

CHAPTER 501

USES AND TRUSTS

501.01 ABOLISHED IN PART.

A constructive trust is an unjust enrichment rectifying remedy, and has nothing in common with an express trust except a confusing similarity in surname or label. *Knox v Knox*, 222 M 477, 25 NW(2d) 220.

Charitable trusts. 1 MLR 220.

Future interests in property. 4 MLR 319.

Doctrine of cy pres as to charitable trusts. 7 MLR 175.

Rules as to suspension of the power of alienation. 9 MLR 316, 14 MLR 75.

Spendthrift trusts. 15 MLR 576, 21 MLR 80.

Necessity of a writing for personal property trusts in Minnesota. 17 MLR 313, 340.

Revocation by settlor. 19 MLR 226.

Reservation of control by settlor. 19 MLR 821.

Legal effect of gift to charitable institutions. 23 MLR 671.

501.02 EXECUTED USES CONFIRMED.

Future interests in property. 4 MLR 319.

Suspension of power of alienation. 9 MLR 317.

Necessity for a writing creating personal property trusts. 17 MLR 313, 340.

501.03 RIGHT OF POSSESSION AND PROFITS A LEGAL ESTATE.

An express trust may be terminated by decree of the court when the entire beneficial interest in and to the trust property, including the estate in reversion, has become vested in the cestui que trust, and the character and purpose of the trust as expressed in the instrument creating it does not conflict with or preclude the right of termination. *Simmons v Northwestern Trust Co.* 136 M 357, 162 NW 450.

The trust consisted of registered bonds payable to bearer. The trust instrument of June 14, 1923, the First Trust Company of St. Paul being trustee, after declaring that the trustee "shall hold, possess, care for, and manage such securities" and directing investment and reinvestment of principal and collecting of interest, provides that the net income shall go to the settlor Matheson during his life. Upon his death the income was to be paid to his wife, if she survived, until her death or remarriage. This was an express trust, authorized by section 501.11, subd. 5, and valid. The state has the same jurisdiction over chattels as over real property and has jurisdiction over a document within its territory. The state courts have power to proceed in rem or quasi in rem. *First Trust Co. v Matheson*, 187 M 468, 246 NW 1.

What law governs the validity of inter vivos trusts of movables. 18 MLR 565.

Reservation of control by settlor as rendering the trust testamentary. 19 MLR 821.

Validity of restraints upon the involuntary alienation of beneficiary's right to receive the principal of a trust. 21 MLR 80.

501.04 ACTIVE TRUSTS NOT AFFECTED.

A provision in a trust agreement for a gift in trust to named beneficiaries "and to their heirs at law by right of representation, in accordance with the then

laws of descent of the state of Minnesota" and a similar provision in a will for a gift in trust to named beneficiaries "and to their heirs at law by right of representation" manifest an intention to pass absolute or fee interests in the trusts to the named beneficiaries in virtue of the rule that words of inheritance are not necessary to pass such interests, the words of inheritance being consistent with an intention to pass a fee or absolute interest and the superadded words being insufficient to cut it down to a lesser one. A beneficiary is not prevented from taking a vested interest in a trust by section 501.17 under which the whole trust estate, in law and equity, vests in the trustee and the beneficiary takes no estate or interest in the lands but may enforce the performance of the trust in equity. *First and American Bank v Higgins*, 208 M 295, 293 NW 585.

Future estates in property. 4 MLR 329.

Rules to suspension of the powers of alienation. 9 MLR 316.

Conveyance in trust to reconvey as creating an active trust. 17 MLR 233.

Spendthrift trusts. 21 MLR 85.

Power of grantor by direct conveyance to himself and another to create a joint tenancy. 23 MLR 386.

501.05 PASSIVE TRUSTS ABOLISHED.

Delivery of negotiable bonds to a depository for named beneficiaries in execution of the donor's intention to make gifts without designation of the capacity in which the depository receives the same is a valid delivery sufficient to complete the gifts, since the depository takes as a trustee for the beneficiaries. A completed gift cannot be revoked by the donor. A direction to deliver at death of the donor definitely fixes the time of delivery. *Larkin v McCabe*, 211 M 23, 299 NW 649.

Where the income is given directly to the life tenant and the sole duty of the trustee is to deliver or pay over the trust property to the remainderman on the death of the life beneficiary, a passive trust is created. Passive trusts of freehold interest in land are executed by sections 501.04, 501.05. In many other jurisdictions the result is accomplished by the statute of uses, 27 Henry VIII, Chapter 10. Analogous to the rule applicable to passive trusts in land, a passive trust of personality is treated as vesting both the legal and the equitable title in the beneficiary on the ground that the trust is without purpose. *Larkin v McCabe*, 211 M 23, 299 NW 649.

Future interests in property. 4 MLR 319.

Suspension of the power of alienation. 9 MLR 317.

Trusts; statute of uses. 17 MLR 233.

Necessity of writing for personal property trusts. 17 MLR 313.

