

Invisible Snares

by Alfred Adask

As background for the following articles in this issue on “constructive trusts,” note that I’ve explored the idea that government uses trusts to bypass the Constitution for about five years. I’m not going to try to republish all of insights and opinions I’ve previously presented on this subject. If I did, I’d have to fill up this whole issue of *Suspicious* without adding anything new. However, I will provide a brief summary of my earlier “Trust Fever” series of articles:

The essence of all trusts is *divided title* to property. To illustrate, let’s suppose a man owns perfect title (also known as “lawful,” “complete,” or “full” title) to a home and decides to create a trust to shelter that home. He first grants or donates the “perfect” title to his home into the trust. The home thus becomes trust property (also known as the trust “corpus”).

The grantor then divides his “perfect” title to the home into its two sub-components: *legal title* and *equitable title*. Each “sub-title” contains a different set of rights. Legal title includes the rights of actual control and disposal of trust property. Equitable title includes the right of possession and use of trust property.

The difference between legal and equitable titles is similar to the difference in rights between a landlord and a tenant. The landlord owns the house and has legal right of control and disposal (sale) of the house. The tenant has the equitable right to live in, use, and “possess” the house. Although the tenant lives in the house, he has no legal right to tear down walls, or sell the property.

When an individual has “perfect” title to his house, he has both the legal right of ownership and the equitable right of use. He has the right to both control (own) and live in (use) his house. However, when he creates

a trust, he appoints one or more trustees to hold the legal title to his home, and he appoints one or more beneficiaries to actually live on the property. The trustees effectively manage the home; the beneficiaries get to live in the home.

(It's a hard and fast rule that the trustees can't enjoy the benefits of the trust property, nor can beneficiaries exercise any real control (ownership) over trust property. Whenever a single individual holds both the legal title and equitable title to a trust property, the "sub-titles" are once again unified into a single "perfect" title, the trust is said to be "executed" and ceases to exist.)

Trusts offer a number of advantages. First, trusts can provide for beneficiaries who are too incompetent to provide for themselves. For example, a wealthy father can create a trust that includes money or property that's to be used exclusively for the benefit of his minor children. As beneficiaries, his children will get to use the father's property (a house, perhaps) or receive the profits from a business or investment—but they don't own legal title to the house or business and thus can't foolishly sell that property. The right of sale and actual control of the trust property is left to the trustees. The advantage of this system is that if the father dies when the children are young and foolish, he needn't worry about his kids selling the house for \$1,000 to buy a new electric guitar or some drugs.

A second, and perhaps more important advantage of trusts, is that they provide *limited legal liability* for trust property and/or trust members.

For example, suppose the kids who are beneficiaries of the mansion left by their wealthy father, get drunk, and cause an automobile accident in which several people are killed or injured. The survivors and heirs of the victims may see the kids' multi-million-dollar home and sue to gain ownership of that property. But if the mansion is held in trust, their lawsuit will be unsuccessful. As beneficiaries, the kids get to use the mansion, but they don't own it. As a result, you can no more sue the beneficiaries for the property they use, than you can sue the owner of an apartment complex when one of his tenants causes an automobile accident on the street.

(Shielded by a network of trusts) it's entirely possible to live like a king and never have personal assets of more than \$500 to your name. Sure, people can still sue you. They can even win massive judgments against you. But insofar as you lack legal title to property, you "own" nothing, and therefore there's nothing that can be taken from you. As a result, you can be virtually litigation proof. Essentially, no one will waste money paying lawyers to sue a beneficiary who has no more personal assets than a homeless bum.

A few years ago, a former governor of a south-western state retired from public office into a life of wealth and leisure. He promoted and personally guaranteed an investment scheme which failed. Based on his personal guarantee and presumed personal wealth, he was ultimately sued by his investors for the millions of dollars they'd lost. On receipt of the suit, the former governor's lawyers replied that everything their client had was in trust, his personal net worth was trivial, and they would therefore not even bother to defend against the investors' suit.

Even though the former governor lived like a king in a mansion, his assets were all held in trust, he was a legal pauper and therefore beyond the reach of lawsuit. If the investors wanted to waste even more of their money paying their lawyers to sue the former governor, they were free to do so, but they'd never collect a dime. Result? The former governor stayed in his mansion and the investors' suit was dropped. You can't squeeze blood out of a turnip—or a legitimate trust.

A third advantage is that trusts can be extremely *secretive*. The man who places his mansion in trust for the benefit of his children has no obligation to inform the state or his neighbors of the creation of that trust. Your trust might only become public knowledge if it were entangled in a lawsuit.

Although there are “statutory trusts” which are sanctioned by the state and created according to state-approved rules, there is no requirement that trusts be “statutory”. You can create a private trust right now, in privacy of your own home, without informing anyone except the trustee you appoint to manage the trust. Unlike corporations, which must be registered with the state, trusts can be established without public or governmental knowledge or approval.

Despite their several advantages—much like the “Force” in the *Star Wars* movies—trusts also have a “dark side”. For example, if government creates a trust (like Social Security) and tempts you to accept its “benefits,” it can thereafter treat you as a “beneficiary” of a that trust. While being a beneficiary may have certain advantages (limited liability, secrecy) in private relationships, being a beneficiary of a governmental trust can create serious political and legal disabilities: beneficiaries implicitly surrender any claim to legal and/or unalienable Rights with respect to trust property.

The problem with beneficiaries is that they have no legal rights within the context of the trust. The reason for this disability is that—according to *Bouvier's Law Dictionary* (1856)—all rights flow from title. For example, the reason you can drive your car, but you can't drive mine is that you have a *title* to your car but you have *no title* to mine. Your right to live in your home or apartment

ultimately flows from a *title* to that property. Even if you don't personally hold a title to that house or apartment, you are ultimately renting from someone who does.

But it's not only true that your *rights* to property flow from your *title* to a property; it's true that the *kind* of rights you receive depend on the *kind* of title you hold. (Virtually everyone assumes that there is only one kind of title) the "perfect" or "complete" title that a grantor must (possess) to create a trust.)

That assumption is wrong. Remember how the essential feature of a trust is *division* of perfect title into its two "sub-titles"—legal and equitable? With legal title, trustees receive one bundle of rights (ownership, control, disposal). With equitable title, beneficiaries receive a different bundle of rights (possession and use). These bundles are mutually exclusive. By definition, being a trustee means you can have no equitable rights in trust property. Likewise, beneficiaries, by definition, have no legal rights to trust property.

(This distinction between "kinds" of title becomes particularly important when a beneficiary goes to court as a plaintiff. Although the plaintiff beneficiary may suppose his case will be heard in a court of law, he'll be wrong.) (The only purpose for a court of law is to determine legal rights. It follows that if you don't have legal title to the subject matter of a lawsuit, you can't have legal rights to that subject matter, and therefore, you have *no standing at law*.) (Unless you have legal title to the subject matter of a case, there is nothing for a court of law to decide.)

As a result, beneficiaries can't invoke a court of law (which only decides legal rights) when they litigate. Instead, beneficiaries but must always invoke a court of *equity* wherein the judge rules strictly according to his own alleged "conscience". In equity, the judge is unbound by law and the litigants are virtually helpless to resist almost any decision the judge wishes to impose. If the judge doesn't like the color of your eyes, your political bias or your religious beliefs, he can rule against you. Beneficiaries have virtually no rights or recourse to defend themselves against judicial bias or even overt oppression. Beneficiaries are always at the mercy of the court.

Thus, from government's point of view, degrading a Citizen to the status of beneficiary essentially empowers government to treat the beneficiary as a *subject*. As subjects, we are obligated to accept without question or constitutional defense virtually any regulation the government wishes to impose.

