

TAX FREE!

How the super rich do it!

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Dedication In Memory of Harry Morgan Phipps

I dedicate this work to the spirit and initiative of my departed elder brother, HARRY MORGAN PHIPPS, Esquire. His life and law practice were devoted to spreading the good news of estate and financial liberty among the entrepreneurs of his day. Several sources report he credited the late Dallas, Texas oilman H. L. Hunt (from whom he received \$75,000 in the late 20's to establish the first Hunt Colato) for having thrust him into the major leagues of wealth, estate, and privacy engineering. His life is the measure of legal courage! Those who seek his monument shall behold many of the *nouveaux riches* of the next several generations. We have him to thank for initially igniting the torch of economic truth. Unfortunately he did not live long enough to see his dream fulfilled but I trust I may carry on his lantern of financial illumination. While he passed some years ago and hence cannot acknowledge my dedication I believe he would have appreciated my sentiment - and certainly my daring.

Foreword

If I were to reveal the foremost secret of the Super Rich I would say it in a single line. In fact it is the secret creed, one might say, of "How the Super Rich Do It!" Though some readers may profess understanding of this creed, I almost always find they are helplessly bound to the whims of state and federal legislature. I say this without foundation here, but I shall prove it in the body of my work, and you will be able to contrast the situation of H. L. Hunt who understood this principle to his sons who forgot it. The Super Rich's knowledge is so finely tuned it can be said they orchestrate the state and federal legislatures. This knowledge is light years ahead of the most sophisticated tax and estate planners in the world. Indeed, the Super Rich invented tax and estate *engineering!* *What a difference there is between merely planning versus engineering!* Nevertheless, almost all professionals and nearly all laymen are unacquainted with the tenet of the Super Rich. Study it. Learn it. Use it. The secret of wealth is

CONTROL, NOT OWNERSHIP!

Author's Preface

Choosing a title for this work was tough. It should have been titled, "*How the Super Rich are Exempt from Probate, Gift Taxes, Estate Taxes, Federal Income Taxes, State Income Taxes, Capital Gains Taxes, Social Security Taxes, Seizures, Bankruptcies, Law Suits, Judgments, Etc., AND How You Can Exclude Yourself From All These Problems!*" Such a title would have apprised the purchaser of the content of the book, but it would obviously not have functioned as a name.

You hold in your hands the fruit of more than a lifetime of work - over ninety accumulated calendar years in research, trials, testing, and experience. For well over a decade my clients have been requesting I write this book. I hope all may benefit greatly; clients and non clients alike.

From the earliest part of the twentieth century men have paid from high to medium five figure sums (See page x, "Dedication In Memory") to learn what this work teaches. Today, two associations, First America Research, and another, charge a minimum fee of \$15,500 for this information during a two day seminar. What one gets for their memberships are the secrets revealed to you here, a syllabus, on going member benefits and updates, helps from the membership, and tape recordings from the two day seminar. Members do their own work of "putting it all together," or they hire one of the association approved attorneys. By any standard their respective fees for the secrets are cheap, because *probate alone* would cost the average person considerably more!

The secrets within these pages have never been offered for such a paltry sum as you have paid for this book. That there has never been a book as this is evidence enough that the information revealed to you here was never intended to be widely known, read, studied, and used - especially from a single volume! For this reason vigorous steps shall be taken to help eliminate unauthorized copies from appearing.

There are but a handful of attorneys who work with Colatos, the "secret trust" of the Super Rich, and almost all of those are on private retainer, do not have public practices, and are not motivated to share what they know. However, in the last decade or more a few lawyers have emerged who have each made significant contributions in the ordinary course of their practices to rediscover and redevelop the English common law - especially those parts which are uniquely American. Among these later few are men like Chester Rhorlich; Joseph Alfred Izzen; Jay W. Mitton; John I. Forry; Michael Pinatelli; the firms of Baker and Botts; and Andrews and Kurth. Also encouraging is that prestigious stock firms like Paine Weber, Inc. have presented offerings which revive those peculiar American forms of business organization known until lately only to the super Rich and their lawyers. This expose will offer the proof in a form a court would label "*evidence*" to document that America's richest families have been using Colatos for over a century!

In an effort to draw the economic and political picture together, it is almost impossible not to make some personal observations or interpretations concerning certain situations which are of historical value. However, interpretations shall be kept to a minimum as I realize that such questions are beyond the intent and scope of this work; so many others have written volumes concerning them. Surely those sources are not so complete concerning the events which shaped our law and history the world cannot use a few of my insights. Therefore I'll limit the digressions as much as possible, and only to offer those insights on tax and economic histories I believe are indispensable to the reader.

The footnotes are integral to this work. I **urge** you in the strongest possible language to use them! They will extricate an *extraordinary secret* so tangled together that without them it could take years of searching to unravel. Because of the pagination necessitating footnotes rather than endnotes, and their essentiality for an authoritative thesis I was unable to print the book in columns. I realize the long line makes reading more difficult and I apologize for that, but as this book won't be read as a novel any way, and as it must be studied, I must demand your indulgence in order to protect the integrity of the work.

I will refer to the "layman" as that tide pool of extremely clever persons, who, rather than hiring critical technology, educate themselves to do the biggest part, if not the entire job of running their businesses. So critical are the decisions entrepreneurs must make today, if they are to negotiate successfully in the sea of competition, that I refer to these elite as the layman or non professionals. Most of my clients over the years have been "laymen" who have put everything together themselves with occasional help from other association members.

On balance, I believe those persons engaged in the legal, accounting, and real estate professions will round out my readership. However, my commitment is greater to the layman. I want anyone of average talent and ability to understand the source of my revelation and why the techniques work. After comprehending I want them to be able to *utilize* the methods themselves.

My brethren will be delighted to see I have adopted the style of sectionalizing paragraphs, but because I know some laymen might be intimidated by the sight of such legal trappings I wish to encourage them! The advantages offered of being able to relocate important material soon becomes apparent. Thus, the symbol "\$" means "section" or "paragraph" while "\$\$" means the plural.

As this expose is fully documented, it will settle any question of tax or law concerning the validity or legality of the Colato; the primary tool of the Super Rich. However, the complexity of my subject material has necessitated the use of many things most people would be unfamiliar with. Therefore, to amateur eyes this work may appear complicated. Again, I say take heart! The text extends great care so that the interested person will completely understand. Even so, an extensive glossary will include terms, foreign words, abbreviations, etc. I have also provided an extensive index. You can find almost any subject within moments. Further, the book includes a Table of Legal Authorities as well as complete selected cases. I realize how anxious one may be to discover the secrets of the Super Rich and how a reader will have a tendency to rush through the material, but as my subject matter contains complete proofs a careful reading is required to truly understand. Nevertheless, I believe a layman or professional can easily step from one concept to another and graduate with a working knowledge most of my kindred brothers do not possess.

I have tried to answer all the questions which you might ask. The reader should have pen and paper handy to write down questions as they arise. I trust most of the answers will appear in another section or chapter of the book. If you have a question which I don't appear to have answered, likely you find the answer from another comment or illustration. Purchasers of this edition may send their questions, with reasonable limit.

Chapter One

The Princes vs. the Paupers!

**In this world nothing can be said
to be certain, except death and taxes.**

Benjamin Franklin

**The art of taxation consists in so
plucking the goose as to obtain
the largest possible amount of
feathers with the smallest possible
amount of hissing.**

Jean Baptiste Colbert

together with a self addressed stamped envelope (SASE) for a FREE answer! If you ask a question, the answers shall not be deemed to be practicing law. They will only give general information concerning the questions asked. If you should like to try any of the suggestions I make herein I heartily recommend a competent lawyer.

Knowledgeable professionals will wade through some familiar material. I hope you will find it mentorious and will realize it is a tangible help for those who cannot afford to compensate every hand held out. When either laymen or professional do it like the Super Rich I then shall have reached my goal.

It would be my great pleasure to give you, the reader, the wealth, estate, and privacy your heart desires, but also that you may stand - whither come the storm!

Brewster, Massachusetts on Cape Cod. Spring of 1990. Don Turner,

Esq.

1

How To Do It Like The Super Rich!

1.1 Every word in this book turns on a single purpose, to help you:

1. Keep more of what you already make and have accumulated;
2. Make your will an *absolutely unbreakable command*;
3. Effectively guard against law suits, judgments, seizures, bankruptcies, etc.;
4. To vastly improve your privacy and financial rating; and
5. To make you, your estate, or business *POSITIVELY FREE* from unpredictable and constantly changing governmental regulation, intrusion, or harassment!

Therefore, as this book is not a novel, I strongly suggest you get a piece of paper and pencil to write questions which spring into your mind. As you go along, I believe you will get answers to all of your questions.

1.2 Others' experiences, accepted legal cases, and documented historical proofs will progressively reveal the secrets of the Super *Rich*. This book will NOT tell you how to get rich quick! Even the Super *Rich* did not acquire their wealth over night, but by using these step by step secrets their fortunes grew and so can yours. In my seminars I have challenged participants, "If you are capable of earning a good living, you can do it exactly as the Super Rich do it." Our first lesson will come from two men who in life could have passed as twins, but in death were more than strangers.

Lesson One

1.3 A couple of years ago, a Nebraska man few people had ever heard of passed away. Coincidentally, a few months earlier, a fairly well-known political figure in Cambridge, Massachusetts also died. In spite of their differences in geographical location, profession, and notoriety, each man - unknown to the other - possessed striking similarities! A sameness so unique, and of the kind one would read about in story books. They shared exactly the same birthday and bore similar features which could easily have passed them as brothers. Although neither was really wealthy, their estates were of nearly equal values, approximately \$665,000. The irony is that the man who in life was

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never well known, except in his own small farming community near Omaha, Nebraska, is destined to become posthumously far more famous in standing than was the moderately well known Cambridge official to the State of Massachusetts.

1.4 Besides his farm home, the Nebraskan owned a time-share condominium by Grand Lake in Colorado. The Massachusetts politician enjoyed a cottage on the beach at Martha's Vineyard. Each man held undeveloped land in other states. They each had three grown children, two sons and a daughter all born within months of each other. Their wives had each died in the same year, some twenty years earlier, and they had numerous grandchildren, beautiful homes, and comfortable lives. The farmer who looked robust and healthy, suffered an apparent heart attack while elk hunting in the Colorado mountains. It was one of those tragic events. His body lay lost for several days. The Cambridge politician just passed his annual physical with "flying colors." He died of complications after a simple but unexpected appendectomy.

1.5 Just two days after the burial of the Omaha farmer, at a meeting to read the will, an accountant gave the family his preliminary estimate of the average estate settlement costs. Initially, it appeared that probate and administrative expenses in Nebraska would run approximately \$44,835! Actually inexpensive by most standards, due no doubt to the family ties to the head of the law firm. The estate had an adjusted gross amount of \$620,665. With the graduated unified credit exemption provided by the Economic Recovery Tax Act, the accountant also estimated Federal Estate costs at roughly \$89,319. The children couldn't believe their ears! State Inheritance Taxes should take an additional \$37,435. Since no marital deduction was possible, the total "death costs" would come in at \$171,589.¹

1.6 Still, the attorneys and accountant, as the estate administrators, stressed that the figures were low estimates. They explained the estate would be probated in Colorado where the condominium was, and also in New Mexico for the section of undeveloped land. There would be no less than *three* probates. Luckily, he owned no foreign real estate.

1.7 Then a new discovery made matters worse. The farmer's son received a substantial loan many years earlier which remained unpaid. Because of the son's continued financial difficulty, the father had forgiven the debt two and a half years before his death. The attorneys explained the entire amount of the note constituted a taxable gift from the farmer's gross estate. The accountant provided the law for the Internal Revenue rationale. A gift made less than three years before death is a gift made in anticipation of death, whether or not it was really made in expectation of death. It would legally be subject to the total taxes. That was the law.

1.8 The accountant also reminded the family that the Federal Estate and Gift Taxes by law had to be paid within nine months of their father's death, and he noted, in cash! The family expressed their shock and dismay. The attorneys confessed they had discussed the problem among themselves with the accountant, and had reached a conclusion. Because of the minimum amount of cash available, no where close to the easily \$200,000 needed, the family really had only one solution for their problem. The estate administrative team delivered their grim diagnosis. "The ranch will have to sell to

¹ Had a marital deduction been possible, these same costs would have been estimated at \$79,215. However, not to be forgotten, the estate had paid the wife's taxes twenty years before.

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pay the costs and taxes. And, "the accountant paused," the entire ranch will have to sell due to the emergency nature of the sale, which will produce a sale price less than it would ordinarily bring in the market place. And there will then be a substantial capital gain's tax² upon the proceeds of the sale of the ranch." The children were aghast with disbelief. Their hearts sank as the truth poured over them in waves. Their father had been debt free for years, and now he was hopelessly in debt.

1.9 Nine long months after the farmer had been laid to rest he was still paying taxes. The children were often beside themselves with worry, and became quarrelsome over the will, which rapidly lost the color and distinctiveness their father had intended it to project. Coordinating the lawyers, accountants, and appraisers became too much for the family. The daughter sued the estate and will, which bore little resemblance to the interpretation she believed her father would have given it under the circumstances. The youngest son counter sued, because he was to have been able to continue in the farming business. The eldest son was angry because his sister and brother were of the opinion he had already received more than his share of the estate.

1.10 The estate is far from settled, and it appears it may be several years before the costly litigation is over. In the meantime, the time-share condominium was the first of many assets to go toward the administrative expenses. Also gone were the family plans to enjoy Thanksgiving at the condominium. Soon the administrative costs will become a far greater share of the inheritance than the children could ever hope to receive. Unfortunately, bitterness seems to rule the day, and while the once happy family fight among themselves, the remaining portions of the estate dwindle away. The family had only a couple of days to rest their pain and grief from the loss of their father before they were faced with the death of his legacy.

1.11 On the dawn of the very day the farmer's daughter sued the will and estate the three children of the Cambridge politician set out from their respective homes toward Martha's Vineyard. They and their families would enjoy the long Thanksgiving weekend at the beach property and cottage. Rather than running in every direction at once for the administrative help needed over their father's estate, or wondering how they would meet the costs of probate, gift, inheritance, estate taxes, capital gains' taxes, federal taxes, and state taxes, the two sons and daughter, each with their young families, raised their glasses in a toast to their dad's life. Without any of the problems faced by the children of the farmer, they were already enjoying the product of their father's labors with love, and nostalgia. Their father's estate was, virtually intact, and they enjoyed the weekend around the fireplace together. They learned from an audio tape about other's misfortunes. Their dad explained how he had protected the property he had controlled during his life, and why it was utterly free from the demolition faced by the farmer's Children. Three young families made some important resolves that day at Martha's Vineyard, and silently and calmly set into motion the same device for themselves.

² Under today's law the gain from the sale would be ordinary income, taxed accordingly.

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Contrast The Methods

1.12 The great similarities between politician and farmer ended with their deaths. The contrast and dissimilarities, make the farmer's situation a legal stigma crying for reform. Reform, however, is long in coming. In spite of articles appearing a generation or more ago, even in legal journals³ no statutory relief is in sight. There may be simply too great a vested political and economic interest to preserve the status quo. The reader may recognize some of the farmer in his own planning or lack of personal economic engineering. The will's vulnerabilities to attack, the total ruin of financial and personal privacy, the loss of the estate to probate, taxes and administrative costs,⁴ are all the rule, rather than the exception. Nevertheless, reform is available, and even comes in color: RED-take it into your own hands red-blooded courage to understand and use the wisdom and privacy of the Super Rich.

1.13 The first lesson one should learn is the most powerful one line secret in the economic world: The secret of wealth is control-not ownership.⁵ Few people have practiced this secret as well as the late Hassie L. Hunt of Dallas, Texas. He was a famous oilman, who, when he died in 1974, as the world's richest man, owned in his own name, only one 1974 Chevrolet pickup truck worth about \$2,500.⁶ Hunt's total worth could only be estimated by the world, as it was never disclosed. The "estimates" ranged from \$2 billion to \$5 billion.⁷ The real significance of these figures can hardly be appreciated until one views them in a perspective more easily understood:

5,000,000,000.00	-	the	highest	"estimate"
<u>2,000,000,000.00</u>	-	the	lowest	"estimate"
\$3,000,000,000.00	-	spread or difference		

1.14 Certainly a spread of three billion dollars is no "estimate" at all. It's a complete guess. The actual inventory of Hunt's personal property was paltry beside the "estimate." Regardless of how much Hunt was worth the revealing and much more interesting aspects of these facts must be viewed with the eye of understanding. It is well known that several hundred trust funds established by Hunt owned his "estimated" worth. In fact, the Dallas phone directory went on for pages listing addresses and phone numbers for seemingly innumerable Hunt trusts.⁸ Another significant fact emerges when

³ Cf §§3.18 and 3..52.

⁴ See §3.38, *et seq.*, *Wills May Turn Your Heirs Gray!* Compare the lists of estates beginning at page 76.

⁵ Those who do understand the principle of control versus ownership do well to look carefully at trusts, and corporations, either foreign or domestic, which only appear to be the devices used by the Super Rich, but are ineffective imitations. Development of this idea follows in Chapter Four.

⁶ Probate Court Number 1, Dallas, Texas. September, 1975.

⁷ *Dallas Morning News*, Sunday, October 5, 1975.

⁸ Dallas, Texas telephone directory under "Hunt".

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one remembers that the Federal Gift and Estate Tax in 1974 took 77% of the property values in excess of ten million dollars. Once again let's view the amounts in digit form:

\$3,000,000,000.00 - the spread or difference
- 10,000,000.00 - maximum gift deductible
2,990,000,000.00 - 77% due the I.R.S..
-2,302,300,000.00 - actually due the I.R.S..
687,700,000.00 - left to the family.

1.15 Two billion, three hundred two million, three hundred thousand dollars would have been due the Internal Revenue Service and worthwhile to collect if *it been owed by Hunt!* The fact is he controlled the wealth, he did own it, and the Internal Revenue Service has never attempted to collect such a fortune.

1.16 Periodic and always interesting lists of the so-called "Super Rich" frequently appear. Yet, when consulted for certain names, we find they are omitted or that the wealth reported is far less than believable. Who, then, are the truly Super Rich? They are the ones who are unimpressed by such lists. Most if not all of their riches and property are privately held and not subject to discovery. They use a reclusive business vehicle affording complete privacy yet they enjoy absolute power to *control their financial affairs*.

1.17 The famed columnist, Jack Anderson, has some interesting insight on this subject:

We have had access to *secret tax filings*⁹ by members of our wealthiest families, the Mellons, the Rockefellers, the Hunts and others. Their returns have one thing in common. Each of the families has had millionaire members, who from time to time, have paid no income tax at all. And almost all of them regularly pay only a fraction of the tax their incomes would require were it not for loopholes¹⁰.

Vice President Nelson Rockefeller, for example, paid no federal income tax in 1970. His brother, John D. Rockefeller III, pays a 10 per cent federal tax as a matter of personal principle. Apparently, he can manipulate his tax *exemptions*¹¹ to produce whatever tax return he feels is appropriate. Paul Mellon, worth a cool one 'billion dollars, is able to get away with negligible income tax, as do other members of his fabulously rich family. And Texas oil millionaire Bunker Hunt has managed to live in luxury without .eying any taxes at all in several years.

We do not single them out of criticism. They have made use of the law

⁹ Emphasis Added. An interesting selection of words.

¹⁰ The Super Rich do not use "loopholes". See §1.63, *et seq., infra*, where loopholes are defined.

¹¹ Emphasis added. "Exemptions" is the appropriate word. See §1.63, *et seq., infra*, where exemption is defined.

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and that is their right. It is the process that is at fault, and it makes a chump out of the person who does not distort his affairs so as to benefit from every possible loophole!¹²

1.18 Here in his column, Mr. Anderson calls us "chumps" for not understanding the background of taxes, as well as how to effectively avoid excessive taxes, as the Super Rich have been doing since the beginning of the Federal Income Tax. He may be right! Lest we be "chumps" it behooves us at this point to learn certain things about that background, and I assure you our search will reveal some extraordinary intelligence. Further, I believe Mr. Anderson is saying with tongue in cheek that if one does distort one's affairs that he or she is a sage, and makes a dunce of the system! Does he not? Such a notion shall take on an engrossing account however "distortion" is not the key-engineering is!

1.19 If it was ever the right of the rich to use the law we will be inescapably driven to the conclusion anyone may enjoy the same right. It is at this juncture we will have to learn *how and when* we acquired said right. When the truth dawns on us it will be as bright as the sun lit day!

Bastard Fraternal Twins

1.20 Our search for the genealogy of Taxes must begin with his mother, the State; in fact, the very first state. Also born to Mother State, and twin brother to Taxes, was Evasion, the latter having been born only a moment after the former. Taxes and Evasion, the two offspring of Mother State, one legitimate and the other not, are seemingly locked in eternal combat. This book will show why the warfare need not be waged, how the Super Rich have avoided the conflict, and **thus how we may profit as well.**

1.21 In order to learn how the Super Rich do it we will need to understand just a bit of fascinating history. For example, the ancient Babylonian and Egyptian states raised their revenues from public lands and extracted "levies in kind" by forced labor, personal servitude, and by "sharing" in the production of private lands. Egypt's major source of income was the poll tax levied directly upon the individual. An extraordinary Egyptian painting owned by the Betteman Archives depicts a tax evader lying prostrate and naked on a floor. While several men held each hand or foot fully extended, another flailed his body with a rod.

One Is Taxed The Other Is Free!

1.22 The Biblical account of the twelve tribes of Israel holds a gripping account of the people in dialogue with God to permit a king to rule over them - "like all the other nations." God warned them that such a king would practice the identical revenue raising tactics of the Egyptians and Babylonians we read about just above. However, the

¹² Jack Anderson, *The Yearly Tax Ordeal*, Syndicated column, 1977. Our choice is not between avoidance and evasion of taxes, but between the effective and ineffective uses of the Internal Revenue *Code (IRC)*, the Internal Revenue Regulations (IRR), and the cases of law. Strict legal use should be stressed.

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people were intractable and begged for a king of their own. God conceded their wish, and a short while later Saul was anointed King over all Israel.¹³

1.23 After Saul came King David and finally his son King Solomon. As Rehoboam ascended his father Solomon's throne, just three generations after King Saul, the people summoned a maverick leader named Jeroboam to speak to King Rehoboam. Jeroboam pledged the people's allegiance only if King Rehoboam would ease the tax burden his father Solomon had placed on the people.

1.24 King Rehoboam forsook the counsel of Israel's elders who begged for tax reform, and instead, took the advice and counsel of the young men he had grown up with. In his edict, he acknowledged, as King Solomon had disciplined the tax rebels with whips, he would use scorpions, and so he raised the taxes. The account is the oldest recorded tax revolt.

1.25 The twelve tribes were torn, ten to two. After the division of the ten tribes of Israel to the North, led by the "Svengali" Jeroboam, the King had the audacity to send his tax collector for the inflated tribute. When the ten northern tribes of Israel heard of it, they all went out together, fell on him, and stoned him to death.¹⁴ Thus the Children of Israel were free while their southern brothers paid the tax.

A Very Special Tax Law!

1.26 Jesus Christ astonished the disciples as well as the Pharisees concerning His doctrine on taxes,¹⁵ and the apostles Peter and Paul were equally vocal on the subject.¹⁶ The Judeo-Christian ethic concerning a very special tax law remains visible even today in the supreme law of our land albeit visible more in word and less in deed. For example, the decree of the Lord to Moses to fix a census, then afterward collect a head tax provided that "the rich shall not pay more, and the poor shall not pay less."¹⁷

1.27 In equal fashion, the Constitution of the United States provided that an apportionment tax, equally dividing the cost of government among the several states,¹⁸ follow the census. In fact, the census was made for the express purpose of

¹³ 1 Samuel Chapters 8 and 9.

¹⁴ Kings Chapter 12.

¹⁵ Cf Matthew 17.24-27 and

Matthew 22.17-22.

¹⁶ Cf Romans 13.1-7; Titus 3.1; 1

Peter 2.13-17.

¹⁷ Exodus 30.11-16.

¹⁸ Article 1 §2: "Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers which shall be determined by adding to the whole Number of free Persons, including those bound to Service for a Term of Years, and excluding Indians not taxed, three-fifths of all other persons.

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apportionment.¹⁹ Unfortunately for America, our current once every ten years census has nothing to do with either our present or past tax system. America has never implemented the Constitutional provision!

1.28 From the beginning of the United States, the Constitution forbade Congress to pass any laws to tax incomes directly (Article 1 §9 clause 4). The chief sources of revenue for the federal government.²⁰ were to be duties, imposts, and excise taxes (Article 1 §8 - customs & import duties, imposed tariffs like gasoline taxes, & excise taxes). However, within four months of President Lincoln's inauguration, the Civil War began (February 12, 1861) and Congress found a European remedy for their money shortage which was getting much attention the world over.

1.29 Since the constitutional provisions (see notes 18, 21, 33 & 19) for revenue raising had never been established, and Civil War costs required more funds than excises and customs would produce, Congress sought a way to circumvent the constitutional provisions of apportionment, and a personal income tax to pay the Civil War debts became their answer. The immediacy "of the cause" encouraged all opponents of an income tax to look the other way while Congress passed the Revenue Act of 1861. The Act imposed a 3% tax on all personal incomes higher than \$800 per year. Wittingly or not, Lincoln's administration opened the door to an ominous vacancy of constitutional presence. The authorized tax of apportionment as provided by our founding fathers was ignored.

1.30 Thirteen years previously, in 1848, Karl Marx and Friedreich Engels hued out their political genus, *The Communist Manifesto*. All but unnoticed the plank of "a heavy progressive and graduated method of income taxation"²¹ became wedged in Congress' newly opened door. Even the United States Department of the Treasury acknowledges today that "this tax on personal income was a new direction for a federal tax system."²² "Even then," the I.R.S. continues, "*social pressures* influenced what was taxed."²³

1.31 Approximately a year after the Revenue Act of 1861, Congress added Marx's two special ingredients; the direct tax became progressive and graduated. For example, supplementary changes taxed incomes of among \$600 to \$10,000 per year at 3% while higher incomes were taxed at 5%. The federal government as a pampered child grew larger and more undisciplined. The people hardly considered the threat their forebear's had warned of - a full grown government. Amazingly the people only became more

¹⁹ Article 1 §7: "No Capitation, or other direct Tax shall be laid, unless in Proportion to the Census or Enumeration hereinbefore directed to be taken." This Constitutional provision is closely akin to God's special tax law.

²⁰ Actually, for approximately two-thirds of our Union's history, until today we had no income taxes, yet at the same time have been the most affluent of societies.

²¹ Second Plank of the Communist Manifesto: "2. A heavy progressive or graduated level of income tax." *The Communist Manifesto*, by Karl Marx and Friedreich Engels. Washington Square Press. Pages 93-94.

²² *Understanding Taxes*, 1966 United States Department of the Treasury, Internal Revenue Service Publication 21 (Rev. 10-85) Module 3, "History of Taxation" page 22.

²³ Emphasis supplied. *Ibid*, page 22.

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intrigued with their imposing offspring.

1.32 After ten years of Lincoln's tax, in 1872, the income tax was abolished but not without an outcry from some of the citizens. They demanded a personal income tax to support the burgeoning federal government. Going beyond the lawful perimeters of our federal constitution during Lincoln's administration proved so necessary, natural and easy that with the growing pressure from new voices crying for an income tax Congress succumbed to the temptation to enact a new law in 1894. However, this time a few constitutional watch dogs barked the alarm.

1.33 The Supreme Court of the United States struck down the law in 1895.²⁴ The Court held that the framers of the Constitution had provided Congress with power to levy indirect taxes, such as import duties and excise taxes on goods (Article 1 §8), and had declared, "no capitation or other direct tax shall be laid unless in proportion to the census..." (Article 1 §9, clause 4). In other words, the people of Pennsylvania should not have to pay more direct tax to the federal government than the people of Georgia, except as the Pennsylvanians might be more numerous.²⁵

1.34 The chant for a personal income tax crescendoed. An ever increasing choir of voices supported a personal income tax. The Super Rich howled in unison, but they soon silenced *themselves*.

1.35 Across the civilized world a Marxian tidal wave favoring income taxation was rising and spreading. Even the Super Rich could not have turned back the tide rushing to sweep away their wealth. The new European maxim "from every man according to his ability, to every man according to his need," was known by the Super Rich as simple theft. Whether euphemistic or not they also believed the phrase "redistribution of wealth"²⁶ actually meant "stealing" - not to matter it was with governmental approval. It was the specter of such legislation which propelled the Super Rich to protective action against the tsunami.

1.36 Ironically and strangely coincidental was the loss of the arrogant and boastful *Titanic* in 1912. Her passengers unabashed wealth and opulence collectively sank into the icy Atlantic waters. The Super Rich extravagant life styles like the *Titanic* also descended into history.²⁷ They turned their mansions and castles the world over into museums. As taxes grew, a lower personal profile became more fashionable. Just as disclosing is the fact today our middle class is also seeking the shelter of the hushed and quiet image.

1.37 As we have said, Congress foreboding Act of 1894 (see note 24) for a personal income tax shook the Super Rich to their economic senses. Although the Act

²⁴ *Pollock v. Farmers' Loan and Trust Co.*, 157 US 429. Rehearing 158 US 601 (1895). Declaring the Revenue Act of 1894 unconstitutional.

²⁵ *Wall Street Journal*, October 5, 1973. "A Birthday You Might Want to Forget".

²⁶ See Chapters Five and Six how this "redistribution process" actually *redistributes taxpayers* and makes them leave America! Over 7,000,000 Americans have left the "home of the brave and land of the free" for tax reasons!

²⁷ Walter Lord reports in *A Night to Remember*, page 87 when speaking of the fortunes of the likes of John Jacob Astor, Ryersons, Mrs. George Widener's trousseau, etc., that it was nothing for the voyage across the Atlantic to cost as much as \$4,350 in 1912 dollars. "The *Titanic* somehow lowered the curtain on this way of living. It never was the same again. First the war, then the income tax, made sure of that."

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was transparently unconstitutional the private verdict concerning the future of an income tax for America was just as clearly in. Its adjudication was for a tax against the rich.²⁸

1.38 From the debates held in Congress Senator Brown of Nebraska couldn't have been more clear:

I want to appeal first to those of us who believe in passing a law which shall reach the *luxurious incomes* of this country and *ask them* to help pass this resolution that the Constitution may have in it a section that can not be misunderstood.²⁹

In the House of Representatives the rhetoric was much the same. Representative Adair of Indiana said:

It is shame and a disgrace, Mr. Speaker, that under our system of taxation the poor laboring man and his wife and four and five children to support, contributes more toward the expenses of the Government than does the millionaire who is too proud to raise a family and has no one to clothe and feed except a wife and a poodle dog.⁻¹⁰

Representative Rucker of Missouri was just as "eloquent:"

I heartily endorse and support the income-tax proposition. I would make a graduated income tax, and I would adjust the rates as to compel the millionaires of this country, who have been immune from taxation, to pay a just and liberal part of the revenues required for the support of government."

1.39 The rich, of course, objected from the beginning," but they learned early that the louder they protested, the more attention was drawn to the intriguing idea of a tax on the rich." This is yet another point of which the United States Department of

²⁸ *Understanding Taxes, 1986 Ibid*, page 22.

²⁹ 44 Congressional Record, 61st Congress. 1st Session, page 1569, emphasis supplied.

³⁰ *Ibis*, page 4426. Apportionment may have solved this dilemma then. Unfortunately our Congressmen would choose the wrong solution after these debates. See Chapter Six for an equitable, fair, just, and American solution to our problem.

³¹ *Ibid*, page 4426.

³² 44 Congressional Recoil.

³³ The Sixteenth Amendment ratified in 1913, was obviously a "soak the rich" scheme. With its low rates of only 1% on annual income of up to \$20,000, and its maximum rate of 6% on annual sums of more than \$500,000 1913 dollars, the intent cannot escape our notice. Less than 1% of the population was required to pay income taxes. By 1918 the maximum rate was boosted to 77% for incomes of more than one million dollars and 5% of the population paid taxes. Finally, World War I was used along with volunteer public speakers to persuade the people that paying taxes for the war effort was their patriotic duty. See note 56.

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the Treasury or Internal Revenue Service agrees that: "The federal income tax began as a tax on the wealthy."³⁴ The disparity that the federal income tax began as a tax on the wealthy is not lost on any tax payer today who realizes the burden is no where near the shoulders of the Super Rich, but is, instead on the same class of people who promulgated the law. Only slightly more difficult is it to reach the conclusion that the evil of the income tax can only be corrected by amending the law to equitable and just proportions.³⁵ Thus it was that the Super Rich were forced to engineer the provisions of that inevitable income tax law to protect themselves.

1.40 Certainly, a plan to tax the rich couldn't possibly have been made without an effort by the Super Rich to oppose it. They most certainly did oppose it.³⁶ However, no tantrums were necessary. The problem stated was a need for cash to the United States Treasury. Once again, apportionment was hardly even considered." Instead, a surprising solution was advanced.

1.41 A certain very gifted and talented legislator supplied the political skill manipulating legislation. The Super Rich thus ensured themselves that the *builders of* their economic gallows would be the only victims. He not only protected the Super Rich, he also found a novel way to fill the Treasury's coffers.'

1.42 Nelson Wilmarth Aldrich³⁹ was himself a member of the exclusive Super Rich club, who only four years earlier, succeeded to a seat in the United States Senate in 1881. Born in 1841, he had enjoyed rapid business successes with interests in banking, sugar, rubber and utilities. He was a master politician in his own state as well as a parliamentary genius in the United States Senate. While a conservative and champion of the maintenance of the gold standard, he became the "unofficial statesman" for the Super Rich society and began *speaking in favor* of the income tax!" Further, *after* the singularly clever Act of August 5, 1909 the Super Rich raised no voice to oppose the soon to be ratified Sixteenth Amendment to the Constitution of the United States."

³⁴ *Understanding Taxes, 1986 Ibid*, page 22.

³⁵ See my solution lot an equitable tax system at page 256.

³⁶ 44 Congressional Record. The even greater proof is in the practical scope of things: The Super Rich did not practice "tax planning" they invented "tax engineering!"

³⁷ Cf notes 18, 21, 33 and §1.29.

³⁸ See notes 41, 42.

³⁹ Nelson W. Aldrich was the maternal grandfather and namesake of Nelson Aldrich Rockefeller; the son of John D. Rockefeller 11 and Abbey Aldrich Rockefeller.

⁴⁰ On June 28, 1909 Senator Nelson Wilmarth Aldrich of the Committee on Finances proposed the exact draft (see §1.48) of that which became the Sixteenth Amendment to the Constitution of the United States. and urged that it be "disposed of without debate." 44 *Congressional Record*, 61st Congress, 1st Session. page 3377.

⁴¹ The 16th Amendment, ratified in January, 1913 is the federal income tax.

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1.43 The Act of Congress on August 5, 1909⁴² imposed an entirely unique tax on corporations (or entities like the joint stock company operating according to the corporate mold) without violating the Constitution of the United States, or without having to wait for the Sixteenth Amendment to be ratified; (it was ratified in January 1913). The Act of August 5, 1909 was the secret *coup d'etat* of the Super Rich! The Act provided the foundation upon which the soon to be created Internal Revenue Code and later regulations would build the law and rules governing the income taxation of specific artificial entities, i.e., corporations and *associations-after the fashion and form of a corporation*⁴³. It was a brilliant move-drawing craftily into place the course taxation had to take, (and continues undisturbed even today), to tax corporations and associations but simultaneously exempt a certain rare and secret type of trusts under the common law which are use by the Super Rich.

1.44 One of the stratagems the Act created was the amount of attention the middle class focused upon the ordinary corporation. A corporation's grand "limitation of liability" which seemed to bless the Super Rich might also bless⁴⁴ them as well. More and more the public used the corporate business vehicle for themselves. This inevitably brought the "double tax," (once at the corporate level and again at their personal income level), down upon their necks.

1.45 No single deed would ever equal the exploit of the Super Rich to protect themselves against the legislated theft of their property. The very nature of an income tax on persons and upon corporate entities was cast into brazen form. The only way back was to start all over again.

1.46 I write too few words here to tell you how important it all was and is: The law today, simply cannot be changed unless we start over from scratch. Should this book, **in** the reaches of time bring such a possibility I couldn't be more glad. If it should ever happen, perhaps providence will lend us a more honest and fair system of taxation which

⁴² The Tariff Act of August 5. 1909. c,6, 36 Stat. 11, 112. Commonly called the Corporation Tax Law.

"That every corporation, joint stock company or association. organized for profit and having a capital stock represented by shares, and every insurance company, now or hereinafter organized under the laws of the United States or of any State or Territory ... or now or hereafter organized under the laws of any foreign country and engaged in business in any State or Territory of the United States ... shall be subject to pay annually a special excise tax with respect to the carrying on or doing business ... equivalent to one per centum upon the entire net income over and above five thousand dollars received by it from all sources ... or if organized under the laws of any foreign country ... from business transacted and capital invested within the United States and its Territories (The provisions for Alaska. Washington. D.C. and certain deductions allowed are deleted as they are immaterial for our subject).

⁴³ See page 175 "Is the Secret Colato Taxed At All?" *Crocker v. Malley*, 249 US 223 (1919); *Flint v. Stone Tracery Co.*, 220 US 107 (1911); *Cf Eliot v. Freeman*, 220 US 178, 185 (1911); *Hecht v. Malley*, 265 US 144, 149-52 (1923). Also see note 76 of Chapter Two.

⁴⁴ Of course the Super Rich were not going to give up their precious "limitation of liability." they had a secret they were not willing to share to the world around them. We will uncover this secret at §4.342.

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our forefathers attempted to give us in the first place.⁴⁵

1.47 As we learned, the Act of August 5, 1909 provided the foundation upon which our tax structure exists today to protect a knowledgeable individual, business, or estate from the pillage of probate, gift, inheritance, and estate taxes; capital gains, social security, federal, and state income taxes, Social Security taxes; lawsuits, judgments, liens, and seizures. We shall not entertain the question concerning the morality of avoiding these taxes. It is assumed the reader is already in agreement that it is the system itself which is immoral and needs to be changed.⁴⁶ Therefore, it was not at all coincidental that Nelson Wilmarth Aldrich was seated as chairman of the National Monetary Commission created under the 1908 Aldrich-Vreeland Act. Of further interest, he drew up the "Aldrich Plan" which contained many features later incorporated in the Federal Reserve System.⁴⁷

1.48 Since the Supreme Court of the United States had ruled the income tax Act of 1894 unconstitutional, Congress and Presidents Theodore Roosevelt and William Howard Taft agreed to amend the constitution to permit an income tax. Congress drafted the single sentence:

"That Congress shall have power to lay and collect taxes on income, *from whatever source derived*, without apportionment among the several states, and *without regard to any census or enumeration*."⁴⁸

Congress submitted the proposed amendment for ratification by the states in 1909. Three and a half years later, in 1913, the Sixteenth Amendment became part of the supreme law of our land. Not however, without the Act of August 5, 1909 tucked away for the time it would become most valuable.

1.49 In the beginning, many congressmen favored a flat one-percent income tax. Most Congressmen however, labored for a graduated and progressive⁴⁹ rate structure. There were several intelligent enough to recognize the evils inherent in such a system, but they were ridiculed, disparaged, and even caricaturized as unpatriotic and doomsayers (see note 56).

1.50 Were the Super Rich entitled to keep and use what they earned as they saw fit? No one can produce a real argument that they did anything more than protect

⁴⁵ For a solution of an equitable and fair tax, please see my solution at Chapter Six.

⁴⁶ Nevertheless to answer the question, "what would our country do without these taxes?" please see Chapter Six.

⁴⁷ Much has been written by other authors concerning the Federal Reserve Bank, its creation and continuation. Most writers would like to see it abolished and/or nationalized. Our national debt with interest piling up into the millions of dollars daily is no longer a secret, but too few of us currently know much about the Fed, who controls it, how it works, etc. It's clear the Federal Reserve System has bankrupt our children's children, and something will eventually have to be done about it. Perhaps this book can help at least personally, if not then nationally.

⁴⁸ Emphasis supplied. *The 16th Amendment to the Constitution of the United States of America*. For apportionment see §1.33. For census see §1.27.

⁴⁹ See §§1.31 and 1.38.

