

CORPUS JURIS SECUNDUM NOTES

CJS 90 Trusts, Section 162 Intention of Creator or Settlor

Footnote 18: Violation of intent; substitution of discretion: "Neither court nor beneficiary nor legislature is competent to violate settlor's intent and substitute its discretion for that of settlor"- Fidelity Union Trust Co. v. Price....."

Footnote 18 it further says, "Intent as law of trust: The intent, or intention, of the settlor of the trust is the law of the trust."

CJS 90 Trusts, Section 162 Intention of Creator or Settlor: Footnote 18. Rights created; powers reserved: "(1) In determining what rights are created by a trust instrument, the intent of the creator is controlling."

CJS 90 Trusts, Section 162 Rights created; powers reserved "(1) In determining what rights are created by a trust instrument, the intent of the creator is controlling. ...(2) In interpreting a trust to determine what rights are created or what powers are reserved, intent of settlor is controlling."

Book 90 CJS Trusts: Section 164 Construing Instruments Together - Instrument exercising power of appointment. "Where a trust agreement provides for a power of appointment, the instrument exercising the power is read into the agreement."

Book 90, Trusts, section 173 Purposes of Trust: Footnote 75 states: "The intent and purpose of the settlor of the trust is the law of the trust."

CJS Book 90 "Trusts" Section 203 Merger of Estates: "As a general rule, where the legal and equitable estates in trust property unite in the same person, there is a merger of such estates and the trust is terminated." However, a merger does not take place until the legal and equitable titles vest in the same person; and it is essential that the equitable interest of no other person shall intervene." "Moreover, the legal and equitable estates must be coextensive and commensurate with each other, or at least the legal estate must be more extensive or comprehensive than the equitable estate. Furthermore, even where the legal and equitable titles are both vested in the same person equity will under certain conditions refuse to recognize a merger which might well exist in law, as where such result would be contrary to the intention of the trustor and would destroy a valid trust."

: Corpus Juris Secundum Book 90 "Trusts", Section 161, Rights of Construction states: "It is a rule of equity that once a trust is created it is thereafter to be treated as a trust."

Trust CJS 90, 2000 ed Sec. 205 Intention of creator or Settlor. The primary, or cardinal, rule in the construction of trusts is that the court must, if possible, ascertain and effectuate the intention of the creator, so far as it appears reasonably certain and consistent with rules of law, or consonant with the limitations of law, and unless forbidden by law, public policy, or good morals. The intention of the creator controls in the construction of trusts or the intention governs or prevails, when it is not inconsistent, or in conflict, with established rules or principles of law or some positive rule of law, or public policy. A construction enabling the trustees, in their discretion, to frustrate, rather than carry out, the settlors intention will not be adopted unless the language and tenor of the trust instrument admit of

CORPUS JURIS SECUNDUM NOTES

no other construction. The construction of the trust instrument depends on the trustors intent at the time of the execution, as shown by the face of the document, and not on any secret wishes, desires, or thoughts after the event. When construing a trust instrument, a court will put itself as far as possible in the position of the grantor, in an effort to construe any uncertain language used by the grantor in such a way as shall give force and effect to his or her intention. The quest is to determine the meaning of what the grantor said and not to speculate upon what he or she meant to say. The grantors intent is to be found, if possible, within the trust instrument itself. When the trust instrument is unambiguous, the express language of a trust guides the court in determining the intentions of the settlor. The language of the instrument may have a meaning controlled by context and surrounding circumstances. the scheme of distribution, and the facts and circumstances surrounding a trust documents execution, are also factors in determining intent. When an intention clearly appears on the face of the instrument, the courts should not defeat that intention by any rules of grammar or rhetoric. Rules for determining intent are the same for trusts as for wills.

CJS Book 90 - Trusts: 822 page Section 422 Enforcing Execution or Performance of Duties of Trust:

“Where the trust has been declared or established or the trustee has accepted the trust, equity, as long as it is possible for it to do so, will not permit the trustee to defeat the trust by his wrongful acts, or failure or refusal to act, but it will enforce the execution or performance of the trust. Equity will not compel a trustee to take on himself the burdens of a trust; but where the trust has been declared or established, or the trustee has accepted the trust, equity, as long as it is possible for it to do so, will not permit the trustee to defeat the trust by his wrongful acts, or failure or refusal to act, but will afford relief by compelling a faithful execution of the trust for the preservation and enforcement of rights depending on and derivable from it, even though the directions contained in the instrument creating the trust may seem to be fanciful or unwise, provided the person seeking the execution of the trust complies with any conditions precedent imposed by the trust instrument. Thus, a court of equity may, in a proper case, compel a trustee to make payments to the beneficiaries, to apply the trust fund or property to the purposes for which the trust was created; to refund money misappropriated; to transfer or convey the trust property; and properly execute a deed therefore; or to make a sale of the trust property according to the terms of the trust; and it may compel the execution of a power in trust. Similarly, relief will be afforded in equity against a trustee who attempts to hold the property and disclaim the trust, or who refuses to take proper steps for the protection of the trust property against adverse claims. Equity will not, however, force a trustee to do an act with respect to the trust property which he cannot do without violating the directions of the instrument creating the trust, and subjecting himself to liability; nor will it compel him to assume additional burdens not provided for by the trust itself, unless imposed by law. The court may construe an instrument creating or declaring a trust, and, if necessary, reform it to conform to the settlor’s intentions; but only the trust actually created may be enforced, and not such a trust as might or should have been created.” Action at law. “The equitable right of the beneficiary of a trust may not be enforced by an action at law against the trustee. An action at law will lie, however, against a trustee in favor of a cestui que trust to recover money due and available to the cestui from the trust estate, where the amount thereof is certain.”

CORPUS JURIS SECUNDUM NOTES

See CJS 90 Trusts Section 421 Establishment of Existence of Trust. Where necessary for the protection of the rights or interests of a cestui que trust, either under an express trust in his favor, or under an implied trust, equity will come to his aid by establishing and enforcing the trust, in the absence of any equitable reason why that should not be done. A bill in equity will not lie, however, for the acts given through defendant denies its existence, although a trust may be declared and the bill retained for further direction where the circumstances make such procedure proper; and, where the question whether an implied trust has arisen out of a particular transfer or transaction can be determined by only subsequent events, a suit for the establishment or enforcement of the trust will not lie pending such determination. The power of an equity court is limited to the establishment and enforcement of trusts, and does not extend to their creation; thus equity cannot be invoked to perfect an imperfect gift by creating a trust, where the words employed are insufficient in themselves to have such effect, although the assertion of, and failure to establish, a gift do not prevent a party from procuring the enforcement of a valid trust arising out of other circumstances. As independent on existence of equitable grounds. A trust may be established and enforced only on grounds of equity and good conscience, and, in the absence of an express trust, a sufficient contract, or other strong equitable circumstances requiring the intervention of a court of equity, a trust will not be impressed on property. No trust will be established or enforced where it would be inequitable to do so. Courts of equity do not enforce or impose penalties or punish persons for their wrongs in the administration of trusts, but only furnish the adequate means of redress when the law fails to do so.

CJS 90 Trusts Section 430: Persons Entitled to Enforce Trust: A trust may be enforced, or the trust fund or property protected, by a suit in equity by the trustee, or in his right, or, as against the trustee or his successor in interest, by the cestui que trust, or his heirs, or a purchaser of the equitable title from him, or some other person interested in the execution of the trust. Where the trustees neglect to defend their legal title to the trust property the cestui que trust may do so; and the cestui may sue to remove a cloud on the title, although the trust deed gives the trustee uncontrolled discretion in executing the trust. On the other hand, a court will not lend its aid in such a manner as to result in the transfer of the res of a trust to a person other than the beneficiary thereof; where such transfer is contrary to the intention of the creator of the trust, and where such transfer might subject the transferee to penalties, irrespective of whether the transferee had turned the trust res over to the beneficiary. Voluntary payments. The rule of law that money voluntarily paid under a claim of right, with full knowledge of the facts on the part of the one making the payment, cannot be recovered back unless there is fraud, or concealment, or compulsion by the party enforcing the claim, has been held to have no application where money erroneously paid was held on a trust for the benefit of others who had no part in its erroneous delivery and payment by the trustee.

CJS 90 Trusts Section 454 (b) Equity Jurisdiction: The law is well settled that a court of equity has jurisdiction of all questions relative to the establishment, enforcement, and protection and preservation of a trust on real or personal property, especially where the rights or interests of minors are involved. While it has been said that the trusts which equity enforces are mainly private trusts arising from contracts express or implied, all trusts are within equity's jurisdiction, whether express or implied, and irrespective of whether they are either direct or constructive, created by the parties or resulting by

CORPUS JURIS SECUNDUM NOTES

operation of law. The existence of fraud is not required to confer jurisdiction on an equity court when the circumstances are such as to require its intervention. It has been declared that it is ordinarily on the trust rather than on the trustee as an individual that a court of equity acquires jurisdiction to enforce a trust.

Book 90, Trusts, section 173 Purposes of Trust: Footnote 75 states: "The intent and purpose of the settlor of the trust is the law of the trust."