501.06 LIMITING PRECEDING SECTIONS.

Where a person knowing that a testator, in giving him a devise or bequest, intends it to be applied for the benefit of another, either expressly promises or by his action at the time implies that he will carry the testator's intention into effect and the property is left to him in the faith on the part of the testator that such promise will be kept, the promisor will be held as a trustee *ex maleficio*. *Ives v Pillsbury*, 204 M 142, 283 NW 140.

Where the owner of property is induced by fraud of the transferee to part with it, the transferee holds it upon constructive trust for the transferor. False representation as to credit standing made in a customer's report to a mercantile agency and by the latter reported to another, who relied thereon in making a contract, constitutes actionable fraud. *Penn Mining Co. v Clarkson*, 205 M 517, 287 NW 15.

The rule that equity will impose a constructive trust upon land obtained by bad faith in favor of the party equitably entitled to it, resting as it does on the moral obligation to refrain from placing one's self in positions which ordinarily excite conflicts between self-interest and integrity, justifies the imposition of such a trust on land acquired by defendant as the result of information received at a time when he was, for all practical purposes, an agent for plaintiff and under an obligation,

by reason of his employment, to report such information. Such is the case even though the tract in question was of a type only occasionally purchased by his employer and notwithstanding the absence of a finding that plaintiff would have purchased the land had he known of it. *Whitten v Wright*, 206 M 423, 289 NW 509.

There is nothing in the record compelling the court to hold as a matter of law that decedent obtained title to the land at the death of the original owner by fraud, and consequently he cannot be held as trustee ex maleficio. *Moe v Oyen*, 208 M 496, 296 NW 512.

In the conduct of its business, directors and officers of a corporation are fiduciaries. So if, in transacting its business, they acquire property in violation of their duty as fiduciaries, they hold it upon a constructive trust for the corporation. *Risvold v Gustafson*, 209 M 357, 296 NW 411.

Where an owner of property who transfers it is induced to do so by the fraud, duress, or undue influence of the transferee, the transferee holds the property upon a constructive trust for the transferor and that trust includes the proceeds of the property. *Blumberg v Taggart*, 213 M 39, 5 NW(2d) 388.

A husband is not entitled to an equitable lien upon his wife's property for the value of his services in improving the property or for advancements in connection with the improvement in the absence of proof that he was induced to perform the services or make the advancements by fraud, duress, undue influence, or a mistake of such a character that he is entitled to restitution. *Martin v Tucker*, 217 M 104, 14 NW(2d) 105.

Where a business opportunity is in the line of a corporation's activities, especially if intended for it, the opportunity, as one in which it has a legitimate interest or expectancy, belongs to the corporation and not to its officers or directors, and if an officer or director diverts the opportunity and embraces it as his own, he is chargeable as a constructive trustee for the benefit of the corporation with all the profits and benefits received therefrom by him; but, where the opportunity is one in which the corporation has no interest or expectancy, the opportunity is not a corporate, but a personal one, and belongs to the director, with the right to treat it as his own. *Diedrick v Helm*, 217 M 483, 14 NW(2d) 913; *Boxrud v Ronning*, 217 M 518, 15 NW(2d) 112.

Defendant, having obtained title to an undivided half interest in the homestead of plaintiff by misrepresentation and in violation of the confidential or fiduciary relationship existing between them, held such title in trust for him. *Crowley v Crowley*, 219 M 341, 18 NW(2d) 40.

Suspension of the power of alienation. 9 MLR 317.

Constructive trust raised by transfer of property to a person in fiduciary capacity. 12 MLR 305.

Constructive trust raised when fiduciary takes a new interest in leased premises for his own benefit. 13 MLR 711.

Constructive trusts in cases of agency to buy real estate. 17 MLR 734.

Statute of frauds as affecting trusts. 19 MLR 581.

Constructive trusts following misappropriated money invested in real estate. 23 MLR 706.

Constructive trusts and applicable equitable remedies. 25 MLR 667.

501.07 RESULTING TRUSTS.

Securities valued at \$5,000 were purchased. Plaintiff claims she furnished the funds to make the purchase, but the certificates were issued in defendant's name to serve certain purposes. Plaintiff claims she was the beneficiary of a resulting trust in the securities. Defendant's divorced wife intervened to subject the securities as defendant's property to the payment of alimony due her. The trial court properly held that there was no resulting trust in favor of plaintiff and upheld the right of the divorced wife to subject the securities to her claim. *Pearson v Hassie*, 200 M 250, 273 NW 677.

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Real estate purchased by the principal stockholder of a corporation with corporate funds which otherwise might have been withdrawn by him as salary and which was placed in his name during his lifetime many years ago was not held in trust by the stockholders for the benefit of the corporation; and personal property purchased by decedent before her death with corporate funds which might otherwise have been withdrawn for salary for her own use and benefit became her property, and the corporation having acquiesced in such procedure could not thereafter claim such property as its own. *Lund v First National Bank*, 217 M 617, 15 NW(2d) 426.