(In other instances, government also tricks us into accepting the role of "trustee" relative to governmental or private trusts. If we unwittingly accept that status of trustee, government can impose a virtually unlimited list of "fiduciary duties" (like paying income tax) upon us. In the capacity of trustee, we must accept whatever burdens and obligations are placed upon us by the trust's indenture (rules of the) trust—even if those duties are seemingly unconstitutional.)

(Although you can't be both trustee and beneficiary of the same trust, you can simultaneously be a trustee of one trust and a beneficiary of another.) (As a result, government will sometimes treat us as beneficiaries; sometimes as trustees. In either case, our claim on unalienable Rights is

compromised or implicitly denied. This denial is particularly frustrating, mysterious, and seemingly inexplicable because not one man in 10,000 could even imagine that the government might surreptitiously impose these trust relationships and legal personalities on us, without our express knowledge. But through these unexpected trust relationships, the government and courts can “secretly” bypass the Constitution and deprive us of our unalienable Rights based on the presumption that we “understood” and voluntarily agreed to surrender those Rights when we became beneficiaries.

At first, the idea that government could use trusts to bypass the Constitution and deprive us of rights or subject us to unexpected duties sounds absurd. But trusts have several major attributes that make this kind of covert oppression possible.

First, anyone—including government—can create a trust without expressly using the words “trust,” “trustee,” “grant,” “grantor,” “benefit,” “beneficiary” or any other term that is normally associated with trusts. Regardless of words used (and even when no words are used), it is incumbent on every person to recognize their role in a trust by recognizing the nature of their relationship to another person or trust property.

I doubt that one person in one hundred can even understand what I just wrote. Worse, I doubt that one person in 10,000 can recognize a “trust relationship” whenever he happens to participate in one.

For example, suppose you borrow my pen. Insofar as I expect you to return my pen, we have just entered into an unstated trust relationship wherein I am the beneficiary (the one who trusts you will return my pen) and you are the trustee (the one who temporarily controls the pen). Even though neither of us used the words “trust,” “benefit” etc.—even though you did not expressly agree to return my pen, I am *trusting* that you will return my pen, you are trusted with control of my pen, and therefore, we have a “simple” (unexpressed) trust relationship.

Creating trust relationships can be just that simple. As a result, it’s easy for government to entangle folks in trust relationships (and thereby compromise whatever rights they might normally expect to have) without folks having any idea of what’s happening.

Further, few people realize that whenever the word “Application” is used by a governmental agency, it typically means “Application for Benefits”. For example, when you fill out an “Application” for a drivers license, Social Security Card, or bank account, you are probably applying for a “benefit” to be provided by a governmental trust. You can’t normally receive a “benefit” without being a “beneficiary”—and “beneficiaries” have no legal rights. Thus, by voluntarily filling out an “application” you may unwittingly forfeit your claim to any legal rights or standing at law relative to the trust property.

If you'd like to see an express trust agreement, read a software license from Microsoft or any other major software provider. The "license" identifies you as the "End-user". Anytime you see the word "use" or "user" beware of (the possible presence of a trust relationship. In the case of software, Microsoft makes it clear that you don't own the software product—you merely get to use it on one computer. But at all times real ownership of the product remains with Microsoft; they own legal title to the software. Your "license" merely gives you an equitable title (or interest) to use their software.

If you don't like your limited rights as a beneficiary, your only option is to return the software (trust property). Otherwise, by continuing to "use" the software (accepting the *benefit*) you have virtually no legal rights against Microsoft. If the software crashes your computer, destroys the data base that runs your business, or causes your accounting software to add a zero to the amount of money your computer sends by check to each of your creditors—tough. As a beneficiary you have almost no recourse at law against the grantor, trust or trustee.

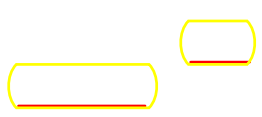
Thus, even without any express indication that your "application" can bind you to a trust relationship,

a trust relationship and resulting diminished status can be impressed on your life. When you filled out the "application," you probably thought you'd receive some *free* "benefits". Silly you. What you didn't know (and they had no obligation to disclose) was that you'd pay for that beneficial "potage" with the surrender of your unalienable Rights. If you should ever lodge a complaint against the trust or trustees, the courts will silently presume that: 1) you recognized the trust relationship when you "applied" to become a beneficiary, and 2) you knowingly and *voluntarily* surrendered your unalienable and legal rights when you applied to become beneficiary.

Based on those silent presumptions, you will lose your case. Insofar as the average person can't even imagine that they could be seduced into surrendering their unalienable Rights by filling out a mere "Application," they will never raise an effective defense in court against the imposition of duties (or loss of rights) under an unseen governmental trust.

Do you see the potential power? Even though trusts are virtually invisible to 98% of Americans; even though we have no training in trusts during our grade school, high school or college education—we are expected to "see" trust relationships whenever we encounter them. If we fail to see those trust relationships, we will still be bound by their invisible chains.

But if you can't "see" those invisible chains, how can you complain about them to the court? If you don't expressly complain about those chains, the court will leave them in place (around your neck). Thus, through trusts, you can be effectively enslaved without even knowing how that enslavement occurred.



Second, unlike contractual relationships, there's no requirement for "full disclosure" when you create a trust and designate someone to be a beneficiary. The best illustration of this attribute is the fact that I can create a trust and designate my six-year old daughter as beneficiary. There is no requirement that I "fully disclose" the terms of the trust to my beneficiary.

Why? Because, as a beneficiary, she is presumed incompetent and unable to understand the operation of a trust. Similar presumptions allow government to impose trusts on adult "beneficiaries" who are also deemed "incompetent" to understand the relevant trust privileges and duties. There is no more need to fully disclose trust rules and regulations to adult beneficiaries than there is to fully disclose trust rules and regulations to children.

Similarly, government can create a trust and designate you as a beneficiary of that trust without expressly informing you of that fact. As a result, whenever you relate to property of that governmental trust, you will have no legal rights and will be treated as a mere beneficiary in a court of equity.

Insofar as we are presumed to have accepted appointment as trustees, we can also be bound by rules which have never been expressly explained to us and even by arbitrary rules that, ordinarily, would be exceed the constitutional limits of government's delegated powers. For example, under the Constitution, government has no authority to penalize a man who has not damaged another person's body or property. However, if that person enters into a trust relationship with government, government can absolutely regulate and even punish that man's acts whenever they violate arbitrary *trust rules*—even if no other person or person's property has been damaged.

In sum, trusts can be created and imposed without express words, without full (or any) disclosure, and without our express knowledge (in secret). As a result, trusts can be used as invisible snares to trap all of us into relationships and roles which compromise our rights as Citizens, reduce us to the status of subjects, and impose unwanted duties. And insofar as we are totally unaware of trusts and their strange powers, they are virtually invisible to us, and thus virtually impossible for the vast majority of Americans to resist or escape. ■

At Arm's Length

by Alfred Adask

Is there a device able to ward off unseen and unwanted trusts? A magic amulet to wear around our necks to keep us safe from the “boogy-trust”?

Probably not. If there is a way to effectively ward off disabling trusts, it will probably depend on having sufficient personal knowledge of trusts to recognize, avoid or at least expressly protest each relationship with a governmental trust as they're encountered.

Even so, there is a term defined in several editions of *Black's Law Dictionary* which seems to ward off constructive trusts much like garlic wards off vampires: “**at arm's length**”. The term is defined in *Black's* 1st Edition (1891) and 4th Edition (1968) as:

“Beyond the reach of personal influence or control. Parties are said to deal ‘at arm's length’ when each stands upon the strict letter of his rights, and conducts the business in a formal manner, without trusting to the other's fairness or integrity, and without being subject to the other's control or overmastering influence.” [Emph. add.]