Trusts Book 90, Section 247 Duties and Liabilities

Footnote 12. Secret Trust: The fact that trust might have been a secret trust in so far as trustee was concerned does not excuse trustee from duty of executing the trust as soon as its existence is made known to trustee. – *Steiner v. Amsel*, 112 P.2d 635, 18 Cal. 2d 48.

Footnote 27. Particular Duties: A trustee owes duty of loyalty to cestui que trust and duties to keep and render accounts, give cestui que trust information on request, permit inspection of trust records and property, not to commingle trust property with trustee's property, to make trust res productive, and to pay over trust income to cestui que trust. – *Hill v. Irons*, 109 N.E. 2d 699, 92 Ohio App. 141, reversed on the other grounds 113 N.E. 2d 243, 160 Ohio St. 21 – *Homer v. Wullenweber*, 101 N.E. 2d 299, 89 Ohio App. 255.

Trusts Book 90, Section 273. Deposits a. In general b. Form or manner of deposit

a. In general. A trustee may deposit the trust funds in a bank or similar institution for safe-keeping, without court authorization; and, under some statutes, in some cases, it is his duty to deposit the funds in bank, or he may be required to do so by order of court. In the selection of a depository for trust funds and in determining whether or not to allow trust funds to remain in a depository, a trustee must exercise good faith, reasonable diligence, and due care, or that degree of care which prudent men use in the direction of their own affairs, and conform to any restrictions or limitations as to the depository provided in the trust instrument. If a trustee, in making a deposit of trust funds, exercised good faith and reasonable diligence and prudence in selecting a responsible bank or similar institution, he is not liable for a loss due to the failure of such depository, and in some jurisdictions this rule is in effect prescribed by statute. However, as a general rule, a trustee is personally liable for money deposited by him in a bank which becomes insolvent, unless it appears that he was not negligent in so doing; and he may be held liable for a resulting loss if he deposits trust funds, or permits them to remain, in a bank or institution of doubtful solvency, which fact he knew, or might have known by the use of ordinary or reasonable care and diligence. This rule, however, has no application where the trust funds are deposited, or the deposit continued, in a bank of known or doubtful solvency by consent of the beneficiaries of the trust, but the consent of a majority of the beneficiaries of the trust will not authorize the deposit of a dissenting beneficiary's interest in the trust funds.

CJS, Book 90 Trusts, Section 273 Deposits, Footnote 86: Debtor-Creditor Relationship: "If a trustee places trust funds in a bank or other institution in his own name to his individual credit, he thereby become a debtor of the estate and a creditor of the bank. - *In re Stafford*, 11 Barb., N.Y. 353."

CORPUS JURIS SECUNDUM NOTES

CJS, Book 90 Trusts, Section 275 A trust is represented by a trustee, and a trustee who acts in good faith and within the scope of the powers conferred by the instrument creating the trust, as such, may enter into valid enforceable contracts and create contractual obligations enforceable against the trust estate. A trust is represented by a trustee. Within the limits of his powers, he may enter into valid enforceable contracts, and may create contractual obligations enforceable against the trust estate. Accordingly, the trust estate may be held liable for expenses for goods, supplies, and services used or employed in the carrying on of a business authorized under the trust agreement; expenses for the preservation, maintenance, or care of the trust estate; expenses which are incurred in the administration and carrying out of the trust; or for expenses in carrying out the trust which was created for the support and maintenance of the cestui que trust.

Book 90, Trusts - See Section 275 Contractual Obligations in General. (See Footnote 24.): A trustee cannot create a lien on a trust estate in favor of a creditor, or charge the trust estate even by his contract, without express authority given by the instrument creating the trust.

CJS Book 90 Trusts, Section 275 (Footnote 47) Mode of dealing: A trustee who actually deals with his trust in the name of another, or by means of an agency which he himself controls, will be deemed to have transacted the business in his individual name and as an individual. In re Boschulte's Estate, 264 N.W. 881, 130 Neb. 284.

CJS Book 90 Trusts, Section 472. Judgment or Decree, and Enforcement - a. In General - General rules govern the judgment or decree in a suit to establish and enforce a trust. ESTOPPEL TO OBJECT TO JUDGMENT: "Persons who have, with notice, participated in a trustee's breach of trust are estopped to assert, against a judgment requiring them to account to the beneficiaries, that it authorizes payment to the latter enforce the time provided by the trust deed for distribution."

CJS 90 Trusts, Section 437: Following or Tracing into Products or Substitutes: "The cestui que trust may follow the trust property through any change in form or species and have the trust attached to the property in its new form; thus, the proceeds which the trustee has received for the trust property may be claimed as subject to the trust."

....**Bank accounts:** "When trust money has been deposited in a bank, the trust attaches to the account or debt created by the deposit, which the cestui que trust may enforce, as long as the fund remains unwithdrawn; and if the bank, or a third person, with notice of the trust receives money from the account, as the private property of the trustee, it may be recovered from the bank or the third person by the cestui que trust."

CJS 90 Trusts, Section 438: - Commingling of Trust Funds or Property – a. In General. "Where trust property is commingled with the property of the trustee, the entire commingled fund or property will be treated as subject to the trust, unless the trust property may be separated from the rest."

CJS 90 Trusts, Section 349 Cestui Que Trust's Rights of Election and Waiver a. Election between personal liability of trustee and pursuit of res b. Election between original property, or product, or substitute c. Election between lien on, and ownership interest in, new property. A. Election between

CORPUS JURIS SECUNDUM NOTES

Personal Liability of Trustee and Pursuit of Res. “As a general rule, where trust property has been diverted, and may still be traced, the cestui que trust has an election to either follow the res or to hold the trustee personally liable for the breach of trust, and the trustee is without power to deprive the cestui que trust of such option. If the cestui que trust has exercised his election, it is error to deny the relief sought and make a different election for him; but the cestui que trust is bound by an election one way or the other. Although there is some authority to the contrary, it is usually held, unless the cestui has proceeded against the trustee personally before he knows that there is property into which the trust funds can be traced, that if the cestui que trust has first elected to hold the trustee personally liable, he cannot thereafter follow the res, while on the other hand, if he has first sought to follow the res, he cannot thereafter hold the trustee personally responsible. However, a previous suit, not to hold the trustee personally liable for breach of trust, but simply to establish the existence of the trust and the amount thereof, does not prevent the cestui que trust from following the trust property.” Footnote 99: Claiming as general creditor on insolvency of trustee: If the cestui que trust elects to prove his claim as a general creditor, he may not thereafter elect to enforce his equitable right to follow the trust property.

CJS 90 Trusts Section 454 Jurisdiction, b. Equity Jurisdiction

(1) In General

A court of equity has jurisdiction of all questions relative to the establishment, enforcement, and protection and preservation of all trusts. [I suggest reading this entire section which was too long to post here.]

The law is well settled that a court of equity has jurisdiction of all questions relative to the establishment, enforcement, and protection and preservation of a trust on real or personal property, especially where the rights or interests of minors are involved. While it has been said that the trusts which equity enforces are mainly private trusts arising from contracts express or implied, all trusts are within equity's jurisdiction, whether express or implied, and irrespective of whether they are either direct or constructive, created by the parties or resulting by operation of law. The existence of fraud is not required to confer jurisdiction on an equity court when the circumstances are such as to require its intervention. It has been declared that it is ordinarily on the trust rather than on the trustee as an individual that a court of equity acquires jurisdiction to enforce a trust.

Complete and incomplete trusts. It has been held that perfect or complete voluntary trusts are enforceable in equity, but incomplete or promissory trusts are not.

Jurisdiction of parties. Generally speaking, jurisdiction of the parties is essential to equity's power to determine controversies with respect to the establishment and enforcement of trusts, and such jurisdiction may be acquired in accordance with general rules.

CORPUS JURIS SECUNDUM NOTES

Possession of land, by a person seeking to establish a trust thereon for his own benefit, is unnecessary to confer jurisdiction on a court of equity.

(2) Nature of Jurisdiction.

Jurisdiction to establish and enforce a trust is original and inherent in a court of equity, and according to some authorities the jurisdiction of equity is held to be exclusive, except insofar as a court of law may, by statute, or by rules of court, be given jurisdiction.

Jurisdiction to establish and enforce a trust, particularly in case of a strict trust, is original and inherent in a court of equity, and such court may also be vested with statutory jurisdiction of the subject. The inherent jurisdiction of equity can be limited or ousted only by valid, express, legislative enactment. According to some authorities, the jurisdiction of equity is held to be exclusive, except insofar as a court of law may, by statute or by rules of court, be given jurisdiction. This exclusive jurisdiction may be limited to a class of trusts technical and continuous in their nature which cannot be enforced or efficiently administered by any other tribunal, permitting law and equity to exercise concurrent jurisdiction with respect to some trusts. It has been declared that the distinguishing characteristic would seem, in the main, to be the adequacy and efficiency of the legal remedy, and in some states, as discussed *infra* subsection b (4) of this section, it is held that a court of equity has jurisdiction to enforce a trust, only where there is not an adequate remedy at law. In cases where equity and the courts of law have concurrent jurisdiction of the subject matter it has been held that the exercise of equitable jurisdiction rests in judicial discretion.