Where in reliance upon the confidential relation of marriage property is conveyed without consideration by the husband to his wife subject to a promise that she will subsequently reconvey the property to him, equity, in order to prevent unjust enrichment will decree the wife to be a constructive trustee holding the property for the use and benefit of the husband where she repudiates her oral promise to reconvey. A constructive trust is only a creation of equity designed to provide a remedy for the prevention of unjust enrichment as in the instant case. *Knox v Knox*, 222 M 477, 25 NW(2d) 225.

Money of wife invested in husband's name. 8 MLR 553.

Suspension of the power of alienation. 9 MLR 321.

Failure of express oral trust does not create a constructive trust as to title to land. 12 MLR 88.

Bequest on condition that divorce be obtained. 14 MLR 104.

Constructive trust in cases of agency to buy real estate. 17 MLR 734.

Statutory provisions affecting purchase. 18 MLR 575, 604.

Oral partnership for deal in lands; money-resulting trusts. 19 MLR 584.

Constructive trusts relating to real property. 23 MLR 708.

Constructive trusts and analogous equitable remedies. 25 MLR 667.

501.08 FRAUD AGAINST CREDITORS.

1. Application of rule.

2. Action to enforce trust.

3. Generally.

3. Generally

At the time the land was purchased by the corporation Anton Lund was in full control of the corporation and had entire right to the profits and dividends. His method of withdrawing surplus and profits due him, by taking title to the land, was acquiesced in by the corporation. No evidence of any kind was submitted which would uphold or sustain a finding of a trust, and the trial court properly held that the property belonged to the estate. *Estate of Lund*, 217 M 617, 15 NW (2d) 426.

Scope of uniform fraudulent conveyance act. 7 MLR 456.

When may a creditor proceed under uniform act. 7 MLR 543.

Presumption of resulting trust or gift. 8 MLR 554.

Validity of bequests on condition legatee obtain a divorce. 14 MLR 104.

Constructive trusts in cases of agency. 17 MLR 745.

Statutory provisions affecting purchase money; resulting trusts. 18 MLR 576.

Oral partnership agreement for the purpose of dealing in land. 19 MLR 584.

501.09 LIMITING THE EFFECT OF SECTION 501.07.

Money of wife invested in husband's name. 8 MLR 554.

Validity of trusts on condition that legatee obtain a divorce. 14 MLR 104.

Constructive trusts created by the use of misappropriated money to purchase real estate. 23 MLR 706.

Constructive trusts applied to interests in land. 25 MLR 717.

501.10 BONA FIDE PURCHASERS PROTECTED.

Where the owner of property is induced by fraud of the transferee to part with it, the latter holds it upon constructive trust for the transferor; and false representation as to credit standing made in the customer's report to a mercantile agency and by the latter reported to another who relies thereon in making a contract, constitutes actionable fraud. *Penn v Clarkson*, 205 M 517, 287 NW 15.

Protection of an interest in real property acquired by a purchaser in good faith at an execution sale. 24 MLR 806.

501.11 PURPOSES OF EXPRESS TRUSTS.

Subdivision 6, amended by L. 1947 c. 597 s. 1.

The beneficiaries being definite, section 501.11 authorizes active trusts in land for any lawful purpose; and section 501.12 authorizes them to the extent possible by common law when the beneficiaries are indefinite. *Y. M. C. A. v Horn*, 120 M 404, 139 NW 805.

The record supports the trial court's conclusion that the trust instrument detailing distribution through the Minneapolis Trust Co. was not obtained by fraud, and it was based upon a consideration and properly delivered for the purpose of vesting the beneficial interest thereby created. *Parten v Edgar*, 200 M 340, 274 NW 226.

A trustee is bound to employ such diligence and prudence in the care and management of the trust estate as any generally prudent men of discretion and intelligence in such matters employ in their own life affairs. In determining whether or not the acts of a trustee have been prudent, we must look at the facts as they were at the time of their occurrence, not aided or enlightened by those which subsequently took place. *Fortune v First Trust Co.* 200 M 367, 274 NW 524.

Upon remittitur a mandate ordering that a trustee's account be surcharged in a principal sum does not authorize the trial court to add interest to the amount surcharged. It is the duty of the court below to execute a mandate according to its terms. *Malcolmson v Goodhue Co. Bank*, 200 M 486, 274 NW 652.

The district court has the power with jurisdiction in personam of trustees as beneficiaries to settle by order annual accounts of the trustees and to direct disposition of trust property; and such orders are in essence judgments, binding as such upon the parties and rendering their subject matter *res judicata*. *Will of Melgaard*, 200 M 493, 274 NW 641.

Where a corporate trustee is joined with an individual trustee, the individual must give such bond as is required by the court, while the corporate trustee is not required to give a bond. *Butler v Builders Trust Co.* 203 M 555, 282 NW 462.