The classic definition of “beneficiary” is “one who trusts.” Therefore, if one acts only “at arm's length,” he would seem to do so “without trusting” and, thus, couldn't be a beneficiary.¹

Black's 7th Edition (1999) does not define the term “**at arm's length**”. Instead, it defines “**arm's-length**” as an adjective that means:

“Of or relating to dealings between two parties who are *not related* or not on close terms and who are presumed to have roughly equal bargaining power; not involving a *confidential relationship* <an arm's-length transaction does not create *fiduciary duties* between the parties> [Emph. add.]

The concepts of “confidential relationship” and “fiduciary duties” are normally essential to trust relationships. Because these concepts are denied by the definitions of “at arm’s length” (*Black’s* 1st and 4th), and “arm’s-length” (*Black’s* 7th), both terms seem to implicitly deny the existence trust relationships.²

Black’s 7th defines “fiduciary relationships” as:

A relationship in which one person is under a duty to act for the benefit of the other on matters within the scope of the relationship. (Fiduciary relationships—such as trustee (beneficiary, guardian; ward), agent-principal, and attorney-client—require the highest duty of care. Fiduciary relationships usually arise in one of four situations: (1) when one person places trust in the faithful integrity of another, who as a result gains superiority or influence over the first, (2) when one person assumes control and responsibility over another, (3) when one person has a duty to act for or give advice to another on matters falling within the scope of the relationship, or (4) when there is a specific relationship that has traditionally been recognized as involving fiduciary duties, as with a lawyer and client or a stockbroker and a customer.—Also term fiduciary relation; confidential relationship. [emph. add.]

There’s a lot to be derived from that definition, but I want to explore just two elements:

First, “fiduciary relationships” are not confined to the beneficiary-trustee relationships of trusts. Instead, fiduciary relationships also include guardian-ward, agent-principal, attorney-client and possibly other unnamed relationships. (Could these un-named fiducial relationship include husband-wife, parent-child, employee, employee, business-customer, doctor-patient and teacher-student?)

This multitude of fiduciary relationships seem governed by principles largely indistinguishable from those governing trusts. I strongly suspect that most of these relationships—although they carry alternative designations—may be varieties of trusts.

Second, *Black’s* definition of “fiduciary relationships” uses the words “relation” and “relationship” eight times. That emphasis on “relationships” may seem unremarkable, but as you’ll read in the article “Legal Personality” (this issue), “relationships” may be far more important than most of us have so far imagined.

For example, I’m beginning to wonder if our invisible, external “relationships” may have a legal existence of their own that’s separate and apart from our individual existence. We know that the names “Alfred Adask”

and “ALFRED N. ADASK” signify two different legal entities. “Alfred” is a natural man and creation of God; “ALFRED” is an artificial entity presumably created by government. But what *kind* of artificial entity is “ALFRED”? Is it a trust? A corporation? Both answers have been advanced; so far, neither has proven satisfactory.

Is it possible that all upper-case names like “ALFRED” identify a “relationship” rather than a unique and isolated artificial entity? In other words, if “Alfred Adask” identifies a natural man who exists as a unique, independent individual without reference, relationship or dependence on any other person or government—is “ALFRED N. ADASK” an “artificial person” (legal personality?) that exists only *in relation* to others?

Does the artificial entity “ALFRED” exist only in the imaginary “space” *between* two persons (“Alfred” and “Wendy”) who had what was *construed* to be a fiduciary “relationship”. If so, the identify of “ALFRED” might be diagrammed something like this:

Alfred <----- **ALFRED** -----> Wendy
(natural man) (**artificial entity**) (natural woman)

This notion is more complex than the diagram suggests, but as you’ll read in a later article (“Legal Personalities”), the idea might not be as half-baked as it first seems. If “ALFRED” is a legal personality that exists only in the “space” between two persons having a “fiduciary relationship,” it would imply that “ALFRED” can’t “exist” if the fiduciary relationship between “Alfred” and “Wendy” were denied. In other words, if Alfred and Wendy entered into their mutual transactions “at arms length,” there’d be no “relationship” between them, and ALFRED might not exist. Given that virtually all of our lawsuits are denominated in ALFRED’s name, the non-existence of that entity might cause the courts some inconvenience.

Im even starting to wonder if a “relationship” might not be the primary *subject-matter* of most lawsuits in equity.

Is it possible that the plaintiff isn’t the subject matter, the defendant isn’t the subject matter; what one or the other party did or didn’t do isn’t really the subject matter. Is it possible that, at bottom, the real subject matter of most suits in equity is a presumed “trust relationship” between the plaintiff and the defendant?

This may be an important avenue of investigation since “subject matter jurisdiction” is so critical to court jurisdiction that it can be challenged at *any* time—even long *after* a case has been decided. So, if a court’s “subject matter jurisdiction” were based on an unstated but *presumed* trust relationship between the plaintiff and defendant, and if the defendant were able to expressly deny the existence of that *presumed* trust relationship, then it might be argued that the court *lacked subject matter jurisdiction* and its verdict was therefore void.

The idea that presumed (construed) trust relationships may provide the subject matter jurisdiction for many of our court cases is a longshot. It’s probably wrong. But if it were true, the implications would be enormous: virtually every case decided in a court of equity might be challenged (even years after the decision) for lack of subject matter jurisdiction. That possibility, no matter how remote, makes me giggle. (Actually, it makes me laugh. . . . No, no—it makes me *roar* with laughter.)

Remember, as pointed out in the previous articles on trusts in this issue, trust relationships can be “construed” (created out of thin air) by the courts to achieve jurisdiction over unsuspecting defendants. Given that the resulting “constructive trusts” are legal fictions, they are virtually invisible to both unsuspecting litigants. But if you learned to “see” constructive trusts, the court’s system of “invisible snares” (trust relationships) might be more easily challenged and denied. And if there’s no trust relationship between a plaintiff and defendant, what basis remains for a court’s jurisdiction in equity?

So how can we use “at arm’s length” or “arm’s-length” to shield ourselves from the obligations imposed by constructive trusts? I’m not sure.

Perhaps we could post public notices in a newspaper declaring that, unless we expressly declare otherwise, in order to preserve all of our unalienable Rights, all of our transactions will be conducted strictly “at arm’s length”. Alternatively, we might add an “at arm’s length” disclaimer over each of our signatures or as codicils to all of our contracts to notify all others that we won’t enter into an implied or presumed trust relationships.

If we can devise an effective strategy to conduct all of our transac-

tions at “arm’s length,” we may be able to blunt or even eliminate the jurisdiction of courts of equity. And if they can’t get at us in equity, that may leave only courts of law—and I don’t think the courts want to deal with our divorces, traffic fines and tax squabbles at law.

Why? Because courts of law determine just one thing: legal rights. Legal rights flow from legal title, and in our brave new ~~democracy~~, we have virtually no legal titles, no legal rights, and thus no standing at law. As a result, without an underlying presumed trust relationship, most lawsuits might tend to “disappear”.

¹ (If “at arm’s length” serves notice that you won’t act in the capacity of a “subject,” it also seems to provide another shield against non-constitutional governmental authority.)

² However, the two definitions may differ in this regard: “at arm’s length” seems to deny one’s status as a *beneficiary* (one who trusts), but “arm’s-length” seems to deny one’s status as a *trustee* (one who is trusted with “fiduciary duties”). I’m not convinced this distinction is real or important. However, the possibility remains that we might need to choose between the terms, depending on whether we wanted to refute our status as a beneficiary or a as trustee in any presumed trust relationship. ■

Plaintiff-beneficiaries vs. Defendant-trustees?

by Alfred Adask

Every two weeks, I host a legal reform meetings here in Dallas. At a recent meeting, I was exploring the meaning of “at arm’s length” when all of the sudden I began to realize something new about the way our courts work. If that realization is (roughly) correct, it could be important; perhaps even exciting.