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themselves from the real enemy-ignorance! The income tax was and is a "soak the rich" scheme.⁵⁰ It is therefore completely immoral, (yet perfectly legal). Paradoxically again, inflation⁵¹ only compounds the problem for the middle class, and especially our elderly on fixed incomes, but it was no doubt necessary the middle class learn from their mistakes, because they were certainly not mindful of the impact their law was to have on the Super Rich.⁵²

1.51 Also, there is no question but that the "informed" (those who coaxed their Congressmen, and those who voted) supported the idea of taxing the rich and made it popular; "make them pave the way." The whole scene was a perversion of Constitutional doctrine and safeguards. In one immoral and memorable leap the American people, just like ancient Israel, forgot God's income tax law⁵³ then threw out the Constitution,⁵⁴ and ignored the Declaration of Independence.⁵⁵

1.52 The real culprits are us. Certainly our turn of the century fathers are initially to blame, but are we any less guilty if we perpetuate their acts? In an epic of avarice, our fathers permitted themselves the gratifying belief that someone else would pay for them. Too many of us today have the same dream! Unmistakably, the only ones paying the income tax now, even as it stands so newly re-enacted-the only ones who have *ever* paid income taxes-are the great and noble middle class!" There is a better

⁵⁰ See § 1.39 and note 17.

⁵¹ See glossary for definition of inflation. Too few people understand what really causes inflation.

⁵² The only argument which could possibly be advanced against this proposition is the monopolies which the Super Rich exercised, particularly in oil production. The last crumb of such an objection is swept away by moral rationale. A wrong on both sides do not negate each other. Further, the Sherman Anti Trust Act of 1890, declaring monopolies illegal was all the remedy needed. The Super Rich quit their monopolies before the enactment of the income tax, but few have surrendered the income tax.

⁵³ See note 17, *supra*.

⁵⁴ See notes 18 and 19 on page 11.

⁵⁵ "We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness."

In terms of tax equality the rich should not pay more nor the poor pay less. If all have the right to pursue happiness all have an *equal* responsibility to pay for what they consider necessary. It would be just as immoral to form a mobocracy to extract protection money as it would be to extract those dollars to pay for something we want against the wishes of those whose money is to be spent. See Chapter Six.

⁵⁶ Wallace E. Olson, then president of the American Institute of Certified Public Accountants in mocking our income tax system and rates reported on the debates held in Congress that.

"A fear expressed by a number of opponents was that the proposed law, with its low rates was the camel's nose under the tent-that once a tax on incomes was enacted, rates would tend to rise. Sen. William E. Borah of Idaho was outraged by such anxieties, and derided a suggestion that the rate might eventually climb as high as 20 percent. Who, he asked. could impose such socialistic, confiscatory rates? Only Congress. And how could Congress-the Representatives of the American People-be so lacking in fairness, justice and patriotism?" *Wall Street Journal*, October 5, 1973. Page 8 at columns 4-6.

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way, and one of the hopes of this writer is that enough people using the tool of the Super Rich might eventually persuade enough of us to legislate liberty for all! Of course, if we desire liberty, we must make it truly available to all.

1.53 The 1986 Tax Reform Act was an immensely popular political scapular. It promised to bestow the blessings of tax relief upon the middle class while shifting the burden onto business. However, business obviously must pass the levies onto its customers. Robert McIntyre of the Washington based Citizens for Tax Justice correctly noted that the new law is even more progressive than the old tax law. Therefore as consistent as the yokes on their necks, the great middle class continues to heft the load. Yet the reader "knows" the Super Rich pays no taxes. The media⁵⁷ tells us they are free from taxes generally, and we "know" there is some legal method or uses of "trusts" the Super Rich employs which doesn't land them in jail.

Conspiracy?

1.54 I will attempt to sooth the palates of the harbingers of the conspiratorial theory of one-world government. However, and mostly to correct the suppositions commonly postulated I admit that the Super Rich manipulated federal legislation to produce the Federal Reserve System. I also acknowledge it was done in the closing hours of Congress' 1913 session.⁵⁸

1.55 It was no mistake that the Federal Reserve System came at the close of the same year (1913) as the income tax. The ratification of the Sixteenth Amendment only served to justify the actions of the Super Rich to create the Federal Reserve System (the Fed). Remember, the income tax came in January of 1913, and the Fed in December.

1.56 -Since there was definitely to be a tax on incomes, aimed squarely at the pockets of the Super Rich, they believed they had a duty to themselves to control it.⁵⁹ After all a tax on their money gave them a right to determine where and how to spend it. In addition, the ingenious Act of August 5, 1909⁶⁰ was barely four years old, it was still too early for them to know if it would perform the miracle they were hoping for, and the Internal Revenue Code and Regulations were still to be promulgated. Finally, their chartered 1909 course wouldn't be entirely safe until after repeated enactments of the Internal Revenue Code, pursuing virtually the same method of exemption for their

⁵⁷ See §§1.17 *supra* and 4.2, *infra*, for media messages along these lines.

⁵⁸ Yes, even to acknowledge that most of the members of Congress had gone home for the Christmas holidays. So much has been written and theorized, this author chooses to ignore most of it. but the reader is meant to understand the Super Rich are far from being the money mongers they are-frequently painted to be by many writers.

⁵⁹ The Sixteenth Amendment was ratified by the narrowest margin. Years later the State of Ohio "reratified" their verification, because Ohio was not a state, but only a territory of the United States at the time. Again the Constitution was ignored, but the Super Rich remained silent as well.

⁶⁰ See §§1.42ff.

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special and secret "trusts,"⁶¹ and until some time in the future when the Supreme Court of the United States would acknowledge the system.⁶²

1.57 The Super Rich were merely looking after their own interests. The Federal Reserve System was simply their "ace in the hole." Perhaps turning the gun against the robber was the only real way of getting the thief to see it from the victim's perspective. Only when one has stood in someone else's shoes may one truly empathize.

1.58 Therefore, the teachers of the conspiratorial theory need to learn a lesson from one of their own chapters of logic. *Few* of society's ills are the fault of the Super Rich. Our ills are the product of a people with the firm mind-set that we can somehow arrange a free ride for ourselves, rather than take the responsibility of seeing, for example, that the charitable duties we have shoved onto government in the form of Social Welfare are our own personal debts and duties, and not possibly the responsibility of government. Those who either invent or propagate the social gospel of government is merely confirming they wouldn't do their duty without the law to augment force. If that be the case, the Super Rich are more than justified in what they did.

1.59 There are just two considerations for the slave when he looks towards liberty: The slave ponders the distant free man and asks, 1) "There's a free man. Why isn't he in chains as I am." He can shake off his fetters and resolve, 2) "There's a free man. I ought to be free as he is." Our choices for economic liberty as a Union are really no different. Our personal choice is the clearest. It is the easiest. It is also through the path of personal liberty the whole world may choose to follow.

1.60 Surely the American people are ready to see it as it truly was; legislated plunder in which we were the only victims. As a result, we have spent our children's inheritance on an investment long gone rotten. Our country is hopelessly in debt to the Fed. - The Super Rich couldn't have fared better. While we were busy passing laws against their incentives, they were figuring out how to turn it around for themselves. They protected their wager on the Act of August 5, 1909 with another on the Fed, and they won both bets.

1.61 Conspiracy? Yes, there was a conspiracy, but those we should condemn are the ones who told the lie, and who bought the lie that we could make someone else pay in our stead. If we are to be completely honest, we will have to admit, the middle class drew first blood. The Super Rich acted *after* the fact, and then only to save what they had earned. I sincerely hope the reader is using the footnotes. At the same time I know they can get in the way. Sometimes the footnotes act as background proofs for what everyone should already (but rarely) know. The major force of this work is not and cannot be clear without either the footnotes or the next. However, to observe the strength of both the reader should reread §1.26 to here without the footnotes.

1.62 This book offers its readers those choices a free man would seek. Conceivably, social pressure could swing the pendulum back far enough to restore the Constitution of the United States; to revive the spirit of the Declaration of Independence, and perhaps --- *just perhaps* - to restore the first principles our founding

⁶¹ See §1.43, *supra*. See §2.54 *re* the legislative intent in excluding the secret trust from the IRC and *Cf* §4.10 with §4.409, *et seq.*, *infra*.

⁶² It came soon enough! *Hecht v. Malley*, 265 US 144 (1923). See the entire case appended at page 326.

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fathers laid of a nation "under God," and who understood that their God was one who would not permit a people to get by with theft without paying the consequences.⁶³

The Super Rich Mind On:

1.63 As Jack Anderson has suggested in his column⁶⁴ that the Super Rich are not singled out for criticism, but that they have made use of the law, which is their right. I agree that the same use of the law is available to all. Though the provisions of tax law concerning property and income were manipulated into existence by the Super Rich, it is nonetheless available to anyone who cares enough to use it. What is the law? It is the intent of the Super Rich. The venerable Judge Learned Hand first enunciated what is quoted as settled law everywhere, (but it is still misunderstood):

Anyone may so arrange his affairs that his taxes shall be as low as possible; he is not bound to choose that pattern which will best pay the treasury; there is not even, a patriotic duty to increase one's taxes.⁶⁵

1.64 Many tax practitioners have misunderstood the intent of the terms. Though the law quoted is settled law, mean not subject or open to question, it does not mean one may adopt a plan which will avoid taxes if that is his *only* motivation. There are a number of other considerations which must also be met should one desire the reciprocal tax benefits.

1.65 Let us now examine and understand the minds of the Super Rich concerning the following tax terms: "Evasion, loopholes, avoidance, and exemptions." We must completely understand the terms or the history we have presented will lend very little use. The following examples endeavor to explain:

1.66 The City of San Francisco, California was prompted to enact a law encouraging car pooling during the gasoline shortage of the late 70's. San Francisco is connected to the other bay area cities by numerous bridges, including the engineering marvel, Golden Gate Bridge. As such, San Francisco adopted legislation providing the exemption from paying tolls at the bridges for cars containing three or more passengers. The toll is collected from automobile drivers upon entering the city; cars leaving the city are free from toll.

⁶³ "Do you not know that the unrighteous will not inherit the kingdom of God? Do not be deceived: neither the ... thieves, nor the greedy ... will inherit the kingdom of God". I Corinthians 6.10f.

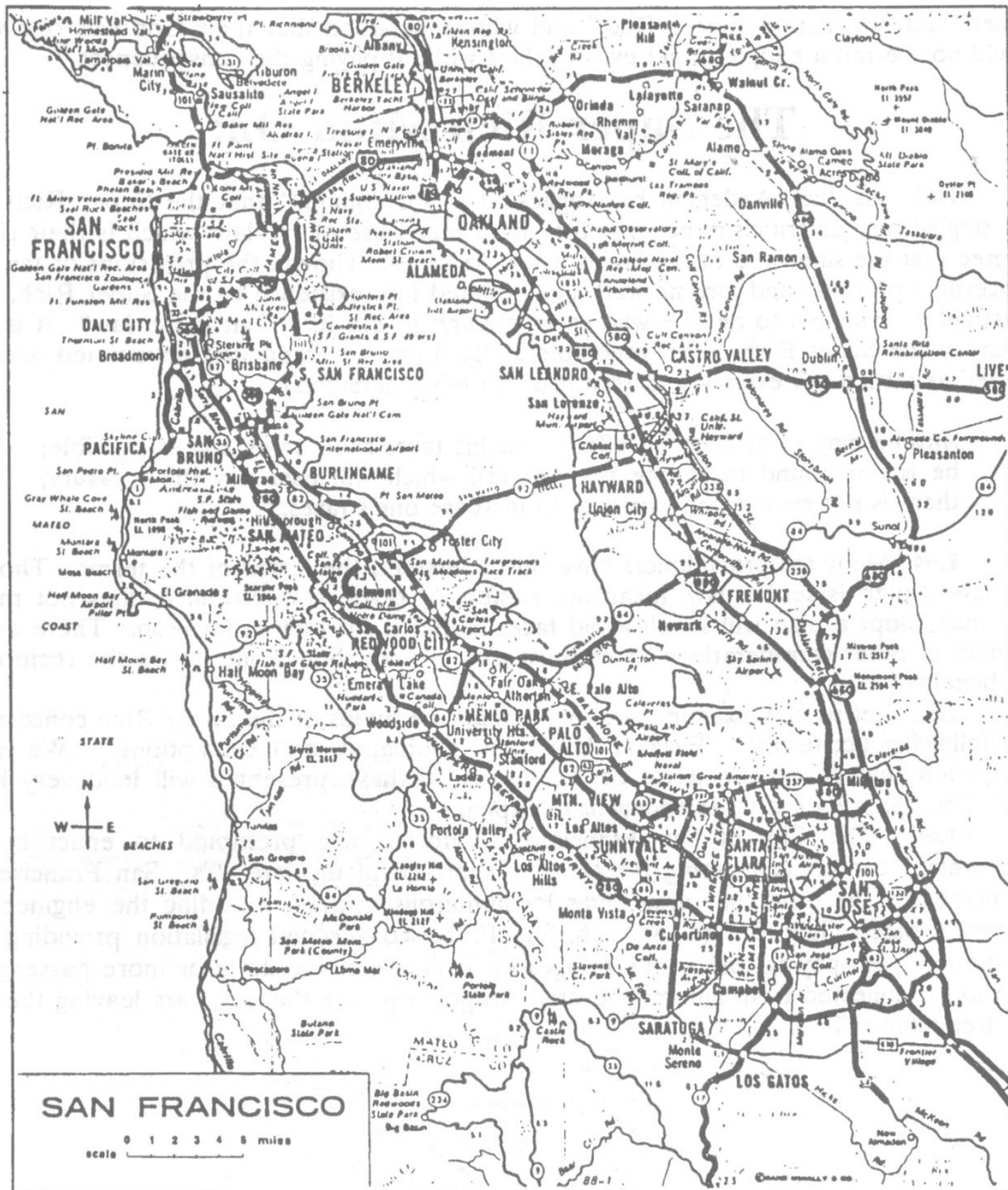
⁶⁴ See § 1.17 page 8.

⁶⁵ Emphasis supplied. *Helvering v. Gregory*, 69 F 2d 809, 810 (1935).

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Evasion

1.67 The reader should imagine he or she is a resident of the bedroom community of Sausalito, which is a scant five miles from the financial district of San Francisco, and that, of necessity, he or she must report to work in said district each morning. (See map above & find Sausalito by intersecting the crosshairs at upper left corner). Upon entering the toll plaza to pay the crossing tax, the driver is offered the



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following choices: Either pay the toll, cheat, by paying less than the amount due, or drive on through while alarms announce the fact that the driver is a tax evader. Cheating is willful disregard for the law and will be punished by imprisonment. Hopefully few readers are interested in tax evasion and none will try it. The penalties are too great.

Loopholes

1.68 Some will recall reading about the technique used by a few motorists of placing a mannequin in the front seat with the driver, and another in the back seat, while the driver used the *privileged* car pool lane and drove at 40 miles per hour past the toll payers stopper in lines.

1.69 One such person who was discovered and required to appear in court to give an explanation of his behavior, challenged the law on the grounds the statute was vague, ambiguous, and unclear." The driver successfully argued the law used the vague term "passenger" rather than the specifically and legally definable word, "people." He was acquitted, and the law was rewritten to constitutionally state what it had attempted to mean.

1.70 In spite of the favorable challenge, most people would not care to use the loophole technique. Though loopholes are completely legal and appear in the law from time to time, they are not the intent of the legislature who must amend the statute to make absolutely clear who is required to pay, and specifically what action is to be taxed. Loopholes are not recommended as they are not worth the risks presented in defending one's actions from such use. The Super Rich do not use loopholes!

Avoidance

1.71 To those of us who are familiar with the San Francisco Bay area. let us challenge our thinking with a question: "Where is the *free* bridge?" *Yes, there is a free bridge connecting Sausalito with San Francisco!* Even those readers familiar with the Bay area may at first overlook the inland mass bridge of proceeding north on Highway 101, then east, then south to San Jose, and finally north up the peninsula into downtown San Francisco.

1.72 Of course, such an avoidance technique is absurd. It is, however, absolutely legal. The tax payer would be ahead in both time and money to simply pay the tax and be done with it. The point is that many people are using just such avoidance schemes which are costing them their hard earned dollars, and the liberty to make some wiser choices, such as the ones this book will suggest.

Exemptions

1.73 The most advantageous technique to escape the tax is the exemption method. Certainly planning is included, and there is more than simple avoidance of tax involved. There are a host of problems solved, and finally, life is easier to live.

⁶⁶ See page 49, *et seq.* Study a case where vague and ambiguous tax law is contrary to good law.

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Obviously, being exempt is the favored method of "tax planning" or better, "*tax engineering*."⁶⁷ One simply arranges to cross the bridge with three people in the car during the hour the law is in force, and he or she is free, exempt-whatever someone else says to the contrary. Corresponding to our examples, we may well understand the following:

"As to the astuteness of taxpayers in ordering their affairs as to minimize taxes, we have said that "the very meaning of a line- in the law is that you intentionally may go as close to it as you can if you do not pass it (*Superior Oil Co. v. Mississippi*, 280 US 390, 395-96). This is so because nobody owes any public duty to pay more than the law demands. Taxes are enforced exactions, not voluntary contributions."⁶⁸

"The legal right of a taxpayer to decrease the amount of what otherwise would be his taxes, or altogether avoid them, by means which the law permits, cannot be doubted."⁶⁹

1.74 Let's review:

Tax Evasion = is illegal.

Tax Loopholes = are legal, but risky.

Tax Avoidance = is legal, but costly.

Tax Exemption = is recommended, because it takes advantage of the law as promoted for some specific legislated purpose. (Never mind it might just be in the best interest of the law maker).

The "Secret Trust"

1.75 The reader will now understand why the media may speak of a member of the Super Rich elite as being worth enormous sums, yet never report his or her family as having lost control of the wealth when the matriarch or patriarch passes away. It is hardly ever heard that the tax man hauled in a great fortune. In fact, just the opposite is reported. The Super Rich have a secret kind of trust which the public has never conceived, and yet society has suspected something like it all along.

1.76 How are the Super Rich, their lives, businesses, and estates *exempt* from taxes? Long ago 'these people arranged their concerns around a special secret trust which acts as a business vehicle. It exists apart from themselves; is controlled by an act of their wills; is free from government intrusion; and goes into perpetuity. Neither trusts

⁶⁷ While tax engineering really embraces the theory of manipulating legislation for the desired advantage, it may fairly be applied to cases which search out those long standing yet largely unknown laws, cases, and/or *jurisdictions* (see 5.38 in Chapter Five) which produce the exact results the Super Rich have obtained.

⁶⁸ Justice Helix Frankfurter *Atlantic Coastline v. Phillips*, 332 US 168, 172-73 (1947).

⁶⁹ Justice George Sutherland, *Gregory v. Helvering*, 293 US 465, 469 (1934).

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nor corporations can achieve these goals.

1.77 How then, did the Super Rich do it? First of all they remembered a special legal principle which over the years has become a secret. Secondly, they focused the envy and attention of the middle class upon certain idols, and thirdly, they continued to do what they did since the beginning. Now from the cradle to the grave they grow up under the protective presence of their secret trusts.⁷⁰ Their every action is a witness to the maxim that the secret of wealth is control rather than ownership. That's what they did in the beginning. For them nothing has changed. Their progress is the same.

1.78 The Colato has been the companion of the Super Rich since before the birth of the United States. For example, a Colato was drafted by Patrick Henry in 1765, twenty-four years before the adoption of the Constitution of the United States, and eleven years before the Declaration of Independence, for Governor Robert Morris of the colony of Virginia. Governor Morris is reported to have been a prominent financier of the American Revolution. His Colato was the North American Land Company.⁷¹

1.79 John Quincy Adams, sixth President of the United States, was one of the original creators of the Boston Personal Property Trust which is described in the very important legal case, *Williams v. Inhabitants of Milton*, 215 Mass. 1, 102 NE 355 (1913).

1.80 In 1804, Senator William Gingham reported to be the wealthiest American when the thirteen colonies won their independence, conveyed his vast estate of more than two million acres in Maine to a Colato. It was terminated 1964 *after more than 160 years of operation*. It ceased because the beneficiaries numbered 315, and for the sale of its last property.⁷² Never mind the antiquity. The Supreme Court of the United States recognized the validity of this form of business organization as recently as 1980!⁷³

1.81 Every American who desires the benefits of a Colato needs it and *can* afford the privacy and protection such a vehicle can establish. Regardless of how little or how much one may presently own or control the Colato can have a great deal to do with the future size of the estate.

1.82 Think back to the differences between our Cambridge, Massachusetts and Omaha, Nebraska friends. The children of the Cambridge politician will add those portions their father dealt out of his estate to their own. The heritage which will be passed on to future generations will become substantive. Add my promised future revelation of how to save all the other taxes, and one's dreams may soar!

1.83 In §1.77 I said "nothing has changed." that's not entirely true although it's accurate. For example, the reader can name people who have changed from kind of persons their parents raised them to be and they are very different today. No where is there a greater change in constitutional corruption than in the sons of liberty who forgot what their posterity bled and died for. It's been true since the days of old and will no

⁷⁰ Though the use of the term "trust" is here used, the reader should know the term is always incidental when referring to the Colato of the Super Rich. We will distinguish between Colatos and common law trusts in later sections of this book. See §4.7, how a Colato is not a trust! Also see "The Four Types of Trusts" on page 174.

⁷¹ Phipps, Harry Morgan, *The Key to Family Security*, 101959.

⁷² Phipps. *ibid*, 01959.

⁷³ *Navarro v. Lee* 446 US 458. 64 L Ed 2d 425, (1980).

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doubt ever continue; The job of second, third, or fourth generations will be to right the wrongs of their ancestors. Many in Congress today fancy themselves as social engineers but haven't the foggiest notion of what their ancestors knew about getting and keeping what they earned. The worst of them have merely inherited their wealth and thus have never learned what was needed to earn the money in the first place.

1.84 Most of these have been summed up by Thomas Sowell in his article entitled *Social Engineers Sinking Western Society*. He said:

Much of the social history of the Western world, over the past three decades, has been a history of replacing what worked with what sounded good. In area after area - crime, education, housing, race relations - the situation has gotten worse after the bright new theories were put into operation. The amazing thing is that this history of failure and disaster has neither discouraged the social engineers nor discredited them.⁷⁴

1.85 What evidence would we need more than the Dallas Hunt brothers? They permitted their Colatos to go into ruin by bankruptcy. Their father, H. L. Hunt, would never have permitted it. He protected his Colato as one protects a king. The sons exposed their dad's legacy to the cruel world of speculation just as the sons of yesterday's entrepreneurs have exposed our constitutional safeguards to convenience by shouting "just say 'no' to drugs!" Then they pass laws which pretend to be for our collective good, but which instead gouge out great chunks of our personal liberties and thus justice.⁷⁵

1.86 What about the other sons of the Super Rich? Have they forgotten the stories of the wicked middle class who came to take away their wealth? No, they have not forgotten. The mechanisms their fathers started have been relied upon and the magic ingredient which ensures their "trusts" future success is not thrown out for something that sounds good. What their secret "trusts" have been able to accomplish they continue to perform.

1.87 It behooves us, then, to learn how the Super Rich do it! As surely as the pendulum swings we are the true sons of liberty who do not use legislative means to deprive one class of our society of that which we ourselves are not willing to suffer. See Chapter Six for my Model Tax Law.

⁷⁴ Scripps Howard New Service, December 18, 1989. Economist Thomas Sowell is a senior fellow at the Hoover Institution in Stanford, California.

⁷⁵ Here's how this happens. A good law is passed. It has good intentions. Then the regulators propound their own regulations to the law, and by the time the prosecutor uses the law it may be casting otherwise innocent people into jail because the intent has become muddled from what the framers of the law designed. So the law intent on stopping drug trade treads on the feet of those who haven't even sniffed a marijuana joint and limits their liberty to do that which a while before was perfectly legal and not the least immoral. More will be said of this at Lesson Five on page 187.

Chapter Two

A Secret Law for Princes?

**Something hidden. Go
and find it. Go, and look
behind the Ranges. Some
thing lost behind the Ranges.
Lost and waiting for
you ... Go!**

Rudyard Kipling

**Knowledge of what the law
allows is the essential element
of tax economy.**

Tax Research Institute of America

2

Why The Super Rich Are Free!

2.1 "The law is on the side of the Super Rich." Most of us intuitively agree with the statement, but if asked for *a reason* for our beliefs we would give a less than satisfactory answer. Though our lives are deeply immersed and surrounded by law, few of us have done more than casually observe the law in action; as a result, we take our legal roots for granted. Not so the Super Rich. They use an ancient element of our law we have forgotten all about, and yet it's so modern its light years ahead of anything else near its class.

2.2 For example, although the Super Rich use corporations and trusts in their economic chess games, the Colato is their cherished King, and their corporations, trusts, or partnerships are merely a knight or even a pawn. The Super Rich realize the very moment they incorporate, use a trust, or a limited partnership, they have taken on the state as *a partner* - something they are loath to do! Instead, they have a Colato or one of its intermediaries own the stock of corporations or the shares of beneficial interest in trusts to shelter their King.

2.3 While I will take the next several chapters to offer the proofs in support of these statements, and I hope you still have your note pad for questions, suffice it to say for now that the corporation or trust⁷⁶ is a creature of the state making it eternally subject to state franchise boards, secretaries of the states, and the whims of both the

federal and state legislatures; because only a State can permit the creation, maintenance, and winding up of a corporation, or creature of equity, therefore the state has a compelling interest in such entities.

2.4 If one wonders why the law is on the side of the Super Rich, or why we are, generally speaking, so far away from the miraculous benefits of the common law, we should first answer the question, "guess who moved?" The regal common law though ignored by the great classes of America has remained stationary since the beginning. It has just as quietly reigned as the supreme and principle law of all American jurisprudence. In parallel, the Colato is the king of the castle, guarded and protected by the Super Rich. They don't expose their king to the market place. The knights or pawns

⁷⁶ As well as any entity which either did not exist at the common law, such as limited partnerships, etc.. or which has been brought into equity jurisprudence, such as a trust. See Chapters 3 and 4. See also *Eliot v. Freeman*, 220 US 178, 185 (1911). Colatos do not take statutory privileges, only common law rights. Initially, these statements may be hard to accept, but do not despair as the differences will become evident as black and white.

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sally forth to adventure, but winning the game lies in the security of the king.⁷⁷

2.5 Our financial lives are comparable to a game of chess ... which can only be won with strategy, wits, skill, imagination, anticipation, judgment, endurance, and determination. The alternatives make no allowance for ignorance or mistakes. If we and our families are to win our own economic game it will depend in large part on aligning ourselves with our roots, loosely called, "the common law."

2.6 Pure. Colatos are as close to our roots of law as one can get, and in fact they *exist solely* as a part of the common law. They are not creatures of either equity or the state. Since a Colatos created under our common law rights of contract, we clearly see that it is the Super Rich who have steadfastly remained on the side of the common law - rather than the law having taken their side.

Lesson Two

2.7 In searching for the secret law for the Super Rich we must also locate the tap root of modern American law. It is paradoxically the most elusive of roots and yet it is the most important one of all. It lies deep. It is hard to find, describe, and explain. Originally it sprang from old Norse Law, which found its origin in Mosaic Law, but it is most clearly comprised of the customs, and judicial decisions of the early English people.

2.8 Today's law books are the archetype of how we got our law; judges in England decided cases according to the way they interpreted the beliefs, customs, or unwritten rules of their village or community. When it was noted another judge had rendered a judgment in an earlier yet similar case that judge's ruling became a precedent. After several judges had ruled similarly, the ruling became "the law."

2.9 At a pivotal period in time, when the written judicial precedent was gaining much greater popularity and uses, the barons' personal rights became more clearly identifiable to them than before. It was, therefore, a natural bridge in the minds of the barons that the Crown should be as mindful of their persons and properties as the common law itself proclaimed.

2.10 Wherefore, in 1215 A.D. the barons of England captured King John in a field at Runnymede, not too awfully far from the Tower of London to convince him that he, too, was subject to law. Thus a sword point persuaded King John to sign the Magna Charta. The development of the Magna Charta procured for the people their basic rights, the main of which is "trial by jury." Jury's tried cases of criminal prosecution by the King, and contests between the citizens over property, contracts, and personal injury. Consequently, in addition to the written legal precedents of law, the Magna Charta assumed the paramount mission as guardian of the common law of *contracts*, "of property, etc.

2.11 During the 400 years among 1215 and 1620, when the Pilgrims landed at Plymouth Rock, the common law had become very well established. The Pilgrims in

⁷⁷ Even though the sons of the late Hassie L. Hunt have not protected their Colato as well as their father, I predict they are shielded well enough that the media will get little more than a glimpse into the labyrinth of their real controlling interests.

⁷⁸ A Colato is really nothing more than a contract. This will be developed further in Chapter Four.

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1647 drafted the Mayflower Compact in order to "... Covenant and Combine Our Selves Together into a Civill Body Politick," (sic). They thought, wrote, and spoke in the language of the English common law. Though lawyers were few, and legal experience differed considerably, the common law of England was generally used. The colonies legally adopted the common law, then the federal union, and finally by all the states except Louisiana. Louisiana modeled all but its criminal law on the legal system of the civil law of France called "Code Napoleon." Thus we see how vital a thorough understanding of the common law will be to learn the secrets of the Super Rich.

Mysterious Enemies!

2.12 Of the approximately thirteen past civilizations enumerated by the eminent world historian, Dr. Arnold Toynbee, each has marched into oblivion. In each of them civil law has found every cruel variety conceivable. The most powerful, ingenious, and ambitious rulers would set up and maintain despotic governments. At the time of writing the Constitution of the United States, there were two great systems of law in the world - the civil law, which was the law of Continental Europe, (also called Roman or Byzantine law), and the common law, which was the law of England and all her colonies. Briefly, and stated in general terms, the basic concepts of these two systems were as now, in mortal conflict.

2.13 Americans have cause to rejoice, for nowhere in either ancient or recent history have common law principles of liberty and free institutions been more highly exalted than in the Constitution of the United States.⁷⁹ A closer look at the common law is imperative! This chapter will enable us to perceive one of the most important aspects of the common law. It may exist apart from the statutes. The common law is a living body of our law which follows its own traditions from precedent to precedent and is largely independent of external pressures of statutes, regulations, and rulings.

2.14 Let's sharply contrast the common law against civil law. In civil law the source of all the law is the ruler, and whether prince, king, or emperor, the monarch is sovereign. The total residuum of power is in the sovereign. Under a civil law system, the people enjoy only those rights, powers, and privileges which the potentate considers to be for their benefit, but which more likely suit his royal pleasure. The people must look to the emperor's law to determine either what they are or are not permitted to do. For they may only do what the emperor declares they may do. Sequester the common law system: The Super Rich look to see only what they are prohibited from doing; for they may do anything they are not expressly forbidden to do. The common law is the singly most important basis of the American legal system. The Super Rich have not forgotten it, but -pore important they use it. The Civil Law is their enemy.

2.15 In comparing the common law to civil law, it needs only be pointed out that neither princes, kings, nor emperors would have much desire to accommodate their

⁷⁹ At a time when people like past Chief Justice of the Supreme Court of the United States, Warren E. Burger, are heading committees proposing great modifications to the Constitution of the United States of America it behoove - the citizens to earnestly, prayerfully, and carefully consider that ours is the oldest, and obviously most successful constitution on the earth. Let us not hastily let down the old guard, but take some lessons from very nearby around us.

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citizen subjects with the provisions for either trusts or Colatos.

2.16 Though a few civil law jurisdictions, notably Liechtenstein,⁸⁰ has provided such statutes creating powers to hold property, they are limited, and not nearly the flexible tool a Colato may be. They create them ostensibly for the sake of liberty, but by bringing otherwise taxable incomes within their low tax domain they derive revenues from the necessary financial services they render.

2.17 Careful focus of the civil law concepts on the screen of our minds will produce an ominous and shady image of a powerfully strong legal force, and therefore a potential for tyranny. In opposition, similar focused attention to common law principle's project and illuminates liberty, fight and glory. I shall explain. The specter of civil law concepts in the late twentieth century has taken the form, in all common law jurisdictions the world over, of legislatures passing a body of laws under which modern day judges must decide cases by the *exact words* of the statutes passed. Statutes compel a strict observance by all, as ignorance of the law is no excuse in any country, and thus statutes become a positive (or aggressive) domination over the lives of the people they seek to control. Contrariwise, in a common law system the decisions are based upon a doctrine called *starre decisus*, which provides that a judge or court will not adopt a decision different from the precedential cases previously ruled. Wherefore, the startling contrast between civil and common law is that the former is a positive legal *force* invoking brute power, while the latter is a negative *force* evoking freedom and liberty.

2.18 The important thing to distinguish about the common law as it affects us today is: when talking about "the law," we are really talking about two kinds of law - "case law" and "statutory law." Case law is based upon earlier court decisions of similar situations. It comes to us in the form of written court opinions or decisions. The principles set forth in these decisions must be applied anew to the particular facts in every individual case which comes before a court. The earlier decisions embodying these principles are called "precedents."

2.19 Statutory law comes to us in the form of written laws or "acts" whose *exact words* are drafted and approved by a federal, state, or local legislature. The practical thing for us to distinguish about trusts, corporations, and Colatos is: trusts and corporations are statutory creations; and trusts have sprung from equity.⁸¹ The statutes govern both. Colatos on the other hand, exist solely at the common law, and usually have no part in equity. The very designation "common law" trust organization denotes

⁸⁰ There is absolutely no counterpart for the Colato in any civil law jurisdiction in the world. In Liechtenstein the *anstalt* and the *stiftung*, (establishment and foundation respectively), are civil law erections attempting to mix common law characteristics of trust concepts (which are generally illegal in civil law countries) with corporations which are creatures of the state. It cannot be over stressed: there is no counterpart whatsoever to Colatos in civil law jurisdictions. While Colatos can operate in a civil law country it cannot be created there, and the special rights it enjoys may not be enforced by a civil law court. Of course, only civil law types of organizations such as the corporation can be created in a civil law jurisdiction. Cf *Practical International Tax Planning*, Third Edition, 1985 pp. 13.3-4. Marshall J. Langer, Practicing Law Institute, New York City.

⁸¹ See §2.29, *infra*.

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the imperative." State statutes regulate trusts," but the common law or specifically the law of contract governs Colatos."

2.20 The following story in abridged form was told not too long ago by Melvin Belli, the celebrated negligence lawyer, in his autobiography, *My Life on Trial*. The story is very useful for our present purposes.

2.21 It seems a citizen of San Francisco, needing to blow his nose, chose the style of holding a nostril closed, and blew the other into a street gutter. A passing car struck the poor fellow on the nose.

2.22 Mr. Belli handled the negligence action for the owner of the nose on the then novel grounds that the driver of the automobile had the last clear chance of avoiding the accident. The jury awarded a negligence verdict."

2.23 Though there is no law on the statute or ordinance books of the City of San Francisco saying, "thou shalt not run over a nose blowing in the gutter," now there is just such a law. Were the near or very same set of circumstances to happen, the owner of that nose could cite *Nose v. Driver* as a precedent for the legal application of his case. Usually, these cases are found in the books which report such cases." This illustrates the way our common law works today.

2.24 The lawyer knows that the common law is just as much a part of the law as the statutes, and statutes are frequently nothing more than legislative declarations of the common law." Legislatures have many times caused a statute to unite some common law principle on the angle the benefits may be more clearly perceived. As we noted however, such enactments impose a powerful legal force, and the idea that we may only do what the law grants."

2.25 Where a privilege or benefit is derived which did not exist at the common law the Super Rich are wary, because in those instances where reliance is made upon a statute creating a desired benefit the recipient or beneficiary is at the future mercy or

⁸² After having said all of this, attention should be directed to the knowledgeable professional that we are speaking exclusively of the Colato used by the Super Rich and not the corrupted variety of Massachusetts trusts which by their nature are associations within the tax definition of the term. It is further acknowledged Goat common law trusts and not Colatos may come within the purview of equity if the creators don't know how to keep it out or don't know why it shouldn't be tainted with equity. See "The Hour Types of Trusts" on page 174.

⁸³ See §3.75 *re* the Restatement of the Law of Trusts.

⁸⁴ *Cf* §§2.10 and 4.2-I; *et seq.*, showing Colatos are nothing more nor less than contracts. We shall later determine not all common law types of trusts are exempt from equity, but the Super Rich type is not a part of equity. Further, few states have any statutes affecting Colatos. Since a Colato finds its basis in the law of contract, it does not depend upon any statute for its existence. *Schumann-Heink v. Folsom*, 328 111. 321. 159 NE 250. *Hecht v. Malley*, 265 US 144, 147.

⁸⁵ Belli, Melvin *My Life On Trial*, Popular Library, p. 274.

⁸⁶ See §2.73, *et seq.*

⁸⁷ *Van Ness v. Hyatt*, 13 Pet 293, 298; *Eliot v. Freeman*, 220 US 178, 182; *Marsell v. First National Bank*, 91 US 356, 359.

⁸⁸ As *Cf* §2.17 *re* the positive and negative forces of statutory versus common law.

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whims of the state which bestowed the endowment or power.

2.26 In stronger words, the one who seeks the benefits offered by the state becomes the "ward" of the state for exhibiting a need for the state to do something for the one who cannot do for it for oneself. In view of the need, the state has an interest in the claims made by its beneficiary. If the reader doesn't want the government to be his or her associate or partner, and have a taxable interest to "share" in his or her business affairs, goods, or services, he or she must declare independence and act upon it. One manner a person may act is by using a Colato.⁸⁹

2.27 Thus we may greatly appreciate why the Super Rich have limited use for the statutory business vehicles such as the corporation, limited partnership, joint stock company, etc. I don't mean they do not use such business vehicles, but that they are very careful what liabilities they may expose.⁹⁰

2.28 As we have shown, the first enemy of the Super Rich is the statutory business vehicle, without that is, a Colato tucked mindfully away in the schematic of things.

2.29 Another enemy just as dangerous to them is equity. Common law differs greatly from equity. Today most people think of equity as a set of standards which developed to permit greater justice in court decisions. Equity law came from canon or church law developed during the Seventh Century as a result of the Crown's conversion to Christianity. The King, convinced that the Church was better equipped to handle "matters of conscience" than his courts of law, established a Chancellor to preside over the courts of equity. These courts decided cases according to broad principles of justice and reason, rather than by the rigid but more traditional common law standards.

2.30 Equity acts *in personam* (according to the person and seeks a general interpretation of the laws) while common law acts *in rem* (according to or against the thing and seeks a narrowly defined remedy). Here's an example of equity: If a man was unable to repay a loan on time, and had pledged a piece of property of greater value, though the property would still be sold the excess from the proceeds of the sale would, under an equity decision, be returned to the delinquent borrower instead of being kept by the lender. These kinds of decisions, being fairer than the inflexible common law, promoted a system of law which was "fair or just," from which the word "equity" derives.

2.31 After having thus said, "the system of equity is fairer or more just," it might initially be confounding to learn equity jurisprudence is an enemy of the Super Rich and their Colatos. However the matter may at first appear, the goals of privacy and protection of assets which all civilized people require cannot survive without the rigidity

⁸⁹ No better illustration of the tax impact exists than *Eliot v. Freeman*, 220 US 178, wherein it is stated that it was the intent of Congress to tax only corporations and joint stock companies as were organized under some statute and derived from the statute some quality or benefit not existing at the common law. Because the two Colatos in the Eliot court had been formed as a matter of right under the common law they were exempt from the taxing statute! See §§1.43 and 4.409 how a Colato is taxed. Also see quote at §4.93, *Bouchard v. First People's Trust*, 148 NE 895, 899.

⁹⁰ See §2.2. Various examples will appear in Chapter Four.

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of the common law.⁹¹

2.32 In other words I'm not saying there is no room for equity jurisprudence. I am saying that the terms of a contract cannot safely survive in a world without the common law. Contractual obligations whether from one person to another or from the people to their government are in jeopardy without the rigidity of common law principles. This is precisely why civil law governments though molded after the fashion⁹² or form of the American government do not long survive, because they do not adopt the common law system along with the form they attempt to adopt and the whole falls into political abyss.

2.33 It is precisely for the reason cited that the vehicle of the Super Rich falls within the framework of that which is called a common law trust. Especially so, because a common law trust is really nothing more than a contract.⁹² That it is not a trust, in spite of the use of the term, "trust," is evident because a Colato has "no original fund to be held and administered for beneficiaries."⁹³

2.34 Most important of all is the consideration that it is the common law which covers contracts and the ownership of property from which a Colato ascends. Remember, this is a legal point which has nothing to do with equitable *moral principles*.

2.35 It is important these statements appear here for clarity's sake, as there is much confusion concerning the law of trusts which is not applicable to the special "trusts" of the Super Rich. Trusts and Colatos are two completely different things. Much greater details follow in later chapters.