An assignment of a life insurance policy to a trustee for her benefit by the irrevocably named beneficiary, who is also the assignee of the insured, transfers to the trustee all the rights, privileges, and options of the beneficiary under the policy which the trustee may use and exercise for the benefit of the beneficiary the same as she could have done if there had been no assignment. *1st Trust Co. v N. W. Mutual*, 204 M 244, 283 NW 236.

Money or other property received by a trustee as proceeds of sale or exchange of capital of trust property, is capital, not income. In the instant case it was the duty of the trustee, who is also the life tenant, to allocate to corpus rather than income, all dividends of the corporation so far as they constituted all increases in its capital, that is, profits of sale of securities. *Clarke v Bennett*, 204 M 574, 284 NW 876.

Legal title passes to the trustee of the fund upon delivery thereof to him by Anna Gibson, upon the express oral agreement that he was to invest the same

and use it for her support and maintenance during life, and turn over and deliver to her sister Christina Schlick what remained after payment of debts and funeral expenses. Oral trusts in personality were not abolished by section 501.01. *Sal-scheider v Holmes*, 205 M 459, 286 NW 347.

Delivery of negotiable bonds to a depository for named beneficiaries in execution of the donor's intention to make gifts without designation of the capacity in which the depository receives the same, is a valid delivery sufficient to complete the gifts since the depository takes as trustee for the beneficiary; and where, as here, gifts have been executed so as to pass title to donees, a return of the property to the donor for purposes not inconsistent with the continued ownership of the donees does not reinvest the donor with the title. A completed gift cannot be revoked by the donor. *Larken v McCabe*, 211 M 11, 299 NW 649.

The general rule is that where gains result from the sale of trust securities, the accretions belong to and are a part of the trust principal and as such may not be treated as income. To the extent that the trust donor reserved an interest in the trust created by him, that interest was subject to claims of his creditors, but the rights of trust remaindermen could not be reached. *Brin v Sherill*, 211 M 85, 300 NW 195.

It is the duty of the court to bear in mind that when the creator of a trust intentionally and unmistakably reposes discretion in his trustee he does so because he desires the trustee's honest judgment; and the court will not substitute its discretion for that of the trustee except when necessary to prevent abuse of discretion. *Pritchard v Carpenter*, 212 M 233, 3 NW(2d) 226.

The contract between a trustee and a cestui que trust providing for the payment to the trustee as attorney for the beneficiary of one-third of the amount recovered for the beneficiary from the trust estate, is in violation of a spendthrift clause in the trust instrument which prohibits the assigning or encumbering of the beneficiary's interest in the estate, or income prior to the distribution thereof. An attorney at law, or trustee, unfaithful in the performance of a fiduciary duty, forfeits right to compensation. *Hursch v Lee*, 214 M 448, 9 NW(2d) 245.

The fundamental essential of a trust is separation of the legal estate from the beneficial enjoyment since there can be no trust when both the legal title and the beneficial interest are in the same person. An express trust is one created by the parties in language directly and expressly pointing out the persons, property, and purpose of the trust; and where a testator in creating a testamentary trust made no provision for the appointment of successors to the named trustees in the event of vacancy, if a vacancy occurs the district court has authority to appoint a co-trustee to act as such with the one named in the will. *Wertin v Wertin*, 217 M 51, 13 NW(2d) 749.

Where a will discloses a testamentary intention to use a corporation, all stock of which is owned by the testator, as an instrumentality for the execution of his testamentary plan, it will be given that effect; and the court may direct the trustee who holds all the stock of the corporation to exercise his power of stock control so as to effectuate the payments along the testamentary plan. Gains in value of investments represent an increase in capital and are credited to principal rather than income and a capital loss is chargeable to the corpus. *Griffin v First Nat'l*, 218 M 206, 15 NW(2d) 590.

Where the language of the parties does not clearly show their intention, practical construction may be resorted to to determine whether a debt or a trust is intended. An express trust, as distinguished from a resulting or a constructive one, involves the separation of the legal and the beneficial interests in a thing or res whereby legal interests in the trust res are held by a person, the trustee, for the benefit of another, the beneficiary, who has an equitable interest in the res to receive whatever benefits he is entitled to therefrom by the terms of the trust. Under our statute, the trustee has the whole legal title and estate; the beneficiary a chose in action, consisting of the right to enforce in equity performance of the trust. The beneficiary of a trust has a beneficial interest in the trust property and the creditor has merely a personal claim against his debtor. If the intention is that the money shall be kept or used as a separate fund for the benefit of the payor or a third person, a trust is created. If the intention is that the person

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receiving the money shall have unrestricted use thereof, being liable to pay a similar amount to the payor or a third person, a debt is created. There is no trust in the instant case. *Farmers Bank v Ellingson*, 218 M 416, 16 NW(2d) 319.