What follows is, for the most part, a reply I sent by email to one of the people at the meeting, Terry Farmer. He’d expressed his appreciation for learning about “at arm’s length,” but I countered that I was more excited about the new “insight” we’d stumbled onto at the meeting.

Dear Terry,

The “at arms length” concept seems important, but it was small stuff compared to the insight gained during the meeting on the operation of the courts. What we did last night—by beginning to see how the plaintiff may be *assumed* be the *beneficiary* of a *assumed* trust relationship with his defendant—and how that assumption inevitably opens the door for the judge to construe a constructive trust—may be a big step forward in understanding the “system”. If that insight wasn’t particularly clear to people attending our meeting, it was a revelation for me.

If that insight is correct, I can now imagine that “adhesion contracts” and “quasi-contracts” etc., aren’t “contracts” at all (there’s usually no lawful consideration). Instead, those terms were merely used to mask the fundamental *assumption* on which the courts act—that those documents or other conduct by the parties are evidence that a *trust relationship* had been created between the parties. Based on that assumed trust relation-

ship, the unsuspecting plaintiff is assumed to act in the legal personality of a beneficiary and the unwitting defendant is assumed to appear in the capacity of a trustee. Although the court assumes the plaintiff and defendant know they're involved in a trust relationship, that assumption is never expressed to either litigant. As a result, without the knowledge, understanding or intention of either party, the courts will assumptively (secretly) resolve their issue as if it were an alleged violation of trust law—even though no such trust relationship did, in fact, exist.

This hypothesis doesn't explain everything that happens in court. For example, criminal cases are probably not based on trust relationships (but *penal* cases may be).

Nevertheless, in *civil* cases between “private” parties, I'm increasingly confident that, in most instances, the court silently makes a series of assumptions:

(1) The first “great assumption” is that the plaintiff and defendant had previously entered into a “implied” (not express) trust relationship;

(2) Based on the assumed trust relationship, the court assumes it has jurisdiction in equity;

(3) The plaintiff appears in the court of equity as the assumed “beneficiary” of the implied trust relationship and unwittingly implies that the defendant holds the position of “trustee”;

(4) The court of equity assumes in personam jurisdiction over the defendant based on the defendant's assumed status as trustee in the implied trust relationship; and,

(5) The plaintiff-beneficiary is assumed to be complaining that the defendant-trustee has somehow breached his fiduciary obligations as trustee in their implied trust relationship.

(Note that every one of these assumptions is false.)

In essence, I'm wondering if our civil courts of equity operate primarily through the imposition of *constructive trusts* upon unwitting litigants. I.e., without either litigant's knowledge, the courts *assume* both litigants have previously entered into “implied” (unexpressed) trust relationships. What's the basis of this assumed trust relationship? Perhaps a debt in credit or an implied promise of performance.¹

Based on the assumption that the parties had voluntarily entered into a trust relationship, the court *construes* the plaintiff's complaint to allege that: 1) the defendant-trustee *promised* to perform (or refrain from performing) some act, provide some service, or pay some money on behalf of the plaintiff-beneficiary; 2) the plaintiff-beneficiary “trusted,” relied on and “expected”² the defendant-trustee to perform as promised; but 3) the defendant-trustee violated his fiduciary duties by failing to perform as he had originally (and implicitly) “promised” and/or received a benefit which (under trust law) can only be conferred on a beneficiary. (Trustees receiving trust benefits are condemned for having received “unjust enrichment”.)

The court then issues a court order which may serve as an express *trust indenture* to clarify the interests and duties of both parties to the former “implied” (unexpressed) trust relationship. The plaintiff-beneficiary's trusting “expectations” are either confirmed, modified or denied; the

trustee's alleged fiduciary obligations are likewise clarified and specified. The court's "order" will compel the defendant to perform whatever fiduciary obligations the court finds were "intended" by the parties when they first entered into their "implied" trust relationship. Any "unjust enrichment" received by the trustee-defendant will be ordered to be "disgorged" and returned to the beneficiary (plaintiff or perhaps some other third-party beneficiary).

Admittedly, this seems to be a pretty "far out" hypothesis. It is so foreign to almost everyone's understanding of our civil court system, that it's almost certainly mistaken. Even if I'm roughly correct, I've undoubtedly made some serious oversights or errors.

But even if it's just roughly correct, it's a blockbuster.

As a defendant, how can you stop a case against you based on an implied "trust relationship"? If my "constructive trust" theory is roughly correct, I can imagine several possible strategies.

First, you might argue that the court's "great assumption"—that there was a trust relationship between you (the alleged defendant/trustee) and the plaintiff-beneficiary—was false. E.g., you might argue that the relationship was always conducted "at arms length" and therefore no trust was created. Alternatively, you might argue that a payment in real money (gold or silver coin) was included in the transaction—or that the alleged debt was paid in full, the trust had therefore been "executed" and no trust relationship remained for the judge to "construe".

If there's no trust relationship, there's probably no basis for hearing the case in equity. The plaintiff (by acting as a "beneficiary" attempts to invoke the court in equity rather than at law) has implicitly conceded that he has no legal rights relative to the controversy with the plaintiff. If he had legal rights, he should've proceeded at law.

So if the plaintiff has no legal right relative to the controversy with the plaintiff, he can't invoke a court of law. And if there's no trust relationship for the plaintiff to base a claim in equity, how can the plaintiff sue?

Second, you might concede that a trust relationship did, in fact, exist

between you (the alleged defendant-trustee) and the plaintiff, but it was a *intended* to be a *different* trust relationship (possibly biblical) from the secular trust relationship the court attempted to construe. If the judge misconstrued your original but unexpressed intentions, he would've "construed" the wrong trust, therefore his resultant court order (express trust indenture) might be a nullity.

For example, suppose you're tangled up in a divorce or custody battle and your spouse appears in court as the beneficiary/plaintiff and you are the assumed defendant/trustee. The judge will want to rule "in the best interests" of the child according to a secular trust relationship based on Birth Certificates, Social Security Accounts, and your Marriage License. But what would happen if you defended yourself claiming that the only trust you were aware of or knowingly entered was a "trust in God" wherein the terms of the marriage, divorce, child custody, and support would be spelled in your "trust indenture"—the Bible? Thus, despite the secular "hooks" of Marriage License, Birth Certificate and Social Security Accounts, you might be able to mount a strong defense based on your 1st Amendment Right of Freedom of Religion.

Of course, you'd probably have to refute, revoke or otherwise compromise the legal impact of the various secular "hooks". For example, when the court prepared to decide the case "in the best interests" of your alleged child "MARYANN B. DOE" (an artificial entity) you might argue that you're a natural man and not parent to any alleged "child" who was, in fact, an artificial entity. Instead, you might claim that your only daughter is the flesh-and-blood offspring named "Maryann Doe" (a gift from God), and therefore your only "trust relationship" with that child is expressly described in the faith (trust indenture) called the "Bible".

Third, you might argue that although a trust relationship did in fact exist between you and the plaintiff, the plaintiff-beneficiary was in breach of that trust relationship and therefore lacked the "clean hands" required to invoke a court of equity.

A classic illustration of the "clean hands" doctrine is seen in the story of Jesus telling a crowd bent on stoning a sinful woman to death that "He who is without sin, cast the first stone." Since everyone in the crowd was also guilty of sin, they lacked the "clean hands" required to act against their fellow sinner.

Today, the "clean hands" doctrine simply says that a plaintiff may not ask for equity if he hasn't given equity. In other words, you can't invoke a court of equity to force your neighbor to return the lawn mower he borrowed, if you are equally guilty of first refusing to return the neighbor's power saw which you borrowed.