(3) Extent of Jurisdiction.

Equity's jurisdiction over trusts in plenary, and when its jurisdiction is properly invoked it will afford full relief with respect to the protection and preservation of the trust property and of the rights of all parties concerned.

The jurisdiction of equity over trust estates is plenary. When its jurisdiction is properly invoked it will afford full relief with respect to the protection and preservation of the trust property, and of the rights of all parties concerned. Thus, where it becomes necessary to the complete relief in a particular case, an equity court may not only construe the trust, but will aid a discovery of the instrument creating the trust, and will also aid the discovery of the trust funds sought to be recovered. A court of equity has jurisdiction, when it becomes necessary for the protection and preservation of the trust to appoint or to

CORPUS JURIS SECUNDUM NOTES

remove a trustee, as discussed supra § 218, 234; and to appoint, and to control a receiver. The trustee's breach of trust, and his good faith and honesty in dealing with the trust property is within the jurisdiction of a court of equity; and a court of equity has jurisdiction to accord relief for the conversion, misuse, or misappropriation of trust funds or property; to prevent diversion of trust property to other than trust uses; to compel the due execution of trusts under which money is held; to settle conflicting claims to the trust fund or property; to require trust funds or property to be turned over to the cestue que trust or persons entitled thereto, either from the trustee, or his representative, or from a third person; or may give such other relief as is required by the circumstances when a trustee conveys trust property in violation of the trust. Similarly, a court of equity has jurisdiction to repair damage incurred by reason of fraudulent dealing with the trust property; to prevent fraud; and to secure an accounting for a fraudulent breach of trust, as discussed supra § 386. Moreover, a court of equity may compel a discharged trustee to turn over the trust property to his successor. The court may also establish a trust in property against persons who hold the legal title, and secure conveyances from them to the cestue que trust, although some of the defendants are in possession of the property, and the bill also prays for possession. The mere fact, however, that a trust is created on certain property does not invest a court of equity with jurisdiction to determine all the disputes which may arise with respect to the title of such property, is being only where a trust or trust estate as such is the subject matter of the suit that resort can be had to equity.

[This section continues so please read on for complete info for this section.]

CJS 90 Trusts Section 454(4) Adequate Remedy At law - "Where the jurisdiction at law and in equity is concurrent, and the court of law first obtains jurisdiction, without the intervention of some special cause rendering the jurisdiction of law inadequate, a court of equity may not interfere; nor has a court of equity jurisdiction of a question, which is a legal one, exclusively within the jurisdiction of a court of law." [There is more to this section] Please see the book for the entire info.

CJS Book 90 Trusts Section 460 Bill, Complaint, or Petition (a) In general. "Except in so far as the peculiar nature of the subject matter gives rise to particular rules of pleading, the general rules of pleading, particularly those relating to equity pleadings, apply. Accordingly, a bill, complaint, or petition in equity to establish and enforce a trust, to be sufficient, must fully and distinctly allege all facts which are essential to complainant's cause of action, or to entitle him to the relief sought. This well-settled general rule has also been applied where the action involving the establishment and enforcement of a trust is in the form of an action of contract; and it has been applied in an action at law against the trustee for trust funds, an action to trace the trust funds into the hands of a third person, an action seeking the imposition of a trust and appointment of a receiver, and on a bill or petition by a trust creditor. General rules of pleading also apply with respect to naming the parties to the suit, and alleging the appointment and qualification of the trustee, and his relation to the subject matter; and furthermore such rules apply with regard to the construction most unfavorable to complainant being given to the allegations in the bill, complaint, or petition, and as to its being insufficient if it shows on its face that complainant does not come into court with clean hands, or discloses an adequate remedy at law, or laches.[This is a partial excerpt from this section]

CORPUS JURIS SECUNDUM NOTES

CJS Book 43 Infants § 108 General Considerations – “Generally, infants do not have the same legal rights as adults. Since the authority of the state to supervise and control infants is broader than its authority over adults, the legislature may deny certain privileges to minors which it grants to others. While an infant under a specified age may be considered non sui juris, infants are possessed of certain rights. Their rights are not superior to those of adults, and they are bound by the law to the same extent as adults. The disabilities of infants are really privileges, which the law gives them, and which they may exercise for their own benefit, since the object of the law is to secure infants from damaging themselves or their property by their own improvident acts or prevent them from being imposed on by the fraud of others. The rights of infants are of greater concern to a court than those of adults, and must be protected by the court, while adults must protect their own rights. Persons dealing with the infant must take notice of his privileges and disabilities. Infancy is a personal privilege, and only minors themselves can complain because of violation of laws affecting minority, although after the death of an infant the privilege of infancy continues to his legal personal representatives. An infant cannot dis-affirm acts done for others and not affecting his own property.

The limits on the legal capacity of minors to act on their own behalf were not established to defeat the enforcement of their rights, and the protections with which the law cloaks an infant should not be used by others as a weapon against the infant. On the other hand, infancy is a shield for the protection of an infant and not a weapon of attack; consequently an infant cannot take advantage of his infancy for the purpose of perpetrating a fraud, or have the benefits from claiming his personal privilege without having imposed on his the disabilities of infancy.

There are no vested property rights in the personal privilege of infancy. The common law disability of an infant to enter into a binding transaction is not a property right, and hence such disability may be constitutionally interfered with by the legislature. Accordingly, in the absence of constitutional inhibition, the legislature has the power to fix the age at which the disabilities of infancy shall be removed and to change the age at which an infant is privileged to exercise legal rights which shall be binding on him.”

Admissions. “An infant is incapable of making an admission which can affect his rights. Although admissions of an infant may be shown for what they are worth, nevertheless they are not binding on him. A fortiori, the admissions of another person cannot affect an infant’s rights nor can the admissions of infants bind other persons.

Exercising right of election. An infant has not the legal capacity to exercise a right or power of election without consent of the court. Any exercise of a power of election should be by the court. Where other rights are involved a court of equity may exercise the right for him or bar him from a future exercise of the right.

As to acts done or contracts made in the place of domicile, it is generally held that the law of domicile governs as to the capacity or incapacity of the person.

CORPUS JURIS SECUNDUM NOTES

CJS Book 43 Infants: § 110. Acting as Agent or Trustee – An infant may act as an agent and bind his principal, or he may be a trustee.

Generally, an infant may act as agent. His capacity is limited only by the readiness of the principal to intrust him a commission and his own physical and mental capacity to carry out the instructions under which he acts. Such agency may be created by parol. To the extent and within the limits of general rules of agency, the acts of an infant acting as an agent are binding on the principal.

An infant may act as a trustee, and in such case he is as much bound to carry out the trust as though he were an adult. Since the infant's right to dis-affirmance is personal, as discussed supra § 108, and infra § 131, 172, such right does not extend to acts performed by him in a fiduciary capacity. He will not be permitted to receive property to his own exclusive benefit and then repudiate the trust or equitable charge created by the person from whom he derived it.

If you check out **Corpus Juris Secundum Section 110 "Acting as Agent or Trustee"** [My notes: ...you can see the two avenues to take. Either debtor...as Agent or Trustee under trust...] "Generally, an infant may act as agent. His capacity is limited only by the readiness of the principal to interest to him a commission and his own physical and mental capacity to carry out the instructions under which he acts."

It further says...."Generally, an infant may act as agent." **Whenever it says, "Generally" as opposed to Specially.....you are under general deposit opposed to Special Deposit!!!!!!** "An Agency may be created by parol" "An infant may act as a trustee, and in such case he is as much bound to carry out the trust as though he were an adult."

CJS 43 Infants Section 124 Jurisdiction of Courts Over Estates of Infants: Courts of equity have general and inherent jurisdiction over the property of infants. Primary jurisdiction over the estates of infants may, under constitutional or statutory provisions, be vested in the probate, county, district, or other specified court, and such courts, when they succeed to the jurisdiction of the court of chancery, exercise the power under the same rules as pertained to the court of chancery subject to whatever limitations have been imposed by statute. Jurisdiction can be exercised only when the court has acquired jurisdiction as to the particular infant and subject matter. The commencement of a proceeding affecting an infant's property vests the court with the jurisdiction over his estate, pursuant to which the court acts in loco parentis or as a guardian, and the infant becomes its ward. It is the duty of the court to safeguard the infants property interests with great care. In the discharge of its duty, the court is not bound by the pleadings of counsel, and may act on its own motion.

After the jurisdiction of the court has attached, the court has broad, comprehensive and plenary powers over the estate of the infant. It may adjudicate the rights and equities of the infant in property, and it may cause to be done whatever may be necessary to preserve and protect the infant's estate. However, the exercise of such powers must be tempered with reasonable limitations. So, the court cannot act in violation of constitutional or statutory limitations on its powers, abrogate rights of other persons in order to bestow a benefit on the infant, or permitted the impounding of the infant's funds or the creation of a trust to deprive the infant of the right to absolute enjoyment of the funds at majority. In all cases where an infant is a ward of the court, no act can be done affecting his person or his property

CORPUS JURIS SECUNDUM NOTES

unless under the express or implied direction of the court itself. An infant is not competent to waive the statutory requirements enacted for his benefit and protection with respect to the manner in which the jurisdiction of the court may be exercised.