Upon a foreclosure sale of the property the mortgage debt is extinguished to the amount of the purchase money. The result is the same whether the property be bid in by the mortgagee or purchased by a third person. Having been paid, rules relative to commercial paper no longer apply. The bonds secured by the mortgage in the instant case are, after the sale, commercially dead. Bondholders share pro-rata in the proceeds of redemption or sale of the res. The mortgagee who purchased 15 of the 65 bonds, may have his pro-rata share of the proceeds of the sale. *Olmsted Bank v Pesch*, 218 M 427, 16 NW(2d) 470.

There is a clear distinction between the acts of trustees in making investments of trust funds and their acts in making, or failing to make, prompt disposition of securities received from the hands of the creator of the trust. The purchase of a speculative stock by a trustee is one thing; the retention of such stock, awaiting the arrival of a favorable opportunity to sell, is quite another. The former would constitute negligence; the latter, regarded prospectively, might be prudent, although in retrospect it might seem to have been a grievous error. Trustees should not be held liable for unfortunate results which they could not be expected to foresee and were powerless to prevent. *Comstock's Will*, 219 M 326, 17 NW(2d) 656.

Defendant, having obtained title to an undivided half interest in the homestead of plaintiff by misrepresentation and in violation of the confidential or fiduciary relationship existing between them, held such title in trust for him. *Crowley v Crowley*, 219 M 341, 18 NW(2d) 40.

Charitable uses are favorites with the courts of equity, and construction of all instruments where they were concerned is liberal in their behalf. The object and effect of a true charitable bequest is to confer a public benefit. The doctrine of judicial cy pres, as distinguished from prerogative cy pres is one of the most beneficent doctrines in the law of trusts, and by judicial or legislative pronouncement, is now recognized almost universally throughout the country. *Noel v Olds*, 138 F. 586.

Charitable trusts and the Minnesota statute of uses and trusts. 1 MLR 201.

Charitable trusts; gifts. 1 MLR 221.

Passing of the corporation in business. 2 MLR 407.

Validity of a perpetual trust. 3 MLR 39, 68.

Rules against restraints on alienation. 8 MLR 186, 295.

Suspension defined. 8 MLR 308.

Creation of future estates in chattels personal, not in trust. 8 MLR 315.

Authorized purposes of trusts of real property. 9 MLR 316.

Power of trustee to lease trust property. 9 MLR 316.

Suspension of the power of alienation. 9 MLR 323.

Condition in trust that cestui que trust be reared in certain religious faith, effect of. 10 MLR 73.

Commingling of funds with money belonging to executor, administrator, or trustee, interest. 13 MLR 521.

Joint adventures. 13 MLR 711.

Validity of bequests on condition that legatee obtain a divorce. 14 MLR 104.

Charitable trusts. 14 MLR 589.

Charitable trusts; Minnesota statute not retroactive. 14 MLR 611.

Definiteness and certainty of testamentary trust. 14 MLR 704.

Spendthrift trusts. 15 MLR 571.

Creditor's right to reach beneficiaries' interests. 15 MLR 576.

Necessity for a writing for personal property trusts. 17 MLR 313.

Trust of void patent. 17 MLR 558.

Testamentary trust for benefit of specific animals. 17 MLR 563.

Drafting of wills and trusts. 18 MLR 27.

Insurance trusts as non-testamentary disposition. 18 MLR 391.

Law governing validity of inter vivos trusts. 18 MLR 565.

Vested remainder in personalty; payment postponed. 18 MLR 891.

Rights of subsequent creditors in corpus of trust fund set up by debtor reserving life estate and general power of appointment. 19 MLR 328, 347.

Termination and revocation of trusts, termination by reason of improvidence in creation. 19 MLR 225, 255.

Trusts, principal and income and amortization of premiums and accumulation of discounts. 20 MLR 203, 237.

Validity and effect of exculpatory clauses in trust instruments. 20 MLR 210.

Right of support; cestuis living on property. 20 MLR 322.

Spendthrift trusts, validity of restraints upon the involuntary alienation of beneficiary's right to receive the principal of a trust in Minnesota. 21 MLR 80.

An assignment of beneficial interest in spendthrift trust enforced as a contract to assign. 23 MLR 110.

Validity of oral trust in personalty. 24 MLR 138.

Spendthrift trusts, right of trust estate to reach trustee-beneficiary's interest to recover for breach of trust. 24 MLR 295.

Voting trusts currently observed. 24 MLR 347.

Federal estate tax, inter vivos transfers subject to power in donor to alter, amend, revoke or terminate. 30 MLR 306.

501.12 EXPRESS TRUSTS FOR CHARITABLE, EDUCATIONAL, RELIGIOUS, AND OTHER PUBLIC USES.

The beneficiaries being definite, section 501.11 authorizes active trusts in land for any lawful purpose; and section 501.12 authorizes them to the extent possible by common law when the beneficiaries are indefinite. *Y. M. C. A. v Horn*, 120 M 404, 139 NW 805.

A devise or bequest although in form an outright gift yet when made to an institution whose sole reason for existence and whose entire activity is charitable, is in purpose and practical effect a charitable trust. *Swenson v Board*, 202 M 31, 277 NW 529.

