Trust Cites
from
Massachusetts Court Decisions

TRUSTS

1. What is a trust?

A trust is, "An obligation arising out of a confidence reposed in the trustee, or person who has the legal title to property conveyed to him, that he will faithfully apply the property according to the confidence reposed; in other words, according to the wishes of the creator of the trust."

Beers v. Lyon, 21 Conn. 604.

2. What are the four essential elements to a valid legal trust of personal property?

There are four essential elements of a valid trust of personal property: (1) A designated beneficiary; (2) a designated trustee, who must not be the beneficiary; (3) a fund or other property sufficiently designated or identified to enable title thereto to pass to the trustee; and (4) the actual delivery of the fund or other property, or of a legal assignment thereof to the trustee, with the intention of passing legal title thereto to him as trustee.

Brown v. Spohr, 180 N. Y. 201.

3. Is there any form required to create a trust?

A declaration of trust is not confined to any express form of words, but may be indicated by the character of the instrument.

Kekewich Y. Manning 1 De G. M. & G. 176.

4. What is the one thing absolutely necessary to create a trust?

The one thing necessary to give validity to a declaration of trust-the indispensable thing--I take to be, that the donor, or grantor, or whatever he may be called, should have absolutely parted with that interest which had been his up to the time of the declaration, should have effectually changed his right in that respect, and put the property out of his power, at least in the way of interest.

Bacon, Warrimer v. Rogers, L. R. 16 Eq. 340.

5. How may a party transfer the title to his property to create a trust?

A man may transfer his property, without valuable consideration, in one of two ways; he may either do such acts as amount in law to a conveyance or assignment of the property, and thus completely divest himself of the legal ownership, in which case the person who by those acts acquires the property takes it beneficially or on trust, as the case may be; or the legal owner of the property may, by one or other of the modes recognized as amounting to a valid declaration of trust, constitute himself a trustee, and, without an actual transfer of the legal title, may so deal with the property as to deprive himself of its beneficial ownership, and declare that he will hold it from that time forward on trust for the other person.

Jessel, Richards v. Delbridge, L. R. 18 Eq. 11.

6. Must a trust in real property be in writing?

In all cases where a deed or other instrument of conveyance is absolute on its face, and the

grantor or his assignee seeks to defeat its operation by showing that the deed, though absolute in form, was, in fact, executed upon certain express trusts, the grantee may invoke the protection of the statute of frauds by requiring proof of these alleged trusts to be made in writing.

Allen v. Woodruff, 96 Ill. 11.

7. When a man pays money for an estate and the title is taken in his wife's name, what further must be shown in order to prove a resulting trust?

When the entire consideration for a conveyance is paid by the husband and the legal title is taken in the name of the wife, it must be shown to make out a resulting trust in his favor, that it was intended that she should have no beneficial interest in the estate by way of gift, settlement or advancement.

Carroll, Sigel v. Sigel, 238 Mass. 587.

8. When will a trust be implied?

A trust will be implied, if the intention to create one "can be fairly collected from the instrument." It is of no controlling significance that the will does not in so many words declare the existence of a trust.

Cardozo, In re Security Trust Co. of Rochester, 232 N. Y. 109.

9. Does the word "trustee" after a party's name give notice of a trust?

The rules of law are presumed to be known by all men; and they must govern themselves accordingly. The law holds that the insertion of the word "trustee" after the name of a stockholder does indicate and give notice of a trust. No one is at liberty to disregard such notice and to abstain from inquiry, for the reason that a trust is frequently simulated or pretended when it really does not exist. The whole force of this offer of evidence is addressed to the question, whether the word "trust" alone has any significance and does amount to notice of the existence of a trust. But that has heretofore been decided, and is no longer an open question in this commonwealth.

Foster, Shaw v. Spencer, 100 Mass. 382.

10. Is it possible for a man to be his own trustee?

On principle, it seems to me impossible; for the moment both meet in the same person, there is an end of the trust. He has the legal interest, and all the profits, by his best title. A man cannot be a trustee for himself.

Mansfield, Goodright v. Wells, 2 Douglas 771.

11. In what case can a trustee sue without joining the cestuis que trust?

The general rule is, that in suits respecting trust property, brought either by or against the trustee, the cestuis que trust as well as the trustees are necessary parties. To this rule there are several exceptions. One of them is, that where the suit is brought by the trustee to recover the trust property or to reduce it to possession, and in no wise affects his relation with his cestuis que trust, it is unnecessary to make the latter parties.