2.36 Continuing with our subject of equity courts, the Chancellor appointed judges to enforce his equity powers. Therefore, courts of equity, also known as courts of chancery, are not courts of law. Courts of law only judged acts after damage was done, while courts of equity had the additional power to order a wrongdoer to stop his harmful act; or power to order injunctions.

⁹¹ For the rationale of the absolute necessity for the rigidity of the common law see §4.92 in Chapter Four. The whole law of contract hinges upon this factor, and it is the major difference between common law and civil jurisdictions the world over!

⁹² See §4.7, *et seq.*, why a Colato is not a trust, and Cf with §4.66 the law of contract.

⁹³ A common law trust organization (Colato) of the type the Super Rich use is not a trust for no less than two separate reasons. (The following two points will be completely developed later, but are mentioned here to begin the familiarization process). (1) "*LEGALWISE*:" "In legal contemplation a trust must split legal and equitable title which a Colato cannot do; and (2) "*TAXWISE*:" *Income Tax Regulations*, §301.7701-4(a): "Ordinary Trusts - In general, the "Trust" as used in the Internal Revenue Code refers to an arrangement created either by a will or by an inter vivos declaration whereby trustees take title to property for the purpose of protecting or conserving it for the beneficiaries under the ordinary rules applied in chancery or probate courts." Parties to the Super Rich type of Colato contractually limit their respective rights, duties, and obligations to the common law. The equity definition of "fiduciary" (trustee) is not desired by the Super Rich, because it gives governmental or judicial discretion of review of the parties' affairs. A court would not later be able to move the parties into equity who had agreed to exclude equity legal principles. This is one of the reasons a "will" of the Super Rich *cannot be broken*. Much more on this subject follows in Chapters Tyro, Three, and Four. See quote at §4.93 *Bouchard v. First People's Trust*, 253 Mass 351, 148 NE 895. See also §4.7, *et seq.*, which offers the three proofs as to why a Colato is not a trust. Finally Cf §4.23ff and 4.66 "The Secret Law Can Be Used By Anyone!"

A Secret Law for Princes?

2.37 For over a thousand years, the courts of law and courts of equity existed together, but were served by separate judges. Then, during the late 1800's Great Britain combined the two courts into one, where one judge could sit in either law or equity simultaneously without calling any notice to his changing of, roles when the situation seemed warranted. In the United States, law and equity were merged in much the same way during the second quarter of this century.

2.38 The Super Rich Colatos have no part in equity jurisprudence because they are careful to contractually eliminate such dependence, and to promote especially fair dealing where their Colatos are exposed, (if indeed they are exposed at all).

2.39 As stated, equity sprang from "Church law" in Seventh Century England. It was during the development of the equity system that trusts came into general use. A custom and practice since early times by the kings of confiscating lands left by a deceased thereby forbidding any right of inheritance was effectively eliminated when an owner of property "sold" or otherwise transferred his property to the Church *during his lifetime*. Such agreements contained⁹⁴ the express proviso the Church holds it for the benefit of his children.

2.40 Ecclesiastical dominion (being a perpetual institution which English kings were not readily disposed to attack) was used as trustee for several hundred years for many private lands. Finally, King Henry, VIII tried to cut his losses with a special edict called the *Statute of Uses* in 1536. Fortunately as trusts had been used for several hundred years, and the equity law system was then so well established even the King's courts of law weren't powerful enough to overwhelm the uses of trusts, and the King's *Statute of Uses* collapsed into a void. As a result, "trust law" grew up entirely from equity jurisprudence. This is why we understand that trusts are creatures of equity rather than creations made as a result of contractual right.

2.41 As also noted, the secret type of "trusts" the Super Rich employ is simply contractual agreements. One specific element characterizing the Super Rich *pure trust*⁹⁵ is the latitude of power bestowed upon the office of trustee. It is a power of such great magnitude it is unknown in the ordinary law of trusts.⁹⁶

2.42 Parties in these secret "trusts" contractually agree to devoid themselves of any rights in equity for the purposes of exempting their "trusts" and themselves from governmental or judicial harassment and control.⁹⁷ The courts have no power to enlarge or diminish such rights. The courts cannot bring under legislative construction, definition, or control in the equity arena of "fiduciaries," a legal contract where the

⁹⁴ The Latin and legal term is "inter vivos." When used with trusts, one may see "living trust" or "inter vivos trust" used interchangeably.

⁹⁵ *Van Ness v. Hyatt*, 13 Pet. 293, 298; *Marsell v. First National Bank*, 91 US 356, 359; *Bucher y. Ches. R. R. Co.*, 125 US 555, 583; *Eliot v. Freeman*, 220 US 178, 182; *Hecht v. Malley*, 265 US 144, 68 L Ed 949, 44 S Ct 462, (for purposes of federal taxation. This entire ease is reproduced in the appendix).

⁹⁶ The trustees of there specialized kinds of "trusts" possess "in fee simple" or absolute control and title to the property of the "trust." The office of trustee is actually the principal, subject only to the terms of the agreement. Trusts could never operate under such conditions. For "in fee simple" see glossary and Cf §4.54 - §4.57.

⁹⁷ See the quote of *Bouchard v. First People's Trust*, 148 NE 895 at §4.93.

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members have settled their intents and wishes to exclude those matters. This is especially true because their secret "trusts" are not creatures of the state. There is absolutely nothing in these regards for the government to review.⁹⁸

2.43 In cases where the trustee is vested with *fee simple* control and title to the corpus or asset` of the "trust," where the trustee, is the principal, subject only to the terms of the agreement strict common law rules must govern questions concerning the property and contract of the "trust." Thus the *pure* common law trust organization (Colato) of the Super Rich remains fixed within common law jurisprudence.

The Secret Tax Treaty!

2.44 Now the reader has a basis for understanding and hopefully a growing appreciation for the majesty of the common law. The reader wouldn't wait too long, since this book is about how to escape taxation, to ask what the Internal Revenue presumes of the common law. As the reader fathoms the depths the Super Rich have reached you will discover how the seeming enemies, the Super Rich and the I.R.S., have reached an agreeable truce, and why their treaty has been so durable since it was signed. I now quote with approval, the opinion of the I.R.S. as to definitions and distinctions of law:

DEFINITIONS OF LAW

(1) Laws are rules of conduct which are prescribed or formally recognized as binding, and are enforced by the governing power.

(2) Common and Statutory.

(a) Common law comprises the body of principles and rules of action relating to government and security of persons and property which derive their authority solely from usages and customs or from judgments and decrees of courts recognizing, affirming, and enforcing such usages and customs.

(b) Statutory law refers to laws enacted and established by a legislative body. All Federal crimes are statutory but common law is frequently resorted to for defining words used in the statutes. For example, statutes provide penalties for attempted evasion of income tax, but they do not define the terms `attempt' and 'evasion.'⁹⁹

⁹⁸ Cf the sovereignty of a United States citizen at §4.30 and contrast with §§2.12 and 2.17.

⁹⁹ *Internal Revenue Manual* MT 9900-26 (1.29-75). 5041.1.

Special Concessions From: The People Of The United States

2.45 Power to make law (see Power Scale, Table I page 42) under our republican form of government does not belong to a single person, but to the populace as a whole. We shall discover together to what degree concerning a tax question (which is not that different from other questions of right) each rung of the ladder effects our law.

2.46 At the highest of the list is our entire country. We the People have recognized the equality and sovereignty of us all and that government have only those powers which the people delegate. We'll learn how on page 41 these special concessions to the Super Rich can be enjoyed by all as we gain admission through the gate of knowledge.

2.47 All rights are retained by the people, and the government has no rights.¹⁰⁰ The people establish their contract with the government by their constitution and commission powers they select to the government. This is the essential element of our republican system and upon which the common law rights of citizens and residents rest, safeguarded against the encroachment of government. In short, contracts, common law trusts, and Colatos are dependent upon the maintenance of these rights. See the two quotations from the Constitution of the United States at §4.33.

Juries

2.48 Trial by jury¹⁰¹ is the next highest in the power of law making. (See Table I at page 42). First established in the Magna Charta in 1215 A.D., the framers of our republic recognized trial by jury as an essential element of liberty. Government would be unable to bring an action against a person without that person's peers sanctioning its powers.

2.49 Even though it is not within the purview of juries to "make law," they in another way affect the law at the highest level. They may apply their consciences, and bring a verdict which actually nullifies the law as given them by the court. This is called "jury nullification" and *no judge or coon* is so powerful as to set aside the verdict of a jury to acquit an accused individual. Our common law is full of such precedents. Even the law as decided by the Supreme Court of the United States can be set aside by the jury in a trial situation, and the jurors serving have a right to know it.¹⁰²

¹⁰⁰ Amendment IX, *Bill of Rights*. Amendment X. *Bill of Rights*

¹⁰¹ See *Magna Charta*, §2.10.

¹⁰² Unfortunately, today's courts and judges will rarely appraise the venireman of their rights, but nothing can be done to those who knowingly exercise their consciences. Lawyers need to move the courts to reestablish one of the most sacred safeguards a free people could depend upon. Some of my associates are offended by these remarks, but I invite their historical recollection. Our juries as constituted at the common law even have the right to try the law as well as the facts! And the Constitution of the United States has never been amended to diminish such ancient right. In the beginning, the Supreme Court of (continued...)

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2.50 Without the historic precautions of a jury system as constituted at common law, injustice has grown proportionately. Politicians constantly promise to get tough on crime, but things continue to get worse. Many persons wonder what we can do about it without ever realizing the power, duty, and responsibility we have while sitting on juries. Without exercising these rights we cannot long remain free.

2.51 Ability of our veniremen to vote their conscience is the first and last protection a free people could maintain over crime of any sort, and the worst order we should be worrying about is the heightened potential for governmental tyranny. We must reinstate our sovereignty by the means of knowledge, and more important, by responsible use.

2.52 Not one on the Power Scale (see Table I page 42) are more important than juries. In order to maintain a high degree of integrity to our entire common-law system, we must count it a special honor to sit as veniremen when called upon to do so. Those who shrink from their duty because they imagine that their livelihoods are more important, have foolishly forgotten that maintaining the pattern perpetuates that which first established the liberty to pursue our work and thus our happiness.

The Constitution Of The United States

2.53 The Constitution of the United States (see Table I on page 42) is the supreme law of the land.¹⁰³ It is the organic contract we have with our government. The first ten amendments thereto are our *Bill of Rights*. It can only be changed by amendment. The United States Congress, under Article 1 of the United States Constitution has the power to make law, but not in contradiction to the constitution.

¹⁰² (... continued)

the United States was a court of original jurisdiction in which jury trials took place. Chief Justice John Jay, one of the authors of The Federalist Papers charged the jury in the Georgia v. Brailsford case as follows:

"In may not be amiss, here, Gentlemen, to remind you of the good old rule, that on questions of fact, it is the province of the jury, on questions of law, it is the province of the court to decide. But it must be observed that by the same law, which recognizes this reasonable distribution of jurisdiction, you have nevertheless a right to take upon yourselves to judge of both, and to determine the law as well as the fact in controversy. On this, and on every other occasion, however, we have no doubt, you will pay that respect, which is due to the opinion of the court; For, as on the one hand, it is presumed, that juries are the best judges of facts: it is, on the other hand, presumable, that the courts are the best judges of law. But still both objects are lawfully, within your power of decision. " Georgia v. Brailsford, 3 Dallas 1, 4 (1774). (Emphasis supplied).

¹⁰³ Constitution of the United States, Article 6, §2: "This Constitution. and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

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2.54 Neither the President of the United States nor the judges nor courts can "make law." Thus the Super Rich exercise their rights under Article I, §10 of the Constitution of the United States to make their contracts, i.e., Colatos.¹⁰⁴

The Supreme Court Of The United States

2.55 The Supreme Court of the United States (see Table I on page 42) also does not "make law," but its duty is to interpret the Constitution of the United States. It is the highest court in the land. As such its decisions are precedential in nature as there is no higher legal authority.

2.56 If either the Internal Revenue Service or taxpayer desires, they may exhaust their appeal remedies all the way to the Supreme Court. The Supreme Court of the United States says Colatos are legal, and the Super Rich rely heavily upon the Court for its rulings on tax matters.

The United States Court Of Appeals

2.57 Once again, the United States Court of Appeals (see Table I on page 42) does not "make law." Its decisions are very important, because less than 61% of all cases which apply to the Supreme Court is heard each year. Usually only after several of these circuit courts render decisions opposing one another will the Supreme Court decide the next case coming along under a similar question. Consequently, these decisions are especially important.

2.58 In fact, it was the Tenth Circuit Court of Appeals which settled how to tax a "pure" Colato, which we'll discover in Chapter Four, and the Supreme Court of the United States denied further review, so we can understand how valuable this court's decisions are.

The United States District Court

2.59 Federal District Court (see Table I on page 42) is the first and only place a tax matter may be tried to a jury. Federal District Courts also do not "make law." The cases which are reported from this court are important, but less so than cases from the two previous courts.

The United States Tax Court

2.60 Tax Court, (see Table I on page 42) so named because it tries issues of tax law is in reality no court at all. It is, instead, an Administrative Hearings Board. This

¹⁰⁴ *Constitution of the United States*, Article 1, §10: "No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque or Reprisal; coin money; emit Bills of Credit: make anything but gold and silver coin a tender in payment of debts; pass any Bill of Attainder, ex post facto law, or law impairing the obligation of Contracts, or grant any Title of Nobility". (Emphasis supplied).

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remark is caustic to some whose practices are before the Tax Court, but I remind them, no jury is available, and the burden of proof is upon the tax payer. Shocking? It is to many people. The reasons there are no jury trials in Tax Court are several, but since a tax payer petitions this tribunal for its findings of the tax law these could be no possibility for anyone other than the I.R.S. to make the decision.¹⁰⁵

2.61 Lest the reader be too upset with the existence of the Tax Court let me hasten to say that while the Tax Court "makes no law," one very great benefit comes from its decisions. The decisions made by the Tax Court are binding upon itself. As we will learn, this has been a great advantage for the Super Rich. (Of course if the citizens are ready to enact a fair and honest tax system we could dispose of the Tax Court).

The Internal Revenue Code

2.62 Congress passes the Internal Revenue Code (IRC) into law. It is also called Title 26 of the United States Code. The Table (on page 42) places the Internal Revenue Code at *level three* on the scale of zero to ten, ten being the highest authority.

2.63 As the Code is the law, substantive case authority has settled that the words of the IRC may not be extended by implication beyond the clear import of the language the law has used. If the IRC uses a word the precise import of that word is to the exclusion of all other words or meanings.

2.64 The Super Rich trust heavily upon the Internal Revenue Code, because the Congress has never thrust the Colato into the mainstream of the tax code.¹⁰⁶ With repeated enactments of the Code now over 75 years old, the absence of the Colato within the IRC is indicative of legislative intent to exempt it from the provisions of the Code. The reader will have very little difficulty recognizing how valuable this has become to the Super Rich. Proof follows in chapter Four.

The Internal Revenue Regulations

2.65 Though the Colato has never reached the Internal Revenue Code, the Regulations are not silent about them.¹⁰⁷ While the Internal Revenue Code (IRC) is the law, the words of the Internal Revenue Regulations (IRR) are *NOT* law.

2.66 The language of the IRR's is drafted by the authority of the Commissioner of the Internal Revenue Service, and whereas it is instructive, helpful, and influential concerning our tax law, it is not binding or conclusive on the courts! All this aside, the

¹⁰⁵ In case someone thinks I would advocate a trial 1w jury for the Tax Court let me hasten to say. NO! I would advocate an equitable tax system which the Super Rich wanted not the system we presently have. To install trial by jury within the Tax Court would only tighten injustices grip on an already knotty problem. (See §6.102 for my model of such a tax system.

¹⁰⁶ Certainly one of Congress' reasons are their "blind trusts" which they frequently create upon entering some public office. President Jimmy Carter was the first to openly publicize his use of the "blind trust." Sec §5.35, where it shows a "blind trust" is a Colato.

¹⁰⁷ Internal Revenue Regulations, §301.7701-4(h). See §4.14.

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Internal Revenue Regulations *ARE binding* upon the Internal Revenue Service, and they may not later change their minds. The Super Rich are particularly fond of the Internal Revenue Regulations, (Table I. page 42).

The Internal Revenue Letter Rulings

2.67 The lowly Internal Revenue Rulings (see Table I on page 42) merely clarify the Service's position concerning the IRC and their Regulations. The chief advantage of a tax payer in obtaining a revenue ruling (letter ruling) is to eliminate any criminal liability concerning the adoption of a tax plan. However, the Internal Revenue Service can and does change its mind, and may bring a civil action to recover_ lost taxes.

2.68 The Super Rich are not dependent on such poor "authority" as "letter rulings." They use a, 'id depend on levels 10, 8, 7, 6, 5, 4, 3, and 2 of the power scale to engineer their business and family structures.

2.69 You may learn from this book how to accomplish the same thing for yourself. Why don't the Super Rich rely on power level #9 (trial by jury)? One of the advantages of the common law trust form of business organization is its ability to stay out of the courts!

Attorneys, I.R.S. Agents, & CPA's

2.70 Notice the power scale we enjoy as individuals (see Table I on page 42). Since we are a Union governed by law rather than an anarchy governed by the toughest, we are all individually responsible to obey the law. None of us as individuals "make the law," albeit we may affect it greatly in three ways. First, we may join our Democratic or Republican caucuses to help delegate and finally elect those we desire to serve us as our representatives in government. Secondly, we must count it an honor and a consecrated duty to serve as veniremen on our jury's. Finally, as sovereigns, we may individually do anything we are not prohibited from doing by exercising our common law rights, the most sacred of which is our right to contract.

2.71 We now conclude all of these discussions begun on page 37. We said that special concessions had been granted to the Super Rich in each of the areas we have since considered. Entertain a question concerning the Power Scale on page 42. On the power scale, where would you place judges on their ability to "make law?" We should remember, judges themselves are not necessarily to be honored (certainly not to be disrespected, either), but the persons merely represent the exalted place we have given for the honor and respect we place in the *office* of the court. Without such reverence we would be a chaotic and lawless mob. Certainly judges have very great power, but judges do *NOT* "make law." They merely execute judgment on the law. Therefore court judges have zero (0) power to make law. They merely apply the law and mediate litigable matters. Therefore, we must understand if we are to enjoy the same allowances the Super Rich claim that we must use this knowledge for ourselves - *use it individually or lose it!* There is no better way than to transplant these principles within the substance of our marrow where is produced sovereignty of the people, the infection fighting antibodies so necessarily pumped throughout the body of our Republic!

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Who Has The Power?

2.72

Table I

On a Scale of 10 as Highest to 0 as Lowest

-
10. Rights of the People
 9. Trial by Jury
 8. Constitution/Congress/President
 7. United States Supreme Court
 6. United States Court of Appeals
 5. United States District Court
 4. United States Tax Court
 3. Internal Revenue Code = law passed by Congress
 2. Internal Revenue Regulations = helpful but not law
 1. Internal Revenue Rulings = the I.R.S.'s position
 0. Attorney's, I.R.S. Agents, CPA's, You and me.
-

Pinpointing Their Secret Law!

2.73 If you are a lawyer you may wish to go on to §2.77. The great balance of this work will cite such legal authority and case law as is necessary to develop a substantive thesis; therefore you are offered the opportunity to learn exactly how and where I found what I am passing along to you. You will obtain the ability to judge for yourself the validity for every one of the claims made herein, as well as learn how to judge other legal matters quite different in scope from this book. Now I realize some of you are just too anxious to learn the major secrets. You can easily get bored here but I urge you not to! Without this pay t you will never know how credible my sources are. Nevertheless if you do get bored, go ahead and skip to Chapter 3, but I warn you - you may have to come right back to get this knowledge, because 1, use it throughout to make proofs.

2.74 The skill I now teach will lend a very comfortable viewpoint in the way you live your life. You will no longer have to depend solely upon advice of counsel for you may look it up yourself and ask far more meaningful questions concerning absolutely any legal matter you can imagine. You will find yourself able to work in the most sophisticated of law libraries elbow to elbow with the best lawyers in the world.

2.75 An old maxim says, "a little knowledge is a dangerous thing." I believe that's true. *A little* knowledge IS dangerous. However, when *all the knowledge* the law library holds is at your disposal, you possess a confidence no lawyer can present a rationale you cannot follow. If you choose, you will know where to go, and how to find and tap such vast resources of information, data, and facts as any law library holds - on any subject!

A Secret Law for Princes?

2.76 It's a well-kept secret that no lawyer or judge knows all the law the library contains. What he does know is *HOW* to find that knowledge. For this reason an exercise will be available at the end of this chapter to test your new found legal competence. You can realize another benefit as well. With your new insight, you *will* be literally overwhelmed by the complete revelation of the secret we are about to expose to the light of your mind! The solution to your own problems will become fixed, because it will be laid with the foundation of truth and backed up with time tested authority. I don't believe any other method would give you so much confidence.

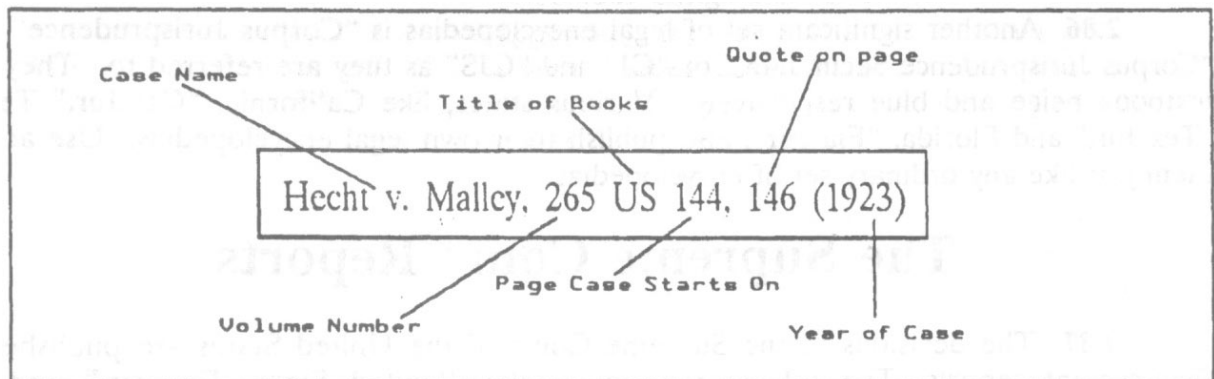
2.77 If this sounds exciting, and I hope it does, have fun with this section of my book! If you are a lawyer and already have legal research skills, you *will* want to skim my techniques, especially beginning on page 47 at §2.104 to its conclusion at §2.117 to satisfy yourself of the accuracy of what I'm uncovering. Each level of this exposé is built carefully from the foundation up.

2.78 For example, in the citation *Hecht v. Malley*, 265 US 144, 146 (1923), (see Table II below) one of the most important cases this book imparts, (in fact, it's so important the whole case is in the appendix), the name and the numbers shown above are really no riddle at all. The system comes down from antiquity and is easy to understand: The name of the case is in italics; *Hecht versus Malley*. The digits "265" immediately following the name always refer to the volume number, in this case, the two hundred sixty-fifth volume.

2.79 The designation "US" stands for the title of books; the standard abbreviation for the "United States Reports." The next grouping of digits, "144," marks the page in the volume where the case reported begins. The "146" signifies the page of a certain quotation or the main thought.

Table II

2.80



2.81 It isn't necessary that the quoted page number be listed in the citation, but as a matter of judicial etiquette, it may be supplied. The numbers provided in the parentheses give the year the decision came down. Again, it is not essential. Give it to lend emphasis of how long such legal authority has been depended upon.

2.82 Armed with the simple knowledge in the section above at Table II, Table I

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on page 42, and page 59 which you may photo copy to take with you, you can be comfortable in the nearest law library.

The Secret Law Exposed In: The Legal Encyclopedias

Should you encounter any difficulty, simply look at the beginning or end of one of the various books for instructions or hints on their use, and to the abbreviations employed. Suppose you wanted to begin to understand something about the subject "ornithology" a field you may be ignorant of. You would probably start your research in an encyclopedia. Law is not so different. There are legal encyclopedias on every subject of law.

2.83 For example, you might begin your research on our present subject of "trusts" in the "T" volume. Without the help this book provides it might take a long time to discover the subject of "Business Trusts," which is more properly the area of our study. As has been said, Colatos are quite different and separate from the law of trusts. You will find Business trusts in the "B" volume of the legal encyclopedias.

2.84 As to be expected, encyclopedias give general knowledge of a subject matter and the citations for the authority of such rationale. The most notable of legal encyclopedias are "American Jurisprudence" (Am Jur) and "American Jurisprudence Second" (Am Jur 2d).

2.85 When a publisher of legal books reaches some arbitrary number of volumes, or a new edition of books is printed, they will start off numbering the volumes all over again at number 1. This time the books will be called the second or third edition and will be abbreviated as above "2d." "Am Jur", or "Am Jur 2d", as lawyers refer to them, are both green books, the latter a lighter shade.

2.86 Another significant set of legal encyclopedias is "Corpus Jurisprudence" and "Corpus Jurisprudence Secundum," or "CJ" and "CJS" as they are referred to. They are textbook beige and blue respectively. Various states, like California, "Cal Jur," Texas, "Tex Jur," and Florida, "Fla Jur", also publish their own legal encyclopedias. Use any of them just like any ordinary set of encyclopedias.

The Supreme Court Reports

2.87 The decisions of the Supreme Court of the United States are published in five current reports. The official reporter is the "United States Reports," and the designation "US" is commonly used. The very same case will also be published by the Lawyer's Cooperative Publishing Company, and is called the "Lawyer's Edition," or "L Ed" and "L Ed 2d." Again, the very same case will also be published by West Publishing Company, in the "Supreme Court Reporter," or "Sup Ct" or simply "S Ct."

2.88 A common method of citation is to give all three of these published accounts, because several reader's aids will make one or the other publisher preferred. As an example for citing all three Supreme Court reporters, the case of *Hemphil v. Orloff* was affirmed (aff d) by the Supreme Court of the United States, and would be shown as follows: 277 US- 537, 48 S Ct 577, 72 L Ed 978.

A Secret Law for Princes?

2.89 When reading the texts of these three publishers, they will all be the same. The fourth current reporter is "United States Law Week" (USLW), a work of the Bureau of National Affairs, and is primarily used by researchers of new Supreme Court decisions.

2.90 The old official Supreme Court reporters were men who were responsible for making the reports. These early reports bear their names, and we mention it here, because as I have been saying, the incident of older case law (always valid unless or until overturned) is predominate in our subject. These reporters were Dallas (Dall), Cranch, Wheaton (Wheat), Peters, Howard (How), Black, and Wallace (Wall). All of these old reporters' works are now bound in volumes I through 90 of the "United States Reporter," and cover the years 1774 through 1874.

The Federal Court Cases

2.91 The decisions of the United States Circuit Court of Appeals, and the United State Court of Claims are reported in the "Federal Reporter." abbreviated "F," and "F2d." The decisions of the inferior United States District Courts are reported in the "Federal Supplement," or "F Supp."

2.92 The higher the court in which a case is reported; the stronger precedential value it holds. Thus you can immediately tell how high the case is by merely looking at the case citation. For example:

1st: US, S Ct, and L Ed = Supreme Court of the United States. This is the highest legal authority.

2d: F and F2d = Circuit Court of Appeals is directly beneath the Supreme Court in authority.

3d: F Supp = United States District Court, the lowest federal court, but the only level at which trial by jury is held. Then there are the:

The State Supreme Courts

2.93 Approximately two thirds of the states officially publish their judicial decisions in bound books; however, many states are relying on the "National Reporter System" by West Publishing Company.

2.94 West's have seven regions for their state reporting system. They are: The "Atlantic Reporter" (A) and report state Supreme Court cases from Connecticut, Delaware, Maine, Maryland, New Hampshire, Pennsylvania, Rhode Island, Vermont, and Washington, D.C. The "Northeastern Reporter" (NE, are for Illinois, Massachusetts, New York, and Ohio. The "Northwestern Reporter" (NW) is for Iowa, Michigan, Minnesota, Nebraska, North Dakota, South Dakota, and Wisconsin. The "Pacific Reporter" (P) covers Alaska, Arizona, California, Colorado, Hawaii, Idaho, Kansas, Montana, Nevada, New Mexico, Oklahoma, Oregon, Utah, Washington, and Wyoming. The "Southeastern Reporter" (SE) handles Georgia, North Carolina, South Carolina, Virginia, and West Virginia. The "Southwestern Reporter" (SW) is for Arkansas, Kentucky, Missouri, Tennessee, Texas, and the Indian Territory. The "Southern

TAX FREE! How the *super* rich do it!

Reporter" (SO) deals with Alabama, Florida, Louisiana and Mississippi. These volumes look very nearly alike and are published in standard text book beige. They will usually have red or black labels on their spines, and have that "typical" law book look.

Shepards

2.95 Shepards¹⁰⁸ are an extremely clever and important set of books. Published at the foot of Pikes Peak in Colorado Springs, Colorado by Shepards Publishing Company these volumes are as celebrated as the famed mountain peak. They are so influential the name "Shepards" has become a verb. Lawyers will ask, "Has the case been *shepardized*?" That can be a very important question, as these volumes show whether a case of importance has been reversed, overruled, etc. They also indicate how a given case has been treated in subsequent decisions, whether its authority was followed, questioned, etc. These books are red, and are available for all federal and state reporting systems.

The Digests

2.96 Also very valuable to legal research are the Digests. Though never to be cited as legal authority, a brief narrative statement of various cases is given as an index to the law. The Digests are encyclopedic in fashion and form, and are very easy to use. These volumes are the progeny of West Publishing Company and use their acclaimed "West's Numbering System." You will find said numbering system a great asset to legal research. For example, if you wanted to research a certain concept under the topic of "statutes," you would look in the "S" book to find the subject. There are decennial digests which compare to a set of encyclopedia which are renewed every ten years, and which will lead the researcher to most of the important cases under that topic and concept for that period. These books are also text book beige.¹⁰⁹

Words And Phrases

2.97 Another marvelous reference set, also published by West's are "Words and Phrases." These blue volumes contain various words and/or phrases judicially defined by federal or state courts. They are complete with cited authorities.

¹⁰⁸ For an example of what the pages in Shepard's look like see page 53 (the left side). Do not be frustrated by the fact that hundreds of pages are nothing but columns of numbers as you will see. These volumes will be explained, and are very easy to use.

¹⁰⁹ See pp 54ff for an example of the *Decennial Digests*.

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The Legal Dictionaries

2.98 Not to be outdone by the encyclopedia, legal dictionaries are also necessary. A word of legal import has its own definition; one which Webster may not have thought of. Black's or Ballantine's are recommended.

The Internal Revenue Code

2.99 Title 26 of the United States Code (26 USC), commonly called the Internal Revenue Code, is passed by Congress. It is the tax law of the United States. The Internal Revenue Service promulgates its Internal Revenue Regulations. While they are helpful, instructive, and influential, they are not law and not binding on the courts.

2.100 There are various tax reporting services which furnish tax decision cases. The most renowned and prominent of such services is Merten's, because their published account and subsequent annotation or remarks are more frequently quoted by the courts in tax cases. Merten's volumes are light green in color. Consult these books themselves to learn how they are used. Some of the other tax reporting services are Commerce Clearing House (CCH), and Prentice Hall (PH). They are black in color.

State Statutes

2.101 In addition to the above are the various state statutes books, like Illinois Revised Statutes, etc. Consult these volumes when state laws are important. Finally, there are many other books which are valuable. For example, the "American Law Reports" (ALR, ALR ad, and ALR 3d) which are commentaries or annotations concerning critical issues in law. As further example, 156 ALR 22 is an "exhaustive" treatise concerning common law trusts and Colatos, and 88 ALR 3d 704 is an updated annotation concerning the general subject. They are all standard text book beige.

How The Super Rich Use The Law!

2.102 On the following pages is a case entitled *Hellmich v. Hellman*. Hellmich was the Collector of Internal Revenue. Today we call such officer the "Commissioner of Internal Revenue, (CIR). Hellmich didn't like the decision of the District court and appealed against Mr. Hellman, the tax payer. There is one issue in the case below which is of great importance.

2.103 The issue with which we shall contend for is that the legislature must state with particularity what is to be taxed and exactly how to tax that we may organize our affairs as do the Super Rich to become exempt from certain tax obligation. This case is so important we will follow it through until the end of this chapter.

2.104 Our study of this case shall accomplish three objectives. They are:

1. Learning a settled doctrine of law which applies to the Super Rich in a unique but indirect way.

TAX FREE! How the *super rich* do it!

2. The cases cited will provide you with information as to where and how to find the law for your self, and shall be the primary material for the exercise at the end hereof, and
3. If you will invest your time to the degree this chapter deserves, the substantive declarations of this work will not only become settled themselves, you will have a strong conviction that you should enjoy what the Super Rich have enjoyed for so long.

2.105 Now examine the case of *Hellmich v. Hellman*. It begins on the lower left column of page 239, (our page 49). Each of the short paragraphs is numbered and called "head notes." We don't quote these paragraphs as authority, for they are only the publisher's abbreviated narration of what that particular section of the case is about. The text is quoted as authoritative however, and the citation given, 18 F 2d 239, which is found at top center of the page.

2.106 Remember, the "F" in the citation clearly indicates this case is from a Circuit Court of Appeals, which is just inferior to the Supreme Court of the United States. Its authority then is very high indeed. Only the Supreme Court would be higher authority. The 6th headnote is of our primary interest.

2.107 Look for headnote #6. It looks like this:

6. Statutes 245

2.108 The word, "Statutes" is the topic. The key is merely a designation of the particular concept in question, #245, namely, that questions based in the application of vague tax statutes must be resolved in favor of the tax payer and against the government.

2.109 You will find the text referred to by headnote #6 at page 243 (our page 51) top left column with the brackets around the "6." Read and clearly understand the text at "6" on page 243. Isn't that wonderful? Any doubt is resolved in our favor! I can assure you from what we will continue to show, however, that there will substantially more than simple doubt about the program the Super Rich have been using. We don't need to doubt that they have been very careful in everything they have done.

2.110 Did you notice how the Circuit Court of Appeals quoted higher authority, namely the Supreme Court of the United States, by citing *Gould v. Gould*, which is the controlling authority for this issue at law?

2.111 Note the other cases which are also cited. Two circuit cases are cited and three other Supreme Court cases.

2.112 Finally a commentary or annotation is also given. Please turn through all the pages to our page 57 and continue reading at §2.113.

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HELLMICH v. HELLMAN

18 F.(2d) 239

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citizens of the United States. It is just as important that the government deal fairly with its citizens as that its citizens deal fairly with the government.

In this case the Treasury Department seems not to have determined what taxes it actually intends to attempt to collect. According to the response of the collector of internal revenue, it has not had time to investigate the claim, "and is not informed as to the merits of said claim," and yet insists that under these circumstances the court must await the pleasure of the Treasury Department, and that claims allowed and to pay which there are ample funds, and which bear 6 per cent. interest, must go on bearing the interest at the ultimate expense of the petroleum company until the government at its pleasure is ready to assert its claim. The interest on the claims allowed amounts to some \$8,900 per year. In the brief of appellant it is stated: "If the assets and revenues of this corporation are ample to satisfy all claims the question of priority would seem immaterial." The court found that the assets of the petroleum company were more than \$600,000, and all debts, including the government's claim for taxes, would not exceed \$250,000. Hence it would seem that the question of priority was entirely immaterial, and that the proceeding of the government was useless. It is in no wise prejudiced by the order of the court. There is no reason why it will not receive its taxes. To withhold payment further of claims established with no resulting benefit to the government would be an act of gross injustice, which no government should desire. We are satisfied that on the second question as well as the first the contention of the government is unsound, and that the court was entirely correct in its conclusion.

The order and judgment of the trial court is affirmed.

HELLMICH, Collector of Internal Revenue, v.
HELLMAN.

(Circuit Court of Appeals, Eighth Circuit,
March 18, 1927.)

No. 7298.

1. Internal revenue \S 7(b)—Gain realized in liquidation of corporation, which is distribution of earnings or profits, constitutes "dividend," within meaning of provisions exempting it from normal tax (Revenue Act of 1918, \S 201 (a), (c), 210, 213, 216 [Comp. St. \S 6336 $\frac{1}{2}$ b, 6336 $\frac{1}{2}$ c, 6336 $\frac{1}{2}$ f, 6336 $\frac{1}{2}$ h]).

Gain realized in liquidation of corporation, which is in fact a distribution of earnings or profits accumulated since February 28, 1913,

constitutes "dividend," within Revenue Act 1918, \S 201 (a), being Comp. St. \S 6336 $\frac{1}{2}$ b, and exempt under section 216 (Comp. St. \S 6336 $\frac{1}{2}$ h) from normal tax imposed by sections 210 and 213 (Comp. St. \S 6336 $\frac{1}{2}$ c, 6336 $\frac{1}{2}$ f), since section 201 (c) requiring payment of tax on amount distributed in liquidation, when construed with subdivision (a), defining dividends, does not constitute an exception to or qualification thereof, but is supplemental thereto.

[Ed. Note.—For other definitions, see Words and Phrases, First and Second Series, Dividend.]

2. Statutes \S 219—Treasury Department regulations, construing laws relating to taxation, are not conclusive.

Regulations of Treasury Department, construing laws of Congress relating to taxation, are instructive, helpful, and influential, but are not conclusive on the courts.

3. Statutes \S 205—Subdivisions of section of statute should be construed together, if possible.

Subdivisions of section of statute should be construed together, if possible, and one should not be permitted to defeat the other.

4. Internal revenue \S 7(b)—"Dividend" is gain or profit.

A "dividend" is a gain or profit.

5. Internal revenue \S 28(2)—Petition in suit to recover additional income tax, alleging surplus at liquidation was accumulated earnings and profits, held to sufficiently describe nature of surplus (Revenue Act 1918, \S 201 (a), 216 [Comp. St. \S 6336 $\frac{1}{2}$ b, 6336 $\frac{1}{2}$ h]).

Petition in suit to recover additional income taxes, alleged to have been erroneously assessed and collected, alleging that surplus of corporation at time of liquidation consisted of earnings and profits accumulated since February 28, 1913, held to sufficiently describe nature of surplus for purpose of determining whether it was a dividend, within meaning of Revenue Act 1918, \S 201 (a), being Comp. St. \S 6336 $\frac{1}{2}$ b, and exempt from normal tax under section 216 (Comp. St. \S 6336 $\frac{1}{2}$ h).

6. Statutes \S 245—Doubts in taxation statutes are resolved in favor of taxpayer, and laws imposing taxes strictly construed.

Doubts in taxation statutes are resolved in favor of taxpayer, and laws imposing taxes are to be strictly construed, and not extended beyond clear import of language used as taxing powers have duty of making clear what is to be taxed and how.

7. Statutes \S 245—Purpose of Congress to impose double taxation must be clear.

There may be double taxation, but purpose of Congress as to tax must be clear.

8. Statutes \S 24—Courts will, if possible, avoid interpreting tax statute to result in injustice.

Courts will avoid, if possible, an interpretation of a tax statute which results in injustice.

In Error to the District Court of the United States for the Eastern District of Missouri; Charles B. Faria, Judge.

Suit by Isadore N. Hellman against Arnold J. Hellmich, Collector of Internal Revenue. Judgment for plaintiff, and defendant brings error. Affirmed.

John R. Wheeler, Sp. Atty., Bureau of Internal Revenue, of Washington, D. C. (Louis H. Breuer, U. S. Atty., of St. Louis, Mo., and A. W. Gregg, General Counsel, Bureau of Internal Revenue, of Washington, D. C., on the brief), for plaintiff in error.

Henry H. Furth, of St. Louis, Mo., for defendant in error.

Before KENYON, Circuit Judge, and MOLYNEUX and OTIS, District Judges.

KENYON, Circuit Judge. Defendant in error was plaintiff in the trial court and will for convenience so be designated here. Likewise plaintiff in error will be designated as defendant.

Plaintiff brought suit to recover certain additional income taxes alleged to have been erroneously assessed and collected from him for the calendar year 1919. Defendant demurred to the petition. The trial court overruled the demurrer. Defendant electing to proceed no further, judgment was entered for plaintiff. The statements of the petition, taken as true for the purposes of the demurrer, establish that plaintiff on December 31, 1919, was the owner of one-half of the capital stock of Hellman & Sons Fur & Wood Company, a corporation of the city of St. Louis, Mo.