CJS 43 Infants, Section 127 Property held in trust: An infant may take and hold property in trust although he is subject to the same disabilities in administering the trust as in dealing with his own property. An infant's acceptance of a trust may be confirmed or disclaimed upon his coming of age. So, an infant will be bound by the terms of a conveyance of property which he is to hold in trust, at least where he assents to such conveyance after attaining his majority. Since infancy is a personal privilege, as considered supra section 108, where a minor, acting as trustee for another, takes the legal title to property and at the direction, and for the benefit of the beneficial owner makes a conveyance of the property so held, he cannot afterwards avoid the validity of the conveyance by disaffirming the same on a plea of infancy. An infant trustee may be directed by order or decreed of court to make a conveyance, and a conveyance made by the infant trustee pursuant to such a decree is good until the decree is reversed and the conveyance avoided. Minor beneficiaries cannot consent to the termination of a trust for their benefit.

CJS 43 Infants Section 221 a. General Considerations.... b. Necessary and Proper Parties; Joinder and Substitution: Persons who have an interest in, or claim on, the property or right in controversy are necessary parties, and it is in t duty of the court to direct that all persons be made parties to the litigation whose presence is necessary to give the court jurisdiction to grant the infant proper and adequate relief. Persons who have no interest in the litigations are not necessary or proper parties.

**** It has been held that an infant party to a bill in equity, ordinarily should be made defendant rather than complainant; but that, while the joining of an infant as plaintiff instead of as defendant may constitute error, it is not such a jurisdictional defect as to render the decree void as against bona fide purchasers under it. It has also been held that the rule requiring the joining of an infant as defendant and not as plaintiff need not be applied strictly except when the infant has a substantial interest in the litigation, that a proceeding which diverts a minor of an estate in lands is not necessarily against his interest so that he must in every possible contingency be made defendant, and that on a suggestion at any stage of the cause that an infant party is on the wrong side of the record, the court may order an inquiry, and if the fact is found as suggested, the proceedings will be amended by placing the infant on the opposite side of the suit..****

CJS Book 39 Guardian & Ward, § 2 - Definitions - "A ward is the person over whom or over whose property a guardian is appointed"

CJS 39 Guardian & Ward, § 3 - Nature of Office or Relation - "Guardianship, which has been viewed broadly as a trust, is designed to further the well-being of one who is incompetent to act for himself by placing his person, property, or both, in the hands of one designated as his guardian."

CORPUS JURIS SECUNDUM NOTES

CJS 39 Guardian & Ward § 3 - Guardianship as trust. - "As a general rule, it is held that a confidential or fiduciary relationship, which arises by operation of law, exists between guardian and ward. However, while guardianship has been viewed as a fiduciary position similar to that of a trustee, and it may properly be denominated a trust, in the common acceptance of the term, it is not a trust in the technical sense."

CJS 39 Guardian & Ward § 69 Fiduciary Status – Footnote in Margin: "Every guardian is in general sense, trustee, since he deals with property of others confided to his care, but he is not trustee in sense in which that term is used in courts of equity and in statutes".

CJS I Introduction section 2 Definitions: "The word "attorney" signifies, in its broadest sense, a substitute or agent; one who is appointed or authorized to act in the place of or for another. The word is not necessarily limited to an attorney in fact, nor does it necessarily refer to an attorney at law; but when not coupled with any qualifying expression, the word is usually construed as meaning attorney at law."

CJS I Introduction section 2 Definitions: Clients are also called "wards of the court" in regard to their relationship with their attorneys.

CJS Vol. 7 Sections 2, 3, & 4 where it says:

4 ATTORNEY & CLIENT

"...attorney with an obligation to the courts and to the public no less significant than his obligation to his clients. Thus, an attorney occupies a dual position which imposes dual obligations."

"His first duty is to the courts and the public, not to the client and wherever the duties to his client conflict with those he owes as an officer of the court in the administration of justice, the former must yield to the latter."

2-3 ATTORNEY & CLIENT

"A client is one who applies to a lawyer or counselor for advice and direction in a question of law ... Clients are also called "wards of the court" in regard to their relationship with their attorneys."

Wards of court. Infants and persons of unsound mind. Their rights must be guarded jealously. **Black's Law Dictionary 4th Edition 1968**

CJS 81 Social Security § 66 Admissibility of Evidence "Under the Social Security Act, evidence may be received at any hearing even though inadmissible under rules of evidence applicable to court procedure. Accordingly, the normal rules of evidence do not apply in social security cases, and the administrator is permitted to consider evidence which would be objectionable in a court of law if it is of the kind on which fair-minded men are accustomed to rely in serious matters. Hearsay evidence is admissible up to the point of relevancy."

CORPUS JURIS SECUNDUM NOTES

§ 67 Disability Benefit Claims. ... "Hearsay evidence is admissible up to the point of relevancy.The administrator may consider the report of a designated medical consultant even though he had not personally examined the claimant." "claimant's special insured status expired...."

WOWwww this sounds like special equity kicks in here!!!!!! Looking through the form...into the substance!!!!

CJS Equity page 203. Clear right to relief: "The power of a court of equity will not be invoked unless a clear right to equitable relief is established."

CJS Equity page 159: "Law of nature" - "Equity was once known as law of nature."

CJS Equity: page 160: "Substantive rules of law" "The substantive rules of law are the same in suits at law and in equity, but the procedure is different."

CJS Equity page 159: "Entitlement to relief" "To entitle plaintiff to relief, he must present such a case as appeals to the conscience of the court."

Here's the section about Waiver and Consent. Remember people volunteer to get their property's taken from them...they volunteer to go to jail...as hard as that may seem it's true...and here's the harsh reality. Read it for yourself! People must increase their knowledge so they stop volunteering unknowingly!!!

<http://www.archive.org/stream/cu31924084259872#page/n90/mode/1up>

"The party who is deemed to have waived his right to object has no just cause to complain of this rule of the Court; for he is conclusively presumed to know the rule, and to have intentionally ignored the error in question. What a man consents to he cannot complain of, and this consent may be inferred from silence, or from conduct.⁵" "The doctrine of waiver promotes diligence, prevents trickery and bad faith,⁶ and preserves rights acquired on consequence of the waiver." Section 71, Footnote 4 says "(He who is silent [when he ought to object] is considered as consenting [to what is done].)"

CJS 9, Banks and Banking § 208 Special or Segregated Deposits

Special and segregated deposits are ordinarily entitled to the same priority as other trust funds. Where the circumstances of a deposit are such as to make it a special or segregated deposit and render the money or thing deposited a trust fund, it is ordinarily entitled to priority in accordance with and subject to, the rules stated supra § 204-207, as to trust funds generally.

For an alleged special or segregated deposit to be entitled to priority, the circumstances or agreement under which it was made must be sufficient to render it a special or segregated deposit in fact. What was originally a special or segregated deposit may be denied priority if the depositor has permitted it to be converted into a general deposit, or claim prior to the insolvency of the bank, or has waived the right to priority. If, however, a special or segregated deposit was in fact intended and created, the manner in which it is formally evidenced or entered on the books or records of the bank is immaterial; and the acts

CORPUS JURIS SECUNDUM NOTES

and conduct of the bank in treating the deposit as general one cannot of themselves deprive the special depositor of the right to priority, unless the depositor has consented thereto or acquiesced therein.

CJS 9 Banks and Banking, Section 213 Special or Trust Deposits:

In the absence of sufficient special circumstances, however, a deposit of public funds, like a deposit of other moneys, creates merely a general deposit giving rise to the relation of debtor and creditor; and the mere fact that all public monies are, broadly speaking, trust funds, or held in trust by the officer depositing them, does not of itself render a deposit of such funds a special or trust deposit so as to entitle it to priority.

CJS 9 Banks and Banking, § 213 Special or Trust Deposits

A deposit of public funds may be entitled to priority, without regard to whether there is a prerogative or statutory right of preference in the favor, where the circumstances are such as to render it a special or trust deposit.

In the absence of sufficient special circumstances, however, a deposit of public funds, like a deposit of other moneys, creates merely a general deposit giving rise to the relation of debtor and creditor, and the mere fact that all public moneys are, broadly speaking, trust funds, or held in trust by the officer depositing them, does not of itself render a deposit of such funds a special or trust deposit so as to entitle it to priority.

Relationship between bank and depositor. There is no debtor and creditor relation between the bank in which special deposit is made and its special depositor, their status or relation being that of agent and principal, bailee and bailor, or trustee and cestue que trust. Title to the thing deposited does not pass to the bank but remains in the depositor, the latter retaining the right of control and disposition. Thus, the depositor retains title to the thing deposited, and the bank acts as a bailee.

CJS 9 Banks and Banking, Section 283 Special Deposits.