Swayne, Carey v. Brown, 92 U. S. 171.

12. Is any interest which the trustee may have for himself in the estate paramount to that of the cestuis que trust?

It is very clear, upon principle of authority, that the estate in the hands of the trustee is bound in equity to discharge the legacies to the other cestuis que trust, before he or his assigns can claim any part of it, if the estate has been diminished by a violation of his duties as trustee. The equities of those to whom he is bound by his assumption of the trust are prior and superior to any which he can create in the trust fund by contract.

Hoar, Belknap v. Belknap, 5 Allen 468.

13. What is a spendthrift's trust?

We do not see why the founder of a trust may not directly provide that his property shall go to his beneficiary with the restriction that it shall not be alienable by anticipation, and that his creditors shall not have the right to attach it in advance instead of indirectly reaching the same right by a provision for a ceasor or a limitation over, or by giving his trustees a discretion as to paying it. He has the entire jus disponendi, which imports that he may give it absolutely, or may impose any restrictions or fetters not repugnant to the nature of the estate which he gives. Under our system, creditors may reach all the property of the debtor not exempted by law, but they cannot enlarge the gift of the founder of a trust, and take more than he has given.

Morton, Broadway Ntl. Bank v. Adams, 133 Mass. 170.

14. Will the law restrict the creation of a trust, the manner of administration of which has not been indicated by law?

A trust may be created which may be perfectly consistent with the law, and yet the law may have pointed out no mode of enforcement; still it would not interpose to prevent it, but would leave its execution to the voluntary action of the trustee. A person may convey his property upon what trust or condition he pleases so that it be not against the law.

Ross v. Duncan, Freeman Chancery (Miss.) 587.

15. What is the difference between a gift inter vivos and a trust?

The rule of courts of equity with regard to gifts inter vivos is, that they will be enforced only when the gift is completed and when nothing remains to perfect the title of the donee. The cases of trusts, however, are not exactly the same; for if the owner of an estate in fee simple, having the legal estate, or who has stock standing in his name, execute a deed declaring himself to be a trustee of the estate or of the stock for the benefit of another, and he delivers that instrument to the cestui que trust, and acts upon it, although no conveyance of the legal estate and no transfer of the stock should take place, still that would probably be sufficient to create a trust.

Price v. Price, 14 Beavan 598.

16. Will the right of dower be prevented from attaching by the creation of a trust estate?

The difficulty in which the courts of equity have been involved, with respect to dowers, I apprehend, originally arose thus: They had assumed as a principle in acting upon trusts, to follow the law; and according to this principle, they ought, in all cases where rights attached on legal es-

tates, to have attached the same rights upon trustees and consequently to have given dower of an equitable estate. It was found, however, that in the cases of dower this principle, if pursued to the utmost, would affect the titles of a large proportion of the estates in the country; for that parties had been acting on, the footing of dower, upon a contrary principle, and had supposed that by the creation of a trust the right of dower would be prevented from attaching.

D'Arcy v. Blake, 2 Schoales v. Lefroy 387.

17. Does the same rule which affects the right of dower in a trust estate affect the right of courtesy?

Many persons had purchased under this idea; and the country would have been thrown into the utmost confusion if courts of equity had followed their general rule with respect to trusts in the cases of dower. But the same objection did not apply to tenancy by the courtesy; for no person would purchase an estate subject to tenancy by the courtesy, without the concurrence of the person in whom that right was vested.

D'Arcy v. Blake, 2 Schoales v. Lefroy 387.

18. Will the court remove a bankrupt trustee?

In my view, it is the duty of the court to remove a bankrupt trustee, who has trust money to receive or deal with, so that he cannot misappropriate it. . . . A necessitous man is more likely to be tempted to misappropriate trust funds than one who is wealthy; and besides, a man who has not shown prudence in managing his own affairs is not likely to be successful in managing those of other people.

Jessel, In re Barker's Trust, 1 Chan. Div. 43.

19. May a trustee deal with the trust estate or the beneficiary in such a way as to make a profit for himself ?

The rule is well established, that trustees and others, sustaining a fiduciary and confidential relation, cannot deal on their own account with the thing or person falling within that trust or relationship. This rule is applied to all persons in whom there is a trust and confidence reposed, which would bring in conflict the interest of the trustee and cestui que trust. The temptation of self interest is too powerful and insinuating to be trusted; and it must be removed by taking away the right to hold the property purchased.