This corporation on that date entered into voluntary liquidation. The surplus and profits were distributed between the plaintiff and one other, they being all the stockholders of the corporation. The corporation had a capital stock of \$27,600, and a net surplus on December 31, 1919, of \$46,466.27, of which \$31,545.58 was earnings and profits accumulated by the corporation since February 28, 1913. Plaintiff realized a gain of \$15,001.55, which he indicated in his return of income for the year 1919, but excluded from income subject to normal tax. He paid the surtax. The distribution, so far as pertains to the capital stock, is not disclosed by the record. The Commissioner of Internal Revenue held that plaintiff was subject to a normal tax upon the amount of \$15,001.55, which plaintiff paid, and in this action sought to recover back the same. The District Court entered judgment therefor.

(1) The issue is whether that part of the gain realized in the liquidation of the corporation, which is in fact a distribution of earnings or profits accumulated since February 28, 1913, is a dividend, and therefore under the Revenue Act of 1918 not subject to the normal tax. The Revenue Act of 1918 (40 Stat. c. 18, tit. 2, p. 1059) contains the following provisions applicable to this transaction:

"Sec. 201. (a) That the term 'dividend' when used in this title (except in paragraph (10) of subdivision (a) of section 234) means (1) any distribution made by a corporation, other than a personal service corporation, to its shareholders or members, whether in cash or in other property or in stock of the corporation, out of its earnings or profits accumulated since February 28, 1913, or (2) any such distribution made by a personal service corporation out of its earnings or profits accumulated since February 28, 1913, and prior to January 1, 1918.

"(c) A dividend paid in stock of the corporation shall be considered income to the amount of the earnings or profits distributed. Amounts distributed in the liquidation of a corporation shall be treated as payments in exchange for stock or shares, and any gain or profit realized thereby shall be taxed to the distributee as other gains or profits."

Comp. St. § 6336½b.

"Sec. 210. That, in lieu of the taxes imposed by subdivision (a) of section 1 of the Revenue Act of 1918 and by section 1 of the Revenue Act of 1917, there shall be levied, collected, and paid for each taxable year upon the net income of every individual a normal tax at the following rates:

"(a) For the calendar year 1918, 32 per centum of the amount of the net income in excess of the credits provided in section 216."

Comp. St. § 6336½c.

"Sec. 213. That for the purposes of this title (except as otherwise provided in section 233) the term 'gross income'—

"(a) Includes gains, profits and income derived . . . from . . . dividends The amount of all such items shall be included in the gross income for the taxable year in which received by the taxpayer, unless, under methods of accounting permitted under subdivision (b) of section 212, any such amounts are to be properly accounted for as of a different period."

Comp. St. § 6336½ff.

"Sec. 216. That for the purpose of the normal tax only there shall be allowed the following credits:

"(a) The amount received as dividends from a corporation which is taxable under this title upon its net income, and amounts received as dividends from a personal service corporation out of earnings or profits upon which income tax has been imposed by act of Congress."

Comp. St. § 6336½h.

It is conceded that a dividend from a going corporation paid out of current earnings is not subject to the normal income tax. Section 216 of the act so provides. But it is contended by defendant that there is a difference between dividends as defined in section 201 (a) and distributions in complete liquidation of the corporation under section 201 (c). Subdivision (a) uses the term "any distribution" which covers "every distribution." There could be no question that the distribution made by this corporation to plaintiff would be squarely within its definition of a dividend, unless subdivision (c) limits or changes the same. Section 201 (a) provides that the term "dividend" shall have the meaning therein given "when used in this title (except in paragraph (10) of subdivision (a) of section 234)." This section does not pertain to any question involved here. It is apparent that section 201 (a) intends to provide a definition for the term "dividend" as used throughout the title, with the one exception referred to. The term "dividend" as used in section 216 (a) with reference to normal tax therefore has the meaning given to it in section 201 (a) which makes a distribution by a corporation to shareholders out of its earnings or profits accumulated since February 28, 1913, a dividend.

Is this changed by subdivision (c) of section 201?

Defendant contends that construing subdivision (a) and subdivision (c) of section 201 together it is manifest that subdivision (c) is in the nature of a limitation upon, or exception to, subdivision (a), and takes out of the realm of dividends gains or profits realized in liquidation of a corporation—even if the distribution be of earnings or profits accumulated since February 28, 1913; that the situation is exactly the same as if plaintiff had sold his stock to another person and realized profit thereby; that the transaction is an exchange of the assets of the corporation for the outstanding stock, and that the gain or profit realized thereby is to be taxed to the distributee as other gains or profits, and that other gains or profits are subject to the normal tax.

18 F.(2d) 196

Since the decision of this case by the trial court the United States District Court for the Western District of Kentucky in *Langstaff v. Lucas*, 9 F.(2d) 691, 694, has held along the line of the position urged by defendant in this case. That case was affirmed by the Circuit Court en banc of the Sixth Circuit (13 F.(2d) 1022) in a very short opinion, in which the court said that it affirmed the judgment upon the reasoning and conclusions of the District Judge. The District Court in that case under facts somewhat similar to those here held that the distribution to Langstaff was not a "dividend as generally understood, and as defined

In this connection we set out Regulation 45, article 1648, of the Treasury Department referring to this subject as follows:

"Distribution in Liquidation. So-called liquidation or dissolution dividends are not dividends within the meaning of the statute, and amounts so distributed, whether or not, including any surplus earned since February 28, 1913, are to be regarded as payment for the stock of the dissolved corporation. Any excess so received over the cost of his stock to the stockholder constitutes income to such stockholder. However, if such stock was acquired prior to March 1, 1913, and the fair market value as of such date was greater than the cost, but less than the amount so distributed, the taxable income is the excess over such fair market value of the amount received, but no gain is recognized if the amount received, although more than cost, is less than the fair market value of the stock of March 1, 1913. A distribution in liquidation of the assets and business of a corporation, which is a return to the stockholder of the value of his stock upon a surrender of his interest in the corporation, is distinguishable from a dividend paid by a going corporation out of current earnings or accumulated surplus when declared by the directors in their discretion, which is in the nature of a recurrent return upon the stock."

[2] Of course this regulation sustains defendant's position. Congress has bestowed upon the Treasury Department the right to make needful rules and regulations for the enforcement of the provisions of the Revenue Act, and such regulations construing the laws of Congress relating to taxation are instructive, helpful, influential. This regulation is based on the Treasury Department's construction of the statute in question. We are not, of course, concluded thereby. *Himmey et al. v. United States* (C. C. A.) 204 F. 898.

Since the decision of this case by the trial court the United States District Court for the Western District of Kentucky in *Langstaff v. Lucas*, 9 F.(2d) 691, 694, has held along the line of the position urged by defendant in this case. That case was affirmed by the Circuit Court en banc of the Sixth Circuit (13 F.(2d) 1022) in a very short opinion, in which the court said that it affirmed the judgment upon the reasoning and conclusions of the District Judge. The District Court in that case under facts somewhat similar to those here held that the distribution to Langstaff was not a "dividend as generally understood, and as defined

in section 201, subsection (a), and as used in section 216." The court says: "Largely speaking, the distribution to the stockholders of a corporation's assets, upon liquidation, might be termed a dividend; but this is not what is generally meant and understood by that word. As generally understood and used, a dividend is a return upon the stock of its stockholders, paid to them by a going corporation without reducing their stockholding, leaving them in a position to enjoy future returns upon the same stock." It is apparent that the court used its definition of the term "dividend" upon *Lynch v. Hornby*, 247 U. S. 339, 38 S. Ct. 543, 62 L. Ed. 1149. And in this connection reference may be made to *Lynch v. Hornby*, 247 U. S. 339, 38 S. Ct. 543, 62 L. Ed. 1149, 6 Cl. 537, 62 L. Ed. 1087, which is a companion case to *Lynch v. Hornby*.

Article 1548 of regulation 45 of the Treasury Department, supra, is also evidently based upon the holdings of these two cases. In *Lynch v. Hornby*, supra, the court did draw a distinction between a distribution received as a single and final dividend in liquidation of the entire assets and business of a company, and one where the payments of dividends were made by a going concern. Both of these cases relate to the Act of October 3, 1913 (38 Stat. 114), which contains no definition of the term "dividend," and as pointed out in the note in *Holmes, Federal Taxes* (1923 Ed.) and also (1925 Ed.) pages 625 and 830, respectively, the question in both cases was whether earnings and profits accumulated prior to March 1, 1913, should be considered as dividends. "There was no discussion at all of earnings or profits accumulated subsequent to March 1, 1913; no determination as to whether they should be considered as dividends. These cases are not authority for the proposition that a distribution, in the liquidation of a corporation, of assets accumulated subsequent to February 28, 1913, cannot be considered as a dividend under the Revenue Act of 1913. Congress had the right to provide what the term "dividend" as used in the act should cover, and make it different from the usual understanding of the term, and that is what Congress did in section 201 (a).

[3] If subdivisions (a) and (c) of section 201 can be construed together it should, of course, be done. One should not be permitted to defeat the other. United States v. Ninety-Nine Diamonds (C. C. A.) 139 F. 901, 2 L. R. A. (N. B.) 185. Does the construction of the act urged by plaintiff bring these two provisions into conflict?

The trial court pointed out in its opinion one field in which subdivision (c) could operate without conflict with subdivision (a), saying: "Gains might well accrue from the fact that the capital stock when acquired, at or before February 28, 1913, might be worth less than par, and before liquidation such stock might have advanced to par, or more, in which case a gain or profit would accrue to the stockholder, which should be taxed as income and not as a dividend, and which therefore, should bear not only a surtax in a proper case, but a normal tax also." Counsel for defendant in argument point out that the *Hellman & Son Fur and Wool Company* had, when liquidated, a surplus of \$46,466.27, of which \$23,213.13 was distributed to plaintiff. Of this \$15,772.79 represented his share of the earnings accumulated since February 28, 1913. If his stock had cost him par his entire gain would have been \$23,213.13, of which \$15,772.79 would be attributable to the distribution of earnings accumulated since February 28, 1913, and \$7,440.34 would have been profit in the liquidation within the meaning of section 201 (c). A situation would therefore be presented where the profit on the shares would be subject to both normal and surtax, while on the part distributed of earnings accumulated since February 1913, only the surtax would apply, and counsel for defendant claim that in this manner gains realized in liquidation of corporations would be taxed as other gains or profits. This illustration points out how the two subdivisions can be construed without fatal conflict.

[4] A dividend is a gain or profit. Therefore the further language of subdivision (c) "any gain or profit realized thereby shall be taxed to the distributee as other gains or profits" includes dividends. We are satisfied that subdivision (c) of section 201 is not an exception to or qualification of section 201 (a), but is supplemental thereto. *Lynch v. Hornby* and *Lynch v. Hornby*, supra, are not authority against this view. *Lanckford v. Lewis*, supra, and the appeal of John E. Greenwood, a decision of the United States Board of Tax Appeals, are; but we are unable to agree with these decisions.

[5] Defendant claims in his argument that the petition does not specify whether the \$21,545.56 surplus of the corporation was "earned surplus," "paid in surplus," or "prepaid value of capital assets." The petition states as to said surplus that it "consisted of earnings and profits accumulated by said corporation since February 28, 1913." We think this sufficiently describes the nature of the surplus. Plaintiff does

assert that the surplus is a "gain realized in liquidation." The important question however is what the surplus in fact is and not what it may be designated in the pleadings. The question involved in this case is not easy of solution. It may fairly be considered a close one, and not free from doubt. Plausible argument can be presented for the position taken by either side to the contrary as to the construction of subdivisions (a) and (c) of section 201. That leads us to suggest that some elementary and fundamental rules of statutory interpretation ought to be applied, and if so, are controlling in a decision of this case.

[6] It is both the English and the American rule that double taxation statutes are to be construed in favor of the taxpayer, and that laws imposing taxes are to be strictly construed and not extended beyond the clear import of the language used. It is the duty of taxing powers to make clear what is to be taxed and how. In *Gould v. Omaha*, 245 U. S. 151, 153, 38 S. Ct. 53, 62 L. Ed. 211, the court said: "In the interpretation of statutes laying taxes it is the established rule not to extend their provisions, by implication, beyond the clear import of the language used, or to enlarge their operations so as to embrace matters not specifically pointed out. In case of doubt they are construed most strongly against the government, and in favor of the citizen." *Holten Sugar Co. et al. v. Johnstone* (C. C. A.) 219 F. 103; *F. J. Warkis v. Warkis Ry. Co.* (C. C. A.) 264 F. 610; *Hartman v. Wiermann*, 121 U. S. 609, 7 S. Ct. 1240, 30 L. Ed. 1012; *Edman v. Martine*, 184 U. S. 678, 22 S. Ct. 515, 46 L. Ed. 607; *United States v. Merriam*, 203 U. S. 170, 44 S. Ct. 69, 68 L. Ed. 240, 29 A. L. R. 1547; 2 *Sutherland on Statutory Construction*, vol. 2, p. 99.

[7] There may be double taxation, but the purpose of the Congress so to tax must be clear. As said in *Tennessee v. Whitworth*, 117 U. S. 129, 137, 6 S. Ct. 645, 647, 29 L. Ed. 830: "Double taxation is, however, never to be presumed. Justice requires that the burdens of government shall as far as is practicable be laid equally on all, and, if property is taxed once in one way, it would ordinarily be wrong to tax it again in another way, when the burden of both taxes falls on the same person. Sometimes tax laws have that effect; but if they do, it is because the Legislature has unmistakably so enacted. All presumptions are against such an imposition."

[8] Courts will avoid, if possible, an interpretation of the statute which results in injustice. 25 R. C. L. p. 1022; *Limbarger v. Howe*, 76 U. S. 468, 19 L. Ed. 721; *United States v. Oregon & C. R. R.*, 161 U. S. 650, 17 S. Ct. 165, 41 L. Ed. 511; *Knox v. Moore*, 178 U. S. 41, 20 S. Ct. 747, 41 L. Ed. 969. Under the contention of defendant here, if distribution of the surplus accumulated since February 28, 1913, had been made in the form of a dividend declared by the corporation the day before it was intended to liquidate and dissolve the same, it would have been a dividend, and not subject to the normal tax; if distributed the next day in a final liquidation of the corporation, it would be subject to the normal tax. The manner of distribution, if this position is correct, determines taxability, and not the character of the income. The statute should be clear to warrant such a conclusion which results in a double income tax, as these earnings of the corporation have already been fully taxed.

Section 201 (c) does not say that the normal tax shall be assessed on distributions of earnings accumulated since February 28, 1913, made by corporations in liquidation. It does not say that earnings on sale shall not be considered dividends under section 201 (a). If Congress had intended that the definition of the term "dividend" in section 201 (a) should not include distribution by corporations in liquidation of earnings or profits accumulated since February 28, 1913, it would have been very easy to have said so. *Shaw v. Doyle*, 258 U. S. 529, 42 S. Ct. 391, 66 L. Ed. 747, 38 A. L. R. 1444. That this section is not clear is shown by changes therein in the subsequent acts of Congress. The Revenue Act of 1921 omits the provisions as to distribution in liquidation in the 1918 act, and under its provisions the present question could not arise.

We do not think this infers an intention of Congress to change an established theory but that it was the intention to end the injustice which the regulation of the Treasury Department brought about. We quote on this from *Holmes, Federal Taxes* (1923 Ed.) p. 610: "Congress has now definitely provided against the unfair and unwarranted practice of the treasury department under the 1918 law of subjecting such earnings or profits to both the normal tax and the surtax in case of the mere accident of their distribution in the liquidation of a corporation. Where a corporation distributes all of its property in complete liquidation or dissolution, the gain realized by the stockholder from the transaction is taxable as a dividend to the extent that it is paid out

of the earnings or profits of the corporation accumulated since February 28, 1913. If the amount received by the stockholder in liquidation is less than the cost or other basis of the stock, a deductible loss is sustained."

While it is our opinion that the term "dividend" as used in section 201 (a) of the act of 1913, covers a distribution of a corporation to its stockholders out of earnings or profits accumulated since February 28, 1913, even if the distribution is not made until the liquidation of the corporation, and such distribution is not subject to the normal tax, if the question is to be considered as one not free of doubt, which seems to us the most that defendant can claim, then as we have before stated, that doubt should be resolved in favor of the taxpayer. A conclusion of the court along the lines urged by defendant would result in imposing taxes on plaintiff by a doubtful construction of a taxing statute which would extend its provisions beyond the import of the language used, and result in double taxation.

We are not warranted in such conclusion, and while regretting to differ with the Circuit Court of Appeals of the Sixth Circuit, a decision of the Board of Tax Appeals, and the Regulation of the Treasury Department, we are satisfied the holding of the trial court was correct and the judgment is affirmed.

ARNOLD J. HELLMICH, Collector of Internal Revenue, etc. Plaintiff in Error, v. MILTON C. HELLMAN, Defendant in Error.

(Circuit Court of Appeals, Eighth Circuit, March 18, 1927.)

No. 7299.

In Error to the District Court of the United States for the Eastern District of Missouri.

John R. Wheeler, Sp. Atty., Bureau of Internal Revenue, of Washington, D. C. (Louis H. Breuer, U. S. Atty., of Rolla, Mo., Claude M. Crooks, Asst. U. S. Atty., of St. Louis, Mo., and A. W. Gregg, General Counsel, Bureau of Internal Revenue, of Washington, D. C., on the brief), for plaintiff in error.

Henry H. Furth, of St. Louis, Mo., for defendant in error.

Before KENYON, Circuit Judge, and MO'YNEAUX and OTIS, District Judges.

KENYON, Circuit Judge. The same question is involved in this case as in No.

7298, *Arnold J. Hellmich, Collector, etc., v. Isadore N. Hellman*, 18 F.(2d) 239 (opinion this day filed). In accordance with the decision in that case the judgment in this is affirmed.

REARDON v. PENSONEAU (two cases).

(Circuit Court of Appeals, Eighth Circuit, March 18, 1927.)

Nos. 304, Original, and 7065.

1. Bankruptcy \S 136(12)—Burden is on bankrupt, failing to obey turn-over order of referee, confirmed by court, to show what became of money.

Where referee's finding that bankrupt had in his possession a certain sum belonging to bankrupt estate, and ordering him to turn it over to trustee, was confirmed by court, burden was on bankrupt to show that he had lost possession of money under conditions which he could not prevent, to avoid being adjudged in contempt for failing to obey order; presumption being that he still has money.

2. Bankruptcy \S 136(10)—Trustee's objections to testimony that bankrupt did not have money when turn-over order was made should have been sustained.

Where referee's finding that bankrupt had in his possession money belonging to bankrupt estate, and ordering him to turn it over to trustee, was confirmed by court, held that, on hearing on citation of bankrupt for contempt for failing to obey order, trustee's objections to bankrupt's testimony that he did not have money when order was made, and to his introduction in evidence of transcript of all the evidence before referee, should have been sustained.

3. Bankruptcy \S 136(12)—Bankrupt's mere denial under oath did not overthrow presumption that he still has money ordered to be turned over to trustee.

Where referee's finding that bankrupt had possession of money belonging to bankrupt estate, and ordering him to turn it over to bankruptcy trustee, was confirmed by court, held that, on citation of bankrupt for contempt for failing to obey order, bankrupt's mere denial under oath that he had the money did not overcome presumption that he still has it.

Petition to Revise Order and Appeal from the District Court of the United States for the Eastern District of Missouri.

In the matter of August Pensoneau, bankrupt. Joseph M. Reardon, as trustee in bankruptcy, petitions to revise and appeals from an order of the District Court discharging bankrupt, in proceedings to punish him for contempt for failing to obey order directing him to turn over to trustee money belonging to estate. Appeal dismissed. Reversed, with directions.

30A-B-1461	11ABn1368	316A24204	—279—	921E2489	22ABn708	—331—	cc239f445
Ca	11ABn1369	961F449	161F2410012	68SC2410		Ca1	cc239f445
209C-2427	12ABn1263	118S1615	161F2410112	—291—	—317—	141F24126	cc239f447
N J	13ABn1235	6320S161	288F240818	4299F666	31F53117	Cir 2	cc239f447
16N14N1405	19ABn1411	114E4246	CaHf	8192M104	—319—	cc239f446	cc239f446
1A2444	22ABn1513	10C24260	137F524227	540S15117	540S15117	cc239f446	cc239f446
Tea	33ABn1719	83P24972	137F524227	137F524227	137F524227	cc239f446	cc239f446
735W961	33ABn278	—289—	83P24972	137F524227	137F524227	cc239f446	cc239f446
		Cir DC	83P24972	137F524227	137F524227	cc239f446	cc239f446
		Cir 5	83P24972	137F524227	137F524227	cc239f446	cc239f446
		11E24941	83P24972	137F524227	137F524227	cc239f446	cc239f446
		31F24993	83P24972	137F524227	137F524227	cc239f446	cc239f446
		11E24941	83P24972	137F524227	137F524227	cc239f446	cc239f446
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		31F24993	83P24972	137F524227	137F524227	cc239f446	cc239f446
		11E24941	83P24972	137F524227	137F524227	cc239f446	cc239f446
		31F24993	83P24972	137F524227	137F524227	cc239f446	cc239f446
		11E24941	83P24972	137F524227	137F524227	cc239f446	cc239f446
		31F24993	83P24972	137F524227	137F524227	cc239f446	cc239f446

ABBREVIATIONS - ANALYSIS

	History of Case
a (affirmed)	Same case affirmed on appeal
cc (connected case)	Different case from case cited but arising out of same subject matter or intimately connected therewith
D (dismissed)	Appeal from same case dismissed.
m (modified)	Same case modified on appeal.
r (reversed)	Same case reversed on appeal.
s ('same case')	Same case as case cited.
S (superseceded)	Substitution for former opinion.
v (vacated)	Same case vacated.
US cert den	Certiorari denied by U. S. Supreme Court.
US cert dis	Certiorari dismissed by U. S. Supreme Court.
US reh den	Rehearing denied by U. S. Supreme Court.
US reh dis	Rehearing dismissed by U. S. Supreme Court.
	Treatment of Case
c (criticized)	Soundness of decision or reasoning in cited case criticized for reasons given.
d (distinguished)	Case at bar different either in law or fact from case cited for reasons given.
e (explained)	Statement of import of decision in cited case. Not merely a restatement of the facts.
f (followed)	Cited as controlling.
h (harmonized)	Apparent inconsistency explained and shown not to exist.
j (dissenting opinion)	Citation in dissenting opinion.
L (limited)	Refusal to extend decision of cited case beyond precise issues involved.
o (overruled)	Ruling in cited case expressly overruled.
p (parallel)	Citing case substantially alike or on all fours with cited case in its laws or facts.
q (questioned)	Soundness of decision or reasoning in cited case questioned.

ABBREVIATIONS - COURTS

Cir. Fed.) S. Court of Appeals, Federal Circuit (circuit number); U. S. Court of Appeals Circuit (number); CTT, United States Court of International Trade; CTPA, Court of Customs and Patent Appeals; Cl Ct, Claims Court (U. S.); Ct Ct, Court of Claims (U. S.); Cu Ct, Customs Court; DC, District of Columbia; EC or ECA, Temporary Emergency Court of Appeals; MJ, Judicial Panel on Multidistrict Litigation; R.R., Special Court Regional Rail Reorganization Act of 1973.

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2.113 Since *Hellmich* is a circuit case - just beneath the Supreme Court of the United States, it is as we said, of very high authority. However, page 240 (our page 50) top left column shows that said present case is an appeal from the District Court of the United States, in St. Louis, Missouri. The last paragraph on page a44 (our page 52) just above the companion case states the following in pertinent part: "... we are satisfied the holding of the trial court was correct and the judgment is affirmed." Therefore, the decision given by the District Court was upheld by the Circuit Court. This means the Internal Revenue Service lost.

2.114 Now we shall shepardize *Hellmich*. Careful examination of the top of page 5a will produce the now familiar "18 F 2d." ("18" is at the top left = Vol. 18. and "F 2d" is top center = Federal Reporter, 2d Series). Find *Hellmich v. Hellman* in the 18th volume of the Federal second series. You should now find a bold superior number "239." Remember that is the page the case starts on? Immediately below the "a39" are the following designations: "r 276 US 233; r 7a L Ed 544; and r 48 S Ct a44." First of all, the three reporters are for the Supreme Court of the United States, so it tells us the Internal Revenue Service continued their appeal to the very top. However, those little "r's"¹¹⁰ are like flashing red lights! The case we fell in love with, which said what we wanted it to say, **was reversed!** The tax payer, Mr. Hellman, finally lost his case. He couldn't appeal to a higher court. Do we lose too? No. fortunately, the Super Rich were well covered on the doctrine of law we examined from *Hellmich*. I have set you up in order to teach a valuable lesson. Next we'll answer how the principle is still very much valid.

2.115 Should someone go into a court with a legal brief using the *Hellmich* decision as authority for a point of law, what we call judicial notice, it would be a very embarrassing thing to hear opposing counsel tell the judge our case should have no weight because it had been reversed. Of course we could tell the court, that our point - in the 6th Headnote - was good based upon the **controlling authority** of the *Gould* court.¹¹¹ We should still be ashamed, because we could have quoted from *Gould* to begin with. If anyone were to use a case, like *Hellmich*, obviously without having shepardizing, it would certainly make one very cautious of the thesis being presented. There would no doubt be some larger errors, perhaps at the presupposition of their claim!

¹¹⁰ Please see page 53 for the abbreviations used by "Shepards."

¹¹¹ Please find the following on page 243 (our page 51) at the bracketed (6), left column: *Gould v. Gould*, 245 US 151, 153; 38 S Ct 53; 62 L Ed 211 was quoted in the *Hellmich* decision:

"It is both the English and the American rule that doubts in taxation statutes are resolved in favor of the taxpayer, and that laws imposing taxes are to be strictly construed and not extended beyond the clear import of the language used. It is the duty of taxing powers to make clear what is to be taxed and how. In *Gould v. Gould*, 245 US 151, 153, 38 S. Ct. 53, 62 L. Ed. 211, the court said: In the interpretation of statutes levying taxes it is the established rule not to extend their provisions, by implications, beyond the clear import of the language used, or to enlarge their operations so as to embrace matters not specifically pointed out. In case of doubt they are construed most strongly against the government. and in favor of the citizen." *Hellmich v. Hellman*, 18 F 2d 239, 243.

TAX FREE! How the *super rich* do it!

2.116 As we promised to show in §§2.114, the doctrine we tried to extract from the *Hellmich* court was good, but misplaced; please now research the Digests for this proof. On the bottom right corner of page 28-7th D-1066 (our page 54 the key filled in for contrast) you will note the citation "76 S Ct 621" at the end of the text which immediately informs us that it is a Supreme Court case. Read several of the other narratives through the balance of the Digest pages.¹¹² You can see how well established this tenet of law is. Earlier at §2.104 sub paragraph (1), we learned that the settled doctrine that tax statutes must not be vague, ambiguous, or unclear applied to the Super Rich in an indirect sort of way. The reader has no doubt learned there is more than sufficient code, regulation, and case authority in existence that *Gould v. Gould*, though absolutely accurate, will never have to be used by the Super Rich ... so clear and well established is their technique.

2.117 At last the hidden is uncovered. The lost is found and waiting for you. You have heeded Rudyard Kipling's encouragement to Go! You have learned the secret Tax Research Institute of America taught; "that knowledge of what the law allows is the essential element of tax economy."¹¹³ Now let us learn what to do with our new found knowledge.

Notes

¹¹² The professional may wonder why the *7th Decennial Digest* was used. Later editions do not show the progression from Supreme Court of the United States to the lower state courts, and the key, statutes, was the effective way to teach the subject material.

¹¹³ See the quotes on page 27.

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Authorities

CITATIONS CODE = case name: volume number: title of books; starts on page; page of **quote**; year of case.

1. ENCYCLOPEDIAS: American Jurisprudence = "Am Jur" dark green, "Am Jur 2d" light green: Corpus Jurisprudence = "CJ" beige, "CJS" dark blue; Texas = "Tex Jur." California = "Cal Jur." etc.

2. UNITED STATES SUPREME COURT REPORTS: Five current reports:

- 1) United States Reports = US is the 'official' edition, all beige.
- 2) Lawyer's Edition = L Ed and L Ed 2d, all beige.
- 3) Supreme Court. Reporter = Sup Ct or S Ct are beige.
- 4) United States Law Week = USLW or USL Week.
- 5) Dallas = Dall, Cranch = Cranch, Wheaton = Wheat, Peters = Pet, Howard = How, Black = Black, and Wallace = Wall. These are found in Volumes 1 through 90 of the US Reporter from the years 1774 to 1874. All beige.

3. FEDERAL REPORTER AND FEDERAL SUPPLEMENT: All beige. (1) Decisions from United States Court of Appeals and the United States Court of Claims = "F and F 2d." (2) Decisions from the United States District Courts = "F Sups." Also all beige.

4. STATE AND NATIONAL REPORTER SYSTEM, all beige:

Atlantic Reporter = A: CT, DE, ME, MD, NH, NJ, PA, RI, VT, & DC, Municipal Court of Appeals.
Northeastern Reporter = NE: IL, MA, NY, & OH.
Northwestern Reporter = NW: IA, MI, MN, NB, ND, SD, & WI.
Pacific Reporter = P: AK, AZ, CA, CO, HI, ID, KS, MT, NY, NM, OK, OR, UT, WA, & WY.
Southeastern Reporter = SE: GA, NC, SC, VA, WV.
Southwestern Reporter = SW: AR, KY, Indian Territory, MO, TN, & TX. Southern Reporter = SO. AL, FL, LA, & MS.

5. SHEPARDS: Red volumes found usually among all of the above and show how the case reported has been treated. Sometimes a law library has one section where all of these volumes will be found together. Be sure to use their abbreviation page found in the front of each of the books.

6. DIGESTS: Beige. Available currently or every ten years, Decennial issues. Never cited as legal authority, however, invaluable in researching the law. Encyclopedic in fashion and form, and narrative statements of the law act as an index. Uses West's famous "KEY" system.

7. AMERICAN LAW REPORTS: Beige. "ALR. ALR 2d. & ALR 3d." An annotation of selected cases now in its third edition. Cf 156 ALR 22 and 88 ALR 704.

8. WORDS and PHRASES: Royal blue. Many words and complete phrases showing the legal definitions and cited authorities.

9. DICTIONARIES: Black's or Ballantine's.

10. STATUTES: United States Code or for states by own name.

Start your research here or with the Digests - #6.

tin order of highest to lowest authority: start with this number (#2) and move to #3 then #4 for lowest.

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TAX FREE! How the *super rich* do it!

How to Obtain the Authority!

Write your answers on a separate piece of paper.

1. In *Hellmich v. Hellman*, who was Mr. Hellman?
2. At the top center of our page 49 just under the case name, explain the meaning of 18 F (2d) 239.
3. How many head notes are in *Hellmich*? How high is their authority?
4. Is the language provided by the text of note 6, in the brackets, **on page 243 of *Hellmich*, our page 49** good or bad for the Super Rich?
5. On page **243 of *Hellmich***, note 6, what page of the official reporter is the quotation taken from?
6. Why are questionable tax statutes cases to be won by the taxpayer?
7. On page 243 of *Hellmich*, what does the English rule have to do with American law?
8. On page 243 of *Hellmich*, what does the statement mean: Laws imposing taxes are to be strictly construed and not extended beyond the clear import of the language used?
9. Why is it the duty of the taxing power to make clear what is to be taxed and how it is to be taxed?
10. The quotation in the text at note 6 on page 243: What is the level of the authority?
11. Decipher the meaning of 245 US 151, 153, 38 S Ct 53, 62 L Ed 211.
12. Several other Supreme Court cases are listed after the quotation of note 6 on page 243. What is their significance?
13. Beginning on our page 53 of the Digest examples; (A) How many cases are narrated from the Supreme Court of the United States? (B) What particular court heard the next seven cases? (C) What courts heard the following four cases? How high were these courts? (D) What courts ruled on the balance of cases in the key section, "Statutes a45?" (E) Starting with the state Supreme Court, name the reporters **in ascending authority**:
State Supreme Court, _____, _____, _____.
14. When we speak of *Hellmich v. Hellman*, what is the term used to define or describe what kind of law it is?
15. State the difference between F and F 2d.
16. Since it is important to have the highest case authority possible, why would Texas Supreme Court frequently be the highest authority for a case involving a trust? Why wouldn't one of the litigants take the case to the Supreme Court of the United States?
17. What are CJ and CJS?
18. What National Reporter would *Utah Farm Bureau Insurance Co. v. State Tax Commission* appear in?
19. Tell what shepardizing does?
20. True or False. The Internal Revenue Regulations are the law of the Internal Revenue Service?
21. Define probate.
22. Define death taxes.
23. Define gift taxes.
24. Define inheritance taxes.
25. Define estate taxes.
26. Define federal income taxes.
27. Define state income taxes.

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28. Define capital gains taxes.
29. Define Social Security taxes.
30. Why would the Omaha, Nebraskan's farm bring such a poor selling price? How would the sale be taxed today?
31. Lawyers report there is no will written which cannot be broken. Why do you feel so many wills are successfully attacked?
32. Explain the difference between ownership and control.
33. Explain how the Super Rich can use loopholes.
34. Explain how apportionment works.
35. From what source does the phrase "a heavy progressive and graduated method of income taxation" come from?
36. True or False. The I.R.S. says the federal income tax was to be a tax on the rich?
37. The first legal federal income tax in America came about: (a) 75 years ago; (b) 125 years ago; (c) nearly 200 years ago.
38. What role did Nelson Wilmarth Aldrich play in bringing an income tax to the United States?
39. Can a taxpayer legally arrange his affairs only to escape taxation?
40. True or False. A taxpayer may go as close to the line in the law as long as he doesn't go over it?
41. True or False. A taxpayer may legally escape federal or state income taxation even if it is his express motive?
42. True or False. The Colato in America dates back more than 200 years?
43. True or False. The Internal Revenue Regulations are the law as passed by Congress?
44. Trusts are governed by (a) the law of contracts; (b) the law of equity; (c) common law; or (d) civil law.
45. The Constitution of the United States was the first to provide trial by jury.
46. True or False. Subjects of the United States may do anything they are not prohibited from doing.
47. True or False. Original common law dates back so far it wasn't written down.
48. The United States of America is supposed to be: (a) a Democracy; (b) a socialist state; (c) a republican state.
49. Explain why the common law is a negative legal force.
50. What is a legal precedent?

2.118 With your new found ability you will KNOW how to obtain the authority the Super Rich have enjoyed. Knowledge of the law and how to find it is the key. As a wise man once said; with your knowledge get understanding. The next several chapters will aid in your complete understanding.

2.119 Please **PRINT** your name, address, & phone number on a separate piece of paper together with your answers. We will correct your paper. We will not just send the correct answers. Send your paper & a Self Addressed Stamped Envelope (SASE) for the corrections and our notation as to the pages the answers are found on. Send to the Author: Don Turner, P.O. Box 620592, Littleton, CO 80162-0592.

Chapter Three

Pauper's Tax & Estate

Planning?

**We are not only
responsible for what
we do, but also for
what we do not do.**

Molière

3

The Chief Justice Speaks

3.1 In spite of the fact it has become more widely known in the past two decades that trusts are infinitely superior for estate disposition to wills; they continue to be used almost exclusively by a large majority of persons planning their estates. A number of reasons or theories advanced as to why the archaic will remains so prominent range from the public requesting and demanding the device, to an extreme of malpractice.

3.2 Not only laymen but lawyers, judges, and even the Chief Justice of the Supreme Court of the United States has alternately accused attorneys of greed, ignorance, and malpractice! We'll study this problem in just a moment.

3.3 Any number of books, classes, and seminars has been put forth to advance the theories of writers and speakers concerning how to protect oneself from the ravages of law suits, living taxes, death taxes,¹¹⁴ and poor counsel or advice. Extraordinarily complex plans are recommended for Mom and Dad's use. Not only do the most intelligent amongst us not understand them, they are so counsel intensive as to make such plans available to only the affluent.

3.4 Making Mom and Dad the general partners of a family limited partnership, where the children are the limited partners; together with an "S corporation" of which the children are the owners; add to these an "A-B Trust" set up; and insurance trust; a "C Corporation"; a children's trust; a business trust; and a foundation-ad infinitum ad nauseam-no wonder the vast majority of persons feel so helpless and are so inclined to proceed without much caution.

3.5 I have had clients nearly strangled where the children of parents utilized many of these plans. They were stopped from using some of the same tools. Such complicated planning is incomprehensible for most of us, and it is certainly reprehensible to put a noose around the necks of our children. Then for all the trouble of learning about the latest techniques of estate preservation and income savings, Congress ups and changes the law again.

3.6 Analyses of our problems are frequently nothing more than knee-jerk responses to horror stories. We get angry, but not much of lasting value gets done for many of the reasons just enumerated.

¹¹⁴ In technical reality, there is no such thing as "death taxes." Probate is not a tax, and the rationale of federal gift and estate taxation, as well as state inheritance taxes, is based upon the transfer of property after death, rather than the event of death. See §§4.171, 4.183 and the problems we must solve on page 109.

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Lesson Three

3.7 Willadene Livingston, a 6a year old widow, was jailed in Ritzville, Washington, for failure to pay \$58,858 in taxes on her husband's life insurance policies. She reportedly had lost much of her more than one million dollar estate through taxes, and litigation since her husband's death ten years earlier.

3.8 No one had ever told Mr. Livingston of Internal Revenue Code Section 2042 and how an insurance trust could have literally saved his widow. It's also possible Mr. Livingston was sick of hearing so much advice and just did the best he could.

3.9 Gerald Moran, a southern California developer, the only one of ten partners in a building project which faltered, was held 100% liable for the failed venture to the tune of \$6,489,697. No one had ever warned him that his being the general partner with less than 10% interest would make him 100% liable.

3.10 Virginia Hall, a 68 year old widow, had placed her home and bank accounts into joint tenancy with her 46 year old son. She was shocked to learn the Supreme Court of Illinois had decided she essentially made a gift of 50% of her estate and assets, and that her son's creditors were entitled to be satisfied with such resources as they could locate in the son's name. Tragically, the half of her assets were completely absorbed by the creditors for the son's debts.

3.11 We could go on and on with such cases. A few of the stories appear daily in our newspaper, but only those which are more sensational. The accounts may only fulfill some curious appetite for calamity because it would be nearly impossible to tell each circumstance which has been suffered from which we need to protect ourselves, for while running off to solve one problem we may easily create many more.

3.12 Examine the problems listed which we must solve on page 109. The odds of successfully charting a course through such a sea of obstacles under normal circumstances are stacked at least 95 to 5 against us.¹¹⁵

3.13 For 3 "quick fix" some as spontaneously as mold appearing on bread will call their lawyers. Others, on the contrary, attribute the contamination in their essentials as the very spore of the legal profession, yet neither attitude will ultimately solve the problems.

3.14 What should we say about the lawyer? Attorneys can be so valuable-so can doctors when they know what to do, but it is still incumbent on the client to accept the ultimate responsibility. For example, while many perpetrators of white-collar crime are businessmen who have retained law firms, the attorneys will often be called in to advise on the legality of a proposed course of action. If the lawyer's advice is wrong, the fact that it was the lawyer who made the mistake in judgment will be of little consolation to a defendant in a criminal prosecution, because as a general rule it is no defense that the defendant acted in good faith, relying upon advice of counsel.¹¹⁶

3.15 Just how valuable, then, is the lawyer? The source from the following should be most revealing. From the textbook offered to first year law students, page two,

¹¹⁵ United States Department Health, Education and Welfare says less than 5% of the men aged 65 are financially independent.

¹¹⁶ *Miller v. U.S.*, 277 F 721; *Barnett v. State*, 89 Ala 165, 7 SO 414; *Staley v. State*, 89 Neb 701, 131 NW 1028. *Smith v. State*, 46 Tex Crim 267, 81 SW 936. Annotation; 133 ALR 1055.

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chapter one:

You may be overwhelmed by the sheer immensity of the law library; you may also be wondering how you can possibly be expected, in the short space of three years, to become master of all the information contained in such a vast collection. You may set your mind at ease, at least in this single respect. You will never *know* all the law contained in the volumes the law library holds, even after a lifetime of practice. It is a well-kept professional secret revealed to you here as an aspirant to membership in the legal fraternity, that no lawyer knows more than a relatively infinitesimal part of the law, nor does any judge. Professional education however, in addition to fostering the disciplined, pragmatic and critical intellectual process known as "thinking like a lawyer," must equip the law student by instruction in the techniques of legal research, to *find* the law in the volumes you have examined.""

