



# DePaul Advisor

April 2008

## Death Before Will Negates Pledge

### ***Estate of Burg v. Anti-Defamation League Foundation, 2d Civil No. B195382***

Shortly before his death in 2006, Moses Burg signed two letters indicating his intention to leave \$100,000 to the Anti-Defamation League Foundation in his will. Burg met with an attorney who drafted a trust, but it was never signed. The probate court determined that the letters were not testamentary instruments.

The ADLF argued that the elements of a valid gift – donative intent, delivery and acceptance – had been met. The organization also claimed that Burg’s pledge was enforceable as a contractual obligation under the promissory estoppel doctrine.

The California Court of Appeals noted that for a gift to be valid, there generally must be complete divestment of control. Because Burg did not execute a trust or will, he did not fulfill his intention of leaving a gift by will, said the court, adding that a promise of a charitable gift generally may be withdrawn at any time prior to acceptance. ADLF did not show that it had performed any acts or incurred any obligation in relying on Burg’s pledge to justify the application of promissory estoppel.

## Good Intentions Not Sufficient

### ***Estate of Tamulis v. Comm’r., No. 06-4141***

Father Anthony Tamulis, who died in 2000, left the bulk of his \$3.4 million estate to a trust that was

to pay income to his grandnieces for the life of his brother and sister-in-law. The remainder was to pass to a Catholic diocese. The estate tax return claimed a \$1.5 million charitable deduction for the “residue following 10 year term certain charitable remainder unitrust at 5% quarterly payments to two grandnieces.” However, because the trust did not specify the grandnieces’ interests as either a fixed dollar amount or a percentage of the trust’s fair market value, it was not qualified under Code §664.

Although the trust was never reformed [Code §2055(e)(3)(B)], the trustee treated it as a 5% unitrust. The Tax Court held that because the noncharitable beneficiaries’ interests were not a fixed dollar or percentage of the trust’s value, the trust could be reformed only through a judicial proceeding instituted no more than 90 days after the deadline for filing the estate tax return [Code §2055(e)(3)(C)(iii)(I)]. Failing this, the estate was not entitled to a charitable deduction (*Estate of Tamulis v. Comm’r.*, T.C. Memo 2006-183).

The U.S. Court of Appeals agreed. The fact that the trust was operated in compliance with the requirements “depended largely on the good faith of the trustee.” The doctrine of substantial compliance was inapplicable here, said the court, because the requirement to reform the trust is not “unimportant or unclear.”

## Uncashed Check’s Status in Dispute

### ***Succession of Franklin, No. 42,496-CA***

A check for \$33,800, representing the proceeds from a redeemed CD, was found in Dona Mae

Franklin's home after her death. Franklin had bequeathed her house and all "corporeal movable contents" to Robert Davis. The residue of her estate passed to several charities. The executor of her estate asked the court to determine ownership of the check. Davis argued that if cash, rather than a check, had been found, he would have been entitled to the money. The district court declared the check to be an "incorporeal movable" included in the residue. The Louisiana Court of Appeals agreed, noting that incorporeal movables are defined under state law as "rights, obligations and actions that apply to a movable thing." A check not cashed prior to death is still an incorporeal moveable, said the court. The check was an obligation of the bank, which had no obligation to pay the funds to Davis.

## Assignment is Second Gift

### Letter Ruling 200802024

A husband created two charitable remainder unitrusts, naming himself as beneficiary and his wife as successor beneficiary. The couple now proposes to designate a remainder beneficiary and assign their respective interests in the trusts to that organization. Under state law, the interests will merge and the assets will be distributed to charity.

The IRS ruled that the couple will be entitled to an income tax charitable deduction under Code §170(c) and a gift tax charitable deduction under Code §2522(a), equal to the value of their interests, in the year the assignment is made.

## Court: Plaintiffs Not "Special"

### Rhone v. Adams, No. 1060482

Representatives from St. Paul Church and Mayhaw School in Calhoun County, Florida, sued to enforce a testamentary trust created by W.T. Neal. The trustees were to make contributions for charitable purposes exclusively in Escambia County, Alabama, and Calhoun County. No charities were specifically named as beneficiary.

St. Paul and Mayhaw claimed that although they had no standing for themselves, they had standing as "putative class plaintiffs" to sue for restitution on behalf of the entire class for the misdeeds and mismanagement of the trustees. They argued that the attorney general does not have exclusive power to enforce a charitable trust, citing *Jones v. Grant* (344 So.2d 1210), which found that students, faculty and staff of a school had "sufficient special interest" to confer standing. The Supreme Court of Alabama noted that in *Jones*, the students, faculty and staff were identifiable as actual beneficiaries of a charitable trust. St. Paul and Mayhaw are merely potential beneficiaries and therefore have no special interest in the trust's enforcement. Instead, they must rely on the attorney general to commence an action, ruled the court.



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