So far as I know, the issue of "clean hands" is irrelevant at *law*. If you invoke a court of law (not equity) and produce your legal title to the lawn mower, the court of law will compel your neighbor to return your lawn mower even if you are simultaneously guilty of refusing to return the neighbor's power saw, VCR and family car. If the neighbor wants his property back, he can produce legal title to the missing property and invoke a court of law, or (lacking legal title) he can invoke the court in equity—that's his

choice and his problem. But if you have *legal title* to the lawn mower, a court of *law* will force the neighbor to return it—no if’s, and’s or but’s.

I’m intrigued by the application of the “clean hands” doctrine in modern family law (which appears to be litigated exclusively in equity). I.e., the plaintiff who initiates a divorce is arguably at fault for attempting to destroy what was supposed to be a til-death-do-us-part relationship. By filing for divorce, the *plaintiff* intentionally breaks his oath to God, violates the marriage covenant, ignores his spouse’s “expectations,” and damages the other spouse, their children, and even society. These violations would seem to be *prima facie* evidence that the *plaintiff* lacks the requisite “clean hands” to initiate a divorce in equity. Therefore, the plaintiff should ordinarily be forced to accept the painful and humiliating duty to, instead, file for divorce at *law*—where it will be necessary to *prove* that other spouse is the “bad guy” in no uncertain terms.

But what if the plaintiff is the “bad guy”? What if the plaintiff’s real reason for divorce is not “irreconcilable differences” but rather that he wants to run off to Florida with his secretary? Conventional divorce law (not equity) would not allow the errant plaintiff to divorce his innocent spouse unless the spouse *agreed* to “give him” a divorce. Plaintiffs might have to “pay through the nose” to get that “agreement”. Moreover, it might be almost impossible to secure a divorce agreement at law from a spouse who 1) was innocent of any wrong-doing (adultery); and 2) wanted to maintain the marriage no matter how unpleasant that marriage might be.

Historically, virtually all divorces were probably conducted only *at law* where the plaintiff had to *prove* the defendant-spouse had violated the marriage covenant—usually, by committing adultery. Adultery was not only hard to prove, it was messy and destructive of personal lives and reputations.

Today, I doubt that any divorces are conducted at law. Instead, modern divorces appear to be conducted in *equity*—even though the plaintiff lacks the “clean hands” required to invoke equity jurisdiction.

How can I explain the apparent contradiction?

No-fault divorce.

Under this “new-and-improved” legal formula, your guilt as a plaintiff and your spouse’s innocence as a defendant are irrelevant. It doesn’t matter whether your spouse is a sinner or a saint. If you’re tired of the marriage, you can bail out. Anyone who’s hot to run off to Florida with a new boyfriend, girlfriend, whatever, is free to trot.

It occurs to me that the requirement for “clean hands” to invoke a court of equity might explain why family law underwent “no-fault” divorce revolution in the 1950s and 1960s. Prior to “no fault,” your personal unhappiness with your spouse was insufficient reason to sanctify a divorce. If you wanted a divorce you had to *prove* at *law* that your spouse had seriously violated the marriage covenant. To prove your spouse had violated the marriage covenant, you’d have to produce evidence in a public forum that was incredibly damning for your spouse and inevitably humiliating for yourself and even your children. (Do you *really* want to publicize all the juicy details that surround your spouse’s sixteen affairs with members of both sexes since you were married four years ago? Prob’ly not.) There-

fore, divorce lawyers justified “no fault” divorce as a means to avoid the often shocking public revelations and brutal confrontations that had previously characterized divorce in courts of *law*.

However, I suspect real reason behind the “no fault” assumption may have been to nullify the issue of “clean hands”. Despite divorce lawyers’ claims to the contrary, I suspect the “no fault” assumption was not intended to spare plaintiffs the cost and unpleasantness of proving “fault” on the part of their defendant-trustee spouses. Instead, the “no fault” assumption may have applied equally (even primarily) to the *plaintiff-beneficiary* and thereby allowed the plaintiff to proceed (invoke the court of equity) on the *assumption* that the *plaintiff* (not the defendant) had “no fault” and therefore had “clean hands” required to initiate the divorce in equity.

In other words, the “no fault” assumption doesn’t ignore the *defendant’s* marital transgressions, it ignores the *plaintiff’s*. (After all, it’s the plaintiff who violates the til-death-do-we-part trust relationship by filing for a divorce.) So, if the *plaintiff* is assumed to be “no fault,” she can initiate a divorce *in equity* (where proof is largely irrelevant), violate her vow to God, damage her spouse, children and society and—thanks to the maternal assumption—secure a divorce primarily for personal gain.³

It’s all wrong, of course, but thanks to the “no fault” assumption, and constructive trusts, issues of actual right and wrong have become irrelevant in divorce court.

Fourth, even if a implied trust relationship between plaintiff and defendant is admitted, it might be terminated without judicial action. Insofar as the two parties could create the trust relationship without the government’s knowledge or official sanction, it follows that the parties could also terminate that trust relationship without government intervention. As a defendant, you might officially and publicly resign as trustee before the case is heard. We see possible evidence of that strategy in public notices which read something to the effect that “I, John Doe, am no longer responsible for the debts of Jane Doe.” That public disclaimer would seem to terminate any express or assumed trust relationship that had previously existed between Mr. Doe (assumed trustee) and his former wife (beneficiary).

Fifth—less likely, but remotely possible—suppose the original “implied” (unexpressed) trust relationship between the plaintiff and defendant is successfully construed into a constructive trust and results in a court-order (express trust indenture). The defendant-trustee might still be able to simply decline (or resign from) his “appointment” as an “official” trustee who is obligated to administer the constructive trust.

After all, according to the 13th Amendment, “Neither slavery nor *involuntary servitude* . . . shall exist within the United States or any place subject to the [U.S.] jurisdiction.” (Serving as a trustee appears to be a form of unpaid “servitude” to the beneficiaries or the trust, or both.) It therefore seems unreasonable and unconstitutional to force a man to serve as a trustee against his will. If you volunteer to be a trustee, fine. But “no involuntary servitude” should mean that if you refuse to volunteer, you can’t be forced to serve as trustee.

I’m only guessing, but I suspect the court assumes that each defendant “volunteered” to be a trustee when he allegedly entered into the implied trust relationship with the plaintiff-beneficiary. If so, technically, the court isn’t “forcing” the defendant to serve as a trustee. Instead, the court is merely 1) clarifying the fiduciary obligations (issuing a court order) that defendant implicitly accepted when he “voluntarily” entered into trust relationship with the plaintiff; and 2) forcing the defendant to perform those agreed obligations.

Of course, given that you never *knowingly* entered into a trust relationship or *knowingly* agreed to serve as a trustee, the court’s “great assumption” is a complete fiction and sham. As a defendant, you’re being treated like a trustee without ever being expressly informed of the nature of your assumed status.

Assuming this process is actually employed by our courts, it is diabolically clever. After all, what defendant would think to complain about “involuntary servitude” as a trustee, if he don’t even know he was *assumed* to be a trustee in a trust that, in fact, *doesn’t even exist* . . . ?

If this deception really takes place, then the trick would be to “un-volunteer” from your position as trustee. This “un-volunteering” might be achieved by placing the *plaintiff* (as well as the court) on some sort of official notice that 1) you never intended or agreed to enter into an trust relationship; 2) you never voluntarily agreed to serve as a trustee for the plaintiff-beneficiary; or 3) even if you did, you now officially resign from that role as trustee. If that notice were provided by affidavit or publication in local newspapers, I wonder how the court would subsequently “construe” you into the role of trustee. I won’t say the court can’t entrap defendants almost permanently in the role of trustee, but to do so publicly and expressly would inevitably “let the cat out of the bag” and therefore probably be avoided by most judges.