A will provided that a certain residue be given to the decedent's executors in trust, and they were directed that within 15 years after decedent's death the principal and income were to be used for the creation, establishment, and maintenance of "any such charitable or other public institution, or for any such public use as said trustees may in their discretion see fit to appropriate or apply the same". The trustees in their discretion decided to erect an auditorium building in the city of Red Wing. With the advent of motion pictures, the auditorium became the source of considerable income, creating a fund amounting to in excess of \$100,000. Under the facts stated a gift on condition for a charitable purpose was created rather than a charitable trust. The attorney general is the proper plaintiff to compel compliance with the condition impressed upon a gift for a charitable purpose. A citizen, resident, and taxpayer, cannot maintain such action. *Longcor v City of Red Wing*, 206 M 627, 289 NW 570.

Charitable gifts and the Minnesota statute of uses and trusts. 1 MLR 201.

Trusts, doctrine of cy-pres, charities equity, wills. 7 MLR 174.

Cy-pres doctrine, certainty as to object and beneficiary. 8 MLR 353.

- Enforcement of charitable subscriptions. 12 MLR 654.
- Minnesota's statute of charitable trusts. 14 MLR 587.
- Spendthrift trusts. 18 MLR 493.
- Charitable trusts. 19 MLR 606.
- Legal effect of gift to charitable trusts. 23 MLR 670.
- Enforcement of restrictions upon gifts to charitable corporations. 24 MLR 570.
- Deviation from trust because of unforeseen circumstances, invasion of vested remainder for the benefit of the beneficiary. 30 MLR 553.

501.125 KINDS OF PROPERTY A TRUSTEE MAY ACQUIRE.

A trustee is bound to employ such diligence in the care and management of the trust estate as prudent men of discretion and intelligence in general employ in such matters in their own life affairs; and in determining whether or not the acts of the trustee have been prudent, the facts must be viewed as they were at the time of their occurrence, not aided or enlightened by those which subsequently take place. In the absence of fraud or flagrant breach of trust, only simple interest should be charged on amounts surcharged to a trustee's account, unless (1) a trustee has received compound interest, or (2) has received a profit which cannot be ascertained but is considerable, or (3) it was his duty to accumulate the income. In re Comstock, 219 M 325, 17 NW(2d) 656.

A statute, such as that enacted in 1943, passed subsequent to the death of testator does not give the trustee under a will greater powers than those conferred upon him by terms of the will. Trust under the Will of Jones, 221 M 524, 22 NW(2d) 633.

Judicial control of the discretionary powers of trustees. 2 MLR 535.

Liability of trustees (or guardian, executor of administrator) for investment of trust funds. 9 MLR 464.

501.13 DEVISES AS POWERS.

Notwithstanding the provisions of sections 500.12, 500.16, 501.13, 501.14, the intent of a testator-trustor prevails and in the case at bar that intent is clear to confine the distribution of income to the grandchildren living at the time the class came into enjoyment of such income. A widow of a grandchild who died prior to such time was not intended to be included. Long v Disque, 207 M 7, 290 NW 312.

501.14 TRUST PROFIT SURPLUS SUBJECT TO CREDITORS' RIGHTS.

A decree of the probate court in furtherance of the provisions of the will of John Erickson created a trust in the residue of the testator's estate, the income from which was to be distributed to the widow and eight children or to the grandchildren by right of representation. The principal was to be distributed to the beneficiaries in five-year instalments. It provided that no title either in principal or income should vest in the beneficiaries until actual distribution to them and that such beneficiaries should have no power to assign, transfer, anticipate, or dispose of their interests therein prior to such distribution. This created a valid spendthrift trust, both as to corpus and income of the trust estate, which protected the same during transmission to and until actually received by the beneficiaries. When unrestrained by statute, it is the intent of the donor and not the character of the donee's obligation which controls the availability and disposition of his gift. The relationship of John Erickson to his grandchildren, standing alone, is wholly insufficient to justify an implication that it was his intent to make either the corpus or income of the trust available for their support. Erickson v Erickson, 197 M 71, 266 NW 161, 267 NW 426.

See, Long v Disque, 207 M 7, 290 NW 312, under section 501.13.

To the extent that the trust donor reserved an interest in the trust created by him, that interest was subject to the claims of his creditors, but the rights of

trust remaindermen could not be reached beyond such interest. *Brin v Sherill*, 211 M 85, 300 NW 195.

Spendthrift trusts. 18 MLR 493; 21 MLR 80.

Discounts in trust investments. 20 MLR 203; 24 MLR 201.

Premiums and discounts in trust accounts. 31 Harv. L. R. 447.