3.16 The skills you learned in Chapter Two on "Pinpointing their Secret Law" (page 42 §2.73) will greatly affect your ability to test the skill of your chosen advocate and help you to be able to decide if he or she has your best interests at heart. You can save yourself much more than money! You may sleep very well at night, recognizing that you have availed yourself of the best counsel and left the cash and estate vultures to those who want to nest with them.

3.17 Whether public ignorance or professional negligence is to receive the condemnation, it will offer no conciliation either way, as the results would probably be the same. It is a natural law that solutions come only in the wake of recognizing a problem. Because the solutions we are talking about have been around as long as the problem, true recognition requires an intense, determined, and yet personal plan of resolution, as for competitive reasons no one seems to be giving the trust`" secrets away. Hence, a review of the past near half century will bring some helpful judgments and insights into the realm of recognizing those conditions we currently face. Hopefully it will make the solutions more tangible.

3.18 Well over forty years ago, lawyers writing in legal journals were vigorously proclaiming the validity of trusts as will substitutes. Denver lawyer Milton E. Meyer reported several of such works in his article entitled, "The Revocable Trust As a Will Substitute -A Coming of Age."¹¹⁹ His article presses the essentiality of the infrequently used trust for the practicing lawyers and the estates of whose clients they represent. Thus we establish that the legal community has been far from silent on our present subject.

¹¹⁷ *How to Find the Law*. "Analysis of the Problem," Chapter One, page 2. Cohen.

¹¹⁸ See the definitional differences between trust and Colatos §4.7, *et seq.* We are referring to trusts in this chapter and not Colatos.

¹¹⁹ *The Revocable Trust as a Will Substitute*, 39 University of Colorado Law Review, 180. Copy written 1966. Attention will be directed to Mr. Meyer's article elsewhere in this chapter. His article deserves reading today as much as when it was written.

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3.19 Roughly a decade ago the fur of legal criticism began to fly. In July of 1977, then Chief Justice of the Supreme Court of the United States, Warren E. Burger, testified before the Royal Commission on legal services in London that about one half of the practicing lawyers in our country were not qualified to represent their clients. "Some judges placed it as high as seventy-five percent," he said. "Somewhere," he continued, "near the midway mark is probably correct, and it will vary to some extent from place to place." He further added, that had he the power, he would see that such lawyers were not "let loose in the courts," as he wouldn't want an incompetent surgeon in the operating room.¹²⁰

3.20 Sometime later Chief Justice Burger repeated his criticism at the National American Bar Association Convention. Scarcely two months before Chief Justice Burger's scathing indictment, Chief Judge Charles D. Breital of the New York Court of Appeals warned that the practice of law had become so profitable that the profession tended to attract in certain sectors, persons motivated by greed. He stated that if lawyers didn't recognize their social responsibilities that society might look for other choices.¹²¹

3.21 Jack Anderson and Les Whitten were no less vociferous in their regard of the legal profession:

"Across the land, lawyers lurk behind the bushes waiting to pounce upon the passers-by, drag them into court and drain them of their assets. Most lawsuits benefit only the lawyers, who collect fat fees and leave both parties worse off. Attorneys also dominate the government. The founding fathers intended that Congress, for example, should be representatives of the people. But lawyers have taken it over; they hold more than 300 of the 535 seats ... and the probate processes have become so encrusted that the attorneys often wind up with a greater share of an inheritance than the heirs."

3.22 During the same period of public scrutiny in an article entitled, "Lawyers - Can They Police Themselves?"¹²³ we note that lawyers were arguing among themselves whether the profession was "more concerned with punishing those who threaten vested economic and political interests than those who do their clients a disservice." This is all very interesting when we examine in conjunction the stories of three men coming from the period we are discussing. Each of them is a non lawyer. The reader must decide whether they have flown in the face of the law or whether their fresh demeanor, as the cat prancing within Rover's field of view has provoked a chase of jealousy from the legal and government establishments.

¹²⁰ Associated Press, November. 1977.

¹²¹ *New York Times*, Tuesday, May 3. 1977.

¹²² Jack Anderson column, Washington, D.C. June 23, 1977. Though the ratio of lawyers to laymen fluctuates back and forth, the number of lawyers in the Congress has declined over the last decade.

¹²³ *U.S. News and World Report*, June 6, 1977.

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3.23 The first of them taunted, he "was free of the concerns of probate,"¹²⁴ the other two, in addition to probate, tantalized they "could also be free of gift taxes, inheritance taxes, federal and state income taxes, social security taxes, capital gains taxes, suits, liens, judgments, and seizures, etc!" The public recognizing such things were somehow within the realm of legality and generally within the domain of the Super Rich, turned to these three persons as an expression of disdain for the legal community who, in the public's opinion, had long before fled their "social responsibilities," as Judge Breital phrased it. The public is still voraciously "looking for additional choices" for solutions to their estate and tax problems.

3.24 First and therefore most notable of these persons is Norman F. Dacey, whose durable work *How to Avoid Probate!*¹²⁵ has remained a best seller for over twenty years! As his book reached the number one best selling chart for a non fiction work as reported by *Time Magazine*, he was charged with unauthorized practice of law in Connecticut and then in New York. He was finally acquitted in both cases.

3.25 The other two individuals are Karl L. Dahlstrom and Don Turner (myself).¹²⁶ Public lectures and promotions of common law trust organizations attracted the attention of various state bar associations as well as the dander of the Internal Revenue Service. Though they too prevailed over many unauthorized practices of law charges in multiple states, convictions were finally taken for income tax violations.

3.26 The United States Ninth Circuit Court of Appeals overturned Mr. Dahlstrom's conviction. The Supreme Court of the United States concurred, but in Turner's separate and later case he lost his bid to the Tenth Circuit Court of Appeals and served an eighteen month prison sentence.¹²⁷ At this writing Mr. Dahlstrom

¹²⁴ See §3.37 for the history of probate.

¹²⁵ Crown Publishing Company, Inc., New York. Attention will be drawn to other comments on his book elsewhere in this chapter.

¹²⁶ Mr. Dahlstrom is President of The American Law Association. I am International Executive Director of First America Research.

¹²⁷ *Cf* 799 F2d 627. When you contemplate the fact I've endured the test of fire you can take a lot more courage by also knowing that it took the federal government a total of four grand juries to find something I had done wrong, and when they did find a law I had broken **it had nothing at all to do with using Colatos!** Though I contend my conviction was politically motivated I will also acknowledge that I broke a law. What did I do wrong? In substance and in fact, I kept the check book and made the deposits of a church organization which one of the other board members should have held! I did not abscond with church funds. Far from being bitter about the prison experience I count it as the high-light of my life - *however I'm looking for no return trips!* I was simply able to have time to get to know the person I truly am and what I found continues to encourage me. I had time to think about what I think about! It's so profound I repeat it. I had time to think about what I think about!

My failures are my credentials because they are the foundation of attitude and thought adjustment that needed to be made. What did happen actually should have happened because two conditions were in place: (1) All the things and events which enabled that thing to happen were in place - the enablers. (2) All of the requisites which could have prevented those things from happening were not even in site - the preventors. As none of the elements which could have prevented my experiences were present, and since all of the things that enabled my seasoning were in place, it therefore happened and *should have happened!* These are my credentials because I found what doesn't work and proved what does! Finding out what you don't know is the most important search in life.

(continued...)

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continues to hold the dogs at bay, but not without a lot of spitting and snarling.

3.27 While the champions or promoters of a better way have suffered, there is no reason to think a user of a properly executed and maintained trust or Colato would fall into any bad light or within reach of any civil or criminal liability. Indeed, none of those cases concerned the legality or tax validity of either the trust or Colato. Such questions themselves are settled law. (To keep the reporting nature of this section I shall refer to myself in the third person.)

3.28 As Mr. Dacey's book may have tread upon the toes of those lawyers specializing in estate and probate practices and/or bank trust companies, Messrs. Dahlstrom and Turner went much further than mere probate. The government fearing widespread tax avoidance may well have dreaded the exposure of the Super Rich techniques they espouse, and may have felt duty bound to bring discredit to their messages. If such is the case, there is ample pattern for it.

3.29 In fact, in the above mentioned article "The Revocable Trust as a Will Substitute-A Coming of Age"¹²⁸ by Milton E. Meyer, Jr., Esquire, chronicles how his law partner, Hayes R. Hindry, after approximately ten years of revocable trust practice had finally risen above his opposition. Many *lawyers* spoke openly about his "*quackery*" and legal "*black magic*" concerning the use of a trust as a will substitute. (Not surprisingly we will find exactly the same atmosphere when we get into Chapter Five in our examination of Colatos)."

3.30 Meyer contended that:

"A breath of fresh air now surrounds the whole subject [of trusts as will substitutes] and one can speak approvingly of the revocable trust without obvious fear of being regarded as a crack-pot or as a traitor to the cause. As a result, a number of fairly strong statements made by this author in his 1960 article would not be appropriate if made today." [His footnote continues]: These are among the statements enthusiastically quoted by Mr. Dacey in his *How to Avoid Probate!*

Irrespective of whether the revocable trust was independently ready for maturity, it has been rudely shoved into adulthood by Mr. Dacey. The measure of its success as an adult will depend substantially on whether or

¹²⁷(...continued)

My baptism of fire underscores what I have been told by I.R.S. Special Agents (the kind who carry guns and have arrest powers) that the technique I use and am describing in this book "can't be found *by* the I.R.S., and even if it could be found there would be nothing they could do about it." Certainly if there had been something illegal about what I was doing with Colatos they would have prosecuted me on those grounds instead of for the obscure law I broke and for the politically influenced reasons they ultimately chose.

¹²⁸ See §3.18 and the accompanying note.

¹²⁹ See §5.28.

¹³⁰ *Non-tax Advantages of the Revocable Trust*, (with emphasis on use as a will substitute), 37 Dicta 333 (1960). This was the article Dacey "so enthusiastically" quoted from in his book. *How to Avoid Probate!* and which angered Mr. Meyer.

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not the lawyers of this country are now ready and willing to advocate the proper use of the revocable trust to avoid probate (in contra-distinction to Mr. Dacey's ill-advised offering of one-page tear-out forms to get the job done!)

After a number of critical comments about Dacey's book, *Trusts and Estates Magazine* [January 1966, Vol. 105, No. 1, p. 74] has this to say: But all this aside, we have to give Mr. Dacey credit for publicizing the advantages to be had by getting as much otherwise probatable property as possible into a living trust. The bar and the trust industry would do well to steal a page from Mr. Dacey - and do a much more aggressive job of informing the public of the many advantages of revocable trusts. -

If lawyers do not follow this course, then, in the judgment of this author, they will have to initiate steps in their respective jurisdictions to streamline and simplify the probate processes. Rightly or wrongly, crudely or skillfully, Dacey has touched a sensitive nerve on the part of the public. The public, having been offered the "legal wonder drug" of the revocable trust as a cure-all of the "probate racket," [was Dacey's quotation] will not now stand for a pooh-poohing of the revocable trust by lawyers and a preservation of the probate procedures as they now exist in any states. The world of estate disposition will never be quite the same again! Unquestionably, the revocable living trust is now a well established part of this world."

3.31 The reader is best able to decide this issue from his or her own personal experiences or perspective whether the state of things is very much better today than twenty plus years ago when Mr. Meyer wrote the article above, and from which we have just quoted. For example, if you were to go to a lawyer right now and suggest a need to pass your estate to your heirs with the least trouble and expense would your lawyer recommend a will or a trust? Regardless, the author hopes true recognition of the problem and the alternatives will produce a personal solution to permanently solve the reader's estate and tax dilemmas.

3.32 Finally, I feel a bit tongue-tied to know what to call the Super Rich techniques if indeed the ordinary trust is the "*legal wonder drug*" and "*cure-all of the 'probate racket.'*" - So far advanced are the legal principles we are carefully putting down a tier at a time."

Wills are a Bequest to Your Lawyer!

3.33 As we studied in Chapter Two, trusts are a development of equity. Wills are

¹³¹ See §3.18 and the accompanying note. *Ibid*, page 190 - 91.

¹³² See especially Chapters Four and Five.

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therefore creatures of equity.¹³³ Perhaps the greatest misconception about wills is that they do not avoid probate-or any of the other problems this hook offers solutions for. Trusts on the other hand will avoid probate. Of course this is a considerable saving when one understands probate may cost anywhere from 6% to 30%¹³⁴ of a gross estate.

3.34 Probate, like federal gift and estate taxation, are cash demands on an estate. No one in the probate practice, like the federal government, is interested in mortar and stone, sticks of furniture, or parcels of ground. The charge is for cash dollars alone."

3.35 If the greatest misconception believed about wills is that they don't avoid probate, possibly the most disparaging statement made is that many lawyers agree there is no will written which cannot be broken. In fact many valid wills are broken every year. Though the law of wills differs from state to state, an examination of the following definition should throw considerable light on the present discussion.

"The Law of Wills. The legal expression or declaration of a person's mind or *wishes* as to the disposition of his property to be performed or take effect *after his death*."¹³⁶

3.36 Even as the definition forecasts, by the word "wishes", a dead person's mind or wishes are always in danger of not being followed exactly. A will is a statement of "wish". A trust on the other hand, makes legal transfer of property *before death!* Though a trust is not a contract, because a transfer of ownership has actually or legally occurred it falls more heavily in line with contractual obligations.¹³⁷ Therefore trusts, though inferior to the many greater advantages of Colatos, are far preferable to a will which involves the anachronistic judicial machinery of probate.

3.37 Probate, or the Surrogate Judge, like the will and trust, had its origin in the English ecclesiastical courts.¹³⁸ It is a legal procedure through the courts which continues to possess characteristics of the dark ages from which it sprang, and though it originally served to protect the decedent's property for his heirs and creditors against predatory opportunists and faithless debtors, economic and social demands have grown exceedingly tired and frustrated with it. It is extremely time consuming, costly, and not infrequently the occasion for litigation.¹³⁹ Accordingly, in the most general and simple language, probate is the judicial determination of who shall receive what property of the deceased, and now much of it - after costs of course!

¹³³ See §2.29, *et seq.*

¹³⁴ New York Life Insurance Company.

¹³⁵ Internal Revenue Code §2042.

¹³⁶ *Swinburne on Wills*, §2, Black's Law Dictionary, Emphasis supplied.

¹³⁷ See §4.66, *et seq.*

¹³⁸ See §2.29, *et seq.*

¹³⁹ *Meyer, The Revocable Trust As a Will Substitute, supra, Ibid.*

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Wills May Turn Your Heirs Grey!

3.38 Suppose you're retired. You have a little property and desire to bequeath it quietly to your heirs. You might prepare yourself for some anxious activity in your grave.¹⁴⁰ Most of us know it's a complicated matter to die while owning property. We can't take it with us. Few of us however, have sat in on the reading of a will. Ask someone who has. It's not complicated, it's outrageous! In essence the heirs are told to fold up their wills and come back in a couple of years. The lawyer will try to have some money by that time.

3.39 Sometime after Mom or Dad's grave has sunk in and is sprouting crab grass the lawyer will call you back to his office. The money? It will not be coming from dear old Mom or Dad, but from a network of accountants, lawyers, appraisers, administrators, trustees, executors, and the courts. What is left will finally be received. While the best advice short of no planning at all is to at least have a will, there are far too many cases of record where the heirs have gone literally gray while waiting to come into their inheritance.

3.40 The impatient heir attempting to hasten things along by pressuring one or another of the members of the estate settlers will only succeed in obtaining further delays. No matter how thoroughly the assets of estate may have been assembled, wills require the paying of debts, taxes, and other disbursements which is simply time consuming. In far too many cases, these ordinary delays are invitations to rob the estate. Stealing from the dead is a far easier task than picking the pockets of the alive and kicking. Again, regardless of how well organized the testate estate may be, dozens of claimants will be heard before the family collects ten cents.

3.41 Depending on state law, creditors have from four months to a year to make their claims. The federal government, however, may take longer. Within nine months of the testator's death, the federal estate tax forms, together with cash payment, must be filed. Then the Internal Revenue Service may take another year or more to audit the estate tax return. The high cost of dying is not the funeral. It's getting the estate-one's lifetime accumulation-through the knot hole of the probate or surrogate courts. Though the court initially intended to help the average family, it has become a burdensome institution by which ransoms are exacted from the dead and bereaved.

3.42 No matter how amicable the atmosphere may seem to be among the heirs at the reading of a will, many are later shocked when the will is contested. The challenge need not be so sinister as suggesting the deceased was unduly influenced. It may be as simple as erasure marks of pencil notations, or indeed pencil notations themselves. Unsigned amendments, unwitnessed codicils, or other things may make the will completely invalid. One estate expert alleged that 35% of all wills is broken every year." Many lawyers believe no will is immune.

3.43 Compare the situation from a generation ago with that of today's: Dying without a will can lose a widow one half of her husband's estate to

¹⁴⁰ Dacey, *How to Avoid Probate*, *supra*, *Ibid*.

¹⁴¹ *Business Week*, June 3, 1972.

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his relatives in some states. Newly affluent Americans are also finding out the high cost of dying with a will. Archaic court methods can tie up an estate for years, devour 20 percent or more of its value in legal fees-and forces the dead to subsidize politicians in one of the United States laws' darkest scandals. In many states probate judges appoint favored lawyers to help executors appraise estates for taxes. Appraiser's fees come out of the estate. How do appraisers get their jobs? Detroit Probate Judge Earnest C. Boehm could hardly be more frank: "Naturally I select men who have helped me on my campaign." In New York, "special guardians" are often named to protect the interests of "infants," meaning heirs under 21. The state's surrogate judges appoint guardians without public notice of their names or fees. One guardian recently got \$15,000 for ten hours work on a \$700,000 estate. Rumor has it that New York's guardians may return 30% of their fees to party coffers, which suggests the political leverage of Manhattan's two surrogates (annual salaries: \$37,000), whom last year appointed 428 guardians while handling estates with a gross value of \$941 million. Not surprisingly, the bit prize in Manhattan's primary last week was a 14 year term on the surrogate [probate] bench which Fiorello La Guardia once called "the most expensive undertaking establishment in the world."¹⁴²

Brent And Kelli Ashpole

3.44 Brent and Kelli Ashpole, aged 31 and 27, became the victims of a Minnesota Memorial Day highway accident. They were killed instantly. Brent was a partner in a lucrative motor rewinding company which left his children far from destitute. A year after enduring the loss of their parents, the children suffered additional economic, educational, and social losses. Both Mr. and Mrs. Ashpole had made wills assuming that the other would survive. Consequently the children became wards of the court.

3.45 The court awarded Mr. Ashpole's brother guardianship of the children, (their favorite uncle). However a year following the funeral the aunt and uncle found themselves financially unable to continue giving the children what they needed. The small amount of cash realized from disposal of some assets could only be invested in a list of conservative securities, or placed in a bank, which was court approved. And though the guardians were permitted to use the income from the estate for the children's care, it was not sufficient to continue a special education program which had been arranged by the parents for their oldest child who had a reading disorder. The state thus deprived the children of the well-known wishes of the deceased parents.

¹⁴² *Time*, July 8, 1966. p. 65. You can figure out whether things are any different today!

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Billie Goff

3.46 Miss. Billie Goff of Stevens Park, Texas was adopted at age 3. As a young adult she became stricken by a paralysis affecting even her speech. She was so helpless her step father hired a full-time nurse to exercise her, prepare the meals, and clean. Several months before he died the father explained to Billie that his will would leave his financial house in order. Six months after he died the nurse left for ever because there was no money for her salary. Billie was reduced to only 35 cents and tears. She was forced to apply for welfare.

3.47 How could an estate worth \$428,609, according to court records, not even continue her care? All parties agreed Texas law simply did not provide for adopted heirs the same as natural children. Therefore, the court ignored her application for a living allowance because there was no statutory provision for it, despite the inhumane facts. Local newspapers describing her plight, stated that the court believed the estate didn't even amount to that much when so-called contingent liabilities were considered.

Helen Woods

3.48 Helen Woods, heir apparent of the Woodmar Realty fortune of Hammond, Indiana, gained national attention at age 80. Twenty-nine years earlier she was widowed. The assets of the estate included nearly a square mile of business and residential property of Hammond. The value of the property exceeded \$25 million, since her husband's death, yet Helen had never received even a penny of the multi million dollar estate. Finally the Mayor of Hammond, Delaware Senator John Williams, Iowa Representative Gross, and Woodmar's stockholders petitioned the Attorney General of the United States to investigate the unbelievable story.

3.49 The scandal revealed nearly a hundred specific acts of judicial fraud, forgery, and perjury. Each of the losses to the estate was counted in the hundreds of thousands of dollars. The court's handling of this case is such a dreadful account of judicial dereliction it's impossible to imagine a sequel. Nevertheless, the series continues to play all across America-certainly on not quite so grand a scale, but to people who can even less afford the price of admission.

Jim Mather

3.50 Not long ago the founder and then chairman of the board of the multinational Mr. Steak restaurant franchise, Jim Mather, was surprised to learn the meaning behind a lawyer's excuse for his tardiness to a meeting. "I'm sorry to be late", he explained, "I was hammering a nail in my retirement program." The other lawyers offered their indulgences with a round of chuckles. The founder learned after the meeting the meaning of the obviously inside joke. The attorney had been detained by a client whose will he was preparing.

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Leo Kornfeld

3.51 Attorney Leo Kornfeld has not endeared himself to, his brother attorney's by admitting that lawyers make money by handling estates rather than by planning them. He was quoted saying fees for handling these estates often bear no relationship to the amount of time spent by the lawyer on behalf of the estate. Legal fees average out to over \$1,000 per hour in some instances as the attorney seldom spends more than 15 – 20 hours of his own time handling moderate estates. He also conceded lawyers find it a lot easier to exact an enormous fee from a dead man's estate than from a living client. In the main, the handling of moderate estates is a cut and dried affair with much of the work done by the secretary.¹⁴³

3.52 Will reform ever come? Washington based H.A.L.T. † has organized to try to "serve notice on the legal profession ... to bring the legal system closer to the people." They noted that:

It takes 17 times as long to process an inheritance in the U.S. as it does in Great Britain - and costs 100 times as much.

We Americans *spent \$30 billion* on damage lawsuits in 1986-and collect *less than half* that amount. (Lawyers and court costs took the rest.)

Lawyers collect as much as *\$10,000 an hour* -the actual fee a lawyer received in a case resulting from the DC10 crash at Chicago's O'Hare airport. (His actual expenses for 35 hours' work? \$244!)t

When one considers that many legislators in our state capitols are attorneys, the irony of the situation is appreciated. Undue interest in dead men's estates, and "ambulance chasing" can only be thwarted by the living who become concerned enough to educate themselves sufficiently to apply the cures the Super Rich have been using so long.

3.53 Consider carefully the following estates of several prominent individuals. Note the attorney and the CPA who even died intestate-without wills! Compare your own situation with the following small, medium, and large estates *which* have been arranged in ascending order. Be sure to include your life insurance when computing your own gross worth estimate. Then contrast each of the estates shown against the Super Rich effect given at the end. Subtract the total expenses and taxes from the net estate to learn what percentage of the estate was lost.

¹⁴³ *Money*, January, 1973.

† H.A.L.T. "Help Abolish Legal Tyranny" is a nonprofit, non-partisan organization with over 160,000 members who are interested in abolishing the self-serving, lawyer controlled legal system which self polices its own. For just a \$15 (or more) gift they will send you a booklet entitled *Using a Lawyer*. Contact them at: HALT, PO Box 96691, Washington, D.C. 20077-7303.

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Examples Of Ordinary Estates

3.54

Sonny Tufts

Santa Monica, California

Actor

Gross Estate	7.510
Premature Debt Payments	<u>-2.810</u>
Net Estate	54.700
Probate Expenses	2.350
Taxes	<u>20</u>
Total Expenses & Taxes	<u>2.370</u>
Survivor's Net Share	2.330
Percent of Estate Lost	50%

3.55

William C. Coleman

Wichita, Kansas

Chairman, Coleman Co.

Gross Estate	529,390
Premature Debt Payments	<u>-10.900</u>
Net Estate	\$18,490
Probate Expenses	15.000
Taxes	<u>0</u>
Total Expenses & Taxes	<u>15,000</u>
Survivor's Net Share	3.490
Percent of Estate Lost	81%

3.56

Frank Silvera

Pasadena, California

TV and Film Star

Gross Estate	\$52,370
Premature Debt Payments	<u>1,980</u>
Net Estate	\$50,390
Probate Expenses	21.210
Taxes	<u>1,350</u>
Total Expenses & Taxes	<u>22,560</u>
Survivor's Net Share	27,830
Percent of Estate Lost	44%

3.57

Winifred Hilderbrandt

Oklahoma City, Oklahoma

Widow of Oil Man

Gross Estate	299.000
Premature Debt Payments	<u>56.170</u>
Net Estate	242,830
Probate Expenses	21.840
Taxes	<u>67.260</u>
Total Expenses & Taxes	<u>-89.100</u>
Survivor's Net Share	153,730
Percent of Estate Lost	36%

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3.58

Hedda Hopper

Hollywood, California

Newspaper Columnist

Gross Estate	427,660
Premature Debt Payments	<u>-11,670</u>
Net Estate	415,990
Probate Expenses	25,000
Taxes	<u>129,300</u>
Total Expense & Taxes	<u>154,300</u>
Survivor's Net Share	261,690
Percent of Estate Lost	37%

3.59

Omaha Farmer

Omaha, Nebraska

Farmer

Gross Estate	665,000
Premature Debt Payments	<u>0</u>
Net Estate	665,000
Probate Expenses	44,835
Taxes	<u>126,754</u>
Total Expenses & Taxes	<u>171,589</u>
Survivor's Net Share	493,411
Percent of Estate Lost	26%

3.60

Ludwig Mies Van der Rohe

Chicago, Illinois

Architect

Gross Estate	793,040
Premature Debt Payments	<u>24,250</u>
Net Estate	768,790
Probate Expenses	10,670
Taxes	<u>210,790</u>
Total Expenses & Taxes	<u>3318,460</u>
Survivor's Net Share	450,330
Percent of Estate Lost	41%

3.61

Albert Picard (Died Intestate)

San Francisco, California

Attorney

Gross Estate	1,003,599
Premature Debt Payments	<u>159,301</u>
Net Estate	844,298
Probate Expenses	53,195
Taxes	<u>274,241</u>
Total Expenses & Taxes	<u>3 27,436</u>
Survivor's Net Share	516,862
Percent of Estate Lost	48%

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3.62

Franklin Delano Roosevelt

Hyde Park, New York

President of the United States

Gross Estate	1,940,999
Premature Debt Payments	<u>19,221</u>
Net Estate	1,921,778
Probate Expenses	209,516
Taxes	<u>346,130</u>
Total Expenses & Taxes	<u>555,646</u>
Survivor's Net Share	1,366,132
Percent of Estate Lost	29%

3.63

P. G. Lake

Tyler, Texas

Oil Man

Gross Estate	3,531,940
Premature Debt Payments	<u>35,610</u>
Net Estate	3,495,900
Probate Expenses	61,600
Taxes	<u>1,374,300</u>
Total Expenses & Taxes	<u>1,435,900</u>
Survivor's Net Share	2,060,430
Percent of Estate Lost	41%

3.64

Charles Templeton Crocker

San Francisco, California

Crocker National Bank

Gross estate	4,995,976
Premature Debt Payments	<u>48,680</u>
Net Estate	4,947,296
Probate Expenses	136,037
Taxes	<u>2,236,457</u>
Total Expenses & Taxes	<u>2,372,494</u>
Survivor's Net Share	2,574,802
Percent of Estate Lost	48%

3.65

Guy A. Wainwright

Indianapolis, Indiana

President, Diamond Chair Co.

Gross Estate	5,424,750
Premature Debt Payments	<u>25,020</u>
Net Estate	5,399,730
Probate Expenses	89,520
Taxes	<u>3,174,170</u>
Total Expenses & Taxes	<u>3,263,690</u>
Survivor's Net Share	2,136,040
Percent of Estate Lost	60%

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3.66

Alwin Charles Ernst (Died Intestate)

Cleveland, Ohio

Snr. Partner Ernst & Ernst, CPA's

Gross Estate	12,642,431
Premature Debt Payments	<u>-6,232</u>
Net Estate	12,636,199
Probate Expenses	78,862
Taxes	<u>7,039,018</u>
Total Expenses & Taxes	<u>7,117,880</u>
Survivor's Net Share	5,518,319
Percent of Estate Lost	56%

3.67

Albert H. Wiggin

New York, New York

Banker, Retired Chairman Chase National Bank

Gross Estate	20,493,990
Premature Debt Payments	<u>243,250</u>
Net Estate	20,250,740
Probate Expenses	1,257,530
Taxes	<u>13,364,530</u>
Total Expenses & Taxes	<u>14,622,060</u>
Survivor's Net Share	5,628,680
Percent of Estate Lost	72%

3.68 The average loss of the above fourteen non Super Rich estates was more than 48%. To find an estimate of your own survivor's net share, subtract any of the percentages shown, or subtract the 48%. The most important point is, whatever figure you feel is believable, that may be the sum your estate must come with, in *cash*, plus the amount for premature debt payments!

3.69 As you will plainly recognize, no one has those dollars setting liquid, unless he buys an awful lot of life insurance. First of all, very few could afford the premiums such insurance coverage would cost. Second, with a Colato, it's an unnecessary expense. One only needs an amount of life insurance which would meet the last expenses of hospital and burial.¹⁴⁴

Examples Of Super Rich Estates

3.70 Now let's see how the Super Rich do it-how well they have managed to disinherit all the mortality merchants:

¹⁴⁴ See §7.46 "How Colatos Slash Life Insurance Costs!"

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3.71

Hassie L. Hunt

Dallas, Texas

Oil Man. Super Rich

Gross Estate	5,000,000,000
Premature Debt Payments	<u>0</u>
Net Estate	5,000,000,000
Probate Expenses	3,410,000
Taxes	<u>4,235,000</u>
Total Expenses & Taxes	<u>7,645,000</u>
Survivor's Net Share	4,992,355,000

Percent of Estate Lost **Less than two tenths of 1%**

*Guesstimate. Another authority guesstimated \$6,000,000,000!

3.72 Here is the moderate estate of our Massachusetts politician. While far from Super Rich himself, the net effect is the same. Perhaps he was a Super Rich! Compare and contrast with all the other above cases:

3.73

Massachusetts Politician

Cambridge, Massachusetts

Mayor, did it like the Super Rich

Gross Estate	665,000
Premature Debt Payments	<u>0</u>
Net Estate	665,000
Probate Expenses	376
Taxes	0 ¹⁴⁵
Total Expenses & Taxes	<u>376</u>
Survivor's Net Share	664,624

Percent of Estate Lost **Less than one tenth of 1%**

3.74 Each of our two examples was less than *a half of one percent!* Notice how the technique worked as well for the non Super Rich Massachusetts politician as it did for H. L. Hunt. Now make it work for yourself!

The Ordinary Law

3.75 Trust law varies from state to state. Prior to 1959 the state laws concerning trusts were so different from one state to another that the American- Law Institute of Washington, D. C. promulgated a work entitled, *Restatement of rare Law of Trusts, 2d* and adopted it themselves in 1957. By 1959 all of the states had legislated the Restatement as their own law, making much more uniform the law of trusts from state to state. Of course each state from time to time amends the law, so it is necessary for one to check the state's statutes to be in conformity thereto.

¹⁴⁴ Unlike H.L. Hunt, the Mayor owned NO property in his own name, therefore there was no probate, gift, inheritance, or estate taxes whatsoever! He died a "Pauper", but with the family's blessing!

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3.76 I shall offer three definitions of the "trust" below, the last one being more definitive for our later attention in analyzing, comparing, and contrasting the trust with the Colato.

A trust is one of the several juridical devices whereby one person is enabled to deal with property for the benefit of another person.¹⁴⁶

A "Living Trust Agreement" is not-an organization. It is, in fact, an agency where the owner of things of value delivers them to the agent for the purpose of complying with the agreement. Possession changes hands, ownership does not. Where the owner of things of value delivers them to an agent, the agent becomes a bailee to carry out the terms of the agreement.¹⁴⁷

3.77 First America Research calls the "trust" a "statutory agreement of trust:"

"A unilateral agreement of trust, between grantors as opposed to a contract of trust, which is established in accordance with various state statutes, and is therefore subject to subsequent legislation."¹⁴⁸

3.78 As regards a "juridical device" which is "established in accordance with ... state statutes," (*Cf* §§3.76 and 3.77) we recognize very clearly that a trust fits neatly into the dominion of the state just like the corporation, at least in this respect: Since it is created in accordance to statutes, indeed it may not exist apart from the statutes, as also is the corporation, they are both subject to the vagaries of state legislatures. It is, therefore, as a creature of the state, a privilege arising out of equity¹⁴⁹ rather than a right, (as contract is a right¹⁵⁰) and invites governmental intrusion, imposition, and possible control through the courts. In spite of these facts, we shall explore how a trust can be useful in planning an estate in Chapter Seven.

3.79 One of the most amazing aspects of Anglo-American law is the trust. It has historically been used with a minimum of formality and has thus been used for many purposes. Indeed, it may continue to be used for any purpose that does not contravene

¹⁴⁶ *Restatement of the Law of Trusts, 2d* Introductory Note, page 1.

¹⁴⁷ *The Key to Family Security*, Harry Morgan Phipps, page 35. American Law Association, 1974.

¹⁴⁸ First America Research, *Member Syllabus*, 1936, page 33.

¹⁴⁹ See §§2.2. *et seq.*, and 2.29, *et seq.*

¹⁵⁰ See §4.66, *et seq.* Remember, at §2.14. *et seq.*, the difference between a common law right versus a statutory privilege is that in the former one is free to do anything except that which is prohibited or prevented; in the latter case one must look carefully to the statute to see what is expected. The statute for our purposes is more like a mirror of civil law system. For example, one is completely free to make a contract in a common law system, except with a minor, and an incompetent. The courts will also not uphold the terms of a contract which was entered for the purpose of immoral or illegal conduct.

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the statutes, or which are not against public policy.¹⁵¹

3.80 One legal writer has aptly stated that one attempting to capture the precise nature of the trust relationship may confront the same frustrating experience as the young prince in pursuit of a fairy; and who just at the point of capturing her, finds she has taken another form, and ceases to be a beautiful lady, but has become a white bird, or an old witch.¹⁵²

3.81 If it seems First America Research has developed yet another definition for the trust, (see §3.77) the reader shouldn't reprove. As we have learned the trust can be adapted to fit so many different institutions there is certainly room for a more descriptive definition which will make the Super Rich Colatos stand out. Further, there have been more definitions of a trust than perhaps of any other legal institution.¹⁵³

3.82 Professor Maitland in respect to defining trusts said:

"Where judges and tax writers fear to tread, professors of law have to rush in".¹⁵⁴

3.83 This writer to the contrary of leaving the questions to others, has carefully and exactly laid such a foundation as to make the definitions clear, therefore I shall refuse to offer the traditional tongue in cheek caveats as to what a trust is or is not, or what it may accomplish or not accomplish. Most of the legal encyclopedias in one place or another, and the cases which bear on the matter, but especially the *Restatement of the Law of Trusts, 2d155* all agree that there are two great distinguishing factors of a device that can legally stand as a trust, and one which cannot.

The Dividing Line

3.84 The first of these discernible characteristics adds up to "splitting title," and the second, to the law of contract. We shall examine them in order: however, even more concerning the law of contract will be discussed in Chapter Four.

3.85 A trust *MUST* split title of property into their separate legal and equitable parts. Actually, "splitting title" is a simple concept. Though the following illustration is not entirely accurate, the idea of "splitting title" to the very same property will clearly emerge. Suppose you bought a new car. Suppose also you have half the money in cash and desire to finance the balance at your bank. You get the car, but the bank has the title. You have possession and control of the car just as a trustee has possession and control of the trust res (property) but the bank is the owner, so while you are "trusted" with the car (asset); it belongs to the bank.

¹⁵¹ 13 Am Jur 2d. *Business Trusts*, §1.

¹⁵² Lepaulle, *An Outsider's View Point of the nature of Trusts*, 14 Cornell LO 52.

¹⁵³ Long, *The Definition of a Trust*, 8 Virginia Law Review 426.

¹⁵⁴ Maitland, *Equity*, 44.

¹⁵⁵ See §3.75, *Mid*.

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3.86 It's elementary. In legal effect, the title is split. You have the car, but the bank has the title. This "splitting of title" has been recognized as perhaps the most appropriate or accurate of the several uses of the term "trust".¹⁵⁶ In Chapter Four we shall briefly re-examine how the splitting of title is absent in a Colato. However splitting title is certainly the most clearly identifiable characteristic of the -crust and it's impossible to have a trust without this splitting of legal and equitable title.¹⁵⁷

3.87 Possession and control of property constitute "legal title." No doubt you've heard the oft quoted 'legal' phrase "possession is nine tenths of the law?" However, in legal contemplation, this isn't so. As a practical matter it may be true, because the one in possession and control has tangibly more than the one who may actually be the owner. This illustration also helps us understand "equitable title." Just because one has possession of property does not necessarily entitle that one to be the owner. An owner enjoys "equitable title" even though he or she may not have possession and control.

3.88 Let me explain: The last time you borrowed someone's car. a lawn mower. a ladder, etc., you had possession and control of the item, but you knew you weren't the owner. In like manner you were the trustee and the owner was the beneficiary. You had legal title of the property, but the owner had equitable title, and you had to return the item to the owner.

3.89 Take it just a step further; when one person is holding (legal title-possession and control) property for the benefit of another (beneficiaries-equitable title, the owner(s)) we clearly understand the title of the same property involved has been split between the parties.

3.90 Note carefully the following quoted for language indicating one person is holding property for someone else, which indicates "splitting title:"

"A trust is one of several juridical devices whereby *one person* is enabled to deal with property for the benefit of *another person*."¹⁵⁸

"Trust. A right of property, real or personal, held *by one parry* for the benefit of *another*."¹⁵⁹

"The legal relationship between one person having an equitable ownership in property and another person owning the legal title to such property, the equitable ownership of the former entitling him to the performance of certain duties and the exercise of certain powers by the latter, which performance can be compelled in a court of equity, or a court which follows equitable principles.

¹⁵⁶ *Hayden Plan Co. v. Wood*, 275 P 243; *Raffo v. Foltz*, 288 P 884; *Eggert v. Pacific States Savings and Loan Co*, 136 P 2d 822; also see *Seymour v. Freer*, 75 US 202; *Henderson v. Griffen*, 30 US 151; 8 L Ed 79. See especially *Schumann-Heink v. Folsom*, 53 ALR 485.

¹⁵⁷ *McCamey v. Hollister Oil Co.*, (CA) 241 SW 689; *Knight v. Tannehill Bros.*, (CA) 140 SW 2d 552.

¹⁵⁸ *Restatement of the Law of Trusts 2d. Ibid*, emphasis supplied, see §3.75.

¹⁵⁹ *Black's Law Dictionary*. Emphasis supplied.

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3.91 The proposition is absolutely clear. It is imperative that a trust split legal and equitable titles. However as we stated in Chapter Two Webster's definition of a word is not necessarily the legal definition. So also, the legal definition of a word may not be the tax definition. That's right! The Internal Revenue Service has its own dictionary. (Not really a dictionary, but very definitely its own definition of terms).

3.92 Since we will be showing how Colatos may be employed to eliminate taxes of most kinds, and since one of our objectives *will* be to show how to employ the Colato to accomplish our ends, it is not too early to take a look at the tax definition of the term "trust." As you read this definition, answer this question for yourself: Does a trust by tax definition, split or not split legal and equitable title?

3.93

Ordinary trusts--In general, the term "Trust" as used in the Internal Revenue Code refers to an arrangement created by a will or by an inter vivos declaration whereby trustees take title to property for the purpose of protecting or conserving it for the beneficiaries under the ordinary rules applied in chancery or probate courts. Usually the beneficiaries of such a trust do no more than accept the benefits thereof and are not the voluntary planners or creators of the trust arrangement. However, the beneficiaries of such a trust may be the persons who create it and it *will* be recognized as a trust under the Internal Revenue Code if it was created for the purpose of protecting or conserving the trust property for beneficiaries who stand in the same relation to the trust as they would if the trust had been created by others for them. Generally speaking, an arrangement will be treated as a trust under the Internal Revenue Code if it can be shown that the purpose of the arrangement is to vest in trustees responsibility for the protection and conservation of property for the beneficiaries who cannot share in the discharge of this responsibility and, therefore, are not associates in a joint enterprise for the conduct of business for profit.¹⁶⁰

3.94 If you guess that the title is split in a tax definition because "trustees take title... for the benefit of beneficiaries" (first sentence of quotation) you are correct. Congratulations! How convenient this tax definition shall become in Chapter Four! It is unequivocal that a legal or "tax-wise" trust *MUST* split legal and equitable title. When both of these titles unite in the same person, the trust terminates.¹⁶¹

3.95 The second point we promised to examine concerning the definition of a trust concerns the law of contract. As stated, we will study this more fully in Chapter Four. However for simplicity's sake, the law of contract requires two or more parties; an offer by one of the parties and an acceptance by the other; consideration in the form of

¹⁶⁰ IRR §301.7701-4(a).