If this “constructive trust” hypothesis is valid, the operation of our entire system of civil law would be threatened by public *understanding* that our courts routinely function through the imposition of trust relationships which are *assumed*, but do not, in fact, exist. After all, if valid, this hypothesis is largely based on the fact that the public doesn’t have a

clue and is blind to the presence or danger of “invisible” trust relationships. But—if the public began to recognize this “trick”—the whole system of civil procedure might have to be revised.

Why? Because the system depends on public ignorance. If my hypothesis is correct, the system can't work on defendants who are bright enough to understand trusts and trust relationships. Such people will reject the court's “great assumption” that an implied trust relationship exists between the plaintiff and defendant. (Without that assumption, court of equity may not have jurisdiction to proceed.)

Possible applications this notion are springing up so fast in my mind, that I've either made a very important perceptual breakthrough or finally slipped far 'round the bend. Although there's a lot more to be discovered, refined and understood, I believe the understanding that plaintiffs may routinely appear in the role of beneficiary and defendants appear in the role of trustee may be a major insight.

For example, suppose I'm correct and modern family law is primarily based on the assumption that the parties—rather than being married in the classic spiritual sense—had merely entered into a godless, secular trust relationship based on a ritual that merely masqueraded as a true marriage (contract) in the traditional church. Suppose the children born under this trust relationship were (under the doctrine of *parens patriae*) assumed to be the property of the state, and the putative “parents” occupied positions of mere trustees (servants; baby sitters) relative to “their” children. Then, in the aftermath of the divorce, the court might rule “in the best interests of” the children-beneficiaries, that one spouse-trustee (typically, Mom) had custody and the other spouse-trustee (typically, Dad) would be “fired” from seeing his children but nevertheless remain responsible for paying child support.

This analysis implies that there are two trust relationships in such divorces. First, the plaintiff (usually Mom) appears as a beneficiary relative to the defendant-trustee (usually Dad). The court “adjusts” their implied trust relationship and seemingly dissolves their “marriage.” Then, the court adjudicates a second trust relationship in which the children are assumed to be beneficiaries and both parents are assumed to appear as trustees (relative to the kids). Now, the court adjusts the duties of the two parent trustees—typically by giving custody to the Mom-trustee and the duty of paying bills to the Dad-trustee.

But what would happen if the Dad trustee were able to revoke, renounce or decline his “appointment” as trustee for the children? What if Dad would only agree to be a “father” of his own natural children (as defined and empowered by the Bible) but refused to act as a trustee to oversee the welfare of children which the government claims to “own” un-

der the doctrine of “*parens patriae*”? Dad’s refusal could be based on both 1st Amendment freedom of religion and the 13th Amendment’s prohibition against “involuntary servitude”. Could the court compel him to involuntarily accept the duties of a secular trustee in violation of his religious faith? Could the court compel a non-trustee to pay child support for a child which the state claims to “own” under the doctrine of “*parens patriae*”? If the state owns the kids, if the state is the presumptive “father,” then let the state support them.

What if the alleged Dad-trustee were able to challenge the court’s “great assumption” that a secular trust had been created by the marriage ceremony and that, instead, his marriage was a true, *spiritual* marriage under God rather than mere state-licensed cohabitation? And what if the alleged Dad-trustee were therefore able to prove that his relationship to his former wife and/or flesh-and-blood children was not based on the secular trust that the court “construed” when it imposed child support? If the court “construed” the wrong trust, the resulting court order (express trust indenture) might have to be void.⁴

Finally, if my hypothesis seems too incredible to be believed, read the definition of “fiduciary” in *Black’s Law Dictionary* (7th ed.). That definition includes the following description of one of modern applications of that term to *constructive trusts*:

“Fiduciary is a vague term, and it has been pressed into service for a number of ends My view is that the term ‘fiduciary’

is so vague that plaintiffs have been able to claim that fiduciary obligations have been breached when in fact the particular defendant was not a fiduciary *stricto sensu* but simply had withheld property from the plaintiff in an unconscionable manner.” D.W.M Waters, *The Constructive Trust* 4 (1964)

Here, we see strong evidence that at least some lawsuits have been interpreted by courts of equity as being based on the existence of *fiduciary relationships* between the plaintiff and defendant which—“*stricto sensu*”—did not ever exist. Jurisdiction over the defendant was knowingly achieved by means of a assumed “fiction”—a lie.

This false assumption seems to attach without the knowledge of either the plaintiff (beneficiary) or defendant (trustee). Child-like, the litigants proceed *as if* they were in a court of law wherein they had some legal rights or constitutional defenses. Neither side understands that the court is actually deciding their case *in equity* based on assumptions and principles which are completely “invisible” to both litigants.

It’s undeniable that courts of equity achieve jurisdiction over *some* plaintiffs and defendants through the application of assumed “fiduciary/trust relationships” and resultant “constructive trusts”. This procedure is demonstrated and confirmed in [Snepp vs. United States \(444 U.S. 507\)](#). In that 1980 case, the U.S. government (actually the C.I.A.) *expressly* claimed to be a “beneficiary” of a constructive trust with a former C.I.A. employee (Snepp). Under this assumed constructive trust, the U.S. Supreme Court agreed that the C.I.A. could compel the former agent (defendant) to “disgorge” money he’d earned selling a book about the C.I.A..

The *Snepp* case is particularly interesting because the C.I.A. admitted that its former employee Snepp had signed a *contract* when he entered the C.I.A. in 1968 that he wouldn’t write a book about the C.I.A. without the C.I.A.’s approval, and signed *another contract* to the same effect when he left the C.I.A. in 1976. Despite the existence of two apparently valid *contracts*, the C.I.A. instead chose to sue Snepp based on the *assumption* that Snepp and the C.I.A. had also entered into a “implied” (unexpressed) trust relationship in which the C.I.A. occupied the role of beneficiary and Snepp was assumed to be trustee. As beneficiary, the C.I.A. claimed it was entitled to the profits of that trust relationship (the money Snepp had earned from selling his book about the C.I.A.) because Snepp (the assumed trustee) violated trust law by retaining the book profits (unjust enrichment) that rightfully belonged to the beneficiary.

The U.S. Supreme Court agreed with the C.I.A. and held:

“A former employee of the Central Intelligence Agency, who had *agreed* not to divulge classified information without authorization and not to publish any information relating to the Agency without prepublication clearance, breached a *fiduciary obligation* when he published a book about certain Agency activities without submitting his manuscript for prepublication review. The proceeds of his breach are impressed with a *constructive trust* for the *benefit* of the Government.”

The *Snepp vs. U.S.* case proves that (at least on some occasions) the courts have imposed the fiction of constructive trusts to compel performance by defendants.

However, the *Snepp* case does not answer one critical question: *How often* do the courts employ the “great assumption” of fiduciary relationships to gain jurisdiction over defendants? Almost never? Occasionally? Frequently? Or almost always?

I don't know. But I'm finding increasing support for the conclusion that most, perhaps all, of our civil lawsuits are based on assumed “trust relationships” and “promises” rather than (actual) isolated acts or individual rights.

If so, courts of equity are gaining jurisdiction over defendants—not according to what an individual defendant did or didn't do, *per se*—but according to what the plaintiff “expected” the defendant to do. These “great expectations” are based on the defendant's unexpressed and, arguably, *unintended* “promises”.