501.17 TRUSTEES TAKE ESTATE; WHEN.

A provision in a trust agreement for a gift in trust to named beneficiaries "and to their heirs at law by right of representation, in accordance with the then laws of descent of the state of Minnesota" and a similar provision in a will for a gift in trust to named beneficiaries "and to their heirs at law by right of representation" manifest an intention to pass absolute or fee interests in the trusts to the named beneficiaries in virtue of the rule that words of inheritance are not necessary to pass such interests, the words of inheritance being consistent with an intention to pass a fee or absolute interest and the superadded words being insufficient to cut it down to a lesser one. A beneficiary is not prevented from taking a vested interest in a trust (section 501.17) under which the whole trust estate, in law and equity, vests in the trustee and the beneficiary takes no estate or interest in the lands but may enforce the performance of the trust in equity. *First & Amer. Natl. Bank of Duluth v Higgins*, 208 M 295, 293 NW 585.

The fundamental essential of a trust is separation of the legal estate from beneficial enjoyment, since there can be no trust when both the legal title and the beneficial interest are in the same person. *Wertin v Wertin*, 217 M 51, 13 NW(2d) 749.

A testator bequeathed to a trustee real and personal property in trust to hold legal title to property for the benefit of another, applies to estates or interests, one equitable and one legal, the trustee holding legal title and the beneficiary the equitable interest. The record leaves no doubt that the title to remainder of certain funds left by decedent with his son-in-law did not become vested in his heirs during his lifetime. *Droege v Brockmeyer*, 214 M 182, 7 NW(2d) 538.

Destructibility of spendthrift trusts. 5 MLR 546.

Identity between trustees and beneficiaries. 27 MLR 100.

501.20 ALIENATION RESTRAINED; LIMITATION.

A testator bequeathed to a trustee real and personal property in trust to hold and manage the same as a trust fund with authority to sell and mortgage land and reinvest the proceeds and receive the income from the trust property, and pay such income annually to testator's daughter during her lifetime or, in certain contingencies, for a shorter period. The creditors of the daughter cannot reach either the property or the income while in the hands of the trustee during the continuance of the trust. *First Nat'l v Olafson*, 181 M 289, 232 NW 337.

Validity of perpetual trust; escheat. 3 MLR 68.

Destructibility of spendthrift trust. 5 MLR 547.

Rules against restraint on alienation. 8 MLR 186.

Political questions in federal courts. 8 MLR 483.

Restrictions on duration of trusts in personalty. 9 MLR 328.

Restrictions on duration of trusts in real property. 9 MLR 350.

Doctrine of *Claffin v Claffin*, 9 MLR 566.

Creditor's right to reach beneficiary's interest. 15 MLR 571.

Spendthrift trusts. 18 MLR 495.

Termination by consent of beneficiaries. 19 MLR 230.

Validity of restraints upon the involuntary alienation of beneficiary's right to receive the principal. 21 MLR 84.

501.21 EFFECT OF OMITTING TRUST IN CONVEYANCE.

Scope of the uniform fraudulent conveyance act. 7 MLR 456.

Liability of trustees after a decree of distribution. 19 MLR 489.

Rights of a bona fide purchaser at an execution sale. 24 MLR 806.

501.22 TRUST ESTATES.

Destructibility of spendthrift trusts. 5 MLR 547.

Purchase for value and estoppel. 6 MLR 87.

Purchaser of equitable title. 6 MLR 114.

Rules against restraints on alienation. 8 MLR 186.

Restrictions on duration of trusts of personal property. 9 MLR 328.

Spendthrift trusts; termination of trust by beneficiary. 9 MLR 562, 584.

Power of trustee to lease trust property. 14 MLR 274.

Trustee's purchase of trust property, power of court to authorize. 15 MLR 842.

Revocation of trust. 17 MLR 231.

Termination of trust. 17 MLR 346.

Lessons from the depression in the drafting of wills and trusts. 18 MLR 27; 19 MLR 225.

Deviation from express terms of trust. 20 MLR 447.

Duty of trustee to diversify investments. 25 MLR 806.

Contracts made in name of one party for the benefit of another. 29 MLR 436.

Deviation because of unforeseen circumstances; invasion of vested remainder for the benefit of the beneficiary. 30 MLR 553.

501.23 SALE, MORTGAGE, PLEDGE, OR LEASE OF PROPERTY IN TRUST CREATED BY WRITTEN INSTRUMENT; VOID, WHEN; DISTRICT COURT POWERS.

In construing the trust indenture herein involved the entire instrument must be considered, aided by surrounding circumstances, due weight being given to all its language with some meaning being given if possible to all parts, expressions, and words used, discarding and disregarding no parts as meaningless, if any meaning can be given them, consistently with the rest of the instrument; and so considering the present agreement it is apparent that the trustees were limited in their disbursements to the trust donor to the amount available as income of the trust estate. *Brin v Sherill*, 211 M 84, 300 NW 195.

Leasing of trust property. 14 MLR 281.

Oral partnership agreements for the purpose of dealing in land. 19 MLR 568, 581, 601.

Deviation from expressed terms of the trust. 20 MLR 447.

