Trusts: A Fertile Field for Philippine Jurisprudence

By

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One of the chief prides in which a Filipino lawyer may very well indulge is the fact that he can feel more or less at ease in either the Civil Law or the Common Law. The Philippines, because of its relations with Spain for almost four centuries, is the rightful beneficiary of the Roman Law which is the common heritage of civilization. Then too our country's almost half a century of contact with Anglo-American law has afforded it the opportunity of enriching its legal institutions and techniques. Thus it is said and with much truth that in the Philippines there is a happy blending of the best of the two aforementioned systems of law.

The new Civil Code[1] has in it provisions and precepts borrowed from Anglo-American Law and off-hand the following may be mentioned: Easement Against Nuisance, and Lateral and Subjacent Support;[2] Nuisance;[3] Quieting of Title; Reformation of Instruments, Estoppel, and Trusts;[4] Uniform Sales Law;[5] Common Carriers;[6] Uniform Partnership Act and Uniform Limited Partnership Act;[7] and Damages.[8]

It was said by the Code Commission that "The selection of rules from the Anglo-American law is proper and advisable: (a) because of the element of American culture that has been incorporated into Filipino life during the nearly half a century of democratic apprenticeship under American auspices; (b) because in the foreseeable future, the economic relations between the two countries will continue; and (c) because the American and English courts have developed certain equitable rules that are not recognized in the present Civil Code."[9]

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1 Republic Act No. 386.
2 Report of the Code Commission, p. 51.
3 Id., p. 52.
4 Id., p. 55.
5 Id., p. 60.
6 Id., p. 64.
7 Id., p. 67.
8 Id., p. 72.
9 Report of the Code Commission, p. 3.

Whether the adoption of all the Anglo-American rules mentioned above was wise only the future can tell. It is, however, believed by the writer that the incorporation of provisions on Trusts may well be the beginning of a new era in the enrichment of Philippine jurisprudence. It was said by a famous writer that 'Of all the exploits of Equity the largest and the most important is the invention and development of the Trust." [10] The same writer also said: "If we were asked what is the greatest and most distinctive achievement performed by Englishmen in the field of jurisprudence I cannot think that we should have any better answer to give than this, namely, the development from century to century of the trust idea." [11]

The trust as a juridical institution is not entirely new in our system of law. The new Civil Code did not introduce it for the first time. The new Civil Code did, however, bring into bold relief the existence of the trust in our law and placed it where it properly belongs —in the field of substantive law.

As early as in 1901 the trust was introduced in the Philippines by our former American rulers when the Code of Civil Procedure [12] was enacted. The old Code of Civil Procedure contained a few sections on trust [13] which were adopted from the Massachusetts Public Laws. The provisions were, however, scanty and desultory and dealt mainly with the control given to the courts of trustees—their appointment, removal and supervision. Being procedural in character they did not inspire exploitation for the purpose of solving common or novel situations and their importance was not realized as may be seen by the fact that as late as the adoption of the New Rules of Court they were not availed of and no decided case can be found citing any of them. The Rules of Court promulgated by our Supreme Court in 1940 reproduced substantially the provisions of the old Code of Civil Procedure on trusts.[14] Aside from these strictly procedural laws we find in the Corporation Law [15] several provisions relating to trusts.[16]

It may well be asked: "What is a trust and how does it differ from other juridical concepts especially those involving fiduciary relationships?" This article is intended to answer in a general way the question propounded.

It is said that to attempt to give a definition of a legal term so as to include all that is intended to be included and exclude everything

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[10] Maitland, Equity (1936), p. 23.
[11] Maitland, Selected Essays (1936), p. 129
[12] Act No. 190.
[13] Secs. 582-595.
[14] Rule 99.
[15] Act No. 1459.
[16] Sec. 36 (voting trusts), Secs. 131-146 (trust corporations). It is possible that other Philippine laws may have trust provisions but the writer has not been able to locate any of them.

else is difficult if not impossible. It is also said that even if it were possible to frame an exact definition it would not be of much practical importance and value because a definition cannot properly be used as if it were a major premise so that rules governing conduct can be drawn from it.[17] However insofar as a definition may be useful in knowing in a general way the term being dealt with, the following definition given by the American Law Institute in its Restatement of the Law of Trusts may be of service: It is "a fiduciary relationship with respect to property, subjecting the person by whom the property is held to equitable duties to deal with the property for the benefit of another person, which arises as a result of a manifestation of an intention to create it." [18]

From the above definition the following characteristics of a trust are apparent: (a) it is a relationship; (b) the relationship is fiduciary in character; (c) its subject matter is property, real or personal, tangible or intangible, legal or equitable, and it does not involve merely personal duties; (d) it imposes upon the person holding the property equitable duties to deal with said property for the benefit of another; and (e) it arises out of a manifestation to create it.