¹⁶¹ *McCamey v. Hollister Oil Co.* (CA) 241 SW 689; *Knight v. Tannehill Bros.* (CA) 140 SW 2d 552; *Long v Long* (CA) 252 SW 2d 235; *Fisher v. Southland Royalty Co.* (CA) 270 SW 2d 679.

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money or money's worth; and it must all be "**tied together**" with the meeting of the minds, or the understanding of the parties:

Contract

Meeting of the Minds

2 or More Parties Offer/Acceptance Consideration
--

3.96 All three of these parts must be met in a contract. At this juncture it must be understood at the very least that consideration, the element which constitutes the giving of money or money's worth in exchange for property is missing in a trust. Therefore, a trust relationship may easily be distinguished from a contractual one. In other words, a trust is a gift.

3.97 There are basically only three ways to transfer our ownership in property, by gift, sale, or exchange.¹⁶² The difference between a gift and a voluntary trust is that in the case of an ordinary gift, the thing (gift) itself passes to the donee, while in a trust only the equitable title of the gift passes to the beneficiary.

3.98 It is clear to see the only technique of transferring property that fits one of the three molds in a trust is the gifting method. This is precisely why, in the case of a trust, a gift tax is assessed. And the splitting of legal and equitable ownership in a trust is one of the major factors distinguishing the trust from an ordinary contract.¹⁶³

3.99 We may now begin to get a clearer idea as to First America's definition of a trust.¹⁶⁴ When they say "unilateral agreement" it stands apart from the sense of parties negotiating in an offer and acceptance. They mean the agreement is "unilateral"

¹⁶² Property may also be transferred by operation of law and by death, the former we shall not discuss and the latter having been discussed as Probate, see §4.119.

¹⁶³ *Gonsalves v. Hodgsen*, 237 P 2d 656: *Crawford's Appeal*, 61 Pa 52.

¹⁶⁴ See §3.77 and the quote.

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3.104 between the grantors only. A trust is usually¹⁶⁵ created where the beneficiaries have no part in planning its creation, and they usually do no more than accept the benefits thereof.

Creating The Ordinary Trust

3.100 You can easily create your own trust and avoid the nightmares of probate. You have been creating trusts all your life whether you have realized it or not. Every time, for example, you asked someone to hold something for you while you did something else; loaned out or borrowed property from another; asked someone to deliver property for someone else, etc.; a certain trust relationship was created.

3.101 bet's take a closer look from an example we could all relate to: In legal terminology, you, as *GRANTOR*, transferred possession and control of, lets say, \$1,000 cash money to be delivered to your son or daughter away in a distant state at college. You trusted that person, as *TRUSTEE*, for the safe keeping of the money, and to deliver the cash to your son or daughter, as *BENEFICIARY*, upon the *TRUSTEE'S* arrival at the university.

3.102 About the only difference out of the ordinary is that trusts should be written, notarized, and their existence placed on record in the county of the state in which it is created. In addition, an express (written)¹⁶⁶ trust should also name a *SUCCESSOR TRUSTEE(S)* in the event your trusted friend doesn't make it to the university for the reasons of either death or incompetency. You could name yourself the *SUCCESSOR TRUSTEE* to take over the job of completing the transfer to your son or daughter. You can name a line of successors for even more safety.

3.103 The four basic elements of a trust are: (1) Grantor, (a) Trustee, (3) Beneficiary, and (4) Successor Trustees. Here's an example: Mom and Dad as grantors, have three children to whom they would like to leave their property. The property is represented by the ball stationed just below Mom and Dad. It's the "whole ball of wax" that they own.¹⁶⁷ The goal is simple; to pass the ball (properties, trust res, all mean the same thing) to the children without rupturing it and the contents escaping.

¹⁶⁵ See quote at §3.93.

¹⁶⁶ While a written or express trust is the norm, what you have created is a parol or verbal trust. A written trust would be easier to prove up, but a parol trust is just as valid as the express trust.

¹⁶⁶ See the various options listed at §3.113

INTER VIVOS (LIVING) TRUST

Mom & Dad's Assets



Owned By The Children

3.105 Usually the first step would involve calling the family lawyer to express the goal. Very likely the attorney would suggest a will. (It seems most of them still do, unfortunately.) However, Mom and Dad are up-to-date and know a trust will avoid the antediluvian, costly, and time consuming ordeal of probate. They press for a trust. Their lawyer narrowing their needs drafts the trust and has them execute it (sign it in front of a notary public). He then files record of the trust with the state. The job was well done and complete.

3.106 Perhaps Mom and Dad are a little more progressive. They have done some reading and are going to draft their own trust. The open circle dividing legal and equitable title represents a trust. See the illustration above. In addition, they know they could trust several of their friends, relatives, or even their local bank and trust company to be the trustee of their newly created trust to deliver their property to their children in the event of their untimely demises or incompetencies, but they can't think of any reason why they shouldn't act as their own trustees.¹⁶⁸ Certainly none are as qualified as they to be the trustees of their property. They also choose to name their children as Successor Trustees, in addition to having already decided they were to be the beneficiaries.¹⁶⁹

¹⁶⁸ The legal title, possession and control of property, may by declaration of trust be passed from the grantor to him or herself as trustee, with the same legal effect as if the trustee receiving the conveyance had been another person. *Becker, Collector of internal Revenue v. St. Louis Union Trust Co.*, 296 US 48. 50, 80 L Ed 35, 56 S Ct 78.

¹⁶⁹ See §3.117 for Interim Successor Trustees.

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3.107 The declaration of trust is fully funded by typing up schedules of the money and other assets to be included in the trust¹⁷⁰ The trust became legal and binding and made fully operational the moment the document written up is signed before a person like a Notary Public, or Clerk of the Court-anyone who is authorized by law to witness signatures. All of this is illustrated by the arrow moving the assets into the trust. The legal title to the property is all that is physically moved. The children only own the equitable title as beneficiaries.

3.108 Upon execution of the trust the property was then and there transferred from Mom and Dad, as grantors, to themselves, as trustees. Remember, the trustee has possession and control while the beneficiaries own the equitable title. How does one transfer property to one's own self? You can understand *how* one person - in law - may be many different persons. Joe Doakes may be (1) individual, (2) president of a corporation, (3) trustee of *his church*, (4) general partner of a limited partnership, etc.¹⁷¹

3.109 When Joe signs his name, he also states the capacity in which he is acting, for example, Joe Doakes, President XYZ Incorporated. When he signs his name as being individually responsible, it's not necessary he should do more than write his name.

3.110 It is the inter vivos transfer or funding by the owners of property which causes property to escape probate, because there is no question of ownership for the courts to address after death. Since the transfer takes place during life (inter vivos) probate is absolutely unnecessary and is completely avoided.

3.111 When creating a trust, all states require the filing of a "Notice of Trust." This is a document which sets forth particular facts: the date, with the identities of the parties, and should be filed with the clerk in the County Recorder's office. It is not necessary that the provisions of the trust be made public. The actual trust instrument and the property affected by the declaration may remain private. Real estate and other property should be titled in the name of the trust: viz. The Joe Doakes Trust.

3.112 Warranty Deeds and bills of sale should all be drafted and executed in the name of the trust at the same time as the trust is signed, sealed, and recorded. Insurance, bank accounts, property tax records, etc., should also be changed to reflect the existence of the new trust. Usually, sales taxes are not charged by states where the transfers are into family trusts, but it may be necessary to argue a bit with the clerk as trusts are still not as common place as they should be. Simply state that the transfer is a gift into a family trust, and that the ownership isn't really changing. That should take care of the matter.

Options

3.113 One question to consider is how long the trust should last. Whether or not a trust states with particularity how long it is to exist, the statutes require that it may not live beyond twenty-one years after the death of either the grantors, or any other named

¹⁷⁰ See sample forms for the trust in Chapter Eight.

¹⁷¹ *Becker. Collector of Internal Revenue v. St. Louis Union Trust Co.*, 296 US 48. 50, 80 L Ed 35. 56 S Ct 78. See note #168, *supra*.

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person, or persons. In England, for example, it has been customary to name the King or Queen. In other words, a trust naming all the crowned heads of Europe would end at least twenty-one years after the death of the last named person.

3.114 One may question this rule against perpetuity when he or she remembers the Colato mentioned in Chapter One,¹⁷² which lasted over one hundred sixty years. Since it is not logical that someone lived one hundred thirty-nine years after he had the sense to create a trust, it is necessary to say that the law against perpetuities for trusts, as legislative creatures, is not applicable to the Colato. One is a trust the other is a contract. More in Chapter Four. There are many options and rules which must be consulted from state to state. However, the options are nearly as broad as the needs which demand a trust.

3.115 Usually these trusts are revocable. This means that the trusts may be altered, amended, or revoked before the death or incompetencies of the grantors, by the grantors themselves. They need no permission from anyone in order to do so. This specific power retained by Mom and Dad is stated in the formal documents they signed.

3.116 If the trust is irrevocable, the gift tax is made due and payable immediately. The Internal Revenue rationale is that a gift held in a revocable trust is an incomplete transfer from donor to donee, but a gift irrevocable is permanent and therefore the transfer is complete.

3.117 Among the numerous options Mom and Dad should consider in the creation of their trust, especially where minor children are involved, is an interim successor trustee. Such person(s) could act in their behalf if they become incapacitated before the children reach a legal age. Certain "Minutes" in a trust could be made to become unalterable after Mom and Dad's incapacity. Good counsel should be able to explore the many options which are available from desire to desire and state to state.

3.118 The "Minutes" of a trust, corporation, club, association, or a Colato are simply written authorization or memorialization of certain acts which are deemed to be within the powers of the trustee(s) as specified, limited, or expanded. They are informal in that they do not need to be witnessed or notarized. However, such powers as transfers of trusteeship, etc., had best be witnessed by recognized state authority. Other than those mentioned such Minutes are generally not recorded but are helpful as a private and privileged trust property.

Miracle Deductions?

3.119 Many financial planners tout Sections 2041 and 2056 of the Internal Revenue Code as among the greatest estate tax saving concepts available today. Under these "miracle deductions," a spouse leaving his or her estate under one of the several accepted methods may pass the estate to the surviving spouse entirely estate tax free. However, it merely delays the inevitable. When the surviving spouse also dies, the estate will no longer pass to the children tax free; therefore, many estate planners advocate the so-called "A-B trust."

¹⁷² See §1.80

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3.120 Essentially the principle is as simple as the illustration above. except that two trusts are used. "Trust A" by-passes the estate tax of the husband¹⁷³ up to the maximum deductible amount granted under the credit exemption of the Economic Recovery Tax Act (ERTA). "Trust B" is the marital trust of assets which are beyond the deductible amount and upon which an estate tax will be assessed when the wife passes away. Of course, the wife's estate may also shelter the same maximum exemption when she dies.

3.121 The advantage of an "A-B Trust" is axiomatic when viewed beside the will or ordinary trust, in that the moderately sized estates would effect a substantial saving-double the amount of what otherwise would be the deductible exemption.

3.122 Without foundation for saying it here, it must nonetheless be asserted that the "A-B Trust" by comparison to the Colato of the Super Rich is found wanting; the surplusage of the larger estates are subject to the tax, whereas size-great or small-is of no consequence with a Colato. Further, inflation has a way of almost undetectably pushing the smaller estates the ERTA intended to benefit within taxable reach. The statutory provisions themselves are subject to legislative revision, alteration, or repeal, because tax deductions are a matter of legislative grace; and finally, continued use of the husband and wife joint tenancy prohibits the operation of an "A-B Trust." Thus one can see what a difficult and complex machination the "A-B Trust" is. It provokes heavy and continuing reliance upon advice of counsel, however it is still much better than the will or single trust.

Death Traps!

3.123 I don't care to say too much about testamentary trusts except to warn the reader about them. As you might guess by the word "testamentary" these trusts come into existence by operation of a will. In other words, they come into being only after death. They most certainly do not avoid probate. The reason to create one of these types of trusts usually has to be pretty severe to even consider.

3.124

A "Testamentary Trust Agreement" is not unlike a "Living Trust Agreement" except that it is signed by the testator of a will and consists of directions which, if *approved by the trustee and the Probate Court*, transfer possession only from the Court's jurisdiction to the Testamentary Trustee, thereby perfecting the agreement.¹⁷⁴ [In other words it's a bequest to your lawyer!]

Since probate is the legal determination as to who shall receive the property of the deceased, a transfer of property made by a competent person during life may utterly escape the plunder of probate. Probate for the most part is quite a useless and unnecessary cost and headache. If one should use probate, he should do so because it is to his advantage rather than disadvantage.

¹⁷³ Estate taxes are bypassed, because the property is actually transferred into trust. Though "husband" and "wife" designations appear here, the reverse would be just as true.

¹⁷⁴ *The key to Family Security*, Harry Morgan Phipps, page 35. American Law Association, 1974.

No Probate!

3.125 No probate! That's the great quest for the ordinarily astute. Many seminars the country over are touting the trust as the way out of probate. Since wills standing alone must go through probate the reader may well question whether there can be any value at all to a will. After all that's been said it seems difficult to find much value in a will. Many of today's top estate planners assign a very low priority to wills, and a high regard to trusts. However, even in these instances most recommend the will to name guardians for minor children. The will may indeed be so valuable. However, because a *letter of instruction* in either a trust and more especially in a Colato¹⁷⁵ concerning minor children would accomplish the same thing it is all the more burdensome to find any benefit in the antiquated will.

3.126 As for another example, almost immediately after the state of Texas adopted the *Restatement of the Law of Trust*¹⁷⁶, a challenge was made against the trust in a case where it was argued a will should have been used instead. The Supreme Court of the State of Texas found the case to be one of first impression."

3.127 State law, (indeed all trust law) is well settled that if an owner of property can find a means of disposing of it inter vivos (during life), which would render a will unnecessary, for the accomplishment of ones own practical purpose he or she has the right to employ it.¹⁷⁸ The court further found that living trusts offered better management, greater protection, more privacy, and considerable economy when compared with wills.

3.128 The law in each of the states is settled and clear. The document which can stand as a trust is not to be rendered invalid because it avoids the need for a will; therefore what value is there in a will? Ask the widow or a widower where the spouse died intestate, without a will or any other planning. Unless the deceased has a plan to be followed, the state will impose its own will, with almost always terrible consequences for the family, so a will is better by far than no planning at all.

3.129 Consider that wills are generally inexpensive. A few phone calls from the yellow pages should turn up an attorney or two who can produce a will for from \$50 to \$100. Of course others may charge \$500 to \$1,000 or more.

3.130 Many explanations or arguments are advanced to answer the disparity in cost for preparing wills. One reason offered is "You get what you pay for." Others argue that a retiring lawyer may sell his will files to another probate practitioner: that those inexpensive fees inducing the family to write a will more often than not result in the family calling the drafting practitioner to settle the estate through probate, sometimes

¹⁷⁵ A letter of instructions in a Colato is far more powerful than in any other system due entirely upon the nature of the law of contract and the extraordinary character of power enjoyed by the fiduciary. Responsibility upon the trustee in a Colato is rigid, and because such a letter draws upon the contractual obligation and has no part in equity it is superior in every way.

¹⁷⁶ See §3.75.

¹⁷⁷ *Westerfeld v. Huckaby*, 474 S W 2d 189.

¹⁷⁸ *Westerfeld. Ibid.*

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as administrator, executor, testamentary trustee, etc. Therefore the small cost is like a "lost leader" item or an investment for future business. Whatever the case, it pays to know your lawyer well.

3.131 In final analysis, a will may be very valuable for the following end, especially in those jurisdictions where trusts have been neglected or attacked by ignorant parties: A "pour-over" will may be used to pick up any stray assets which may have been overlooked, or deliberately omitted from the trust." Use the will in such cases to direct all personal and judicial attention to the trust or Colato. This removes any and all doubts as to the decedent's wishes.

3.132 We wanted to look at any value, if any, in probate. Of all the negative I've said of probate it may now surprise the reader to find some value in it after all. It may serve a great benefit to lodge a will with a probate or surrogate court, because once probate is begun, official notice must be taken by one and all that any claims against the estate must then be made or peace is to forever and henceforth be held.

3.133 Also once probate is started, which should be very much simplified in the case where property has been transferred inter vivos into trust, the clock starts on the statutes of limitations, which, when run down, will eliminate any and all future claims which any persons may inadvertently fail to lodge.

3.134 The author believes the negligible costs of probate where a trust or Colato has been effectively used, may be warranted. In fact, the executor, administrator, etc., could easily be family members or friends.¹⁸⁰ It's usually just a matter of filing the forms which would be greatly simplified, because the deceased would for all intents and purposes have died a "Pauper" - with the family's blessing of course!

3.135 No field in law, tax, or estate planning is more fraught with mystique, myth, and misunderstanding than are trusts. I have heard fears expressed by all classes of people that the setting up of a trust is tantamount to inviting the Internal Revenue Service to audit. Some lawyers have even said that common law trust organizations are illegal.

3.136 During the 1970's certain trust promoters with an organization called "Educational Scientific Publishers" (ESP) gained prominence for their spurious claims. Their "pure" or "family equity" trusts, which was an attempt to cross the trust with a common law trust (CLT), and efforts to assign lifetime services to said "pure family estate trusts," were successfully challenged by the Internal Revenue Service.¹⁸¹ Little wonder that there are so many concerns on the part of the public. Well, there should be.

3.137 This history is no excuse to ignore those secret Colatos whose legitimacy is confirmed by the acid test of truth and time. This book will reveal such a firm infrastructure in the following chapters only stupidity or carelessness could be blamed for any who do not succeed in reaching their goal of financial accretion and estate

¹⁷⁹ Meyer, *The Revocable Trust As a Will Substitute*, *supra*. *Ibid*

¹⁸⁰ See §3.71 and the following two paragraphs for an indication of what a comparatively small amount of money probate involve for the person who has used the device of the Super Rich.

¹⁸¹ Compare Internal Revenue Rulings 75-257, 1975-2CB 251; 75-259, 1975-2CB 361; 75-260 1975 2CB 376; *Horvat v. Commissioner*, 36 TCM 476 (1977); *affd* by 7th Circuit in an unpublished opinion 6-7-78 Cert. denied. US 3.19-79; rehearing denied. US 5-14-79. *Morgan v. Commissioner*, 37 TCM 1661 (1978). *Damm v. Commissioner*, 36 TCM 793 (1977).

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endurance.

3.138 Luring the ESP years a number of people, including myself, were issuing warnings to the public and clients of ESP. Some paid notice and were saved. Others lost substantially. There are those who feel the Internal Revenue was too harsh on the gullible public. Actually the Service was quite charitable for a change. If the I.R.S. had taken the notion and assessed the taxes which should have been paid due to the gift part of the tax law, financial recovery for most of the ESP clients wouldn't even have been possible¹⁸².

3.139 Let's take an inventory: The dominant reason people should consider a living revocable trust instead of a will is to avoid probate. Remember, a trust avoids probate because the property is transferred inter vivos, thus it is protected for the beneficiaries, and probate as well as all of its "fall out" or its by products of expensive and time consuming estate administration is unnecessary.

3.140 So, how valuable is a trust? It is very valuable! In terms of money it may be an amount as low as 6% of your gross estate to upwards and beyond 30%!¹⁸³ It not only can avoid probate, but administrator's and executors' fees. The usual time to probate an estate is from two to three years, a problem which a trust can avoid altogether. It's business as usual with a trust the very moment after the grantor's death.

3.141 Trusts also are a valuable consideration over wills in the litigation arena. Contesting a will in the courts is easy, because the courts have to, interpret the deceased's wishes. On the contrary, it's a little tougher to debate with the living and breathing competent person who is transferring his assets into trust. After that person's death it's too late to contend a transfer already mature.

3.142 The possibility of conservatorship with a will is very great but entirely eliminated with a trust. Again, it's business as usual. Business interests do not suddenly stop, nor is there a prohibition against new purchases, sales of assets, etc., to take advantage of fluctuating market situations.

3.143 Still another problem solved by the trust is impounding of bank accounts, safety deposit boxes, and the interruption of mail service. All of these are typical problems with a will. If you don't have a trust, you'd better tell your spouse or anyone else you may have as a co-signer on your bank account with you to run, don't walk, but run to the bank the very moment of your death!

3.144 By-pass and marital "A-B Trusts" can appropriately be living trusts. Revocable trusts may be altered, amended, and completely revoked during the lives of the grantors. Competent persons, including the grantors, can be selected to possess, control, and manage the property during and after your life.

3.145 Under the proper circumstances a trust will afford a measure of liability protection for the assets it holds. No gift taxes are due on a revocable trust until the trust is complete in the hands of the beneficiaries. At that time the trust or property of the trust would be used to pay the gift taxes. In the case of an irrevocable trust the gift taxes are due and payable immediately as the gift is complete by virtue of the fact it has been made in evocable.

¹⁸² This is a point some of the leaders of ESP argue about to this day. However, the whole issue is now moot.

¹⁸³ New York Life Insurance Co.

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3.146 There are virtually no income tax advantages with the trust. Prior to President Reagan's 1986 Tax Reform Act income splitting was an advantage, but no more.

3.147 A trust may aid to some degree in property law suit protection. For example, the person who finds the automobile insurance premiums too high may reduce coverage and place each of the cars into a separate trust. If guilty of negligence and sued, the maximum liability would be the car in the trust. Of course, there's always the potential rigor and expense of defending a law suit. (This again, is something the Colato can transcend.) It's one thing to legally be a Pauper, and another to lose respect and standing in the community. Beware.

3.148 As stated, the trust may help some smaller estates with estate and inheritance taxes, but the Colato is a sure method regardless of size. Property can be added or deleted by the trustees at any time at their discretion.

3.149 Finally, living revocable trusts while creatures of equity are not under the supervision of the probate courts. Testamentary trusts on the other hand are under the paternalization of the probate or surrogate courts, thus requiring a periodic accounting to the court. Further, court records are public records and such private details may easily become public information to persons, businesses, competitors, etc., which besides being private, may also prove embarrassing to the family.

Super Rich Solutions!

3.150 We all know the dangers at a railroad crossing, yet there are few professionals or laymen who have truly heeded the warning signs. Likewise, how many beyond a casual survey of their estate and financial affairs actually STOP, LOOK, LISTEN, and then proceed with CAUTION? It is as though there were four certainly fatal crossings we must not ignore. They are: (1) "death taxes," such as probate, gift, estate, and inheritance taxes; (2) "living taxes" such as income taxes, capital gains taxes, and social security taxes; and (3) "living hell." Here I'm not talking so much about armed robbery as I am about *legal violence*, such as lawsuits, judgements, seizures, and bankruptcies. Finally (4) continuous and cautious review.

3.151 If we are to completely succeed in protecting our futures, it's *imperative* we (1) STOP ruinous law suits before they can even begin, and if not that, then to engineer a "law suit proof" estate. We must (2) LOOK for the barriers which the Super Rich have successfully erected to impede the catastrophic progress of income and social security taxes. We must LISTEN carefully to the probate and legal cases now echoing in chambers of yesteryear from those Super Rich who have gone before us and who successfully negotiated the maze of hallways for their estate conservation and accumulation: and (4) CAUTIOUSLY PROCEED both in employing those time honored techniques proven by the Super Rich, and in engaging competent counsel.

3.152 We began this chapter with a quotation from Moliere, the pen name of Jean Baptiste Poquelin, (1622 - 1673) the renown French playwright of thought provoking farces and comedies of manners whose insights the world will ponder as long as it lasts. He said, "*We are not only responsible for what we do, but also for what we do not do.*" What a discerning way to express that even inaction or procrastination is an active response-a decision to do nothing.

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3.153 The Colato is far and away the most simple yet sophisticated financial planning or engineering device an American can ever use. Learning to use the Colato, (next chapter), will prove enjoyable, intriguing, and easy-far easier than the other programs which have been briefly outlined. It will not be necessary to keep up with the "latest tax gimmicks. Colatos are truly the state of the art tax and legal strategy whose ally is truth and time. Both are proved up in the next chapter with black and white documentation a court would call "evidence."

3.154 If you choose to hire an attorney to handle your estate and tax considerations, you no doubt expect Counsel's advice to be based on *all* the law. If the law of Colatos is left out of such advice, this book will prove that counsel's advice is lacking substantially.

3.155 I designed this book to not only to make you literate in your approach to the problems outlined, but also to educate you in how to discern competent counsel from an incompetent. Regardless of what anyone promises to the contrary it's your responsibility to find the best for you. This requires you, and only you, to explore all the law, applying or not applying those elements which would work to your gain.

3.156 Now we have laid such a firm foundation we shall wait no longer to learn how the Super Rich do it. What you apply from my revelation of the financial genius of the Super Rich may determine the legacy you accumulate and leave to your posterity -and perchance, even to your country. Thus we close this chapter with the wisdom of Solomon:

*"A good man leaveth an inheritance to his children's children."*¹⁸⁴

¹⁸⁴ Proverbs 13.22.

Chapter Four'

Prince's Tax & Estate

Engineering?

**Confidence is the greatest
asset of any enterprise.
Nothing useful can survive
without it.**

Albert Schweitzer

**Nothing in the world is as
powerful as an idea whose
time has come.**

Victor Hugo

4

The "Secret Trust" Of The Super Rich!

4.1 Not long ago political author Gary Allen wrote *The Rockefeller File*. Mr. Allen is far from an authority on trusts-a fact he would no doubt concede. However lacking he may be it's revealing to note he echoes the sentiments held by most Americans-that the Rockefellers are exempt¹⁸⁵ from most forms of taxes. Most of us haven't a clue as to how they manage it, but we intuitively know it must be possible. Mr. Allen's uncanny research uncovered more than he could have merely known instinctively. Witness for yourself:

4.2

All trusts are not equal. Only a handful of attorneys in the country knows how to establish the type of trusts the Rockefellers have. These specialized trusts are most emphatically *not* the sort your friendly local solicitor¹⁸⁶ can create for you. They not only can eliminate probate, cut inheritance taxes, and reduce income taxes; unlike corporations, they can achieve almost total privacy. Theoretically, trustees can, within the privacy of their director's meetings, create more and more trusts *ad-infinitem*. With a little effort, taxes disappear. With more effort. even the value of the holdings can be completely hidden.

This explains why the Rockefellers use so many trusts. The fact is we really don't know how many trusts the family has established. It may be thousands, or tens of thousands. Remember Nelson's explanation for the embarrassing fact that lie did not pay any income tax in 1970-his trust fund managers had done a lot of shifting of investments in 1969. You can bet they moved their assets to accomplish this!¹⁸⁷

4.3 Why is the trust so secret? The Colato is *not a* secret! If it were, I probably couldn't have found it. The Rockefellers, for example, have made no real attempts to hide the fact they use Colatos. In fact, the law reports offer the prototype by citing several examples which is documentary proof the Super Rich Rockefellers have been

¹⁸⁵ See §1.73 for the definition of the term "exempt."

¹⁸⁶ Mr. Allen uses the English term which would be equivalent to a corporate or "office lawyer." The English term. "barrister" is used for trial lawyers.

¹⁸⁷ Allen, Gary *The Rockefeller File*, page 12. '76 Press. Seal Beach. California.

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using the Colato for over a hundred years.¹⁸⁸

4.4 In fact, many large and well-known concerns have conducted their business after the form of the common law trust.¹⁸⁹ The legal encyclopedias, law reports, annotations, and cases concerning the Colato have also remained current.¹⁹⁰ Further, some very modern concerns have also adopted the Colato as their business vehicle.

4.5 There has simply been too little demand on the part of the public for information. Lawyers will educate themselves (often at the expense of their clients) when the demand warrants. Though the Super Rich engineered the law to focus attention on the ordinary corporation in 1909,¹⁹¹ there is no evidence to support the idea that the Colato is really a secret.

4.6 Above all, the Colato is no secret to the Internal Revenue-Service. While it is true Congress has never seen fit to include it in the main-stream of the tax code, the Internal Revenue Regulations acknowledge its existence.¹⁹²

Lesson Four

A Trust That's Not A Trust!

4.7 "A trust not a trust?" How can a trust not be a trust? It seems completely contradictory. Suppose for instance you were scheduled to give a talk at a meeting this evening. You woke up this morning with a very sore throat, and about mid-morning, what little was left of your voice is reduced to a whisper. Concerned about your speech, you telephone to make your apologies, "I must beg to be excused, as you can tell I'm a little hoarse." No one hearing your explanation is going to imagine that you are a small horse grazing in a field somewhere. You will be completely understood.

4.8 When else is a horse *not* a horse? When it's a sea-horse, or when it's a sawhorse - *of coupe!* Likewise, there are several uses of the term "trust" which have no relationship to the statutory trust agreement we discussed in the previous chapter.¹⁹³

4.9 "Anti-trust" refers to the laws prohibiting monopolies and restraint of trade which has nothing *per se* to do with a trust. The term "trust" in connection with the oil

¹⁸⁸ The *Standard Oil Trust* was involved in *Rice v. Rockefeller*, 134 NY 174, 31 NE 907 and in *State ex rel. Watson v. Standard Oil Co.*, 49 Ohio 137, 30 NE 279. "*State ex rel. Watson*" means "in relation to the state of Ohio, and Watson being the Attorney General". This was one of those famous monopoly cases.

¹⁸⁹ Annotation: 156 ALR 29 lists some of these organizations.

¹⁹⁰ See "Business Trusts" in 13 *American Jurisprudence*, 2d: same subject in *Corpus Juris Secundum*. See also 88 *American Law Reports* 3d 704. This latter annotation is interesting, because it will refer the reader right back to 156 ALR 22 which purports to be an "exhaustive treatise" of the subject material. And lastly the United States Supreme Court restated the major cases of law in their 1980 decision of *Navarro v. Lee* 446 US 458 (1980).

¹⁹¹ See § 1.44.

¹⁹² Internal Revenue Regulations §301.7701-4(b). See also §4.14 at the quote.

¹⁹³ Cf §3.77.

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monopolies is traceable to the employment of the common law trust form of business organization during the "trust busting" era of the last century.¹⁹⁴ last example of a trust not a trust is the "deed of trust."

4.10 The first of three offers of proof will show why a Colato *is not* a trust. We must remember that the "Restatement"¹⁹⁵ was adopted by each of the states as their law concerning the ordinary trust. The "Restatement's" exclusion of the Colato - because of its marked differences from a trust - also makes that exclusion the legislative intent of each of the states.

The Restatement of this subject does not deal with business trusts ... See §1, Comment b.¹⁹⁶

b. *Matters excluded.* A statement of the rules of law relating to the employment of a trust as a device for carrying on business is not within the scope of the Restatement of this subject. Although many of the rules applicable to trusts are applied to business trusts, yet many of the rules are not applied, and there are other rules which are applicable only to business trusts. The business trust is a special kind of business association and can best be dealt with in connection with other business associations.¹⁹⁷

4.11 A Colato wearing the guise of a "trust" in its name and fundamental terminology is not a statutory trust agreement which must split legal and equitable title.¹⁹⁸ Essentially it is a business vehicle. We examined the splitting of title as being the exclusive characteristic of the ordinary statutory trust agreement.

4.12 Splitting of the legal estate from the equitable estate absent in a Colato removes any possibility of its legally standing as a trust. Not only is this right, it is also good. A Colato is **emphatically** not a trust!

4.13 The second offer of proof is the greatest distinction between a trust and a contract. In the case of the former there is a divided ownership of the property to which the trustee has legal title and the beneficiary an equitable ownership.¹⁹⁹ a contract in which a promisor engages with promisee to render prompt performances to a third person as beneficiary of such contract, the beneficiary merely has a claim against the promisor; while the beneficiary of a trust has a beneficial ownership or interest in the

¹⁹⁴ See 13 Am Jur 2d Business Trusts §2.

¹⁹⁵ See §3.75 concerning the *Restatement of the Law of Trusts*, 2d.

¹⁹⁶ *Restatement of the Laws of Trusts*. 2d page 2, American Law Institute. Washington, D.C. Cf §4.22 on the various names for these "business trusts."

¹⁹⁷ Restatement, *Ibid.* p. 4. In reference to "business associations" see §4.367. *et seq.*, and #3 of "The Four Types of Trusts" on page 174. Also Cf §4.409.

¹⁹⁸ See §§3.84, *et seq.*, for a thorough essay concerning the necessity of trusts to split legal and equitable title.

¹⁹⁹ *Gonsalves v Hodgson*, 38 Cal 2d 91, 237 P 2d 656.

property of the trust. Much more about this later, but serve to say for your reflection in addition to this is that there is no consideration in a trust as there is in a contract.²⁰⁰

4.14 As previously stated, the legal definition of a thing is not necessarily the tax interpretation.²⁰¹ As also stated, the Colato is no enigma to the Internal Revenue Service." The Internal Revenue Regulations handily provides my last offer of proof. Before you read this section, look carefully for the element of splitting title. You'll note it is missing!

(b) Business Trusts-there are other arrangements known as trusts because the legal title to property is conveyed to trustees for the benefit of beneficiaries, but which are not classified as trusts for purposes of the Internal Revenue Code, *because they are not simply arrangements to protect and conserve the property for the beneficiaries.*²⁰³

4.15 Nearly buried in this language is the fact that the "beneficiaries" stand in a different classification than ordinary beneficiaries who enjoy an equitable ownership of the property being held for them by the trustees. Here the "beneficiary" is associated together with the trustees in the conduct of a business which "normally" would have been carried on through business organizations that are classified as corporations or partnerships under the Internal Revenue Code.²⁰⁴

4.16 Let me hasten to say that the legal term "associates" does not necessarily meet the tax definition of the word "associates."²⁰⁴ Therefore, even the Commissioner of the Internal Revenue Service agrees that a properly set up and maintained Colato is not a trust, and he may not change his mind.²⁰⁶

4.17 Pity the one who fails to come so far as to learn what the "trust" of the Super Rich is, is not, and what it can do in deference to the statutory trust agreement. You will remember I warned that the thread of the statutes, cases, Internal Revenue Code, and Regulations must be woven carefully and correctly upon the loom of tax and law to produce the intricate pattern employed by the Super Rich.

²⁰⁰ *Sutherland v. Pierner*, 249 Wis 462, 24 NW 2d 883. While the law of contract is another offer of proof that the Colato is not a trust and vice versa, this separate subject will be treated more carefully at §4.66, *et seq.*, *infra*.

²⁰¹ *Cf* §§3.91, 4.6.

²⁰² *Cf* §4.14, and also see the quotation at §3.93.

²⁰³ *Internal Revenue Regulations* §301.7701-4(b). Emphasis supplied. See note #204. *infra*.

²⁰⁴ *Internal Revenue Regulations. Ibid.* The entire text is quoted at §3.93, *infra*. The term "Business Trust" is a misnomer as we will discover throughout this chapter.

²⁰⁵ For a complete discussion of "associates" please see §4.367ff

²⁰⁶ See §2.66 which shows the Regulations are binding on the I.R.S. and the Commissioner may not later change his mind about the rules.

TAX FREE! How the *super rich* do it!

4.18 This book is intended as both an instructions guide and legal opinion.²⁰⁷ which when twined together, can duplicate the same results for the student. Therefore, those authorities used shall draw into place the proper strings at the right time. Included are explanations as to why the Super Rich discard fibers of the average weave.

4.19 If at times it seems there are so many spindles of yarn to keep track of, we should be encouraged. First, beside the complexities of the never static but changing corporation and limited partnership laws the Colato is far more simple because it is generally free from fickle legislatures statutory restraints and regulations.

4.20 Second, the fabric of confidence gained by knowing (or having at your fingertips) what may be learned is without comparison in the industry of experience. Third, with just a few more passes of the shuttle and the body of your business and family will be clothed with the robe of the Super Rich!

What Is It Then?

4.21 As we have studied, the similarities of the statutory trust and the Colato of the Super Rich begin and end at the same point where we define the term "trust." Common law trust's (CLT's) are frequently termed by many different names, but such locutions are not necessarily descriptive of the peculiar characteristics of the type of "trust" the Super Rich use, and in final analysis there are only three common law types.

4.22 Common law trusts and Colatos may be called a Massachusetts trust; a business trust; a pure or true trust; a unit trust; a blind trust; or a common law trust.²⁰⁸ Lately, I've herd some of the lawyers adding Colatos to their practices using the term "contract trust," but as we will see even that term is not completely distinctive. Generally, it is simply called "a trust." This is why so many are confused to learn it is not a trust. Up until now we who have known the differences continued to use the term "trust." We just understood contextually that we were not talking about statutory trust agreements. Now I have a solution for this bewildering problem!

4.23 The reader has noted how I constantly refer to the Super Rich "trust" as a "*Colato*." It has been important for clarification that I do so, and I will continue to do so for the same reason. My research has deduced that the most descriptive terms were a "pure or true Massachusetts common law business trust organization." Because such a term is clumsy I preferred common law trust organization. I didn't like the words "pure or true" because they had been abused by Educational Scientific Publishers (see §3.136). I also didn't like "trust organization" because of the mistakes by The American Law Association. The acronym COLATO, (co-law-tow) for **Common Law Trust Organization** seemed perfect. You might find it easy to remember by thinking of that cool coconut and pineapple drink called "piña colada." Since at least 1924 there has been a need for a more descriptive name other than "trust" and perhaps this self suggesting and easy to pronounce term is the remedy. Therefore, wherever I employ the term Colato I

²⁰⁷ The word "*opinion*" is used as a legal term of art which among lawyers means "*judgment*" rather than simple belief in probability. I want to make this clear, because while my work must accomplish the first stated goal of showing how it is all done, it must also maintain a legal veracity.

²⁰⁸ See §4.26

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specifically mean the "pure or true" (*Hecht v. Malley* 265 US 144 (1924)) type of common law trusts (CLT's) as found on page 174. "The Four Types of Trusts."

4.24 We can find antecedents of the statutory trust in other legal systems. In fact, jurists and scholars have noted that the modern statutory trust agreement, with its separation of the estate into legal and equitable parts, with separate courts in which their respective qualities may be heard,²⁰⁹ is in its causes, objects, provisions, qualifications, and exceptions, wholly Anglo-American. This is true even in comparison of the ancient Roman *fidei commissum* to the modern *fidei commissa* of the Louisiana Code, or of the Spanish and French laws.²¹⁰

4.25 All this aside the Colato is a bit more American than English, as the Massachusetts trust is said to have originated in that state because of the hostility of the legislature towards corporations. Corporations required an act of the legislature to either buy or sell real estate in Massachusetts, thus the Colato was developed, and the law quite literally grew up in that state, to circumvent such inconveniences.²¹¹

4.26 In some circles the term "business trust" is very popular. The latest editions of the two major legal encyclopedias, *Corpus Juris Secundum* and *American Jurisprudence*, 2d, each treats the subject of Colatos under the nomenclature "business trust." Interestingly, the latest of two annotations of the subject, 88 *American Law Reports* 3d 704, recognizes the term "common law trust" citing *Schumann-Heink v. Folsom* 328 III 321, 159 NE 250, 50 ALR 485 (1927).²¹²

4.27 The United States Supreme Court has acknowledged the Colato as a "pure or true trust" in one of the most pivotal and conclusive cases, *Hecht v. Malley* 265 US 144 (1924).²¹³ The Supreme Court cited the *Hecht* case in *Navarro v. Lee* (446 US 458) in 1980 which makes all those "old authorities" just as up to date as the day they were decided.

4.28 Harry Morgan Phipps who refused to call either the ordinary trust or the pure trust "a trust" defined the pure trust thus:

The Pure Trust is an organization formed by contractual indenture to function in its own right as an independent legal entity managed by its trustees.²¹⁴

²⁰⁹ Cf §2.36, *et seq.*

²¹⁰ *McDonogh v. Murdock*. 56 US 367. 14 L Ed 732.

²¹¹ *State Street Trust Co. v. Hall* 311 Mass 299, 41 NE 2d 30 (1942), 156 ALR 13.

²¹² The whole case is found in the appendix.

²¹³ The whole case is found in the appendix.

²¹⁴ *The Key to Family Security*. Harry Morgan Phipps, page 47. American Law Association. 1974. See §3.76 where First America Research and Harry Morgan Phipps refers to the trust as a "trust agreement." However, we shall call only "pure" Common Law Trust Organization's Colatos.

