject to the terms under which that permission is granted, i.e. public law.

Likewise with conducting business as a Corporation, LLC, foundation, etc. A corporation, according to long settled case law, is “a creature of the state and presumed to be operating for the benefit of the public”. You cannot create a corporation upon your own authority, you must petition the state to do it on your behalf. If you could create this entity upon your own authority, it would be a private association. As a creature of the state, the corporations will always be subject to their creator (the State) and regulation of public law. There is a better answer! A Properly Formed PMA!

10 Maxims of Law

SECTION 4

Maxims of Law

There are ten essential maxims or precepts in commercial law.

1. WORKMAN IS WORTHY OF HIS HIRE. The first of these is expressed in Exodus 20:15; Lev. 19:13; Mat. 10:10; Luke 10"7; II Tim. 2:6. Legal maxim: "It is against equity for freemen not to have the free disposal of their own property."

2. The second maxim is "Equality before the law" or more precisely, ALL ARE EQUAL UNDER THE LAW. (God's Law - Moral and Natural Law). Exodus 21:23-25; Lev. 24: 17-21; Deut. 1;17, 19:21; Mat. 22:36-40; Luke 10:17; Col. 3:25. "No one is above the law". This is founded on both Natural and Moral law and is binding on everyone. For someone to say , or acts as though, he is "above the law" is insane. This is the major insanity in the world today. Man continues to live, act, believe, and form systems, organizations, governments, laws and processes which presume to be able to supercede or abrogate Natural or Moral Law. But, under commercial law, Natural and Moral Law are binding on everyone, and no one can escape it. Commerce, by the law of nations, ought to be common, and not to be converted into a monopoly and the private gain of the few.

3. This one is one of the most comforting maxims one could have, and your foundation for your peace-of-mind and your security and your capacity to win and triumph -- to get your remedy -- in this business. IN COMMERCE TRUTH IS SOVEREIGN. (Exodus 20:16; Ps. 117:2; John 8:32; II Cor. 13:8).Truth is sovereign -- and the Sovereign tells only the truth. Your word is your bond. If truth were not sovereign in commerce, i.e., all human action and inter-relations, there would be no basis for anything. No basis for law and order, no basis no accountability, there would be no standards, no capacity to resolve anything. It would mean "anything goes", "each man for himself", and "nothing matters". That's worse than the law of the jungle. Commerce. "To lie is to go against the mind". Oriental proverb: "Of all that is good, sublimity is supreme."

4. TRUTH IS EXPRESSED IN THE FORM OF AN AFFIDAVIT. (Lev. 5:4-5; Lev. 6:3-5; Lev. 19:11-13: Num. 30:2; Mat. 5:33; James 5: 12). An affidavit is your solemn expression of your truth. In commerce, an affidavit must be accompanied and must underlay and form the foundation for any commercial transaction whatsoever. There can be no valid commercial transaction without someone putting their neck on the line and stated, "this is true, correct, complete and not meant to mislead." When you issue an affidavit, it is a two edged sword; it cuts both ways. Someone has to take responsibility for saying that it is a real situation. It can be called a true bill, as they say in the Grand Jury. When you issue an affidavit in commerce you get the power of an affidavit. You also incur the liability, because this has to be a situation where other people might be adversely affected by it. Things change by your affidavit, in which are going to affect people's lives. If what you say in your affidavit is, in fact, not true, then those who are adversely affected can come back at you with justifiable recourse because you lied. You have told a lie as if it were the truth. People depend on your affidavit and then they have lost because you lied.

5. AN UNREBUTTED AFFIDAVIT STANDS AS TRUTH IN COMMERCE. (12 Pet. 1:25; Heb. 6:13-15;) Claims made in your affidavit, if not rebutted, emerge as the truth of the matter. Legal Maxim: "He who does deny, admits."

6. AN UNREBUTTED AFFIDAVIT BECOMES THE JUDGMENT IN COMMERCE. (Heb. 6:16-17;). There is nothing left to resolve. Any proceeding in a court, tribunal, or arbitration forum consists of a contest, or duel, of commercial affidavits wherein the points remaining unrebutted in the end stand as truth and matters to which the judgment of the law is applied.