The person who establishes the trust is called the settlor or trustor; the one in whom the confidence is reposed is called the trustee; the person for whose benefit the trust is created is called the beneficiary or cestui que trust; and the subject matter of the relationship, the property held in trust, is called the trust property.[19]

The settlor, the trustee, and the beneficiary are usually three different persons. However, the following situations are possible: The settlor of the trust can be the trustee, as when he makes a declaration of trust.[20] The settlor may be one of the beneficiaries of the sole beneficiary of the trust.[21] A sole beneficiary of the trust cannot be its sole trustee although (a) one of the several beneficiaries can be one of the several trustees, (b) the sole beneficiary can be one of several trustees, (c) one of the several beneficiaries can be the sole trustee, and (d) if there are several beneficiaries they can be the trustees.[22] A sole beneficiary may not be the sole trustee of the trust because the juridical notion that there is a separation of the legal and equitable estates must be maintained—a notion that is essential in the trust concept.

Subject to certain qualifications, no particular formality is required for the creation of an express trust.[23] However, formal require-

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17 I Scott, Trusts, p. 30.
18 Sec. 2.
19 Restatement, Sec. 3; New Civil Code, Art. 1440.
20 Restatement, Sec. 100.
21 Id., Sec. 114.
22 Id., Sec. 115.
23 New Civil Code, Art. 1444; Restatement, Secs. 23 and 24.

ments may be necessary because of the parol evidence rule[24] or because of the Statute of Frauds[25] or because of the Statute of Wills.[26] Consideration is not essential for the creation of a trust for the reason that a trust is not a contract.[27] For this reason also the beneficiary of a trust need not have the capacity to contract or to transfer property and the rule is such that even an unborn child may be a beneficiary.[28] The trustee must have the capacity to take, hold and administer the property.[29] However, failure of the nominated trustee to have these attributes will not cause the trust to fail except where the nomination of a particular person as trustee is an essential condition of the creation of the trust.[30] On the other hand the settlor must have the capacity to dispose of his property, the capacity depending on whether the trust is created inter vivos or mortis causa, the reason being that the creation of a trust is an act of disposition of property.[31]

The trust should not be confused with other relationships containing a fiduciary element, such as deposit, agency, guardianship, executorship or administratorship, etc. In all these, as in trust, there is a fiduciary element which imposes on the fiduciary the duty to act for the benefit of the other party to the relation on matters coming within the purview of said relation. That confusion sometimes arises is not uncommon, both in the Philippines and in the United States. In the Philippines in particular one has only to glance at the cases in the Philippine Reports to see that the word trust is applied to relationships which are not properly trust relationships. As used in England and in the United States the term "trust" is applied to "that particular kind of fiduciary relationship which owes its origin to the separation in England of courts of law and courts of equity, and which was evolved by the English Court of Chancery from the ancient use."[32] In this connection it may profit the reader to remember that "That branch of law known in England and America as the law of trust had no exact counterpart in the Roman law and has none under the Spanish law."[33] However, one should not hold on to the idea that Roman law had no influence in the development of trusts in England or that the Roman law had no institutions similar to it. The discussion on this point is reserved for the latter part of this article.

It is said that "the trust owes its peculiar character to the more or less accidental character that in England in the fifteenth century

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[24] New Civil Code, Art. 1443.
[25] Restatement, Sec. 40; Rules of Court, Rule 123, Sec. 21.
[26] Restatement, Sec. 53; New Civil Code, Arts. 804-819.
[27] Restatement, Secs. 28 and 29
[28] Restatement, Sec. 116, comment d; 1 Scott, Trusts, p. 581-585.
[29] Restatement, Secs. 89-98.
[30] Restatement, Sec. 101.
[31] Restatement, Secs. 18-22.
[32] 1 Scott, Trusts, p. 30
[33] Bishop of Jaro v. De la Peña, 26 Phil. 144 145-146.