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4.29 In England and certain of her other common law jurisdictions the term for common law trust (CLT) is "unit trust." In addition, several American cases have noticed *Smith v. Anderson* (1880) 15 Ch D. 247 to have both established and continued to be the law of England concerning Colatos. Of course any common law jurisdiction could assimilate the Colato conditions in their unit trusts.

4.30 Regardless of the terms favored, I plead the case for the term "Colato." I insist on such a name! The reader can notice in chief part the current trend of government in over-regulating the private sector by the way statutory provisions threaten the common law. Bureaucracy grows with the belief that its "subjects" can only take an action where the government has so authorized. Certainly there is nothing new in such despotism.²¹⁵

4.31 When one considers the thousands of new statutes enacted in each of the states every year, and adds to those the laws from the federal government, including all their subsequent and respective regulations, it doesn't take any imagination to see what is happening. We MUST look to the statutes to find what we are free to do.

4.32 It is a man-made fountain designed to distract attention from the source of the well head, but how in reality may the water of usurped authority rise above its source-the United States Constitution? It cannot! Proof of the revolutionary concept flooding our law is that the common law is falling into disuse as a legal precept. Fewer and fewer lawyers could say much of anything of the Blackstonian principles which shaped American Jurisprudence, and upon which the whole now perilously hangs.²¹⁶

4.33 Nothing could be further from the truth that actions not provided for in the statutes' hooks are illegal. Common law is the champion of free men, the embodiment of which a Constitutional right, to wit:

IX. The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.²¹⁷

X. The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.²¹⁸

4.34 The liberty we still enjoy exists entirely because of the common law. How long we continue to enjoy liberty or the quality of it will depend in substantial part on how we use what we have. It all adds up to the ancient system of things: "use it or lose it." The Cola?) (in code-the "trust") may just turn out to be the prime motivator to retain our American heritage even as it has been so good to the Super Rich. Thus the reason the author resorts to the term "common law trust organization" or Colato.

²¹⁵ Please see §§2.14. et seq., and 2.29.

²¹⁶ See *Blackstone's Commentaries*. One of the biggest reasons for the deficiency and decline of common law knowledge today is due to the courses being dropped from the legal curriculums in the 1920's. Younger lawyers have little or no realization and thus skill in this vital area.

²¹⁷ Article IX. Bill of Rights. United States Constitution.

²¹⁸ Article X. Bill of Rights. United States Constitution.

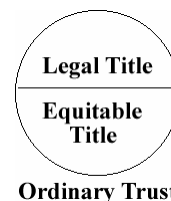
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4.35 The usual course taken in the legal encyclopedias and annotations is to simply describe the nature and attributes of the common law trust's (CLT's) and Colatos. They mix all the integral parts of CLT's and Colatos without distinguishing the "ordinary" and most frequently used CLT and the way it is taxed by the special Colatos employed by the Super Rich and the way they are taxed. Oddly even the American Law Reports completely missed this point even though they grant that their annotation is "exhaustive!"²¹⁹ I believe greater understanding will result, particularly when practically applying this knowledge, by comparing, contrasting, and then distinguishing the Colato of the Super Rich to both trusts and corporations.

4.36 Your knowledge obtained in the foregoing parts concerning the ordinary trust will now begin to take on a practical form. Shortly you will be doing it just like the Super Rich. Colatos bear certain similarities found in trusts, corporations, partnerships, and joint stock companies. A comparison of the first two against the Colato will suffice as it has been recognized as a distinct form of business arrangement which must be differentiated from ordinary corporations,²²⁰ and any other kind of business organization. In a legal phrase, the Colato is a thing *sui generis*, that is, a thing of its own kind.²²¹

4.37 Though the cases in their differentiation also include partnerships we shall not compare it, *per se*, because the same element of concern will rise out of our discussion of the corporation. We will address those instances later when we examine the tax concept of "associates."²²² It will finally become essential to explore the subject, but at this juncture it is sufficient to say the Super Rich steer away from the associated CLT's, Should we encounter the word "partnership" in our study this statement will have equipped us with the necessary link for our understanding.

4.38 As we have repeatedly said, the most elementary distinction of a statutory trust agreement is the splitting of title. Thus the reason we illustrate it with the symbol of a circle divided equally into two parts. The following language should help considerably.



4.39

In states which give liberal recognition to the 'business trust' it manages to escape much of the basic doctrine applicable to private trusts. The basis for evading trust law essentially is that the business trust is in fact a voluntary, consensual and contractual relationship.... by an underlying contract, or in the provisions of a business trust instrument, or both, the parties agree-on the operations of the venture. In effect, they agree, notwithstanding trust law to forego rights and

²¹⁹ 156 ALR 22. Cf 88 ALR 3d 704.

²²⁰ *State Street Trust Co. v. Hall*, Ibid. See also 37 *Yale Law Journal* 1119.

²²¹ *Thomle v. Soundview Pulp Co.* 181 Wash 1. 42 P 2d 19.

²²² For a complete deliberation on "associates" please see §4.367, et seq.

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accept limitations which would otherwise apply. It is this unique contractual feature, plus the purpose of the combination, which as led courts of other states to permit the device to operate in ways quite at variance with trust law. It is, therefore, not so much a trust as a contractual relationship based on trust form which in result is about half partnership and half corporate.²²³

TABLE FOUR

Corporation
Incorporator Investor Stock Holder* Directors

Colato
Creator Investor Certificate Holder Trustees*

4.40 When comparing the special Super Rich Colato to the corporation, the INCORPORATOR in a corporation is the person who acts for and on behalf of the entity being created. The CREATOR in a Colato is the person who acts for an on behalf of the entity being created.

4.41 The INVESTOR in a corporation supplies the assets, property, money, corpus, (or body) of the entity being created. The INVESTOR in a Colato supplies the assets, property, money, corpus, (or body) of the entity being created.

4.42 The investor in a corporation, by his or her investment, purchases the stock and is called STOCK HOLDER. The investor in a Colato, by his or her investment, purchases the certificates and is called CERTIFICATE HOLDER.

4.43 The DIRECTORS control the day to day operations of the corporation. The TRUSTEES control the day to day operations of the Colato.

4.44 So, what are the differences between the corporation and the Colato? Except for terminology the corporation and Colato appear to be the same. There is no difference in their various functions. Were they *really* the same, even in the scope of their capacities, the Internal Revenue service would also tax them the same - like a corporation, i.e., "association" - once at the corporate level and again at the shareholder level. In such a case, the Super Rich wouldn't be interested at all.

4.45 Answer this question: Who are the owners of a corporation? (Choose one): (a) the incorporator, (b) investor, (c) stockholder, or (d) directors? In other words, who has the final mastery, power, and control over the corporation and its property?

4.46 The stockholders, of course. They may hire or fire the directors at the stock holders' meetings. The directors are merely the stockholders' managing agents. In very important language for our consideration, *the directors are associated together with the stockholders for the purpose of engaging in business for profit*. You will note the corporation's stock holders in Table Four are shown in bold type. It is this factor of "associates" which is the most distinguishing element signifying a corporation.²²⁴

4.47 There are several types of common law trusts. The "pure" and the

²²³ *Berry v. McCourt* 204 N E 2d 235. 240.

²²⁴ For a complete discussion of "associates" see §4.367 et seq. §3.40

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"associated" type, the latter being by far the most frequently known and used of the two.²²⁵ In Table Four, if the certificate holders were the owners, as the stockholders are the owners in a corporation, the common law trust would have been the "associated" type. The Super Rich shun them!

4.48 The "associated" type being the most popular of the various types of common law trusts it logically follows that the greatest number of cases, and therefore other authorities like encyclopedias, or general commentaries are making observations primarily concerning the "associated" trust - sometimes also referred to as the "partnership" type.

4.49 Regardless of whether the CLT is "pure" (a Colato), non associated, associated, or a partnership, the matter is completely clear from the earlier quote from the *Restatement of the Law of Trusts*, 2d²²⁶ that "the business trust is a special kind of business association and can best be dealt with in connection with other business associations."²²⁷ We will go on from there to even further distinguish the Colato from all the other types of "Business Trust's" or CLT's.

4.50 The Super Rich have no need of an associated common law trust (CLT). Their secret to profitability is the pure type of common law trust organization or Colato which is not taxed like the associated trust or corporation. Without the "double tax" as imposed against corporations, think of how much more competitive the organization could be.²²⁸ That's reason enough to unincorporate! Don't be too excited! It's already been done by a well known company we'll introduce later whose certificates are traded daily on the New York Stock Exchange.

4.51 The courts differ only in terms as to whether the Colato of the Super Rich should be called a pure or a true trust. In a Colato, (as a reminder the "pure" designation is the essential element of the Colato) there is first of all no division of legal and equitable title. The property is owned in fee simple, or completely, absolutely, and without reservation, by the *office of trustee*.

4.52 The *office* of trustee is the principal: In determining whether a common law trust is cast in the "pure or associated" form we apply the "control test." If the contract creating the trust vests the trustees with the whole title-both legal and equitable (no title splitting)-with the exclusive right and power to manage the business and conduct its affairs free from the control of the certificate holders, then the organization will be treated as a Colato - or pure trust.²²⁹

²²⁵ For a complete treatise of the element of "associates" see §4.367. Also see "The Four Types of Trusts" on page 174.

²²⁶ Either this, or the language used was mere dicta not having the weight of a legal term of art, which is surely not the case. I'm being sarcastic. The *Restatement* is the adopted law of all the states. See §4.10 at the quote.

²²⁷ See how regularly the reader is expected to think *all* Colatos are associations? Keep reading for the secret type the Super Rich use.

²²⁸ A complete guide as to how a common law trust is taxed is found at §4.409.

²²⁹ *Hecht v. Malley* 265 US 144, 68 L Ed 949, 44 S Ct 462 (for purposes of federal taxation). The whole case is appended at page 326. *Williams v. Milton* 215 Mass 1. 102 NE 355: *Goldwater v. Oltman*. 210 Cal 48, 292 P 624. 71 ALR 871: *Schumann-Heink v. Folsom* 328 111 321. 159 NE 250. 58 ALR 485.

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4.53 On the other hand, if the trustees are subject to the control of the certificate holders, as directors are subject to stockholders in corporations, then the certificate holders and the trustees are associated together in a joint business endeavor, and the organization will be taxed as an association or where the corporation rates are imposed.

4.54 The trustee's right and power in a Colato is the single greatest contrast between it and the corporation. It would be unthinkable in the ordinary corporation that the stockholders should be wanting of all legal rights, that they should have no officers and should remain forever mute in either the selection, approval, or disapproval of the directors. or their methods of conduct over the organization's operations!²³⁰

4.55 This is exactly how the Super Rich Colatos operate, and the reader can see just how different from a corporation a Colato really is. While no sane person would lightly invest his or her all into such a situation, with a pure Colato, they just might do it if in fact, they coup trust the trustee as they can themselves.²³¹ They might even be anxious to do so when the benefits are elimination of probate, gift, and estate taxes, and capital gains taxes, inheritance taxes, etc. Carefully examine the benefits below in Table Five.

4.56 The situation canvassed above at §4.54 manifests the fact that the method, mode, and procedure of a Colato in the conduct of its affairs are strikingly different and substantially dissimilar to that of corporations. The system of the Super Rich approximates the idea of personal friends reposing full confidence or *pure trust* in each other.²³² We thus ably comprehend why "trust" nomenclature fits the Colato so very well.

4.57 Though a Colato is not a trust or a corporation, the relationships of the parties (Creator to Investor) is fixed by contract, under common law, and which may create a greater fiduciary role than is available to the statutory trust agreement.²³³ The reason for this is simple. Statutes declare exactly what a person must do to comply with the fiduciary (trust) laws of a state. Statutes, as we have learned, must be narrowly interpreted and then by the legal sense of the specific words employed.

4.58 The legislators, in their wisdom, have prescribed what does and what does not comply with the law regarding fiduciaries to protect society. That may be well and fine for those poor souls who need the direction, but the Super Rich consider themselves capable to care for their own destiny. Thus their contracts create special powers not generally available to the public who are depending on statutes. The Super Rich simply retrain from the statutory license and remain free to make their contracts as they deem them expedient.

²³⁰ *Bouchard v. First People's Trust* 148 NE 895, 899. The whole case is appended.

²³¹ See note # 168 on page 87. Also see §4.303 *re* compliant trustees.

²³² *CIF v. Brouillard* 70 F 2d 154 (1934). Cert. den. 293 US 574 No. 152.

²³³ See §2.41 *re* a power of such great magnitude it is unknown in the ordinary law of trusts.

Table Five
Problems Encountered With The:
Will = W Trust = T Colato = C Forcolato = F

	W	T	C	F
1. Probate Court?	YES	NO	NO	NO
2. Administrator's Costs?	YES	NO	NO	NO
3. Executor's fees?	YES	NO	NO	NO
4. Bonds for creditors?	YES	YES	NO	NO
5. Appraiser's fees?	YES	YES	NO	NO
6. Outside or 3d party control?	YES	YES	NO	NO
7. Public disclosure & embarrassment from recording?	YES	NO	NO	NO
8. 2 - 3 years to transfer assets to survivors?	YES	NO	NO	NO
9. Premature payment of debts because of death?	YES	NO	NO	NO
10. Potential for extensive & costly litigation?	YES	NO	NO	NO
11. Federal gift taxes?	YES	YES	NO	NO
12. Federal estate taxes?	YES	YES	NO	NO
13. State inheritance taxes?	YES	YES	NO	NO
14. State estate taxes in some states?	YES	YES	NO	NO
15. Forced asset liquidation to pay costs and meet legal requirements.	YES	YES	NO	NO
16. Capital gains taxes - now taxed as ordinary income tax instead of favorable rates?				
17. The possibility of conservatorship?	YES	NO	NO	NO
18. Impounded bank accounts?	YES	NO	NO	NO
19. Impounded safety deposit boxes?	YES	NO	NO	NO
20. Impounded mail?	YES	NO	NO	NO
21. Subjection to whims of legislatures?	YES	YES	NO	NO
22. Subjection to judicial review & regulation	YES	YES	NO	NO
23. Joint tenancy problems?	YES	NO	NO	NO
24. Sire of estate a factor for consideration?	NO	NO	NO	NO
25. Business interests assessed a double tax?	NO	YES	NO	NO
26. Business interests stop at death?	YES	NO	NO	NO
27. Prohibition against new purchases. sales of assets to take advantage of fluctuating markets?	YES	NO	NO	NO
28. Uncomfortable concerns re family, business, & estate planning due to changes of law?	YES	YES	NO	NO
29. High costs depriving survivors of assets?	YES	YES	NO	NO
30. Judicial reports & subjection to fiduciary laws?	YES	YES	NO	NO
31. Federal income taxes?	YES	YES	YES	NO
32. Social Security taxes?	YES	YES	YES	NO
33. Usual attorney's fees to start & maintain?	YES	YES	NO	NO
34. Large insurance costs to cover death costs?	YES	YES	NO	NO
35. Law suit liability?	YES	+1/2	NO	NO
36. State income taxes?	YES	YES	YES	NO
37. Governmental & Judicial intrusion.	YES	YES	NO	NO
38. Average death costs?	48%	33%	\$1K	0%
39. Average cost to prepare?	\$1K	\$5K	\$1K	\$1.5K

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4.59 Both Colatos and Common Law Trust's (CLT's) are established by contract, commonly called a Declaration of Trust. The instrument itself is analogous to the charter of a corporation. One of the main objectives of a Colato is to obtain most of the advantages of corporations, but with freedom from the burdens, restrictions, and regulations generally imposed upon them.²³⁴

4.60 Since the contract is established by private parties, for personal purposes, the fact that it has not registered with the state corporation commissioner to comply with statutes relating to incorporating does not invalidate the Colato.²³⁵ All jurisdictions recognize contracting as a common law right.

4.61 By and large, the single greatest recognizable advantage of the corporation is its ability to restrict liability to the corpus of the entity thereby sheltering property from personal loss. However, in several instances, the certificate holders of a Colato enjoy an even greater immunity from personal liability than is accorded to stockholders of corporations.²³⁶ It is axiomatic that where the aims of obtaining most of the advantages of corporations without the authority of any legislative act can be realized, the Colato enjoys a definite advantage over the corporation.

4.62 Everyone knows about the advantages of limiting personal liability which we discussed in the foregoing paragraph. I would ask the reader to search his or her mind to see if he or she knows of a specific method which would obtain the component of limited liability, without obtaining it by a grant of privilege from a state? In other words, can you limit your liability without incorporating?

4.63 A person may effectively guard against personal liability in all jurisdictions by simply agreeing with his or her creditors as making - his or her personal exemption a condition of the contract or obligation.²³⁷ The statement need only be made that the parties agree to such conditions. It is as short as it is powerful.

4.64 I have used such phrases in many contracts over the years for Colatos. Only once have I been asked to explain myself to counsel. Upon explanation, however, there was absolutely no hesitation to go along with it. The reason is simple. Every time you do business with a company whose name ends with "Incorporated," "Inc.," "Ltd," etc., you are on notice that the concern you're dealing with has protected the liability of its owners and directors.

4.65 I merely explain that my entity is a Colato which is similar to the corporation except unlike corporation's the Colato must make the condition a matter of notice. That answers all questions, because everyone is used to dealing with corporations which have

²³⁴ *Ashworth v. Hagen Estates* 165 Va 151. 181 SF 381.

²³⁵ *Hodgkiss v. Northland Petroleum Consolidated*. 104 Mont 328, 67 P 2d 811. *State ex. rel. Knox v. Edward Hines Lumber Co.* 150 Miss 1. 115 SO 595. However, a few states (such as Arizona, California, and Florida) do require registration (See note 461 at page 175). Competent counsel can check the statutes, or with your new found legal research skills gained from Chapter Two, you can easily find the law in your own state. Try it! Also, check and compare whether the statute requires "pure" Colatos to register or only the associated CLTs.

²³⁶ *Goldwater v. Oltman*, 210 Cal 408, 292 P 624. 71 ALR 871

²³⁷ *Bank of Topeka v. Eaton* (cc) I(X) F 8 aff'd (CAI) 107 F 1003, cert. den. 183 US 697, 46 L Ed 395. 12 S Ct 933. Annotation 156 ALR 127-9.

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identical liberty and think nothing of it, and because they feel "the law" requires the unfamiliar Colato to do it they think even less of it!

The Secret Law Can Be Used By Anyone!

4.66 As promised, we now turn our attention to the captivating law of contract. We have established that Colatos are neither trusts nor corporations. What are they? They are contracts! As a result we should learn some new things about our ancient right.

4.67 Of all our rights as enumerated by the United States Constitution none is more sacrosanct than our right to contract. Indeed, of all our rights, none has been judicially or legislatively less disturbed than our right of contract. The framers of our Union recognized the place of contract in our Constitution:

No State shall enter into any Treaty, Alliance, or Confederation: grant letter of Marque or Reprisal; coin money: emit Bills of Credit; make anything but gold and silver coin a tender in payment of debts; pass any Bill of Attainder, ex post facto law, or law *impairing the obligation of Contracts*, or grant any Title of Nobility.²³⁸

4.68 Most of us believe the Fifth Amendment of the United States Constitution protects the individual from self incrimination - and so it does. But fewer know the United States Supreme Court has long held and recognized that our freedom to make our contracts and have them enforced by the courts is apart of the bundle of rights protected by the "due process" clauses of both the Fifth and Fourteenth Amendments.²³⁹

4.69 The Court has also referred to the general right of contract when it was in relation to one's business.²⁴⁰ As comforting as such language may be, the United States Supreme Court even earlier than the two above decisions referred to our freedom of contract as a right among "the inalienable rights" of a citizen *without* basing said right upon either the Fifth or Fourteenth Amendments.²⁴¹

4.70 We unmistakably recognize that language as the spirit of the second clause of our *Declaration of Independence*, where as such the courts have recognized our right to contract as being next to our right to worship or not worship God:

²³⁸ Article 1 §10. United States Constitution (if one reads the quote carefully, we will better understand why we said that the right of contract has been less disturbed than any of our other rights - so corrupted are some of the daily aspect of our lives, like nothing but gold or silver coin as a tender in the payment of debts. Study "*inflation*" in the glossary).

²³⁹ *Patterson v. Bank Eudora* (1903) 190 US 169, 47 L Ed 1002, 23 S Ct 821.

²⁴⁰ *Muller v. Oregon*, 208 US 412, 52 L Ed 551, 38 S Ct 324 (1908).

²⁴¹ *Frisbie v. U.S.* 157 US 160. 39 L Ed 657, 15 S Ct 586 (1895).

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We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty, and the pursuit of Happiness.²⁴²

4.71 We must not get completely carried abroad. We must note that the liberty of contract does not extend to all contracts. For example, a contract of an illegal or immoral purpose; with a minor: or with an incompetent like a drunk or a mentally deficient person is altogether void and will not be upheld by the courts.

4.72 Such contracts are clearly against public policy. Of this detail a weighty question will enter the minds of many people concerning the "tax exempt status" of the Colato. Since Colatos are private contracts, how can the parties to such contracts not be going against the public interest or policy, if it is true the Colato was formed for the express purpose of reducing or altogether avoid taxation?

4.73 Put rhetorically, it must be in the best interest of the public that we lay, collect, and pay taxes else there would be no law. It is a question of paramount importance, especially as this book has earlier made the proposition that a Colato is exempt from such taxes.

4.74 There are two fire escapes. The first we will discuss in another section of this chapter"" as to how the I.R.S. taxes a Colato. In the second both the state and the federal tax authorities hand us the fire extinguisher. A Colato is not rendered illegal even when it was formed for the express purpose of reducing or avoiding taxation.²⁴⁴

4.75 I hasten to add a clarifying word. The phrase "express purpose" is another of those legal words of art. It does not mean that is the *only* purpose. -Positively, that cannot be.²⁴⁵ The word "express" merely means "written." Therefore, a Colato is not to be held to be against the public policy even where it has stated in its written form that *one of its purposes* is to reduce or escape federal or state taxes. Interestingly, when we get to foreign considerations (of the foreign Colato), the I.R.S. expressly deems such purposes as a "business motive." Such rudiment is quite important.

4.76

Contract. An agreement between two or more parties, preliminary step in making of which is offer by one and acceptance by another. In which minds of parties meet and concur in understanding of terms. *Lee v. Travelers Insur. Co. of Hartford, Conn.* 173 SE 185, 175 SE 429.²⁴⁶

4.77 Hold your finger here and go back to page 87 to the illustration of the Living Trust. We will here distinguish a statutory trust agreement from a contract. Answer these following three questions:

²⁴² Declaration of Independence, July 4, 1776. The coined term "unalienable" has also been expressed as "inalienable." It's a word of very great distinction in the strictly American language.

²⁴³ For a complete dissertation as to how a Colato is taxed see §4.409.

²⁴⁴ *Weeks v. Sibley* (D.C.) 269 F 1551. *Phillips v. Blatchford*, 137 Mass 510.

²⁴⁵ See §§1.63f on page 20 for the great misunderstanding of many people and tax planners.

²⁴⁶ Black's Law Dictionary. Cf also §3.95.

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4.78 (1) In the first phrase of the above quotation find the two or more parties pictured in the illustration. Remember before you answer; it is a trust.

4.79 If you identified Mom and Dad as the party of the first part and the children as the party of the second part, do not be disheartened to learn you're wrong. It's the most common answer. You will quickly see it's not possible for such parties to have entered a contract. The children are minors, and are therefore also incompetent. We could legitimately stop right here, but it's necessary to meet all the above quoted components to have a contract. Let's continue for an even greater distinction which will aid our understanding when we actually go through the steps of creating a Colato.²⁴⁷

4.80 (2) Concerning the phrase, "offer by one and acceptance by another," look again to the illustration of the Living Trust. Is it possible to conceive of an offer by Mom and Dad, and an acceptance by the children? No, of course not! There is no consideration. No money or property sold or exchanged for money or money's worth.

4.81 Within such element is the concept of legal detriment to each of the parties. Were we to strain the statutory trust to say it did meet the first qualification, could there be any room for each of such parties to stand in the position of potential loss or injury? In other words, when one person gives up product or services to another for money, both stand in legal detriment. Each has something to lose. Do the children?

4.82 It might be said that Mom and Dad have legal detriment, but it's obvious the children stand in no such place. Of course the proposition is totally misplaced. The statutory trust is unilateral in the nature of its agreement between Mom and Dad-it is no contract-it's pure and simple, a gift. Gifts are diametrically opposed to contracts where there is consideration.

4.83 (3) In the last phrase in the above definition of "contract" is there any potential for the concurrence of terms or conditions? Once again, and for the third time, the statutory trust agreement cannot meet the test of a contract. There is simply no provision in the trust for a meeting of the minds of the parties as the parties themselves are unidentifiable. This discussion settles the question. A statutory trust agreement is not a contract, and the Colato is not a trust, because it does not split title.

Another Dividing Line!

4.84 In a mass of legal cases there are scarce instances of record which reveal the secrets of the Super Rich. Ironically, in hundreds of cases juxtaposed to only about a dozen pivotal cases touching the Colato of the Super Rich, nearly everyone writing or speaking about the subject of "business trusts" constantly cites those few celebrated of such cases before jumping irrevocably into the abyss of the "associated" CLT's.²⁴⁸ We will critically examine a Super Rich characteristic from one such case now (without taking the leap), and forever wonder why so many have sought the chasm of economic emptiness.

4.85 Ernestine Schumann-Heink brought an action against two individuals claiming she was entitled to collect the sum of \$8,075.21 with interest at 6% on a note

²⁴⁷ §4.103, *et seq.*

²⁴⁸ Associated common law trust's (CLT's) are discussed at length at §4.367.

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payable to her, and since the execution of a contract entered into several years earlier between herself and a Colato, "The Goodland Company."²⁴⁹

4.86 The contract Mrs. Schumann-Heink entered contained provisions limiting the liability of the certificate holders and trustees to the assets of the Colato. In the suit seeking payment from the trustees as individuals and not as trustees of The Goodland Company, Messrs. Folsom and Mackie were released by a court of equity²⁵⁰ from personal obligation to pay the note. Mrs. Schumann-Heink took a writ of *certiorari* to the Illinois Supreme Court on grounds the dismissal of her bill to the defendants was in error and unfair, but the Supreme court affirmed the earlier Chancellor's judgment.

4.87 Three primary topics were reviewed by the *Schumann-Heink* court. We'll deal with the first two of them now and the other in a later section exploring its greater range. They concern (1) contract, (2) limiting liability, and (3) the partnership [i.e., "association"²⁵¹] issues.

4.88 The trust form may be utilized for a great many fields of human interest, especially when it finds as its basis the common law right of contract-for contracts are intrinsically flexible as are inc needs of those who create them. Just because a new use of the trust or contract is being made does not mean that new principles of law must be applied in determining rights, because the law is not static, but ever growing and expanding. The law of trusts and contracts is just as much a part of each state's legislative policy as the corporation and limited partnership.²⁵² Therefore all that needs be done is examine those areas of trust and contract law which are already well established.

4.89 The *Schumann-Heink* court in reference to the individual's right to make trusts may easily be construed to acknowledge the common law right of an individual to make any dispositions of his or her property as is chosen whether to create a trust, thereby simply alienating legal or equitable title to property, or by creating a Colato utterly turning over his or her property for another to manage *irr fee* (with absolute title) as The Goodland Company (a Colato) did in this case.

4.90 In the absence of any legislative restrictions to the contrary, one may just as easily exclude the principles of equity-relying exclusively upon the common law of contracts-from his or her Colato, as one could give property away. It becomes apparent that The Goodland Company was itself a contract-a Colato-rejecting many if not most of the principles of equity!²⁵³

²⁴⁹ *Schumann - Heink v. Folsom, et al*, 328 III 321, 159 NE 250 (1927). The entire case is appended in the appendix beginning on page 323.

²⁵⁰ The lower court was sitting in equity. Today's courts have merged law and equity. See §2.29, *et seq.*, and especially §2.37.

²⁵¹ See §4.367.

²⁵² *Schumann-Heink, Ibid*, pp. 252 see our page 323.

²⁵³ See the quote just after §4.96. Though this is a different case from the one we are really examining, important language emerges which would just as well clarify the issue of contracting beyond equitable legal precepts.

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4.91 In distinguishing the statutory trust over the Colato we may easily mark the lack of equitable theorems which appear over and over in cases of this type. The courts, though somewhat puzzled,²⁵⁴ have not found those occasions by any means illegal, but have recognized them as the undertaking of common law right for purposes of creating conditions and terms acceptable to the parties of the contract.

4.92 Please keep in mind as you read the next two quotes the necessary rigidity of the common law as opposed to the bias of equity law.²⁵⁵ In order for people to enjoy the freedom to make their contracts and have them upheld by the courts, it is essential the parties be able to rely on the terms and conditions they alone agree and assent. Here is one court's bewildered expression concerning a Colato.

4.93

A business corporation is unthinkable where the shareholders are devoid of legal rights, have no officers, and are and must remain forever dumb as to the selection, approval or disapproval of managers and methods of conduct of corporate affairs. The declaration of trust in the case at bar is different from any hitherto considered by this court, in that the shareholders are utterly destitute of every legal right and of every means of expressing an opinion touching the trust. No avenue of action occurs to us as open to them except a court of equity for the enforcement of whatever rights may be cognizable in a court of equity.²⁵⁶

4.94 Mrs. Schumann-Heink complained to the court that Messrs. Folsom and Mackie should be required to pay the note as The Goodland Company was limiting any liability to its own assets, and it had no right to do so since it was unincorporated—that it had effectively overstepped its bounds and assumed corporate qualities which it should not have done. Effectively, Mrs. Schumann-Heink was asking the court to make the contract she freely entered a nullity.

4.95 The *Schumann-Heink* court in distinguishing between the fact that The Goodland Company was a contract (Colato) and that a contract existed between Goodland Company and Mrs. Schumann-Heink enforced the obligations of the parties. The court upheld the limited liability provisions claimed by the Trustees as not being an encroachment against the statutes of incorporation. Mrs. Schumann-Heink was accordingly not entitled to repayment from the individuals.

4.96 In appraising the contract of the parties, even the unusual disposition of an unincorporated organization (a Colato) claiming limited liability in its agreements, the court turned legal phrases into artful grace:

In considering whether any contract is against public policy, it should be remembered that it is to the interest of the public that persons should not

²⁵⁴ See the quote below at §4.93.

²⁵⁵ Cf §2.29, *et seq.*

²⁵⁶ *Bouchard v. First Peoples Trust*, 253 Mass 351. 148 NE 895. Case appended. Never mind that no courts of equity would find any rights to equitably divide. When contracts are at issue, the parties who make them need the satisfaction they will be rigidly upheld by the courts when called upon to do so.

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be unnecessarily restricted in their freedom to make their own contracts. Agreements are not held to be void, as being contrary to public policy, unless they be clearly contrary to what the Constitution, the statutes, or the decisions of the courts have declared to be the public policy, or unless they be manifestly injurious to the public welfare. Courts must act with care in extending these rules which say that a given contract is void because against public policy, since, if there be one thing more than any other which public policy requires, it is that men of full age and competent understanding shall have the utmost liberty of contracts that their contracts, when entered into fairly and voluntarily, shall be held sacred and shall be enforced by the courts.²⁵⁷

4.97 If the court had not compelled the fixed terms of the agreement between Mrs. Schumann-Heink and The Goodland Company no one would be able to count on having any contracts enforced. We certainly feel sorry for Mrs. Schumann-Heink, because she lost her money. However, if we were to allow feelings to go ahead of the law, no one would ever start new companies for fear their failure would cause the individuals behind the venture to be bound as slaves to the investors whose contributions went bad. In short, there would be laws prohibiting acceptance of venture capital, and the whole world would crumble and decay.

4.98 Before we entirely leave the discussion of the Law of Contracts, let's prepare ourselves to (1) see the contractual relationship as it occurs when creating a Colato, and (2) prepare to answer a couple of questions to be presented at the end of the next part. (Page 119).

4.99 The reader will note the parties creating a Colato are easily identifiable as Creator and Investor. They come together for the purposes they alone consider worthy, and so long as their agreement is not against public policy they are free to choose their reasons. Since the public policy of creating and maintaining the Colato of the Super Rich is well documented, and is settled as an inalienable right protected by the Constitutional guarantees as set forth and enumerated, add to this, the Declaration of Independence, the cases of law-therefore, the common law; one is well within one's rights to take profit from the law.

4.100 Regardless of the documentation, few people would come by simple chance upon the secret design of the Super Rich Colatos, as we shall soon explore.²⁵⁸ It's imperative we fix our attention's on the formula about to be displayed.

4.101 Our later questions will center upon the concerns of offer and acceptance. We made some point of the necessity of legal detriment when we discussed the statutory trust in part 2 of §4.80. Try to determine what, if any, legal detriment the Creator assumes in his contractual role of creating a Colato. Also determine what constitutes consideration in their exchange.

4.102 The meeting of the minds concerning the terms of their agreement is put to the test when the documents are put forward for signatures. If signed, free of duress and voluntarily, the terms are satisfactory, and *it* is a matter of fact that the parties have had

²⁵⁷ *Schumann-Heink, Ibid, p 254*, appended in full at our page 325.

²⁵⁸ See §4.106 for the secret method.

a meeting of the minds and have agreed upon the specified conditions.

Creating Your Secret Colato!

4.103 Bob and Alice Jones had thought over the many advantages a Colato would offer their family-operated sole proprietorship. They dreamed of the days their children would take over their thriving but small specialty produce business in Northern California. From time to time Bob and Alice had worried about their personal exposure to liability suits, but for one reason or another, had never done anything about it. Finally, their desires for limited liability but without *incorporating* which would mean higher income taxes, and their desire to manage, conserve and maintain the growing business drove them to see a lawyer.

4.104 After discussing their motives with their attorney, he was retained to help them. His secretary typed two contracts which they would each sign; he as Creator of both Colatos and Bob and Alice as the Investors. They also agreed that Bob and Alice would operate as trustees for one Colato while the attorney would be trustee of the other.²⁵⁹

4.105 Among their other agreements, these were the central facts that Bob and Alice understood: They were to irrevocably invest their assets beyond their reach as individuals. While they were to own all 100% of the Colato Certificate Units, they also understood the certificates provided them as persons no ownership in the assets and no control over the trustees-again, no control as individuals." They were to receive a distribution of the assets if and when the trustees declared it to be paid.

4.106 The document they signed described the facts at their meeting. The attorney offered ten dollars and all 100 Colato Certificate Units (CCU's) in exchange for Bob's and Alice's real, personal, and business properties, including the business name and business good will, which by their signatures they accepted.²⁶¹

4.107 The attorney Creator, on behalf of this Colato "A", took the assets into trust for the Trustees. Moments after their exchange of assets for certificates, and \$10.00, Bob and Alice accepted their new duties and responsibilities as the trustees of the organization.²⁶² The Creator then acknowledged his conveyance of the assets to the office of trustee, and his release from any further duties and responsibilities. While Bob and Alice no longer owned the property, as Trustees they enjoyed absolute *fee simple* title and control of those very same assets.

²⁵⁹ Alice's brother was considered as trustee, but it was decided the attorney was a marginally better choice.

²⁶⁰ Cf §4.52 especially noting the "control test." For a discussion of Certificate holders' rights, Cf §4.52 with §4.194.

²⁶¹ Most people would not think of the Creator taking the role of offerer. The common law right of contract provided this necessity. The Colato Certificate Units (CCU's) were part of the contract typed by the lawyer and of his own creation. Fancy bordered paper was used, like those of stock certificates, but any paper would have qualified.

²⁶² See §4.320 for a discussion of trustees rights, privileges, duties and responsibilities.

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4.108 Bob and Alice invested \$500 into Colato "B". The Creator named himself Trustee. The organization was named "Jones Produce Sales Co." Colato "A", "Jones Produce Co." was the same name Bob and Alice had used when a sole proprietorship. Then company "A" and company "B" entered a distributor sales agreement together each retaining the right to cancel the contract at thirty days notice.

4.109 Though Bob and Alice were appointed President and Treasurer of the sales company "B", they were legally subject to the Trustee. Then the attorney trustee executed a resignation to Bob and Alice, but they kept him on for two years before accepting the trustee position themselves.

4.110 The sales company "B" printed new stationery under its name. On the back side of its statements, order forms, and invoices was language providing notice to their customers of the limited liability status.²⁶³ A notation where order forms were signed stated that the reverse side contained additional provisions which were acceptable to the buyer, thus limited liability became a part of every contract entered.

4.111 Mr. and Mrs. Jones operated the new companies in nearly the same manner as before except that now their assets were protected. Fed example, should one of the truck drivers of the sales company ever be involved in an accident; or one of the produce consumers was to become ill; and a law suit was to find the sales company negligent, the liability of the sales company would be limited to no more than the Jones' could tolerate losing. The sales contract could be canceled by "A" Company and assigned to a new company. Further, all the necessary business assets used by the sales company are leased from "A" company. The sales company owns little more than the daily receipts which profits are distributed regularly.²⁶⁴

4.112 The Jones Produce Co. has continued to grow. A new distribution center was opened in southern Oregon. It has become a substantial asset. The Jones' more fully appreciate the benefits to them and their family as each year passes. Should something unfortunate happen to the parents, the children will step directly into the Trustees' office as Successor Trustees. There would be no gift taxes as there would be nothing for Bob and Alice to leave as gifts.²⁶⁵ There will also be no estate taxes, because no transfer of property is to take place after the Jones' death.²⁶⁵ Finally, there will be no estate to probate. The assets and business will continue to prosper and grow without skipping a heart beat.

4.113 Let's review a break-down of the contract. The parties are the Creator as offeror and the Investors as offeree. The terms of the contract were discussed and negotiated. After all the component questions were resolved, the agreement was committed to writing. Upon being signed, the instrument became *prima facie* evidence concerning the meeting of minds. The Creator offered the certificates in exchange for the property as full and adequate consideration. The investors voluntarily accepted the

²⁶³ See a sample of the notice at §4.342.

²⁶⁴ For a discussion on distributions see §4.233

²⁶⁵ See §§4.124, and 4.171.

²⁶⁶ See §4.171, *et seq.*, re estate and inheritance taxes.

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offer. Every element of the contract seems to have been met.²⁶⁷ Has it?

4.114 (1) How does \$10.00 and 100 Colato Certificate Units (CCU's) constitute full and valuable consideration? In other words, why isn't the transfer a gift? (2) What is the legal detriment borne by the Creator of Colato "A"? Each of the above questions is paramount and must have substantive answers. Therefore a close investigation of the rules of tax and law governing the business is in order. Let's seek those answers together.

You Use the Secret Technique!

4.115 Put yourself in Bob and Alice's position. Pretend you just did what they accomplished. Let me ask you, was the negotiation a taxable event? Such concern raises new questions like: What kind of tax may have been generated? A gift tax? A capital gain? Whether or not the transaction was a gift or gain, additional questions will ascend and must also be answered. What constitutes "full and adequate consideration?" What is "fair market value?" What is meant by "ordinary course of business?" What is "arm's length?" Was the dealing legally an "investment?" Each of these questions will be answered in turn.

4.116 *Whew!* Unless the reader is a tax or legal expert you might be thinking, "Whoa! Wait a minute! Let me catch my breath!" Please don't despair. This is hardly the time for it. You've come a long way! You've learned the complex legal principle of splitting title. One of the jobs of the footnotes is constantly to review and make certain you understand where you've been and where we're going next. Where we're heading is to *PROVE* the non tax consequences of this Super Rich secret technique. You'll be amused how the Internal Revenue Code is wrapped around their little fingers.

4.117 Certainly there is nothing illegal about making the trade, but questions of law do not necessarily control issues of tax. Our questions mainly are tax considerations. A resolution is imperative.

4.118 As we briefly noted in the last chapter, there are three ways to transfer property.²⁶⁸ Gift, sale, or exchange. If property is transferred by gift, there is an obvious gift tax. If property is sold, there may be a gain, but what possible tax could be involved in an exchange? (Imagine receiving a value greater than the property exchanged?) Of course, a gain!

What Did You Just Do?

4.119 In our pretense that you did what the Jone's did we come first to the question as to whether the transfer you made is a gift, sale, or exchange. The word "exchange" has been held to its ordinary meaning and is therefore a word of precise import. It means the giving of one thing for another, and requires that the transfers be "in kind," that is, excluding transactions into which money enters either as a

²⁶⁷ See §4.76.

²⁶⁸ See §3.97 Also *Cf* note 162 on page 85.