501.24 LEASES; AUTHORITY OF TRUSTEE; ORDER OF COURT FOR LEASE.

In the case of an active trust for life, and on the death of the life beneficiary to make title to a remainderman, the trust is executed on the death of the life beneficiary into a legal estate in the remainderman without the necessity of a conveyance from the trustee. *Zuckman v Freiermuth*, 222 M 172, 23 NW(2d) 541.

Authority of trustee to lease trust property. 14 MLR 274.

501.29 FINAL ORDER, EFFECT OF; OBJECTIONS, TIME FOR.

The district court has power, with jurisdiction in personam of trustees and beneficiaries, to settle by order annual accounts of the trustees and to direct disposi-

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tion of the trust property. Such orders are in essence judgments, binding upon the parties and rendering their subject matter *res judicata*. *Bank v Will of Melgaard*, 200 M 493, 274 NW 641.

501.34 TRUSTEE TO FILE INVENTORY.

A trustee is bound to employ such diligence and prudence in the care and management of the trust estate as prudent men of discretion and intelligence in general employ in such matters in their own like affairs; and in determining whether the acts of a trustee have been prudent the facts must be viewed as they were at the time of their occurrence not aided or enlightened by those which subsequently take place. The act of the corporate trustee with certain exceptions is allowed. In *re Comstock*, 219 M 325, 17 NW(2d) 656.

501.35 MAY APPLY TO COURT FOR INSTRUCTIONS.

An appeal lies from that part of an order in proceedings by a trustee for accounting and distribution, allowing the trustee's accounts and ordering distribution of the estate, which determines who are entitled as distributees since such part presents a distinct and separable question. *Holden v First National Bank*, 207 M 211, 291 NW 104.

The cardinal rule of construction, to which all others must bend, is that the intention of the settlor, as expressed in the language used in the trust indenture, shall prevail if it is not inconsistent with the rules of law; and when the language of a trust instrument provision has been employed with such precision and clarity as to be free from all doubt as to the intent of the settlor, there is no room for construction or interpretation. In *re Butler's Trusts*, 223 M 196, 26 NW(2d) 204.

The decision of the Minnesota state court that the trust beneficiary had no interest in dividends received during taxable years by the trust in form of deferred debenture notes was conclusive upon the tax court and upon the circuit court of appeals, so that such dividends did not constitute income distributable to the beneficiary, so as to make the dividends taxable to the beneficiary. *Eisenmenger v Commissioner*, 145 F(2d) 103.

501.38 NOT TO LIMIT JURISDICTION OF COURT.

A deposit in a savings account in the name of the depositor as trustee for another with the right to withdraw the whole or any part thereof or otherwise revoke the trust creates a tentative trust only valid under our statutes, which is revocable by the depositor during his lifetime and enforceable by the beneficiary as an irrevocable trust only after the depositor's death. The court has jurisdiction and it is not an abuse of discretion to order the revocation of a tentative trust in order to use the money subject thereto for the ward's comfort and support and the expenses of her guardianship. *Rickel v Peck*, 211 M 576, 2 NW(2d) 140.

Where a testator in creating a testamentary trust made no provision for the appointment of successors to named trustees in event of vacancies, and a vacancy occurred in the office of trustee because of the failure of one of the named trustees to qualify, the district court, which had complete jurisdiction in personam of the named trustees and the trust beneficiaries, had authority to appoint a co-trustee to act as such with the one named in the will. *Wertin v Wertin*, 217 M 51, 13 NW(2d) 749.

501.39 MISAPPLICATION OF PAYMENT TO TRUSTEE.

Money or other property received by a trustee as proceeds of sale or exchange of capital of the trust property is capital, not income; and in the instant case it was the duty of the trustee, who was also a life tenant, to allocate to corpus rather than to income all dividends of the corporation so far as they consisted of increases in its capital from profits on sale of securities. *Clarke v Bennett*, 204 M 574, 284 NW 876.

All persons who knowingly aid in misappropriation of trust funds are equally liable with the trustee. *Martin v First National*, 51 F(2d) 840.

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Trustees personal liability in contracts. 18 MLR 860.

501.40 TERMINATION OF TRUSTEES' ESTATE.

Destructibility of spendthrift trusts. 5 MLR 543.

Revocation and termination of trusts. 19 MLR 225.

Validity of restraints on spendthrift trusts. 21 MLR 87.

501.41 TRUST TO VEST IN DISTRICT COURT ON DEATH OF TRUSTEE.

Substitute trustees; discretionary powers. 13 MLR 165.

501.43 REMOVAL OF TRUSTEE.

See, *In re Comstock*, 219 M 325, 17 NW(2d) 656, noted under section 501.34.

501.44 POWERS OF COURT.

Section 501.33 relates to procedure, not to jurisdiction. The fundamental essential of a trust is separation of the legal estate from the beneficial enjoyment, since there can be no trust when both the legal title and the beneficial interest are in the same person. *Wertin v Wertin*, 217 M 51, 13 NW(2d) 749.