Dennis v. McCagg, 32 111. 373.

20. How does the law consider the trustee's possession of the property?

The actual possession of the trustee is but considered as that of the person beneficially entitled; indeed the estate of the trustee exists entirely for the benefit of the cestui que trust. Where the trust express, as in this case it is, there can be no adverse possession between the trustee and the cestui que trust. . . . A trust is not, as it was formerly held, a chose in action but a present interest, an estate in possession.

Miller v. Bingham, 36 N. Car. 423.

21. Has the trustee a claim against the estate for expenditures he makes for the benefit of the estate?

While persons dealing as creditors with the trustee must look to him personally, and not to the trust estate, yet where the estate has received the benefit of expenditures procured to be made for it by the trustee, and it has not in any way borne the burden of these expenditures properly chargeable to it, and to fasten the charge upon it will do it no wrong, but simply cause it to pay what it is liable for the trustee, or would be liable for if he had paid it, or should pay it, and because of the insolvency or nonresidence of the trustee, our tribunals cannot afford the creditor a remedy for his demand, he may proceed directly against the trust estate, and assert against it the demand the trustee could maintain, if he had paid or should pay the claim and should himself proceed against the trust estate.

Campbell, Norton v. Phelps, 54 Miss. 467.

22. Is the trust property subject to the debts of the beneficiary?

The rule of public policy which subjects a debtor's property to the payment of his debts, does not subject the property of the donor to the debts of his beneficiary, and does not give the creditor a right to complain that, in the exercise of his absolute right of disposition, the donor has not seen fit to give the property to the creditor, but has left it out of his reach.

Morton, Broadway Ntl. Bank v. Adams, 133 Mass. 170.

23. To whom does a person who deals with a trustee look for payment?

Persons dealing with a trustee must look to him for payment of their demands, and that ordinarily, the creditors have no right to resort to the trust estate to enforce his demand for advances made or services rendered for the benefit of the trust estate. But while this is the rule, there are exceptions to it, and where expenditures have been made for the benefit of the trust estate, and it has not paid for them, directly or indirectly, and the estate is either indebted to the trustee, or would have been if the trustee had paid, or would be if he should pay the demand, and the trustee is insolvent or non-resident, so that the creditor cannot recover his demand from him, or will be compelled to follow him to foreign jurisdiction, the trust estate may be reached directly by a proceeding in chancery.

Campbell, Norton v. Phelps, 54 Miss. 467.

24. May the trustee be reimbursed for payments he is obliged to make in the interest of the estate?

Generally the trustee alone must be looked to. He stands between the creditor and the estate. He represents the estate and deals for it. He is entitled to be reimbursed out of the trust estate for all disbursements rightfully made by him on account of it, and creditors must get payment from him; but when they cannot do that, and it is right for the trust estate to pay the demand, and it owes the trustee, or would owe him if he had paid or should pay the demand, the rule founded in policy, which denies the creditor access to the trust estate, yields to the higher considerations of justice and equity, and, in order that justice may be done, the creditors may be substituted as to the trust estate, to the exact position which the trustee would occupy if he had paid or should pay the demand and seek to obtain reimbursement out of the estate.

Campbell, Norton v. Phelps, 54 Miss. 467.

25. Does the court of equity regard the cestui que trust or the trustee as the owner of the trust property?

As courts of equity regarded the cestui que trust as the true and beneficial owner of the estate, to whose uses, according to the terms of the trust, the legal title was made subservient, so in its eyes, the estate of the cestui que trust came to be invested with the same incidents and qualities which in a court of law belonged to a legal estate so far as consistent with the preservation and administration of the trust. This was by virtue of a principle of analogy, adopted because courts of equity were unwilling to interfere with the strict course of the law, except so far as was necessary to execute the just intentions of parties, and to prevent the forms of the law from being made the means and instrument of wrong, injustice and oppression.

Matthews, Freedman's Co. v. Earle, 110 U. S. 710.

26. Should a trustee become bankrupt will the trust property in his hands be subject to general administration?

An executor authorized to carry on a business, who carries it on, he is liable for every shilling on every contract he enters into; besides that, if he becomes bankrupt, the persons who have trusted him have a right to say that that portion of the trust estate which was committed to him for the purpose of carrying on the business shall not be the subject of general administration.