and for four hundred years thereafter there were separate courts of law and equity."[34] It is said that the trust would never have developed but for this.[35] Strangely enough also the trust was evolved in order to evade the law and was resorted to at first for purposes of fraud.[36] In feudal England several liabilities and prohibitions attached to land tenure. Thus the statutes of mortmain prohibited conveyance of land to religious and other corporations. If a man was convicted of treason his property became forfeit to the Crown. A man could not by will devise his land and on his death it would go to his heir. A man who held land had it subject to feudal burdens such as, for instance, the rights of the overlord to escheat, harriot, aid pur fair fils chivalier & pur file marier, etc.[37] With respect to the mortmain statutes, for example, conveyance of legal estate in lands to religious corporations was prohibited in order to prevent the Church from enriching itself. The chancellors of the Court of Equity were, however, on the whole ecclesiastics who were trained in civil and canon law and were familiar with the civil law distinction between naked and beneficial ownership—as in usufruct.[38] To evade the mortmain statutes recourse was made to this distinction. Instead of conveying land directly to the Church it was conveyed to individuals with the understanding that the Church was to have the beneficial enjoyment. The scheme was strictly within the letter of the law which prohibited transfers of legal estates only. The beneficial interest, separated from the legal interest, was termed as use and the court of equity or chancery, presided by the clergy, assumed entire jurisdiction of uses on the ground that they were exclusively matters of conscience and not of law.[39] With respect to liabilities only one instance need be given to show how uses, and ultimately trusts, developed. Thus men who were interested in politics were always running the risk of losing their property to the Crown for if they happened to favor the losing side they were considered and adjudged as traitors. It is said that during the Wars of the Roses the followers of Lancaster and York were wont to convey their property to their own use in a peace-loving subject, such as a law clerk, so that they were able to indulge in their favorite pastime without the risk of losing their property.[40]

The abuses made in connection with uses became so scandalous that Parliament had to enact certain statutes to remedy the situation. One of such statutes was the Statute of Uses enacted in 1535. This

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[34] 1 Scott, Trusts, p. 3.
[35] 1 Scott, Trusts, p. 3.
[36] 3 Pomeroy, Equity Jurisprudence (1905), p. 1813.
[37] For a list of liabilities and prohibitions attached to land tenure, see Statute of Uses, 27 Hen. VIII, c. 10 (1535).
[38] Walker, Introduction to American Law, p. 309.
[39] Walker, Introduction to American Law, p. 309
[40] 1 Scott, Trusts, p. 15

Statute did not make uses illegal for the cestui que use was not deprived of his beneficial interest but quite the contrary he was given also the legal title. But the people were so much in favor of uses that the common law judges as well as the chancellors did not extend the letter of the Statute beyond its strict requirements. Thus it was held soon after that the Statute did not apply to active trusts or where the feoffee (fiduciary) was directed to take the profits and deliver them to the beneficiary as distinguished from a passive trust wherein the feoffee was directed to allow the beneficiary to take the profits. It was also held that the Statute did not apply to uses of personality. Finally it was held that a use on a use is not affected by the Statute although the first use is so affected or more properly speaking "executed" meaning to say that the equitable interest is converted into a legal interest at the moment of creation.[41]

Long before the enactment of the Statute of Uses the beneficiary had no legal rights which he could enforce against the feoffee or trustee. The relationship was regarded as merely honorary and not legal. Complaints against unfaithful trustees became so prevalent that the chancellors compelled the trustee to do what he had undertaken to do. In due time the chancellors built up a system of equitable ownership.[42]

Another question which may interest us is whether the trust idea was borrowed from the Roman law or, contrariwise, what influence, if any, did the Roman law have in the development of trusts.

Due to the similarity of the trust with such Roman law devices of **usufructus**, **usus**, **fideicommissum** and **bonorum possessio** it was at one time believed that the trust had its origin in the Roman law. This, however, is not the case for studies have shown that uses and trusts were derived from the German institution of Salman, modified by the influence of the Roman law, wherein property was transferred to another for purposes to be effected either during the lifetime or after the death of the transferor.[43] So too, Buckland says, that "we shall not find the trust, as a general institution, in Roman Law: of this conception it is common knowledge that the Roman Law and the systems derived from it possess no parallel. As Maitland has said, the analogy between the English double ownership, so-called, and the Roman, cannot be pushed below the surface."[44]

Not having its origin in the Roman Law it would be a mistake to suppose, however, that the Roman Law had no influence in the development of trusts. As has been stated the chancellors, in developing

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41 1 Scott, Trusts, pp. 19-23.

42 3 Pomeroy, Equity Jurisprudence (1905), pp. 1815-1816.

43 Ames, The Origin and Uses of Trusts, 21 Harvard Law Review, pp. 263-265; The Influence of Roman Law on English Equity, Holdsworth's Essays in Law and History, p. 191.