I suspect that the claims of plaintiff-beneficiaries are being interpreted as without legal foundation (beneficiaries have no legal rights) but still necessary to resolve—somewhat like the wailing of a spoiled child crying that his playmate did something “unfair”. In a sense, the “parent-judge” simply acts to pacify the little brat-plaintiff by making the defendant give him the ball or the bicycle or whatever toy the “kiddies” are arguing about. When the defendant says “But, judge, that's *my* ball!”—the judge, like any other over-stressed parent, essentially shrieks “*Just do it!*”

But the entire process could only work if both litigants (especially the defendant) are assumed to be without unalienable Rights. We already know (or at least speculate) that the plaintiff is assumed to be a beneficiary and is thus without legal rights. But that plaintiff-beneficiary's “expectations” could only be enforced against the defendant if the defendant were also assumed to appear in a legal personality based on a trust relationship which leaves him without meaningful rights—rather than as a “man” who is “created equal and endowed by [his] Creator with certain unalienable Rights” which he sought to preserve by acting “at arm's length” in all his dealings with the plaintiff. The show could not go on, unless the defendant were assumed to appear in a capacity that affords him no claim of unalienable Rights against the plaintiff's mere “expectations”.

How could that trust relationship be challenged? One way might be to put the plaintiff (alleged beneficiary) on the stand and ask him to testify about your “relationship” prior to the lawsuit. Given that the unwitting plaintiff won't understand his complaint is being construed as evidence of a preexisting trust relationship, it shouldn't be too hard to get the plaintiff to testify that he doesn't know what a trust is and never intended to enter into one—especially if by doing so, the plaintiff implicitly forfeited many of his unalienable Rights. If both plaintiff and defendant testified on the record that a trust relationship was not intended and therefore did not exist, the court may be unable to sustain its assumptions and resultant constructive trust. No trust, no equity jurisdiction, no case?

Most importantly, I'm beginning to wonder if the *assumed* trust relationship provides the "subject matter" which gives the court "subject matter" jurisdiction in a particular case. It's my understanding that subject matter jurisdiction can be challenged at any time—even long *after* a case has been decided. If so, it seems remotely possible that a civil defendant might retroactively nullify some court verdicts (trust indentures) by expressly denying the existence of the "great assumption" (a "implied" trust relationship between the litigants) which provided the *assumed* subject matter on which the court *assumed* jurisdiction and ultimately decided the case.

The implications are large.

Again, this conjecture seems pretty far-fetched. It can't be as simple as I imply. Although I'm convinced that trust relationships are a principle means by which government extends unconstitutional powers over us, I don't believe it will be necessarily easy to deny or evade those trust relationships. My theory (assuming it's correct) is relatively simple. But the application—the actual implementation through procedures the courts of "this state" will recognize—may be fairly subtle.

Even so, the journey (or rabbit trail) of a thousand miles begins . . .

¹ Given that all legal tender is an I.O.U.—a *promise* to pay, rather than an actual payment, it's possible that any transaction involving Federal Reserve Notes is automatically construed as a "trust relationship".)

² I've seen several cases where the courts talk about the litigant's "expectation of rights" rather than "rights". By definition, beneficiaries have no meaningful rights. Is the term "expectation" primarily applied to persons who occupy status of beneficiary? If so, whenever a court talks about your "expectations," it may be signalling that it regards you as the rightless beneficiary of a trust relationship.

³ She (the plaintiff/beneficiary) can probably (even) stick her (husband) with her legal fees. (Why? Perhaps because she appeared as a beneficiary, and the duty of paying trust obligations (including the debts of the beneficiary) falls on the defendant-trustee (usually the husband).

⁴ I'm betting that one way or another, our duties to pay income tax, have drivers licenses, and obey a host of laws and regulations that any fool can see are unconstitutional are based on assumed trust relationships between ourselves and the government. I'm further willing to bet that those trust relationships must be "voluntary" (remember the "voluntary" income tax?). So if we learn how to "un-volunteer" as trustees (or even beneficiaries) from these various trusts, we may be able to extract ourselves from the equity jurisdiction of today's civil courts. Once that's done, the only way government could easily attack us would be *at law*—for criminal offenses wherein we intentionally damaged another person's body or property. Generally speaking, I believe gov-co is so reluctant (perhaps incompetent) to prosecute people at law, that cases which can't be prosecuted in equity may be routinely dropped.

■

Penal Offenses

by Alfred Adask

Although I've studied the legal system for years, I still don't understand the terms "criminal" and "penal". The words seem similar, but not synonymous. Their meanings are thus confused.

However, I suspect a key distinction between "penal" and "criminal" can be inferred from the definition of "Criminaliter" in *Bouviere's Law Dictionary* (1856):

CRIMINALITER. Criminally; opposed to civiliter, civilly.

2. When a person commits a wrong to the injury of another, he is answerable for it civiliter, whatever may have been his *intent*; but, unless his *intent* has been unlawful, he is not answerable criminaliter. [Emph. add.]

Note that it's possible for a person to "commit a wrong to the injury of another" by 1) accident or 2) intent. If the wrong is unintentional, we have a *civil* offense. When the wrong is intentional, we have a *crime*.

For example, suppose a child darts out into a street and is hit and killed by a passing car. If it can be shown that the driver hit the child by accident, there may be a civil offense (which may be settled with insurance). But if it can be shown that the motorist could have stopped or swerved to avoid hitting the child, but instead *chose* to strike the child *intentionally*, we have a *crime*. In both examples we have the same driver, same car, same dead child. The only difference between a civil offense and a crime is the absence or presence of the driver's wrongful *intent*. Thus, the "crime" is not the *act* of killing the child, it's the *intent* to do so.

Given that the essence of any crime is the perpetrator's "intent," it follows that only a natural, moral person (one who *knows* the difference between right and wrong) is capable of committing a crime. Why? Because amoral entities (children, the insane, and artificial entities) can't tell the difference between right and wrong and are therefore incapable of forming the requisite "intent" necessary to knowingly *choose* to commit a crime.

When these amoral entities "accidentally" or inadvertently commit a wrong, they are subject to penalty—but not as criminals. Instead, they are "penalized" in order to (hopefully) discipline them and perhaps "deter"—inspire fear rather than impart moral knowledge—to other amoral entities from committing similar offenses.

For example, when a child takes something that belongs to someone else, we don't indict the child for theft—we give him a smack on the butt to teach him his first lesson in property rights. Similarly, when the accounting firm Arthur Anderson is found to have assisted its client Enron in shredding truckloads of financial documents, the Arthur Anderson corporation is penalized with a \$500 million fine. However, the *corporation* is not prosecuted *criminally* since corporations (although clearly capable of doing wrong) are artificial entities incapable of forming the necessary *intent* to do wrong. (Of course, officers of the errant corporation might be charged criminally, but I suspect the corporation itself can only be “penalized”.)

Penal

Black's Law Dictionary (7th Ed.) defines “penal” in part as:

“Of, relating to, or being a penalty or punishment, esp. for a crime.”

Note that while “penal” may apply “especially” to a crime, it need not apply “exclusively” to a crime. That is, “penal” can be applied to offences that are statutory and civil but not necessarily criminal. Thus, a penal statute might impose the penalty of \$10,000 fine, or punitive damages as a “civil” penalty *in addition* to the criminal penalty of spending several years in prison.

Black's 7th continues to define “penal”:

“The general rule is that penal statutes are to be construed strictly.”

Note that a “*general* rule” implies specific exceptions. Thus, government has power to deviate from that “general rule”. Also, in modern legalese, the word “construed” often implies the presence of a “constructive trust”. Thus, “penal” sanctions may be a primary artefact of constructive trusts.

Black's 7th continues with a “simple” 64-word sentence:

“By the word ‘penal’ in this connection is meant not only such statutes as in terms impose a fine (or corporal punishment) or forfeiture as a consequence of violating laws, but also all acts which impose by way of punishment, damages beyond compensation for the benefit of the injured party, or which impose special burden or take away or impair any privilege or right.” (Emph. add.)