A special deposit is a delivery of property, securities, or even money to the bank for the purpose of having the same safely kept and the identical thing deposited returned to the depositor, or one for some specific purpose, such as deposits discussed infra section 286, not contemplating a credit on general account and may also be defined as one held for a particular purpose in identical or equivalent form as when deposited, subject to return at any time and not commingled by the depository with other funds or assets of the bank. A special deposit is a delivery of either money or chattel to a bank under a special agreement or under circumstances sufficient to create a trust, or a deposit accompanied by an agreement that the identical deposit will be returned or paid out for a specific purpose, or a bailment, agency, or trust whereby a bank keeps or transmits the identical property or funds entrusted to it.

CJS 9, § 284 Determination of Character of Deposit

A bank deposit is ordinarily a general deposit. There is a rebuttable presumption that a deposit is general, and the burden of proof is on the party claiming that a deposit is special. In the absence of a

CORPUS JURIS SECUNDUM NOTES

specific direction, or agreement to the contrary, a deposit is general. A deposit is special only if the money is placed in the bank for the purpose of safekeeping or on the understanding that the bank shall act as a bailee, or only if it is made for a specific purpose with special instructions or an agreement between the bank and the depositor to use the funds for a special purpose. An agreement may be manifested by the bank's acceptance of a conditional deposit. If the agreement of the bank to a special deposit is to be implied by the acceptance of a deposit accompanied by written instructions, the writing should set forth by clear direction what the bank is required to do.

The general or special character of an account is a question of fact, to be determined by the purpose for which the deposit was made, the relationship between the depositor and the bank and the intention of the parties as expressed in their contract and as revealed by the facts and circumstances of the case, such as the words and acts of the parties and their course of business. The mere size of a deposit, standing alone, is not an indication that the account is special.

The fact that a deposit is marked "special" or bears some other particular designation, is not controlling, nor is the lack of such a designation conclusive.

The bank's failure to maintain the segregation of deposited funds is an indication that the deposit is general.

As individual retirement account established with a bank in accordance with federal tax law constitutes a special deposit.

Account subject to check.

An account subject to check is ordinarily regarded as a general deposit, although the single fact that funds were placed in a checking account is not conclusive of their character as a general deposit. Deposits may, of course, be general although not carried in a checking account.

Interest.

Crediting of interest on a deposit is an indication that it is general in character; although this factor is not necessarily controlling. The fact that a deposit draws interest and also is subject to withdrawal does not make it a special deposit.

CJS 9, § 285 Change in Character of Deposit.

To change a general deposit into one of a special character requires a contract. Such a change is dependent on the intent of the parties. The fund at least in legal contemplation, must be withdrawn from the general deposit and redeposited with, and accepted by, the bank under a new arrangement. There must be some act to segregate the funds for a particular purpose. A bank's issuance to its depositor of cashier's checks to the extent of his deposits does not change their relationship of debtor and creditor nor make the transaction a special deposit.

CORPUS JURIS SECUNDUM NOTES

By agreement between the parties, a deposit special when made may become general in character. The special character of a deposit cannot be changed by factors which fail clearly to show the intention of the parties to treat the deposit as general. If a deposit is made as special, the bank cannot change its character by carrying the account on its books as a general one, as by wrongfully placing it to the depositor's credit in a general checking account, nor will deposit of a personal item in a fiduciary account change the special character of the latter, nor will the bank's conversion of a special deposit transmit it into a general deposit. A trustee's unauthorized diversion of funds in a special deposit will not alter its character. It has been held that commingling of funds by the depositor may destroy the special status of an account.

CJS 9 Banks and Banking § 286 Deposits for Specific Purposes

"Deposits for Specific Purposes, In General A deposit of money for a particular purpose may, at least in some circumstances, constitute a special deposit or, according to some authorities, a deposit which is neither general nor wholly special. It is not ultra vires for a bank to receive and hold money to be applied to a specific purpose. A specific deposit, or deposit for a specific purpose, consists in the delivery of money or property to a bank for application to a designated object or a defined purpose, as in the case of money deposited to meet a maturing obligation or a note delivered for collection. It has been held that, when money is placed in an account for a specific and particular purpose or to be paid to a particular person, a special deposit exists, at least where the special purpose is made known to the bank. However, it has been held that such a deposit is not necessarily special and may be general, that such a deposit is special only if the bank knew or should have known of the purpose, that, in the absence of an agreement, such a deposit is general even if the purpose is known to the bank, that such a deposit becomes a trust fund only if deposited with the understanding that it should be set apart for a particular purpose and not mingled with other money of the bank, and that, while the acceptance of funds to be held for a specific purpose gives rise to a special deposit, "specific purpose" connotes that, in holding the funds, the bank itself acts as an agent directly on behalf of the beneficial owner. The intent of the parties is ordinarily determinative of the question of whether or not a deposit constitutes a trust fund. The parties may by agreement give to deposits which would otherwise be general the special character of trust funds. Mere designation of a bank deposit by a certain name is insufficient, of itself, to characterize the deposit as a trust fund or to put the bank on notice that the deposit so designated, but without any agreement or conditions attached as to withdrawal, may be withdrawn only for a specific purpose, although such designation may, in combination with other facts, be sufficient to show a deposit for a special purpose. The mere form of the bank account as adopted by the owner is not sufficient to establish a trust. FACTS rather than book entries or terminology are controlling on the issue of whether or not a bank deposit is impressed with a trust. No particular form of words is necessary to create a trust relation between bank and depositor. Whether any particular fund is to be considered as held in trust for a special purpose, or treated merely as a deposit creating the relation of debtor and creditor, will depend upon the circumstances for each particular case. If a deposit is made as a general deposit, the fact that it is made for the purpose of providing a credit which is to be used thereafter for a special purpose does not give it the status of a trust fund in the hands of the bank.

CORPUS JURIS SECUNDUM NOTES

Nature of non-general deposit for specific purpose.

A deposit for a special purpose not constituting a general deposit has been referred to as "special". It has also been held that such a deposit is neither general nor wholly special, and that such deposits constitute a distinct class of deposits.

Distinction exists between "special deposit" and "deposit for specific purpose," since special deposit creates relation of "bailor and bailee" and entitles bailor to receive back exact thing deposited, while deposit for specific purpose creates fiduciary relationship and purpose MUST be fulfilled according to terms of agreement of deposit.....

This reminds me of the famous story of how say three different blind people who have never seen an elephant approach one from different directions and end up describing it very differently.

http://en.wikipedia.org/wiki/Blind_men_and_an_elephant

To comprehend it well one must have a clear perspective from all the relevant angles.

Gilberts Law Summaries - Trusts Section 67 "No party in the trust needs to know or understand that a trust is being formed."

CJS book 90 Trusts, Section 161. "It is a rule of equity that once a trust is created it is thereafter to be treated as a trust."

Barron's Dictionary of Banking Terms. A certificate is a "paper establishing an ownership claim."

Registration of births began in 1915, by the Bureau of Census, with all states adopting the practice by 1933.

The Certificate represents the GENERAL RELATION AS OPPOSED TO A SPECIAL RELATION UNDER TRUST!!!

Mother granted the name generally... not specially under trust and never corrected the record evidenced as a misconstruement under d/c.

The trust does not exist in the public until you express and prove it!

But the beneficiary having a "beneficial nature" can be recognized in a special court of equity if you present proof of the intent to create a trust.

So the parent is the trustee of the child in the public upon proof of the existence of a trust.

State is the beneficiary having a beneficial character!

So the 'Parents' are Grantor / Trustee all under a misconstruement because we did not express the trust.

CORPUS JURIS SECUNDUM NOTES

Mom granted the child to the state, state said you have trusteeship and are liable for the good keeping of the states property grantor, agreed without objection and never brought forth any beneficial claim of a beneficial nature.

Can trusteeship be transferred and still allow the original grantor to have control over the child? Mom acted on you behalf, you could not...you were too young, you were the grantor really but as a child the mom acted in your behalf

Mom was the 'Informant'.

Mom did a survey on you and created a title - the birth certificate which contained:

survey - 1 name 2, boundry (size, wt. color hair etc.) 3. public or private all = identity.

Page 161 CJS Equity 30A section 2: "Equity jurisprudence has been defined as that portion of remedial justice which is exclusively administered by a court of equity, as contradistinguished from that portion of remedial justice which is exclusively administered by a court of common law. 31."

4) "Absence of remedy which only a statute can confer does not empower equity to assume jurisdiction and supply the deficiency in absence of such statute."

5) "Chancery" and "equity" are commonly used interchangeably and synonymously, and chancery has been defined as the system of jurisprudence administered in courts of equity. Equity courts have all the power and authority which a court of chancery formerly had."

6) Page 164 CJS Book 30A: "Statute giving a court the jurisdiction and powers of a court of chancery is not intended to confer jurisdiction broader than that pertaining to the English court of chancery."

7) CJS Book 30A Section 8 Page 169: "It has been stated broadly that a suitor who seeks to protect a right recognized in a court of equity, but not recognized and protected in a court of law, comes into equity as of right and that there is no discretion to refuse to entertain the bill."

CJS book 30A Equity - Section 83 "Special Application of Rule"..... Equity Jurisdiction is obtained by a Bill in Discovery.