44 Equity in Roman Law, p. 15.

uses, applied the distinction known in civil law between naked and beneficial ownership. Thus Pomeroy says that "the elementary notion of trusts, like so many other doctrines of equity, was borrowed from the Roman law." [45] Pomeroy cites the **fidei-commissa** wherein an heir was to surrender the property to another person, the beneficiary. He concludes, however, by stating that "Although it is plain that the conception of a 'use' was borrowed from this **fidei-commissum** of Roman law, and that the English chancellor followed in the footsteps of the Roman magistrate, yet beyond this mere elementary notion or suggestion there is little resemblance between the two species of ownership. Their essential differences are as marked as their superficial similarity; and it is a grave error to represent the entire equity jurisprudence concerning uses and trusts as derived from Roman law." [46]

The trust is the most versatile device known in law for dealing with property. A trust can be created for any purpose not contrary to law or public policy.[47] It is said that the purposes for which a trust can be created cannot be classified or enumerated because the purposes "are limited only by the imagination of lawyers and men of business and by the policy of the law against using the trust for illegal purposes." [48] Nevertheless, to give a few broad examples we may mention the following as purposes for which trusts may be created: family settlements, business transactions and substitute for incorporation.

Perhaps one of the most intriguing uses of a trust is in the so-called spendthrift trust which is defined by the Restatement of the Law of Trusts as one "in which by the terms of the trust a valid restraint on the voluntary and involuntary transfer of the interest of the beneficiary is imposed." [49] Most states uphold the validity of spendthrift trusts but a few hold them invalid on the ground that they are against public policy.[50] Where spendthrift trusts are allowed it is immaterial that the beneficiary is competent to manage his own affairs.[51] By a spendthrift trust the beneficiary is protected against his own impro-

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[45] 3 Equity Jurisprudence (1905), p. 1810.

[46] 3 Equity Jurisprudence (1905), pp. 1812-1813. A footnote is added that in the ancient use and in the modern trust there are of necessity two distinct estates, the legal and the equitable, vested in different persons. In the *fidei commisso*, however, there was no such division of ownership, no double simultaneous estates. Until the inheritance was transferred to the beneficiary he only had a right of action.

[47] Restatement, Sec. 59.

[48] 1 Scott, Trusts, pp. 370-371.

[49] Sec. 152 (2). The leading case is Broadway National Bank v. Adams, 133 Mass. 170, 43 Am. Dec. 504 (1882).

[50] 1 Scott, Trusts, pp. 749-752.

[51] Restatement, Sec. 152 comment g.

vidence. He cannot anticipate his interest and his creditors cannot reach it. Verily he is one who can have his cake and eat it too.[52]

The new Civil Code provides that "The principles of the general law of trusts, insofar as they are not in conflict with this Code, the Code of Commerce, and the Rules of Court and special laws are hereby adopted." [53] All in all the Civil Code contains only eighteen articles on trusts, two of which consist of a definition of terms falling under the General Provisions, four of which provide for Express Trusts, and the remaining ones providing a non-exclusive enumeration of Implied Trusts. That the framers of the code did not attempt to incorporate more articles on trusts was a wise move. Indeed if they had placed detailed provisions on trusts in the code it would have attained unnecessary length. The Restatement of the Law of Trusts which contains the more salient principles, doctrines and rules on the subject contains four hundred and sixty sections. In evolving our own law of trusts we can rely on the Restatement which has won wide, though by no means universal, acceptance in the United States. We can also draw from the rich and almost unlimited jurisprudence of both the United States and England on the subject.

The writer hazards to predict that a full utilization of the trust device in our country will help us immeasurably in our economic reconstruction. Its possibilities are unlimited because it is a very flexible tool. In business matters, for example, where the relations to be established are too delicate or too novel for the coarser devices of contract, the universal tool, or incorporation, the standard method of organization, the trust lends itself ideally to the need born of economic and social fact situations.[54] It will do well, therefore, to explore the possibilities of this subject in the Philippines. The law of trusts opens to us a new field for study and application.

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[52] Exceptions are made by the Restatement and it warns that they are not necessarily exclusive. Thus the following claims may be made against the beneficiary: (a) by his wife or child for support or alimony. (b) for necessary services and supplies rendered or furnished. (c) services and materials rendered or furnished which preserve or benefit his interest. Sec. 157. A spendthrift trust created for the settlor's own benefit is ineffective against his creditors. Restatement, Sec. 156 (1).

[53] Art. 1440.

[54] Isaacs, Trusteeships in Modern Business, 42 Harvard Law Review. p. 1048.