Bacon, Owen v. Delamere, L. R. 15 Eq. 134.

27. Is the cestui que trust ever permitted to retain possession of the trust property?

There may be cases in which it may be plain from the nature of the property that the testator could not mean to exclude the cestui que trust for life from the personal possession of the property, as in the case of a family residence. There may be very special cases in which this court would deliver the possession of the property to the cestui que trust for life, although the testator's intention appeared to be that it should remain with the trustees as where the personal occupation of the trust property was beneficial to the cestui que trust, there the court taking means to secure the due protection of the property for the benefit of those in remainder, would, in substance, be performing the trust according to the intention of the testator.

Tidd v. Lister, 5 Maddock 429.

28. How must a trustee conduct the business of the estate?

It seems to me that on general principles a trustee ought to conduct the business of the trust in the same manner that an ordinary prudent man of business would conduct his own, and that beyond that there is no liability or obligation on the trustee. In other words a trustee, is not bound because he is a trustee to conduct business in other than the ordinary and usual way in which similar business is conducted by mankind in transactions of their own. It never could be reasonable to make a trustee adopt further and better precautions than an ordinary prudent man of business would adopt, or to conduct the business in any other way. If it were otherwise, no one would be a trustee at all.

Jessel, Speight v. Gaunt, 22 Ch. Div. R 727.

29. May a trustee employ an agent in the transaction of the trust business?

I wish most emphatically to say that if trustees are justified by the ordinary course of business in employing agents, and they do employ agents in good repute and whose fitness they have no reason to doubt, and employ those agents to do that which is in the ordinary course of their

business, I protest against the notion that trustees guarantee the solvency or honesty of the agents employed. Such a doctrine would make it impossible for any man to have anything to do with a trust.

Lindley, Speight Y. Gaunt, 22 Ch. Div. R. 727.

30. When a trustee acts through an agent is he responsible for losses which might occur?

Courts of law, and equity too, are more strict as to executors, but where trustees act by other hands, either from necessity, or conformable to the common usage of mankind, they are not answerable for losses.

There are two sorts of necessities: First, Legal necessity; second, Moral necessity.

As to first, a distinction prevails where two executors join in giving a discharge for money, and one of them only receives it, they are both answerable for it, because there is no necessity for both to join in the discharge, the receipt of either being sufficient; but if trustees join in giving a discharge, and one only receives, the other is not answerable, because his joining in the discharge was necessary.

Second, Moral necessity, from the usage of mankind. If trustee acts as prudently for the trust as for herselves, and according to the usage of business.

If trustee appoints rents to be paid to a banker at that time in credit, and the banker afterwards breaks, the trustee is not answerable.

Hardwicke, Ex parte Belcheir, Ambler 218.

31. If a trustee keeps trust money in his own hands and it is stolen is he responsible for it?

I do not know that a bailee, executor, administrator, or trustee, are bound to keep goods always in their own hands. They are to keep them as their own, and take the same care; if therefore a man lodged trust money with a banker, if lost in many cases the court has discharged the trustee, especially if lost out of the banker's hands by robbery.

Jones v. Lewis, 2 Ves. 240.

32. Must the trustee keep the cestui que trust advised as to what is being done with the estate?

It is no part of the duty of a trustee to assist his cestui que trust in mortgaging, or, as Lord Justice Lindley added "in squandering or anticipating his fortune," Low v. Bonveni (1891) 3 Ch. 82, but a trustee is bound to give his cestui que trust proper information as to the investment of the trust estate, and where the trust estate is invested on mortgage, it is not sufficient for the trustee merely to say, "I have invested the trust money on a mortgage," but he must produce the mortgage deeds, so that the cestui que trust may thereby ascertain that the trustee's statement is correct, and that the trust estate is so invested.

Chitty, In re Tillott, L. R. (1892) 1 Chancery 86.

33. Can a trustee lend an infant's money on private security ?

It was never heard of that a trustee could lend an infant's money on private security. This is a rule that should be rung in the ears of every person who acts in the character of trustee, for such an act may very probably be done with the best and honestest intention, yet no rule in a Court of Equity is so well established as this.

Holmes v. Dring, 2 Cox E. Cas. 1.