Courts of equity are not always restricted by the same rules as courts of law. See, *Trieweiler v. Sears*, 268 Neb. 952, 689 N.W.2d 807 (2004); *Drake v. Morrow*, 140 Neb. 258, 299 N.W. 545 (1941). Where a situation exists which is contrary to the principles of equity and which can be redressed within the scope of judicial action, a court of equity will devise a remedy to meet the situation. *Trieweiler v. Sears*, supra. An action in equity vests the trial court with broad powers authorizing any judgment under the pleadings. *Ludwig v. Matter*, 210 Neb. 87, 313 N.W.2d 234 (1981); *Lippire v. Eckel*, 178 Neb. 643, 134 N.W.2d 802 (1965).

CORPUS JURIS SECUNDUM NOTES

In *Gerow v. Covill*, 192 Ariz. 9, 960 P.2d 55 (1998), the court explained that equitable judgments constitute an exception to the general rule that conditional judgments are void. The court accordingly upheld a dissolution judgment ordering that ownership of stock for a company fraudulently conveyed "shall" be changed to reflect the former wife's one-half interest "upon" resolution against the registered owner that the stock ostensibly in her name was in fact owned by the former husband. The court rejected the husband's contention that such an order was void because it was conditional, explaining that the trial court was merely using its power as an equity court to adapt its relief and mold its decree to satisfy the requirements of the case and to conserve the equities of the parties. *Id.* The court stated: "'When a court of equity renders a conditional decree . . . [i]t is simply adjusting the equities between the parties and granting to one or the other certain relief to which the litigants may be entitled.'" *Id.* at 13-14, 960 P.2d at 59-60 (quoting *Mason v. Ellison*, 63 Ariz. 196, 160 P.2d 326 (1945)).

Corpus Juris Secundum book 30a Equity! Section 2-Equity CJS 30A "Foundation of equity is good conscience."

"It has been stated broadly that equity is that system of jurisprudence in which the conscience rules"

"The substantive rules of law are the same in suits at law and in equity, but the procedure is different."
(These quotes were from page 160)

"The decree of a chancellor is always a matter of grace and never the absolute right of a litigant." Page 168.

"Equity is free to use its coercive process vis-a-vis the person and compel execution of proper instruments that are needed to carry out a court's degree." Page 171.

Page 288: **Here's a BINGO!!!!** section 93. "Courts of equity must follow general maxims in rendering relief.34

These maxims are in the strictest sense principia, the beginnings out of which have developed the entire system of equity jurisprudence, and are, in general, enforced by the courts. 37"

Page 289. "In order to be entitled to relief, complainant must establish a superior right or equity."
"Equity courts are not bound by strict common law rules.49"

"Equity courts are not by strict common law rules.49"

"Equity looks beneath the rigid rules of the law to seek substantial justice.51"

"It has power to prevent such rules from working an injustice,52

and will depart therefrom whenever it is necessary to accomplish the ends of justice.53"

"Every equitable right or interest derives not from a declaration of substantive law, but from the broad and flexible jurisdiction of courts of equity to afford remedial relief, where justice and good conscience so dictate.54"

CORPUS JURIS SECUNDUM NOTES

"Equity administers its remedies in accordance with its own rules.⁵⁵

One who seeks the aid of equity is governed by its rules and principles⁵⁶

and cannot complain that the strict rules of law are not enforced.⁵⁷"

"The maxims and principles of equity apply to suits in equity even though the suit is also cognizable in the law courts.⁵⁸" Pages 289 and 290.

Page 291 "Final object of equity is to do right and justice." "Maxim that no one should be allowed unjustly to enrich himself at another's expense was without application in action to set aside mortgage foreclosure." "Equity is not concerned with the identity of plaintiff or of defendant but will do justice between the parties, regardless of the order in which they may appear on the court docket."

Page 292: "Equity will permit only what is just and right with no element of vengeance." "A court of equity will be more inclined to listen to him who heeds the biblical command "Thou shalt not avenge" rather than one who seeks vengeance." "Equity will use extraordinary powers only to end that justice may be done in each individual case presented." "Equitable relief will not be granted, unless it appears that good conscience and substantial justice require it." "Courts of equity are not bound in castiron rules, but are governed by rules which are flexible and adapt themselves to particular exigencies, so that relief will be granted when, in view of all the circumstances, to deny it would permit one party to suffer a gross wrong at the hands of the other." "A court of equity has the fundamental and inherent equitable power so to protect and control its proceedings as to prevent abuse and injustice." "Courts of equity will see that wrong and oppression are not inflicted under guise of legal procedure." "Court of equity should require that parties brought before it do what equity and good conscience require should be done." "Equity requires one to be just before he can be generous." "Equitable relief will not be granted, unless it appears that good conscience and substantial justice require it."

Page 293 "Courts of equity is not to be made an instrument of wrong." "The fact that the remedy is exclusively in equity does not compel the court to do inequity."

Page 294: "Under the principle that he who seeks equity must do equity, where question for determination is whether one party or another has prior or superior right, decision should be against party who has weaker equity or one who was in better position, by reasonable diligence or care, to have averted the loss which now must be borne by one or the other." "A suitor cannot escape the effect of the maxim by resorting to legal niceties.¹⁷"

Page 310 "Equity will not aid one who comes into court as a law violator."

Page 390 talks about "Case transferred from law to equity"

Pomeroy Section 46. 1918 Vol 1: The same large view of equity has sometimes been taken by the earlier judges, but not to any considerable extent since the Reformation.

CORPUS JURIS SECUNDUM NOTES

The following example will suffice : In *Dudley v. Dudley*, Prec. Ch. 241, 244, Sir John Trevor, M. R., said: "Now, equity is no part of the law, but a moral virtue which qualifies, moderates, and reforms the rigor, hardness, and edge of the law, and is a universal truth. It does also assist the law where it is defective and weak in the constitution, which is the life of the law; and defends the law from crafty evasions, delusions, and new subtleties invented and contrived to evade and delude the common law, whereby such as have undoubted right are made remediless. And this is the office of equity, to protect and support the common law from shifts and contrivances against the justice of the law. Equity, therefore, does not destroy the law, nor create it, but assists it." I shall end these citations by a quotation from Chancellor D'Aguesseau, the great French jurist (Œuvres, vol. 1, p. 138) : "Premier objet du législateur, dpositaire de son esprit, compagne inseparable de la loi, l'equite ne pent jamais etre contraire a la loi meme. Tout ce que blesse cette equite, veritable source de toutes les lois, ne resiste pas moins a la justice."

Section 48 Pomeroy, 1918, Vol. 1.: "The very growth of equity, as long as it was in its formative period, was from its essential nature an antagonism to the common law, either by way of adding doctrines and rules which the law simply did not contain, or by way of creating doctrines and rules contradictory to those which the law had settled and would have applied to the same facts and circumstances. It would be a downright absurdity, a flat contradiction to the plainest teachings of history, to deny that the process of building up the system of equity involved and required on the part of the chancellors an invasion, disregard, and even open violation of many established rules of the common law; in no other way could the system of equity jurisprudence have been commenced and continued so as to arrive at its present proportions.^a"

Corpus Juris Secundum (CJS), Volume 7, Section 4, Attorney & client: The attorney's first duty is to the courts and the public, not to the client, and wherever the duties to his client conflict with those he owes as an officer of the court in the administration of justice, the former must yield to the latter. Clients are also called "wards" of the court in regard to their relationship with their attorneys.

CJS Conversion Section 2: Action in Law. "Trove is an action in law 16 as distinguished from an action in equity.¹⁷ While trove has been called equitable in nature, applying the principles of equity, this action is not available for the protection or enforcement of equitable titles or rights.²⁰"

CJS Book 30A Equity - Page 292:

1. "Equity will permit only what is just and right with no element of vengeance."
2. "A court of equity will be more inclined to listen to him who heeds the biblical command "Thou shalt not avenge" rather than one who seeks vengeance."
3. "Equity will use extraordinary powers only to end that justice may be done in each individual case presented."
4. "Equitable relief will not be granted, unless it appears that good conscience and substantial justice require it."

CORPUS JURIS SECUNDUM NOTES

5. "Courts of equity are not bound in castiron rules, but are governed by rules which are flexible and adapt themselves to particular exigencies, so that relief will be granted when, in view of all the circumstances, to deny it would permit one party to suffer a gross wrong at the hands of the other."
6. "A court of equity has the fundamental and inherent equitable power so to protect and control its proceedings as to prevent abuse and injustice."
7. "Courts of equity will see that wrong and oppression are not inflicted under guise of legal procedure."
8. "Court of equity should require that parties brought before it do what equity and good conscience require should be done."
9. "Equity requires one to be just before he can be generous."
10. "Equitable relief will not be granted, unless it appears that good conscience and substantial justice require it."

Page 293

1. "Courts of equity is not to be made an instrument of wrong."
2. "The fact that the remedy is exclusively in equity does not compel the court to do inequity."