First, whatever “privilege or right” they’re “taking away” can’t be the “unalienable Rights” that are given by God and thus beyond the lawful capacity of any man or judge-god to arbitrarily remove.

However, no one—certainly not a beneficiary—can claim “unalienable Rights” within the context of a trust other than that of God’s true church (which is a spiritual *faith* rather than a secular *trust*). Thus, a court of equity could have authority to “take away” the “equitable rights” of beneficiaries and even “legal rights” of trustees. This power of *penal* authorities to take

away “rights” implies that the litigants are not appearing in the capacity of independent “men” but may be appearing in the capacity of parties to a trust.

Second, whenever I see an unusually long and hard to read sentence in a legal document, I assume the author is trying to conceal rather than communicate. So I tend to read the long sentences very closely. As a result, I can find a host of implications in that single, 64-word sentence.

For example, *Black’s* definition of “penal” declares:

By the word ‘penal’ in this connection is meant not only such statutes as in terms impose a fine, or corporal punishment, or forfeiture as a consequence of violating laws, but also *all acts* which impose by way of punishment, damages beyond compensation for the *benefit* of the injured party,

Thus, “penal” not only applies to punishments required by “statutes” but also to “*all acts*” which impose a punishment beyond “the *benefit* of the injured party”.

OK—who is the “injured party” in a court case? The *plaintiff*.

Since “statutes” imposing penalties are passed by the legislative branch of government, what else might fit under the general heading “*all acts*” that impose a punishment on errant defendant-trustees beyond the “benefit” of the plaintiff-beneficiary?

How ‘bout the discretionary “acts” of a *court* committed without direct requirement of law? And where can courts act without regard to law? In *equity*. In fact, judges in courts of equity are specifically absolved from the duty to obey the “law” (statutes) but are instead empowered to decide cases based strictly on their alleged personal conscience.

Thus, a “person” can be penalized not only according to law (statutes), but also according to “*all acts*” in the administration of trust relationships under the unbridled discretion of judges sitting in *equity*. Such “penal” applications seem to expose all persons to the *arbitrary* authority of the state courts of equity—i.e., rule by *man*, not law.

And what is a principle subject-matter jurisdiction for courts of equity? *Trusts*.

The implication that “penal” offenses may routinely apply to *trust*-based relationships is supported by *Black’s* reference to “benefit” in the definition of “penal”. The term “benefit” generally signals the presence of a “beneficiary” and, thus, the presence of a trust. This is consistent with the observation that in *constructive* trusts, the plaintiff (whether he knows it or not) appears in the capacity of a *beneficiary* who implicitly claims to have been wronged by the defendant. The defendant (whether he knows it or not) appears in the capacity of a *trustee* who is alleged guilty of violating his fiduciary obligations to the plaintiff-beneficiary.

Again, none of this may sound particularly remarkable or relevant. Big deal—trustees may be subject to “penal” laws. But who cares? Virtually no American ever signs up to be a trustee in a trust, right?

Yes—and No.

Look at the definition of “constructive trust” in *Black’s* 7th:

A trust imposed by a court on equitable grounds against one who has obtained property by wrongdoing, thereby preventing the wrongful holder from being unjustly enriched. Such a trust creates no fiduciary relationship. Also termed *implied trust*; *involuntary trust*; *trust de son tort*; *trust ex delicto*; *trust ex maleficio*; *remedial trust*; *trust in invitum*. Cf. *resulting trust*. [Underline added.]

Since the terms “constructive trust” and “involuntary trust” are synonymous, then defendants might challenge the constitutionality of such constructive/involuntary trusts (and their resulting duties and liabilities) as a violation of the 13th Amendment’s prohibition against “involuntary servitude”.¹

Black’s continues:

“A constructive trust is the formula through which the conscience of equity finds expression. When property has been acquired in such circumstances that the holder of the legal title may not in good conscience retain the beneficial interest, equity *converts* him into trustee.” *Beatty v. Guggenheim Exploration Co.*, 122 N.E. 378, 380 (N.Y. 1919) (Cardozo, J.)

Exactly. The defendant may be unknowingly “*converted*” into a “trustee”.
Black’s continues:

“It is sometimes said that when there are sufficient grounds for imposing a constructive trust, the court ‘constructs a trust.’ The expression is, of course, absurd. The word ‘constructive’ is derived from the verb ‘construe,’ not from the verb ‘construct.’ . . . The court *construes* the *circumstances* in the sense that it explains or *interprets* them; it does *not construct* them.” 5 Austin W. Scott & William F. Fratcher, *The Law of Trusts* Sect. 462.4 (4th ed. 1987). [emph. add.]

Here, *Black’s* makes clear that the court “construes” but does not “construct” a trust. Thus, the court “interprets” the interests and duties of the parties to a trust-relationship which is *assumed* to exist between the parties *before* they enter the court. However, the court does not create (“construct”) a brand new trust *after* the case has been initiated.

The assumption that the court “construes” an *existing* trust—rather than “constructs” (creates) a brand new trust—absolves the court from the duty of expressly informing the litigants of their “new” trust relationships. Since the trust being “construed” is *assumed* to have been created by the plaintiff and defendant, they are *assumed* to know about that trust and need no further information on it’s creation or their respective roles. Instead, since the litigants are assumed to know about the existence of their trust relationship and their respective roles, the court’s only purpose is to expressly clarify (construe) the duties and interests that are assumed to attach to the assumed trust-relationship.

Given that the court “construes” rather than “constructs” (creates) the trust relationship, the whole case (and perhaps even the court of equity’s jurisdiction) seems to turn on the *assumption* that a *pre-existing* trust relationship did, in fact, exist. If that *assumption* can be expressly challenged and shown to be false, there’d be nothing for the court of equity to “construe” and the plaintiff’s case would be at least compromised and possibly defeated. In other words, if the defendant denied the existence of a trust relationship between himself and the plaintiff, the case might lack subject matter to invoke a court of equity.

Black’s concludes the definition of “penal” with:

“The word penal connotes some form of punishment imposed on an individual by the authority of the state. Where the primary purpose of a statute is expressly enforceable by fine, imprisonment, or similar punishment the statute is always *construed as penal*.” [Emph. add.]

The phrase “authority of the state” might be stretched to imply that the penal authority did not ultimately trace to God. Technically, “crimes” are committed against *God’s* law (thou shalt not murder, steal, lie, etc.). Thus, “crimes” are ultimately enforced under God’s authority.

But when an offender is penalized by the authority of the state, it seems possible that he’s been found guilty of an offence against the *state*, rather than God. For example, God declared that “Thou shalt not steal,” and thus made all theft a crime against the laws of God. (However, The Bible is silent on God’s opinion of driving without a driver’s license.) Therefore, insofar as driving without a license (or without insurance, current registration or fastened seatbelts) can’t be traced to God’s law, then those offenses are against man’s law (the state) and might be “penal” rather than criminal.

Also, note the use of the word “construed” in the last sentence of *Black’s* definition (“Where the primary purpose of a statute is expressly enforceable by fine, imprisonment, or similar punishment the statute is always *construed as penal*.”). This isn’t proof, but it again implies that modern “penal” sanctions may be applied through *constructive* trusts. This, in turn, tends to support the hypothesis that we may routinely (but unwittingly) appear in court as parties to assumed trust relationships that do not, in fact, exist.

If so, defendants might gain a great deal might by successfully denying the existence of those *assumed* trust relationships.

Also, insofar as “resulting trust” is not listed as synonymous with “constructive trust,” it might be advantageous for a defendant to concede that a trust relationship exists, but declare that it’s a “resulting” trust rather than a “constructive” trust (I haven’t looked into the issue, but perhaps the defendant’s trustee liabilities are lessened under that kind of trust relationship). ■