34. Is a trustee held to a very high degree of care in making investments?

The rule in general terms is, that a trustee must in the investment of the trust fund act with good faith and sound discretion, and must, as laid down in Harvard College v. Amory, 9 Pick. 446, at page 461, "observe how men of prudence, discretion, and intelligence manage their own affairs, not in regard to speculation, but in regard to the permanent disposition of their funds, considering the probable income, as well as the probable safety of the capital to be invested.

Field, Dickinson, Appellant, 152 Mass. 184.

35. Is a trustee permitted to speculate with the trust funds?

My own judgment, after examination of the subject, and bearing in mind the nature of the office, its importance, and the considerations which alone induce men of suitable experience, capacity, and responsibility to accept its usually thankless burden, is, that the just and true rule is, that the trustee is bound to employ such diligence and such prudence in the care and management, as in general prudent men of discretion and intelligence in such matters employ in their own like affairs.

This necessarily excludes all speculation, all investments for an uncertain and doubtful rise in the market, and, of course, everything that does not take into view the nature and object of the trust, and the consequences of a mistake in the selection of the investment to be made.

Woodruff, King v. Talbot, 40 N. Y. 76.

36. May the cestui que trust follow the trust funds in a case where the trustee has converted them?

Where a trustee converts the fund, the cestui que trust has a right to follow the fund and take it in its changed shape; as where a guardian invests the ward's money in the purchase of land, the ward may elect to have the land.

Taylor v. Kelly and Others, 56 N. Car. 240.

37. Is the trustee's duty to preserve the trust funds or to increase them?

It, therefore, does not follow, that, because prudent men may, and often do, conduct their own affairs with the hope of growing rich, and therein take the hazard of adventures which they deem hopeful, trustees may do the same, the preservation of the fund, and the procurement of a just income therefrom, are primary objects of the creation of the trust itself, and are to be primarily regarded.

Woodruff, King v. Talbor, 40 N. Y. 76.

38. If the trustee makes a profit from an investment of the trust funds is the cestui que

trust entitled to the profit?

The employment in trade is unwarrantable; but if it turns out to have been profitable the cestui que trust has a right to follow the money, as it is said, into the trade. In such a case, the trade profits have in fact been produced by the employment of the money of the cestui que trust; and it would be manifestly unjust to permit the trustee to rely on his own misconduct in having exposed the funds to the risk of trade, as a reason for retaining the extra profits beyond interest for his own benefit. Even where no such extra profits have been made the cestui que trust is in general at liberty to charge his trustee, who has allowed the trust money to be employed in trade, with interest at five per cent, that being the ordinary rate of interest paid on capital in trade.

Cranworth, Robinson v. Robinson, I Deg. M. & G. 247.

39. What is the rule of the election of a cestui que trust to take advantage of the trustee's investment?

The rule is perfectly well settled, that a cestui que trust is at liberty to elect to approve an unauthorized investment and enjoy its profits, or to reject it at his option; and I perceive no reason for saying, that where the trustee has divided the fund into parts and made separate investments, the cestui que trust is not at liberty on equitable as well as legal grounds, to approve and adopt such as he thinks it for his interest to approve.

Woodruff, King v. Talbot, 40 N. Y. 76.

40. If a trustee of a charitable fund is guilty of a breach of trust can the person damnified have recourse against the trust funds?

It seems to have been thought that if charity trustees have been guilty of a breach of trust, the person damnified thereby has a right to be indemnified out of the trust fund. That is contrary to all reason, justice, and common sense. Such a perversion of the intention of the donor would lead to most inconvenient consequences. The trustees would in that case be indemnified against the consequences of their misconduct, and the real object of the charity would be defeated. Damages are to be paid from the pocket of the wrongdoer, not from a trust fund.

Campbell, Heriot's Hospital v. Ross, 12 C. & F. 506.

41. What are the essentials of a trust agreement whereby the beneficial interest is transferable?

By the declaration of trust the plaintiff declared that they held the real estate and all other property at any time received by them thereunder subject to the provisions thereof, "for the benefit of the cestuis que trust (who shall be trust beneficiaries only) without partnership, association or any other relation whatever interesse" upon trust to convert the same into money and distribute the net proceeds to the persons then holding the trustees' receipt certificates-the time of distribution being left to the discretion of the trustees, but not to be postponed beyond the end of twenty years after the death of specified persons then living. In the meantime the trustees were to have the powers of owners. They were to distribute what they determined to be fairly distributable net income according to the interests of the cestui que trust but could apply any funds in their hands for the repair or development of the property held by them, or the acquisition of other property, pending conversion and distribution. . . . Then followed a more detailed statement of the power of the trustees and provision for their compensation, not exceeding one per cent of the gross income unless with the written consent of a majority in interest of the cestui que trust.