Page 294:

1. "Under the principle that he who seeks equity must do equity, where question for determination is whether one party or another has prior or superior right, decision should be against party who has weaker equity or one who was in better position, by reasonable diligence or care, to have averted the loss which now must be borne by one or the other."
2. "A suitor cannot escape the effect of the maxim by resorting to legal niceties.¹⁷"

Page 310

1. "Equity will not aid one who comes into court as a law violator."

CORPUS JURIS SECUNDUM NOTES

COURT CASE

In The Fourteenth Court of Appeals

NO. 14-10-00090-CV

MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., AS NOMINEE FOR

GREENSPPOINT FUNDING, Appellant

V.

NANCY GROVES, Appellee

On Appeal from the 334th District Court Harris County, Texas

Trial Court Cause No. 2009-29112

A suit to quiet title is equitable in nature, and the principal issue in such suits is “the existence of a cloud on the title that equity will remove.” *Florey v. Estate of McConnell*, 212 S.W.3d 439, 448 (Tex. App.—Austin 2006, pet. denied) (quoting *Bell v. Ott*, 606 S.W.2d 942, 952 (Tex. Civ. App.—Waco 1980, writ ref’d n.r.e.)). A “cloud” on legal title includes any deed, contract, judgment lien or other instrument, not void on its face, that purports to convey an interest in or makes any charge upon the land of the true owner, the invalidity of which would require proof. *Wright v. Matthews*, 26 S.W.3d 575, 578 (Tex. App.—Beaumont 2000, pet. denied). A suit to quiet title “enable[s] the holder of the feeblest equity to remove from his way to legal title any unlawful hindrance having the appearance of better right.” *Florey*, 212 S.W.3d at 448 (quoting *Thomson v. Locke*, 1 S.W.112, 115 (Tex. 1886)).

<http://4closurefraud.org/2011/05/02/tx-quiet-title-appeal-victory-against-mers-mortgage-electronic-registration-systems-v-nancy-groves/>

"5 1 Pom. Eq. Jur., §§ 121; 360. So vast is the number and variety of suits in Chancery, that

it is impossible for a Solicitor to find a precedent for every case, even if it existed; but he who has -the maxims mastered is saved much of the drudgery of hunting precedents. Out of the twenty-six letters of the alphabet, by permutations and combinations, are made the countless multitudes of words and sentences written by earth's millions since writing was invented. So, out of a few fundamental maxims can be deduced the rules which, by proper application, will determine the, equities of the vast proportion of equitable suits instituted in Chancery. *Melius est petere fontes quam sectari rivulas.* (It is better to seek the fountains [the maxims of the law] than to follow the rivers [hunt for adjudications based on maxims.]

CORPUS JURIS SECUNDUM NOTES

The maxims and principles contained in this Chapter are not all strictly maxims and principles of Equity; many of them are maxims and principles of the common law. Nevertheless, they have all been adopted into the family of equitable doctrines and are constantly used and applied by our Chancery Courts. The author has long been convinced that no one can master the jurisprudence of Equity who has not thoroughly comprehended that subtle alchemy in its maxims whereby the most difficult problems are readily solved; and, so believing, no little space has been devoted to them. These principles and maxims constitute a system of jurisprudence based on good reason and good conscience; and are designed to enable the Courts of Equity to do complete justice between all the parties in any litigation, however novel, abstruse, complicated or numerous, the questions involved may be. O Aequitas agit in personam. Code, § 4305."

CJS 65 Section 4 Idem Sonans:

With respect to names, the phrase "idem sonans" means of the same sound. Under the doctrine of idem sonans absolute accuracy in spelling names is not required in legal documents or proceedings; a mistake in the spelling of a name is immaterial if both modes of spelling have the same sound and appearance. Thus, if a name, as spelled in a legal document, though different from its correct spelling, conveys to the ear, when pronounced according to the commonly accepted method, a sound practically identical to the correct name as commonly pronounced, then the name thus given is sufficient identification of the individual referred to, and no advantage can be taken of the clerical error, and absolute accuracy in spelling names is not required in civil or criminal proceedings where the names sound the same such that an attentive ear finds difficulty in distinguishing them when pronounced. Great latitude is allowed in the pronunciation and spelling of proper names, since proper names are often spelled differently, although pronounced the same. The doctrine of idem sonans is normally utilized only with regard to similar personal names.

If names sound alike, or if common usage has made their pronunciation identical, they are regarded as the same and a variance of their spelling is immaterial, unless it is such as misleads a person to his prejudice, or the misspelling transforms the name into a wholly distinct appellation.

"The law presumes every person to have a given name unless the contrary is shown." CJS Section 8 Book 65 Names.

CJS Book 65 Part III. Assumed or Fictitious Name, Section 14 Trust and trustees. Trust cannot adopt a name, but trustees may adopt name or names for transacting business, executing contracts, or suing and being sued.

"Identity of Interests" - Blacks Law Dictionary 8th edition. "A relationship between two parties who are so close that suing one serves as notice to the other, so that the other may be joined in the suit."

CORPUS JURIS SECUNDUM NOTES

CJS Book 65 Part III. Assumed or Fictitious Name, Section 14 - Impersonation. Where one contracts with individual face to face and intends to contract with the person before him or her, the contract is made with such person, regardless of what name he or she may assume for the transaction and of whether the assumed name is the name of the living person with whom the other person was under impression he or she was controlling.

CJS Book 65 Part III. Assumed or Fictitious Name, Section 14: Business operated under two nearly identical names. Where persons choose, for their own advantage, to operate the same enterprise under two nearly identical names, to the confusion of third persons, the verbal distinction should be disregarded and one entity held to be merely the alter ego of the other.

Trust CJS 90, 2000 ed Sec. 205 Intention of creator or Settlor. The primary, or cardinal, rule in the construction of trusts is that the court must, if possible, ascertain and effectuate the intention of the creator, so far as it appears reasonably certain and consistent with rules of law, or consonant with the limitations of law, and unless forbidden by law, public policy, or good morals. The intention of the creator controls in the construction of trusts or the intention governs or prevails, when it is not inconsistent, or in conflict, with established rules or principles of law or some positive rule of law, or public policy. A construction enabling the trustees, in their discretion, to frustrate, rather than carry out, the settlors intention will not be adopted unless the language and tenor of the trust instrument admit of no other construction. The construction of the trust instrument depends on the trustors intent at the time of the execution, as shown by the face of the document, and not on any secret wishes, desires, or thoughts after the event. When construing a trust instrument, a court will put itself as far as possible in the position of the grantor, in an effort to construe any uncertain language used by the grantor in such a way as shall give force and effect to his or her intention. The quest is to determine the meaning of what the grantor said and not to speculate upon what he or she meant to say. The grantors intent is to be found, if possible, within the trust instrument itself. When the trust instrument is unambiguous, the express language of a trust guides the court in determining the intentions of the settlor. The language of the instrument may have a meaning controlled by context and surrounding circumstances. the scheme of distribution, and the facts and circumstances surrounding a trust documents execution, are also factors in determining intent. When an intention clearly appears on the face of the instrument, the courts should not defeat that intention by any rules of grammar or rhetoric. Rules for determining intent are the same for trusts as for wills.

CJS Book 54 - Limitations of Action - Section 185: Particular Trusts within the Rule "As a general rule, the only class of trusts not affected by the statute of limitations is composed of those technical and continuing trusts which are not cognizable at law, but which fall within the proper, peculiar, and exclusive jurisdiction of courts of equity."

CJS Book 30a (1992 Edition)- Section 2 Definitions, Nature and Distinctions. In part; Escheat is an incident or attribute of sovereignty, and rests on the principle of the ultimate ownership by the state of all property within its jurisdiction. The legislature has power to provide for escheats because it represents the sovereignty of the state, but the legislature may exercise its power contrary to the peoples command directly expressed in the constitution.

CORPUS JURIS SECUNDUM NOTES

Escheat is generally regulated by statutes, or constitutional provisions, which are to be construed in accordance with well-defined rules of statutory construction.

Section 3 Grounds. In part; Accordingly, the state, in a just and proper exercise of its police power, may declare statutory grounds of escheat of lands within its territory, and for the purpose of enabling it to follow up property to which there is no apparent or certain claim of ownership, the state for its information may require depositaries or stakeholders of property to file reports and give reasonably prompt notice of escheatable property.

The only reasons for property formerly belonging to a decedent to escheat to the state is that there is no other beneficiary known who has a superior claim thereto, or that in the orderly administration of estates, when the whereabouts of the beneficiary is not ascertainable, it is inexpedient to indefinitely maintain assets pending the beneficiary's discovery.

Section 4 Property Subject. In part; Personal property does not escheat in the original and technical sense of the term; but the doctrine of escheat is, in effect, applied to personalty as well as to realty. The doctrine extends to intangible as well as to tangible property, and generally to all rights of property of any nature whatever. To be subject to escheat, the property ordinarily must have its situs within the territorial limits of the particular state.