7. IN COMMERCE FOR ANY MATTER TO BE RESOLVED MUST BE EXPRESSED. (Heb. 4:16; Phil. 4:6; Eph. 6:19-21). No one is a mind reader. You have to put your position out there, you have to state what the issue is, to have someone to talk about and resolve. Legal Maxim: "He who fails to assert his rights has none.)

8. The primary users of commercial law and those who best understand and codified it in Western Civilization are the Jews. This is Mosaic Law they have had for more than 3500 years past which is based upon Babylonian commerce. This one is: HE WHO LEAVES THE BATTLEFIELD FIRST LOSES BY DEFAULT. (Book of Job; Mat. 10:22; This means that an affidavit which is unrebutted point for point stands as "truth in commerce" because it hasn't been rebutted and has left the battlefield. Governments allegedly exist to resolve disputes, conflicts and truth. Governments allegedly exist to be substitutes for the dueling field and the battlefield for so disputes, conflicts of affidavits of truth are resolved peaceably, reasonably instead of by violence. So people can take their disputes into court and have them all opened up and resolved, instead of going out and marching ten paces and turning to kill or injure. Legal Maxim: "He who does not repel a wrong when he can, occasions it".

8. SACRIFICE IS THE MEASURE OF CREDIBILITY (NO WILLINGNESS TO SACRIFICE = NO LIABILITY, RESPONSIBILITY, AUTHORITY OR MEASURE OF CONVICTION). Nothing ventured nothing gained. A person must put himself on the line assume a position, take a stand, as regards the matter at hand. and One cannot realize the potential gain without also exposing himself to thew potential of loss. (One who is not damaged, put at risk, or willing to swear an oath on his commercial liability to claim authority) (Acts 7, life/death of Stephen). for the truth of his statements and legitimacy of his actions has no basis to assert claims or charges and forfeits all credibility and right Legal Maxim: "He who bears the burden ought also to derive the benefit".

9. SATISFACTION OF A LIEN. In commerce a lien or claim can be satisfied in any one of three ways. (Gen. 2-3; Mat. 4; Revelation.).

By someone rebutting your affidavit, with another affidavit of his own, point by point, until the matter is resolved as to whose is correct, in case of non-resolution.

You convene a Sheriff's common law jury, based on the Seventh Amendment, concerning a dispute involving a claim of more than $20. Or, you can use three disinterested parties to make judgment.

The only other way to satisfy a lien is to pay it.

Legal Maxim: "if the plaintiff does not prove his case, the defendant is absolved".

10. So, the tenth maxim of law is: A LIEN OR CLAIM CAN BE SATISFIED ONLY THROUGH REBUTTABLE BY AFFIDAVIT POINT BY POINT, RESOLUTION BY JURY, OR PAYMENT.

Trust Inquiry Worksheet

SECTION 5

Trust inquiry worksheet

What is the name of your pma/trust/foundation?

_____

What is the purpose of your pma/trust/foundation?

_____
_____
_____

What is your vision for your private pma/trust/foundation?

_____
_____
_____

Are you working with products or services?

_____

If service, how do want to interact with them?

_____
_____

If products, how do you intend to sell your product or offer your service?

_____
_____

Why do you want to create a pma/trust/foundation?

_____
_____
_____
_____

.

What benefits do you see with creating a pma/trust/foundation?

_____
_____
_____

Will you be operating in commerce or some kind of contract with people? - Please describe?

_____
_____
_____

If operating in commerce, will you be opening a bank account?

- [ ] Yes
- [ ] No

Do you have a website? - If you don't will you be creating one, or do you need help creating one?

_____
_____
_____

Reach out to find support on creating your... PMA - TRUST - FOUNDATION

SECTION 6

PRESENTED BY: KAUHALE FOUNDATION
KAUHALE.LIFE - 808-278-7912