Holmes, Crocker v. Malley, 249 U. S. 223.

42. What is known as a Massachusetts trust?

(Continuing No. 41.) A similar consent was required for the filling of a vacancy among the trustees, and for a modification of the terms of the trust. In no other matter had the beneficiaries any control. The title of the trust was fixed for conveniences as The Wachusett Realty Trust.

The declaration of trust on its face is an ordinary real estate trust of the kind familiar in Massachusetts unless in the particular that the trustee's receipt provides that the holder has no interest in any specific property and that it purports only to declare the holder entitled to a certain fraction of the net proceeds of the property when converted into cash and meantime to income.....

There can be little doubt that in Massachusetts this arrangement would be held to create a trust and nothing more. "The certificate holders . . . are in no way associated together, nor is there any provision in the (instrument) for any meeting to be held by them. The only act which (under the [declaration of] trust) they can do is to consent to an alteration . . . of the trust," and to the other matters that we have mentioned.

They are confined to giving and withholding assent, and the giving or withholding it "is not to be had in a meeting, but is to be given by them individually." "The sole right of the cestuis que trust is to have the property administered in their interest by the trustees, who are the masters, to receive income while the trust lasts, and their share of the corpus when the trust comes to an end."

Holmes, Crocker v. Malley, 249 U. S. 223.

43. Have the holders of transferable interests in a Massachusetts trust any control over the trustees?

By the terms of the indenture of trust the property contributed by the certificate holders, or that bought with money contributed by them (the original trust property could be acquired in both ways by the terms of the indenture of trust) was to be held by the trustees in trust to pay the income to the holders of the certificates, and on the termination of the trust to divide the trust fund or the proceeds thereof among them. The certificate holders are throughout called "cestuis que trustent." The certificate holders or "cestuis que trustent," are in no way associated together, nor is there any provision in the indenture or to a termination of it before the time fixed in the deed. But they cannot force the trustees to make such alteration, amendment or termination.

Loring, Williams v. Milton, 215 Mass. 1.

44. What is the interest which holders of transferable shares have in the trust property in a Massachusetts trust?

(Continuing No. 43.) And the giving or withholding of consent by the cestuis que trust is not to be had in a meeting, but is to be given by them individually. As we have said, no meeting of the cestuis que trust for that or any other purpose is provided for in the trust indenture. The trustees of the Boston Property Trust have a right to sell the trust securities and reinvest the proceeds and also a limited power to borrow on the security of the trust property. The certificate holders or "cestuis que trustent" as they are called in the trust deed, have a common interest in precisely the same sense that the members of a class of life tenants (among whom the income of a trust fund is to be distributed) have a common interest, but they are not socii, and it is the trustees, not the certificate holders, who are masters of the trust property. The sole right of the ces-

tuis que trustent is to have the property administered in their interest by the trustees, who are the masters, to receive income while the trust lasts, and their share of the corpus when the trust comes to an end. (It is plain that it is a trust and not a partnership.)

Loring, Williams v. Milton, 215 Mass. 1.

45. What is the difference between a Massachusetts trust and a partnership?

The respondent is a Massachusetts real estate trust, a form of business organization which is not uncommon in that State and is very uncommon elsewhere. Its character is to be determined by the law of Massachusetts where it is located. The legal character of trusts resembling the respondent has several times arisen in Massachusetts courts generally upon questions of taxation, and the court has been called upon to decide whether they were to be taxed as partnerships, or as ordinary trusts. In some cases, such organizations have been held to be partnerships, and in others to be strictly trusts. The distinction between the two turns upon the provisions of the trust agreement or declaration. In cases where by the declaration of trust, the shareholders are given substantial control of the management of the trust property, the trust is held to be a partnership; in cases where shareholders have no such control, the trust is held, for the purposes of taxation, to be of the same sort as the usual testamentary trust, and not to be a partnership.

Morton, In re Associated Trust, 222 Fed. 1012.