Section 11. Nature and Form. The proceeding to enforce an escheat is in the nature of an inquest of office. The procedure is generally regulated by statute, and, when so regulated, the escheat must be established in the manner prescribed and all the requirements of the statute substantially complied with. By conferring on a court of chancery exclusive jurisdiction over escheat proceedings, the legislature presumably intended that such proceedings would be governed by principles and practices of a court of equity.³¹

footnote 31. N.J. State by Parsons v. Standard Oil Co., 68 A.2d 499, 5 N.J.Super. 460, modified on other grounds 74 A.2d 565, 5 N.J. 281, affirmed Standard Oil Co. v. State of New Jersey by Parson, 71 S.Ct 822, 341 U.S. 428, 95 L.Ed. 1078

Section 12 Jurisdiction. In part; Courts of law or Equity. In some jurisdictions statutory proceedings for escheat should be prosecuted at law; and, indeed, it has been said to be the general rule that, in the absence of statute to the contrary, courts of law have jurisdiction of an inquisition, or other proceeding, to establish or perfect an escheat. However proceedings in chancery may be allowed, as where there are other grounds of equitable jurisdiction.

Section 17. Pleadings. In part; The same particularity of pleading is required in proceedings under escheat acts as in ordinary actions at law or in equity.

Answer or Traverse. What would be an insufficient answer in an ordinary action at law or in equity must be regarded as insufficient in an escheat proceeding. The traverse may be general or special, and may extend to all, or be limited to one or more, of the facts necessary to support the inquisition. The effect of a traverse is to bar the claim of the state until the issue is determined by trial.

CORPUS JURIS SECUNDUM NOTES

Section 21. Operation and Effect. Taking without escheat or for benefit of subsequent claimants. In part: Under statutes of this character, the state takes only custody and control, and holds the property subject to all lawful demands of the true owners thereof.

B. Title Transferred. In part: When title vests in the state, it carries with it the right to possession, and to the rents and profits accruing after the vesting.

The state takes subject to the lien of a mortgage, with the right to redeem from foreclosure proceedings, and by some statutes, to trusts.

Section 23. Release, Restitution, and Reimbursement.

B. Proceedings Evidence. In part: In a contest between claimants to an escheated estate, each claimant has the burden of proving his relationship and he cannot rely on the weakness of the claim of others.

CJS book 90a page 83-- In addition to their general and inherent jurisdiction over trusts and actions to establish and enforce them, **courts of equity have the right to exercise a supervisory control over trustees and their jurisdiction is generally deemed to be exclusive and not to be vested in probate or county courts, unless jurisdiction has been conferred on such courts by a statute.** The power exists solely for the protection of the rights of the grantor who created the trust and of the rights of the beneficiaries of the trust. There is no public interest in the matter where the parties to the instrument are purely private parties. The power is part of the courts general administrative power in connection with its trust creations and is usually exercised IN CHAMBERS.

Here are a few quotes from Section 2-Equity CJS 30A

Page 160:

1. "Foundation of equity is good conscience."
2. "It has been stated broadly that equity is that system of jurisprudence in which the conscience rules"
3. "The substantive rules of law are the same in suits at law and in equity, but the procedure is different."

Page 168.

"The decree of a chancellor is always a matter of grace and never the absolute right of a litigant."

Page 171.

"Equity is free to use its coercive process vis-a-vis the person and compel execution of proper instruments that are needed to carry out a court's degree."

CORPUS JURIS SECUNDUM NOTES

Page 288: Here's a BINGO!!!! section 93.

1. "Courts of equity must follow general maxims in rendering relief.³⁴ These maxims are in the strictest sense principia, the beginnings out of which have developed the entire system of equity jurisprudence, and are, in general, enforced by the courts. ³⁷"

Page 289. and 290:

1. "In order to be entitled to relief, complainant must establish a superior right or equity."
2. "Equity courts are not bound by strict common law rules.⁴⁹"
3. "Equity courts are not by strict common law rules.⁴⁹"
4. "Equity looks beneath the rigid rules of the law to seek substantial justice.⁵¹"
5. "It has power to prevent such rules from working an injustice,⁵² and will depart therefrom whenever it is necessary to accomplish the ends of justice.⁵³"
6. "Every equitable right or interest derives not from a declaration of substantive law, but from the broad and flexible jurisdiction of courts of equity to afford remedial relief, where justice and good conscience so dictate.⁵⁴"
7. "Equity administers its remedies in accordance with its own rules.⁵⁵ One who seeks the aid of equity is governed by its rules and principles⁵⁶ and cannot complain that the strict rules of law are not enforced.⁵⁷"
8. "The maxims and principles of equity apply to suits in equity even though the suit is also cognizable in the law courts.⁵⁸"

Page 291

1. "Final object of equity is to do right and justice."
2. "Maxim that no one should be allowed unjustly to enrich himself at another's expense was without application in action to set aside mortgage foreclosure."
3. "Equity is not concerned with the identity of plaintiff or of defendant but will do justice between the parties, regardless of the order in which they may appear on the court docket."

Page 292:

1. "Equity will permit only what is just and right with no element of vengeance."
2. "A court of equity will be more inclined to listen to him who heeds the biblical command "Thou shalt not avenge" rather than one who seeks vengeance."

CORPUS JURIS SECUNDUM NOTES

3. "Equity will use extraordinary powers only to end that justice may be done in each individual case presented."
4. "Equitable relief will not be granted, unless it appears that good conscience and substantial justice require it."
5. "Courts of equity are not bound in castiron rules, but are governed by rules which are flexible and adapt themselves to particular exigencies, so that relief will be granted when, in view of all the circumstances, to deny it would permit one party to suffer a gross wrong at the hands of the other."
6. "A court of equity has the fundamental and inherent equitable power so to protect and control its proceedings as to prevent abuse and injustice."
7. "Courts of equity will see that wrong and oppression are not inflicted under guise of legal procedure."
8. "Court of equity should require that parties brought before it do what equity and good conscience require should be done."
9. "Equity requires one to be just before he can be generous."
10. "Equitable relief will not be granted, unless it appears that good conscience and substantial justice require it."

Page 293

1. "Courts of equity is not to be made an instrument of wrong."
2. "The fact that the remedy is exclusively in equity does not compel the court to do inequity."

Page 294:

1. "Under the principle that he who seeks equity must do equity, where question for determination is whether one party or another has prior or superior right, decision should be against party who has weaker equity or one who was in better position, by reasonable diligence or care, to have averted the loss which now must be borne by one or the other."
2. "A suitor cannot escape the effect of the maxim by resorting to legal niceties.¹⁷"

Page 310

1. "Equity will not aid one who comes into court as a law violator."

CJS Trust, Book 90, Section 50, Page 174-175. The construction of a declaration or acknowledgement of Trust is a matter of law.

In determining whether or not a writing creates an express trust the court is not permitted to speculate, guess, or surmise as to the meaning of the instrument and relationship of the parties.

CORPUS JURIS SECUNDUM NOTES

CJS TRUSTS, BOOK 90A, section 323, page 45. Breach or repudiation of trust agreement. A trustee who breaches or repudiates a trust agreement commits an act which necessarily encompasses fraud.

507 P.2d 241

JOHN P. JENNINGS, LUCILE JENNINGS GILLE, and LAURA JENNINGS HOUSEWORTH, Individually and as Trustees, and LUCILE POLLOCK JENNINGS, Appellees,

v.

MAE N. JENNINGS, Appellant, and THE NATIONAL INVESTMENT COMPANY, INC., Defendant.

No. 46,771

Supreme Court of Kansas.

Opinion filed March 3, 1973.

We are not impressed by the argument of defendant that this cause of action does not sound in fraud. True, the plaintiffs did not use the word "fraudulent" until the amended petition was filed; however, a trustee who breaches or repudiates a trust agreement commits an act which necessarily encompasses fraud. To determine whether the plaintiffs discovered or should have discovered the fraudulent acts of A.H. Jennings, Jr., more than two years prior to the filing of this action requires an examination of the record.

208 Okla. 655 (1953)

258 P.2d 649

BYRD

v.

MARLIN.

No. 34536.

Supreme Court of Oklahoma.

June 16, 1953.

Fraud is the arch enemy of equity, and a court of equity will relieve against a judgment obtained by imposition or fraud. * * * It matters little as to the mode or manner in which fraud is effected. A court looks to the effect, and asks if the result is a consequence of the fraud. For any description of mala fides

CORPUS JURIS SECUNDUM NOTES

practiced in obtaining a judgment equity will grant relief. If by fraud and misconduct one has gained an unfair advantage in proceedings at law, whereby the court has been made an instrument of injustice, equity will interfere to prevent him from reaping the benefit of the advantage thus unfairly gained."

"Fraud practiced in the very matter of obtaining the judgment is regarded as perpetrated upon the court, as well as upon the injured party, and will warrant a court of equity in enjoining the judgment. and quoting Pomeroy's Equitable Remedies, vol. 2, §§ 648, 650, and 651:

"Where fraud relates to the conduct of the suit, as where it prevents a party from asserting his rights, there is no fair adversary proceedings, and equity will interfere. The courts commonly speak of the former class as intrinsic and of the latter as extrinsic fraud, etc. Thus, it is generally said that it is extrinsic fraud, mistake, and the like which are grounds for relief.'

CORPUS JURIS SECUNDUM NOTES

CORPUS JURIS SECUNDUM NOTES