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consideration or as a basis of measure.²⁶⁹

4.120 An "exchange" is a reciprocal transfer of property as distinguished from the transfer of property for a money consideration only." It should be perfectly clear that trading \$10.00 and Colato Certificate Units (CCU's) is an exchange rather than a sale, as the \$10.00 could hardly be spoken of as "full" consideration or the absolute *basis of measure*.

4.121 Consideration must be "full and valuable." If someone from the I.R.S. wants to say \$10.00 constitutes consideration, then the I.R.S. would also have to be willing to allow us to take the loss! Of course, it's obvious the exchange is a trade, because \$10.00 wouldn't be a fair basis of measure.

How You Did It!

4.122 We next consider whether the creation of a Colato is legal, and whether or not the exchange comprises an investment. It has already been held that the creation of this very kind of organization was legally valid and for the purpose of creating permanency of the Colato. Additionally, it has been held that subscription of CCU's in such a trust is not a gift, but an investment of which the trustee takes title as owner.²⁷¹

4.123 It's easy to see how the trustee in a business vehicle where the certificate holders are devoid of legal rights, have no officers, and are and must remain forever mute as to the selection, approval or disapproval of the trustees and their methods of conduct of business affairs would make the trustee absolute owner." Consequently this Super Rich technique may be regarded as an investment which is all quite right and legal. I hope that gives you a lot of confidence!

No Gift Taxes!

4.124 It is inconceivable to the ordinary mind that an investment could produce a gift tax, but the "unusual" nature of the exchange of property for CCU's of a Colato produces equally unusual tax questions. In illustration, does a transfer of property which has a fairly discernible value for certificates of an undeterminable value create a gift tax question in your mind?

4.125 For the sake of consideration of this seemingly multifarious problem, let's assume Bob and Alice's property was worth \$1,000,000.²⁷³ The certificates they received for \$1,000,000 value declare on their face, as does the contract they signed creating the Colato, that the owner of the CCU's is not an owner as a stockholder is an

²⁶⁹ *Trenton Cotton Oil Co. v. Comm.* 147 F 2d 33. See also *Biggs v. Comm.* 632 F 2d 1171, 1176 (1980).

²⁷⁰ TR 118, §39.112(a)1,(e).

²⁷¹ *Palmer v. Taylor* 269 SW 996, 1000 (1925).

²⁷² *Bouchard v. First People's Trust*, 253 Mass 351, 148 NE 895. Case appended.

²⁷³ It wasn't, but the solution will more clearly emerge with such a great contrast of dollars to certificates.

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owner; that certificate holders have no ownership whatever in the property held by the Colato, nor do they have any voice or control over the trustees.²⁷⁴

4.126 In making the situation simple to understand from the tax commissioner's perspective, answer this question: Suppose Bob and Alice were to offer their CCU's for sale. How much would you pay? The question is of crucial import! If you reply, "31,000.000," you need to reread paragraph §4.125. If you say, "Not a red cent"-if this was to be an adjudicated decision-Bob and Alice are in trouble! They made a gift to their Colato!²⁷⁵ They would have to pay the tax.

4.127 As we have nosed, the main element categorizing a statutory trust agreement as a gift is the lack of consideration, but transfers reached by the gift tax are limited to those without consideration of money or money's worth. The federal gift tax applies to exchanges of property where less than an adequate and full consideration is received for the property transferred. In the case of a transfer of property for less than adequate consideration in money or money's worth, the amount by which the value of the property exceeds the value of the consideration is a gift within the meaning of Internal Revenue Code §2512(b).

4.128 This is only one of several instances where simple application of a law would be a misapplication, and the courts demand non application for cases of the Super Rich Colato!

4.129 The problem exists, because the certificates have no ascertainable "fair market value," and they may have minimal value to someone else. Questions concerning full and valuable consideration raise the specter of a "bad bargain." Fortunately these very questions have been put to the United States Supreme Court.

4.130 Leon Jaworski, acclaimed Watergate Special Prosecutor, argued the case of *Anderson* against the Internal Revenue Commissioner. The most important feature of this case is that the Commissioner *acquiesced*=" that bad bargains do not result in taxable gifts. It is therefore a case of ultimate authority. The case produced two conditions which would not result in the assessment of a gift tax. To obtain the confidence necessary to do it as the Super Rich do it we should understand the rationale of *Anderson*.

4.131 Even though the bench-mark of a gift is "donative intent" and all lines flowing away from there enter the domain of "contractual consideration," the Tax court under guidance of the Supreme Court precedents made the test for gift tax purposes a more workable objective or external standard than the less effective subjective inquiry of attempting to determine the transferor's *intent*.

4.132 Under this analysis, the whole question rests on whether the transaction can be said to have been "in the ordinary course of business." The court said any transfer for full and adequate consideration passes the test whether or not it was "in the ordinary course of business." We must admit that the CCU's, with their indeterminable value may

²⁷⁴ The legal title, possession and control of property, may by declaration of trust be passed from the grantor to him or herself as trustee, with the same legal effect as if the trustee receiving the conveyance had been *another person*. *Becker v. St. Louis Union Trust Co.*, 296 US 48, 50; 80 L Ed 35; 56 S Ct 78.

²⁷⁵ See §4.152 which shows that while the fair market value may be indeterminable, the CCU's are far from worthless.

²⁷⁶ Means the Commissioner has bound himself to such rules in any future cases.

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seem to be less than "fair market value" in money or moneys worth. However, in pertinent inquiry for gift tax purposes, the court stated the component-"in the ordinary course of business"-turns on whether the transfer is a *genuine* business transaction.²⁷⁷

4.133 The court declared that meeting the test when full and valuable consideration was absent was dependent on the transaction being both "common and ordinary for the persons involved, as well as for the business in general." And it noted there was "*nothing more ordinary*" in our society as: business being planned, conducted, and arranged to acquire proprietary interest, and that such arrangements were frequently made for inadequate consideration-if consideration was to be measured solely in terms of money or something reducible to a money value.²⁷⁸

4.134 Since the contractual agreement was made at arm's length, between the Creator and Investors, i.e., by parties not related by blood,²⁷⁹ and since nothing is more common and ordinary than persons making their contracts to establish rights and interests; and since the cases demonstrate the contractual technique is the common and ordinary method of creating Colatos, we now know why the Super Rich are exempt from the gift tax when making their exchange.

4.135 However broadly Congress may have used the term "gifts" in the gift tax law, and however much it may have dispensed with common law concepts of gifts, it is certain that the law was neither designed nor intended in its operation to hamper or strait-jacket the ordinary conduct of business.²⁸⁰ Therefore we are equally certain that the exchange of however great a value for CCU's does NOT result in a taxable gift just because the certificates have an indeterminable value. The whole procedure is definitely a "genuine business transaction."

4.136 The petitioners to the Tax Court in *Anderson* argued that while "donative intent" may not have been material in determining whether a gift had been made, the presence or absence of "donative intent" was an important circumstance in determining whether a genuine business transaction had been made. (Bob and Alice certainly demonstrated no donative intentions.) The court was fully persuaded and provided the Treasury Regulations which in substantive part are the same today, a half century later: First the 1936 Regulations:

Transfers reached by the statute are not confined to those only which, being without a valuable consideration, accord with the common law

²⁷⁷ The court supplied the emphasis. The reader *will* almost immediately reach the conclusion that a bona fide contract could never be less than a "genuine business transaction," and a Colato is a contract!

²⁷⁸ *Estate of Anderson v. Commissioner of Internal Revenue*, 8 Tax Court 706. Also see §§4.124, and 4.171, *et seq.*

²⁷⁹ Cf *Anderson. supra*, with *Comm. v. Wemyss* 324 US 303. *Merrill v. Fabs*, 324 US 308. Arm's length transactions are those in which parties may agree upon certain terms and conditions for an objective which has nothing to do with their bond of blood, but which could have been concluded with persons Wholly unrelated by blood for the declared purposes the business was conducted. In other words it is not a "sham" with no real or bona fide negotiation.

An *Anderson t-. Commissioner* 8 TC 706. 721.

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concepts of gifts, but embrace as well sales, exchanges, and other dispositions of property for a consideration in money or money's worth to the extent that the value of the property transferred by the donor exceeds the value of the consideration given therefore. However, a sale, exchange or other transfer of property made in the ordinary course of business (a transaction, which is bona fide, at arm's length, and free from any donative intent), will be considered as made for an adequate and full consideration in money or money's worth. A consideration not reducible to a money value, as love and affection, promise of marriage, etc., is to be wholly disregarded, and the entire value of the property transferred constitutes the amount of the gift.²⁸¹

Compare with modern language:

If a bona fide transfer, sale or exchange is made at arm's length in the ordinary course of business, the transaction will be assumed to be for consideration and not gratuitous. A consideration that is not reducible to a value in money or money's worth, i.e., love and affection or a promise of marriage, is to be wholly disregarded and considered totally gratuitous.²⁸²

4.137 We note, as did the United States Supreme Court in *Anderson* that it's frequently the cases of law which settle the disputed meaning of a statute: that the 1936 Regulations are actually saying the same thing. Fewer examples exist than the illustration above as to the importance of the common law, and if the questions of the gift tax were not already clear enough, there is yet another matter which would dispose of any attempted application of the tax. The United States Circuit Court of Appeals for the First Circuit has long held that full and adequate consideration is met by the issuance of trust certificate units in exchange for real and personal property invested in a *pure* common law trust organization (Colato).²⁸³

4.138 The Commissioner has acquiesced to this holding as well! Therefore, even though the *Anderson* court in its definition of "in the ordinary course of business" proved that full and valuable consideration was not necessary in a bona fide and genuine business transaction, a Colato - the preferred vehicle of the Super Rich meets the first test as well as the second, of *Anderson*.²⁸⁴ Conclusively, the application of the gift tax *in an exchange* by the Super Rich, gift taxes are not applicable. We will explore the gift tax question once more in considering its effect on Bob and Alice's estate-after their deaths.

²⁸¹ 1936 Treasury Regulations 79 Art. 8.

²⁸² Internal Revenue Service *Federal Estate and Gift Taxation Publication*, #488, page 33.

²⁸³ *Carpenter v. White*, CIR 80 F 2d 145.

²⁸⁴ For a delineation of a pure type of Colato, see *Hecht v. Malley* 265 US 144, 68 L Ed 949. 44 S Ct 462. See also §4.51 for pure or true types of "trust's" on page 107.

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No Capital Gains Taxes!

4.139 We began our present considerations with many questions at §4.115 and only one remains to be answered. Is the exchange in a Colato h taxable event-we now know it is not a gift. but is it a gain? Many thorny issues are just as soundly defeated by the Internal Revenue Code, the Regulations, and the cases.

4.140 Remember the illustration we used pretending Bob and Alice's property was worth a million dollars? Let's look at a new issue from the same question. When Bob and Alice traded their property for the CCU's, these certificates must have been worth \$1,000,000 else they wouldn't have made the exchange. Is that correct? The question is rhetorical, but it must be as substantively answered as the others.

4.141 If Bob and Alice voluntarily traded \$1,000,000 of property for CCU's, it would appear at first blush the certificates must be valued by at least what they traded for them. In other words, if CCU's are good and valuable for such an exchange, why shouldn't the I.R.S. collect and the Joneses pay the capital gain at the time of the swap, based upon the "fair market value" of the property exchanged?

4.142 The Internal Revenue Code to the rescue!

The measure of the gain . . . of an exchange is the difference between the [adjusted] cost . . . basis of the property transferred . . . and the fair market value of the property . . . received.²⁸⁵

4.143 As there can be no "equitable construction" of a tax statute,²⁸⁶ the Code must be strictly construed. It does not say a gain is to be measured by the fair market value of the property *transferred*. Instead it commands the measurement to be taken from the fair market value of the property *received*. Bob and Alice received CCU's. Consequently we must look to the certificates to determine fair market value.

4.144 It is true that exchanges generally produce capital gains taxes, but there are certain instances where recognition of a gain must be postponed. However the Internal Revenue Code ^{-foes} not answer how to handle the problem when a gain is not determinable at the time of the exchange. The question has been decided by the courts. This is why we remind ourselves from time to, time that the taxpayer's choice is not limited to avoidance or evasion of taxes,²⁸⁷ but rather a choice between the effective and non effective application of the Code, the Regulations, and the cases.²⁸⁸

4.145

Sometimes the amount of the gain ... isn't determinable at the time of the [exchange] ... where ... [it] depends on uncertain future events ... although

²⁸⁵ Internal Revenue Code §1001(a), (b). See also *Partington v. Attorney General*. L.R. 4H.L. 100, 122, an English case. Also see Table Six on page 126.

²⁸⁶ *U.S. v. Merriam*. 263 US 179 (1923). *Commissioner v. Harrelson* 282 US 55 (1930). *Gould v. Gould* 245 US 151. Cf §2.17. There is just no such thing as "equitable construction" of a statute!

²⁸⁷ Remember tax avoidance is legal, but evasion - a felony. See §1.65, *et seq.*

²⁸⁸ See exemptions at §1.65. *et seq.*

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the transaction is otherwise closed for tax purposes, it may remain open for the purpose of determining both the amount and time of taxation of the gain.²⁸⁹

4.146 As stated, the measure of a gain in the case of an exchange must be determined by the difference of the adjusted cost basis of the property traded and the fair market value of the CCU's received. Remember your answer as to what you would give Bob and Alice for their CCU's were they to be offered for sale?²⁹⁰ Admittedly, the certificates have an indeterminable fair market value, but more than a zero value. thus no gain (or loss) is recognized until the basis has been recovered.²⁹¹ We really need to learn the tax interpretation of "fair market value."

Proof!

4.147 The I.R.S. in rendering valuation of property makes a surprisingly simple proclamation:

The "fair market value" is the price at which the property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell, and both having knowledge of all the relevant facts. It may not be determined by a forced sales price, nor is it to be determined by the sale price of the item in a market other than that in which such item is most commonly sold to the public.²⁹²

4.148 If you reread it, that definition primarily benefits the Treasury in estate tax situations. However the Service may not have one definition for "fair market value" at one time when it is beneficial, and a different one for another time when the benefit goes to the taxpayer. The I.R.S. is obliged to keep their conclusion that the fair market value of valuable CCU's cannot be determined in any forum other than a voluntary sale.

4.149 As the definition also provides, the I.R.S. may not force a sale to determine price where the item displays an inherent yet unsettled value. They may also not force the CCU's to be sold in a market other than that in which such certificates may commonly be sold to the public. In addition, when the Treasury says "public," they mean at retail rather than wholesale. The value of the above definition to the Super Rich is evident in the point that they may plan their affairs around hard and fast rules which are not subject to change.

4.150 To better visualize the concept, perhaps an arithmetical illustration will clear up any confusion. It will also help unfold the Super Rich advantage in the Commissioner's holding.

²⁸⁹ *Tax Coordinator*, 1-2300.

²⁹⁰ *Cf* §4.126.

²⁹¹ *U.S. Master Tax Guide*, §910 Standard Federal Tax Reports. "Adjusted Cost Basis" means the total cost of the property plus financial improvements made, less any allowances for depletion or depreciation.

²⁹² *Federal Estate and Gift Taxation*, Publication No. 448, p. 39.

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Surely, if the certificates were ever sold they would be purchased for less than the cost Bob and Alice originally paid for their assets.²⁹³ In such a sale, a capital loss would be realized. The "adjusted cost basis" takes into consideration any adjustments which the law provides for depreciation or depletion.

TABLE SIX
"Fair Market Value of CCU's"

Fair Market Value of Colato Certificate Units received. The CCU's take on the original basis of the property which Bob and Alice held in their hands. "Basis" includes what Bob and Alice paid for their property, plus all improvements they made- "ACB"-see next box below).

MINUS = djusted Cost Basis, "ACB", of Bob and Alice's exchanged assets.

EQUALS = Capital Loss

4.151 The above diagrammed elements provide the Super Rich with some marvelous benefits. We presently consider two, but the latter only in passing. because it shall be closely, examined in the next chapter. We will there extend the provisions of

²⁹³ §4.151 sill give you a little peek into solving this problem. However, see §4..u)9 for domestic tax treatment of distributions to U.S. persons. Briefly, it should be stated that for the special purposes of the Super Rich the CCU's are a more important ingredient for the *creation* processes than for the enjoyment of distributed income. Of course CCU's have that advantage, but when it comes to capital gains and income taxes for domestic (rather than foreign) Colatos there is little advantage in owning the CCU's.

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these rules to the "offshore"²⁹⁴ benefits relished by the Super Rich. If a sale of the CCU's never takes place, the gain is effectively postponed indefinitely, or recognized as a tax-free exchange. Should a sale (perhaps to a foreigner)²⁹⁵ take place at less than the basis costs, for example, the \$1,000,000 Bob and Alice initially traded, a capital loss would occur.

4.152 Truly consider the value of the CCU's. Bob and Alice have traded \$1,000,000 of property and cash for 100 CCU's. Are the certificates worth \$1,000,000? Are they valueless? If the business grows, the certificate holders at the time of liquidation or distribution stand to reap a very large reward. Still, what are the certificates worth? To fully answer the question and as the I.R.S. said in the quotation above we must be entirely apprised as to any and all conditions which could affect fair market value. A condition never mentioned until now is that the certificates expire or become null and void at the death of the holder!²⁹⁶

4.153 Couple the detail that the certificate holders must live in order to receive royalty distributions with the fact that they as individuals have no ownership in the assets nor any control over the trustees or their affairs.²⁹⁷ Distributions are a future promise yet are to be made at the discretion of the trustees. If at some future point a substantial royalty could be paid it would have to be paid to the CCU holders. So - what are those certificates worth? What would you pay for them? The answer is indeterminable. However it is clear they have a substantial value. Far from a zero worth.

4.154 The factor should be transparent: In the case of a contingent royalty contract, a promise to pay (as exists in all Colatos), any estimate of fair market value is conjecture and speculation. The United States Supreme Court has concluded against the Commissioner's past claims for taxable gains in this situation, that the taxpayer is allowed to recover his cost basis before a gain can be recognized. Therefore, such Colato transactions concerning a capital gains tax remain open.²⁹⁸

4.155 Generally, income tax law affects only *realized* losses or gains. A promise to pay indeterminate sums is not taxable "income."²⁹⁹ Just think: If a sale of the certificates or distribution royalties does not exceed the original basis which was exchanged for C'-U's, or if a sale of the certificates never takes place, the capital gain is postponed indefinitely.³⁰⁰ The exchange is tax free! Let your imagination run just a

²⁹⁴ "Offshore" simply means outside the jurisdictional bounds of the United States. Canada or Mexico for example, are "offshore."

²⁹⁵ If something like this is to happen it will have to be real and not fictitious.

²⁹⁶ See §§4.182, 4.183, *et seq.*, reference the expiration of the CCU's at death and for a discussion of the Federal Estate Tax considerations.

²⁹⁷ Remember the Super Rich qualities of the Colato at §4.93.

²⁹⁸ To "remain open" produces the same results as a "tax free" exchange. *Burnet v. Logan*, 283 US 404. 51 S Ct 550, 75 L Ed 1143 (1931).

²⁹⁹ *Burnet, op cit.*

³⁰⁰ IRC §1001(a), (b).

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little bit on these thoughts. We'll get to them soon enough.

4.156 Several times over the years confusion has risen concerning the applicable rules for taxable gains on exchanges. In those instances the transfers in question have always resulted from transactions which were not "in the ordinary course of business."³⁰¹ They were relative to divorce settlements. In just such a case, the court emphasized the economic realities which are necessary to sustain a capital gains tax and concluded that the singleness and emotionalness of divorce proceedings do not necessarily have to comply with the rules determining fair market value.³⁰²

4.157

Section 111(b) requires that the capital gain be measured by "the fair market value" of the property *received* (emphasis added) by the taxpayer, not by the fair market value *transferred* by the taxpayer in exchange for the property received. To say that the fair market value of the property received is the same as the fair market value of the property given up not only ignores realities, but is the use of a formula which is radically different from the recognized formula approved by the courts for determining fair market value.³⁰³

4.158 It is patently evident that congress did not intend or authorize taxable gain to be measured in any other way than based on the fair market value of the property *received*. Whether the certificates have an ascertainable value on any particular date, even the amount of that value is subject to the particular facts and circumstances. We may therefore conclude that a contractual exchange in a Colato is a genuine business transaction; the certificates themselves are full and valuable consideration; and the exchange is an open transaction and is not subject to a capital gains tax!

4.159 Interestingly, the I.R.S. desires the exchange used by the Super Rich in the creation of their Colatos, even though they are able to escape the capital gains income tax. You see, there is a chance (regardless of how remote it may later become for those who use the offshore secrets of the Super Rich) that the Treasury will collect a substantial capital gains tax when the Colato is liquidated. Finally, if it was the other way around then there would be no capital gains tax as everybody would be exempt.

³⁰¹ See §4.131 Had counsel argued along these lines it's easily conceivable even those few decisions muddying the water would have reached other conclusions.

³⁰² Cf and distinguish *Commissioner v. Marshman* (see note just below), with *Davis v. U.S.*, (1961) 287 F 2d 168. 82 S Ct 805, affirmed in part and reversed in part on other grounds, 370 US 65, 82 S Ct 1190. 8 L Ed 335. Rehearing denied 371 US 854, 83 S Ct 14, 15.

³⁰³ *Commissioner v. Marshman* 279 F 2d 27, Emphasis supplied by the Court. Cert. den. 364 US 918. 8 S Ct 282. 286. 5 L Ed 2d 259. *Maxfield v. U.S.* 152 F 2d 593, Cert. den. 2 Cases 327 US 791, 66 S Ct 821, 90 L Ed 1021.

More Proof!

4.160 We have now answered the question as to whether the exchange Bob and Alice made was a taxable event-either a gift or a gain-it was neither! We have not answered what legal detriment the Creator had in his part of the transaction.³⁰⁴ It's axiomatic from a legal view that the Creator had legal detriment because for a period of time he held in his capacity all of Bob and Alice's property. Fiduciaries, regardless of how long such activities last have substantial burdens, and he performed his *executory*³⁰⁵ duties just as he contractually agreed.

4.161 We have finally laid to rest any claims the exchange was a taxable event. The Super Rich exchange of property for CCU's is not only legal, but it is also tax free!

The Day The Death Merchants Took A Holiday!

4.162 Andy Curtis married late in life. Moreover he was 22 years older than his young wife, but his bachelor years had been full and not wasted. He had a friend. Milton Guest, an insurance broker, who fascinated him with tales of a business technique which was used by fabulously rich H.L. Hunt. Guest had been introduced to Hunt by his brother-in-law, Harry Phipps, for insurance needs, but Hunt was taken with Guest. A friendship developed which lasted until Hunt passed away in 1974.

4.163 Guest spent many an hour with Hunt while the two brainstormed the miracles Colatos would accomplish. It is reported that these sessions were long and exciting-that occasionally Hunt would leave scheduled appointments waiting all day long with his secretary while they intoxicated themselves with their favorite subject.

4.164 The stories Milton told Andy were captivating. Thus it came about that Milton created Andy's first Colato. In fact, Milton Guest's name was reported in a newspaper article as being instrumental in saving the Andy Curtis estate from the plunder of probate and taxes when Andy passed away suddenly a number of years ago.

4.165 Andy Curtis had started a small grocery store in Spokane, Washington during the forties. Through some shrewd purchasing and marketing, his building had to be enlarged sever. I times. Finally a large location was purchased on East Sprague Street where Spokane was growing fast. It wasn't long before one store became two, and today a chain of supermarkets dot the Inland Empire.

4.166 The young Mrs. Curtis was content to leave the business to Andy and cared to know nothing of the enterprise, but indulged their three children. Tragically their two youngest children, teenaged sons, drowned in 1947 while on a boating excursion where the Snake flows into the Columbia River. Their older daughter married not long after

³⁰⁴ See the two questions posed at §4.114.

³⁰⁵ An executory duty is one where something remains to be done by one of the parties and by the terms of a contract but before that person has actually delivered or conveyed title of the property to he dealt with. This is the duty the Creator has in the Super Rich Colato. See *Martin v. John Clay & Co.*, Mo. App., 167 SW 2d 407, 411.

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and moved to Idaho with her husband. Mrs. Curtis was so bereaved, they adopted an infant son in 1952. During the 16th year of the adopted heir's life, Andy suffered a stroke and died.

4.167 The boy was obviously too young to be trustee of the concerns, though he was named to succeed his father. Still, Andy's trusts had anticipated such catastrophes. Milton Guest arrived from Texas as Interim Successor Trustee for the Curtis Colatos, and succeeded in finding adequate maintenance for the grocery business until the son became of age. The community noted with favor that the super markets would continue, due to Mr. Guest's "ingenious trusts."

4.168 Mrs. Curtis suffered no more than the loss of her husband. Since all the family assets were owned by a network of Colatos there was no rush to sell off property to pay the death merchants. Even though Mrs. Curtis understood very little about what Andy had always referred to as "the Trusts," she understood even less concerning Milton Guest's work after Andy's death. The contractual obligation on Milton's part as Trustee to secure the right management personnel and additional Interim Successor Trustees to act until the son became Trustee all went according to the strict terms set forth in the contracts.

4.169 Sincerely understand this: The reason there was never a loss of the family home, business, aid assets is because-only *Andy died*.³⁰⁶ His Colatos will live on into perpetuity. The reason Mrs. Curtis was as ignorant of probate, as she was the business, and of the accompanying administrative costs, executor's fees, trustee's fees, consultant's fees, bonds to protect creditors, attorney's fees, commissions, losses from forced sales of property, appraiser's fees, impounded bank accounts, etc.,³⁰⁷ is because there weren't any. Under the - circumstances there couldn't have been any.

4.170 Yes, the mortality merchants took a holiday but not at Andy's expense. There was no probate because Andy was a Pauper, and there was no property to be transferred. Business continued routinely, and Andy's resolution proved his confidence was not placed on a mere wish,³⁰⁸ but instead upon the exact terms and conditions of a contract.

No Gift or Estate Taxes!

4.171 Since the question of whether a transfer of property is a gift would have to focus on the point of transfer, it is clear that a deceased with no property to his name has nothing to give as a gift, or to leave as an estate. There is obviously no gift tax. However the I.R.S. is not content to look only at property owned at or near death, but also to property transfers throughout one's entire life!³⁰⁹

³⁰⁶ See the definition of probate at §3.37.

³⁰⁷ Consult the chart of problems solved by Colatos on page 109.

³⁰⁸ Please see the definition of a will at §3.35.

³⁰⁹ IRC §2512(b), (c). Cf §4.122. 4.137, *et seq.*

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4.172 About the time his youngest of two sons, Charles, was born Harry Michelson purchased some property in Hingham, Massachusetts and began to operate a dairy farm. Over the years he expanded his holdings and included buying and selling cattle in his operations. From an early age, his sons, Albert and Charles, worked in the family business, gradually taking on added responsibilities as they grew older. The enterprise succeeded, and in the mid-1950's when Albert and Charles were in their twenties, the business became known as Harry R. Michelson & Sons.

4.173 Then in 1960, Albert, the oldest son, expressed a desire to leave Massachusetts and settle in New York State. Therefore, Harry and son Charles paid a sum of money settling Albert's interest in the family businesses. Harry and Charles continued the operations as equal partners until the Spring of 1964. Harry suffered a heart attack and determined to withdraw somewhat and devote less time to the daily activities.

4.174 In the latter part of the fateful 1964, a corporation was formed to handle the cattle buying and selling business. Father and Son, as equal stock holders, continued to operate the business. Approximately four years later, in 1968, a second corporation was formed with equal shares for the dairy business. While the corporations took the tangible and intangible personal property, the real estate was held in the father's name for the exception of one parcel held as joint tenants by father and Charles.

4.175 Several days before forming the second corporation, a common law trust (CLT)³¹⁰ named Michelson Realty Trust with father and son as co-trustees was created, and deeds conveyed the real estate to the CLT. Harry received 51% of the TCU's (Trust Certificate Units) while Charles received 49%. Then the corporations leased the real property from the CLT. The CLT being an "associated" type, filed corporate income tax returns.³¹¹

4.176 In addition to his interest in the family businesses. Harry owned together with Mrs. Michelson a substantial amount of real and personal property. Therefore Harry executed two documents to dispose of his individually owned property. He made a will and a revocable living trust.³¹² Approximately 6 years after creating the CLT Harry died, and the I.R.S. attempted to **tax** Charles' 49% of the TCU's as a gift from Harry's estate under IRC §§2036 and 2038.

4.177 The I.R.S. agreed that Charles' 50% stock interest in the two corporations was not includable in his father's gross estate, but it contended Charles' 49% ownership of TCU's was includable "by reason of the trust mechanism employed." The Tax Court noted, however that both Code §2036 and §2038(a)(1) excluded bona fide sales for an adequate and full consideration in money or money's worth.³¹³ The Harry R. Michelson Estate, Petitioner, argued against the I.R.S. that Charles received his 49% of the TCU's in *exchange* for his partnership interest in the land conveyed to the CLT.

³¹⁰ See page 165, "Colatos Versus Common Law Trust's."

³¹¹ See §4.367 relative to the issue of "associates" and its subsequent taxation as a corporation. Also Cf the chart on page 174.

³¹² See Chapter Three concerning trusts and wills.

³¹³ See also *Estate Tax Regulations*, 20.2043-1(a).

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4.178 The Tax Court conceded that Charles was the owner of one half interest in the entire family enterprise prior to creating the CLT and that he received 49 Trust Certificate Units in the Michelson CLT in exchange for his 50% partnership interest in the lands conveyed to the CLT. It was determined that there was no gratuitous transfer involved in the creation of the Michelson Realty Trust, (i.e., the transfer was for consideration and not a gift) thus there was no basis for the application of either Code sections.³¹⁴

4.179 While there was no inclusion of Charles' TCU's or the real estate represented by his TCU's into his father's estate, 51% of the values of the real estate were taxed due to the nature of the certificates. The Trustees and the Certificate Holders were "associated together." By this we mean that in the indenture/contract creating the CLT there was no prohibition against the Certificate Holders directing the affairs of the office of Trustee and the destiny of the CLT-as the owners.

4.180 Since the Certificates represented ownership of the assets held by the CLT, as stock represents ownership of the assets in a corporation, it was a simple matter for the I.R.S. to tax the TCU's. The corporation, trust, and will were absolutely no help in escaping the federal gift and estate taxes either.

4.181 Had the Michelson CLT been "pure" instead of "associated", (a Colato instead of a CLT), not even 5% of the values would have been taxed because the certificates of a Super Rich Colato do NOT represent a beneficial interest or claim by the holders against the property held by the Colato.

4.182 Very simply, in a Colato where there is no division of legal and equitable title³¹⁵ there is no possibility anyone else can have an interest or be expecting a gift. It is just not possible. Therefore there can be no gift or estate taxes. Additionally, the Certificates of the Super Rich "pure" type of common law trust organization (Colato) expire and become null and void upon death, so there aren't even any certificates left in the estate.

No Federal Estate Tax!

4.183 The expression "death taxes" is all the rage, and it appears it always will be. In fact, there is no such thing. The *subject* of the federal or state gift and estate tax is neither the property of the decedent, nor the property of the legatee, but rather the transfer of assets affected by death.³¹⁶ As death is the propelling force for the imposition of the tax, it is death which determines the interests to be includable in the gross estate. However, interests which terminate on or before death are not a proper subject of the federal estate tax.³¹⁷

³¹⁴ *Estate of Harry F. Michelson*, TCM 1978-371.

³¹⁵ For a complete discussion of legal and equitable title see §3.84, *et seq.*

³¹⁶ *Knowlton v. Moore*, 178 US 41, 20 S Ct 747, 44 L Ed 969 (1900); *YMCA v. Davis*, 264 US 47 (1924), 44 S Ct 291, 68 L Ed 558; *Edwards v. Slocum*, 264 US 61 (1924), 44 S Ct 293, 68 L Ed 564; *Goodman v. Granger*, 243 F 2d 264 (1957). *Babb v. U.S.* 349 F Supp 792 (1972).

³¹⁷ *Goodman*, and *Babb*, *supra*, see note 316 on page 132.

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4.184 Here is the rationale for the Super Rich providing that their Colatos CCU's become null and void at death: Certificate Holders must live to collect the contingent royalty distributions. If the CCU holder should die the CCU's become a nullity-as though they never existed. Thus there is no Code provision for the federal government to levy the estate tax. The Super Rich are free because the property doesn't belong to them, and when they die there is nothing to transfer or to tax! The courts have held that notes canceled at death are not includable in a gross estate.³¹⁸ Further Colatos will even provide for the nullity of the CCU's upon either insolvency or bankruptcy.³¹⁹

4.185 There are a couple of reasons for this, but one which springs to the fore of our subject is that such provisions make the Super Rich "judgement proof." We will cover this issue at §4.217ff. As exciting as these prospects may be, when you consider using a Colato for your own purposes don't forget that there must always be a business motive or purpose and this is *only one* of the many legitimate business purposes you would be able to think of.

No Inheritance Taxes!

4.186 States usually have inheritance taxes however most states have gift and estate taxes in addition to the federal gift and estate taxes. Once again, the foundation for an inheritance tax is based upon transfer of property after death. If all property interests have been disposed of before death, or interests in CCU's expire at death, there is no property to be transferred, and thus there is no opportunity for the inheritance tax to attach. See row simply the Super Rich technique disposes of these problems?

4.187 Another example of this type of expiration of right is the fairly well known concept of life estate.³²⁰ This is where an estate is limited to a duration of the life of the party holding it, or of some other person. I have an elderly client who sold his property for a life estate. He still lives on the property, treats it as though it were his very own, indeed it is, until he dies. The man who bought his property will take the property when my client dies. As my client has no heir and the buyer substantially improved the condition of the property my client lives in, it was a good deal for all concerned.

³¹⁸ *Estate of John A. Moss*, 74 TC No. 91 (1980). Cf §4.224 as to what happens to the CCU's when they become null and void. Also reconsider §4.96.

³¹⁹ "Moreover, upon the death, insolvency, or dissolution of the Holder hereof, this Certificate (and all rights hereunder) shall be absolutely NULL AND VOID. However, all or part of the Units hereby represented may be transferred before death, insolvency, or dissolution of the Holder, but only upon the approval of the Trustees, and in accordance with the provisions of the Indenture on file in the office of the Trustees." A statement extracted from the Colato Certificate Units developed by First America Research indenture.

³²⁰ *Black's Law Dictionary*. See also *Williams v. Ratcliff*, 42 Miss. 154.

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What If They Change The Law?

4.188 "Well, we've disposed of probate, gift, estate, and inheritance taxes. What if so many people start acting like the Super Rich they change the law?" I've heard this question so many times it deserves an answer. First of all, history proves that although the simple trust could have avoided the king's interest in estate lands of English barons, there just weren't that many people proportionately who used trusts.

4.189 The King's custom of confiscating lands left by a deceased, ruining any chance of inheritance, was effectively suspended when an owner of property transferred it to the Church knowing the Church would hold it for the benefit of his children.³²¹ Even though King Henry VIII did try to stop the use of trusts for these purposes he was unsuccessful, because too much time establishing the precedent uses of the trust had passed and it was impossible to undo the trust legal tradition. In spite of this there were more than not who did not use trusts!

4.190 Perhaps like today many people *feared* trusts were "illegal" just because the King didn't like them. That would be enough to stop any of the unthinking faint hearted. Just because the option is available doesn't mean *everyone* will use it. Besides, there are more than enough death merchants peddling their wares to ensure that not too many will use the tools of the Super Rich. My hope is that 3% to 5% will use Colatos, because therein lies my hope for a free America.³²²

4.191 Second, substantial numbers of years have established the direction of the taxing system here as weak as in England. Even with the advent of Reagan's latest tax reform, containing the most overall changes made since the inception of the tax, *its direction remains entirely unchanged*.³²³

4.192 "Third, with the cases and the Commissioner's acquiescence to the situations we are studying, the only changes which could be made would be to codify the constitutional provisions for an equal and uniform tax throughout America, and that's one provision of the Constitution which wouldn't hurt too much. Fortunately or unfortunately, the law can be changed as much as possible without ever turning its direction. It's here more or less to stay. The only way back is to the beginning to start all over again."³²⁴

4.193 Let's hope enough people *do* start using the Colato so that we're forced to scrap the present corrupt and immoral system. Then we can have an honest and more effective policy. Once again, until that time comes we're headed the *only* direction the law can go. One does not retreat laterally - the only retreat is to the rear!

³²¹ See §2.40 for the development and continuance of the ordinary trust and the subsequent Statute of Uses.

³²² See §6.91 on this subject.

³²³ The tax reform act of 1986 "is unquestionably the most far reaching reform of the nation's tax code since the adoption of the federal income tax in 1913." *Newsweek*, August 25, 1986 page 15.

³²⁴ See my solution for an equitable tax system at page 256.

You Can Use Super Rich CCU's

4.194 The Investor in a Colato in effect is subscribing to "shares" or Colato Certificate Units. However, in a Super Rich Colato where the element of trust is contractually absolute or pure, as opposed to the "associated" type, the CCU's do NOT represent:

1. Any legal title or beneficial interest in the Colato or its assets.
2. Any voting or managerial rights, and
3. Any vested income rights.

4.195 At first glance it's difficult for anyone to understand why, with such limited rights,³²⁵ anyone would invest valuable money or assets for Certificates of these kinds. This may frankly be the reason the Super Rich type of "trust" attracts so little attention. It appears to have very few advantages - at first! It's almost like saying, "I believe in paying *ALL* my taxes!" and then finding out the emphasis was on "my" instead of "all."

4.196 The duties of the Super Rich to taxes are plainly less than almost every body else. As we have been learning, it's due to an inequitable system they never wanted, and thus their engineering of the law and the Internal Revenue Code.

4.197 Of course the ability of a Colato to escape taxes makes the arrangement intriguing (but that isn't readily apparent), and we have stated elsewhere that a technique used by a taxpayer for the sole invention of avoiding taxes is insufficient on its face.³²⁶ There must be some business purpose for the technical vehicle used. Therefore, we shall examine in the next several parts (1) whether there is any recognizable precedent for such "unusual certificates;" (2) the full character of such CCU's; and (3) what business purposes and business activities are available and necessary to effectuate the Super Rich system for ourselves.

4.198 As our discoveries are casually uncovering why and how the Super Rich have been able to maintain their status quo, we are also grasping how we too can also be utterly free of taxes, and how our own estates, wealth, and power can grow with every year. However, we'll have to continue to keep our eyes wide open because the Super Rich components have been with us for a long time, yet they have never captured our attentions long -enough to convey the benefits of which they are capable.

4.199 Let's first review and then determine what benefits Colato Certificate Units of a Super Rich type trust do represent. So far they epitomize absolute escape from probate,³²⁷ gift,³²⁸ inheritance,³²⁹ and federal and state estate taxes.³³⁰ That's far

³²⁵ See the limited certificate holder rights at §4.2271

³²⁶ See §4.235 for "Special Sanctions Endorsed" and "Total Escape" following.

³²⁷ See Chapter Three, §§4.2, and 4.169.

³²⁸ See §4.124, et seq.

³²⁹ See §4.186.

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more already than the ordinary trust can accomplish.³³¹ These certificates can save federal and state income taxes, capital gains taxes, and Social Security taxes. In addition, they can prevent bankruptcies, seizures, liens, and law suits.

4.200 We already know how and why the first third of the benefits work. We must study to prove the last two thirds. When we put it all together, it will make very good sense.

4.201 What about that "contingent right to income or distribution of assets" (when ordered at the discretion of the Trustees)? Is there any identifiable example of such a thing in the "real world?" Remember when we learned there was a company which unincorporated itself to be more profitable, and that it's certificates have been traded daily for quite some time on the New York Stock Exchange?³³² - It's a very notable example of the Super Rich technique.

4.202 Prior to 1961 The Mesabi Co. operated as a corporation where the double tax rates apply once at the corporate level and again at the shareholder level. President Arnold Hoffman of The Mesabi Corporation, announced that the Commissioner of the Internal Revenue had in a private letter ruled that the proposed Mesabi Trust would not constitute an association of persons taxable as a corporation.³³³ Then in July Mr. Hoffman conveyed the corporation's assets to a Colato.

4.203 Mesabi Trust's income consists of royalties received from iron ore production on nearly 10,000 acres known as the Mesabi Iron Range in Northern Minnesota which is leased to an affiliate of two major steel companies. Mesabi freely acknowledges that the Colato form of business organization allows a sizable tax advantage of which exemption from the federal corporate income tax is most important.

4.204 Mesabi is obliged to distribute all income after payment of expenses and necessary reserve provisions.³³⁴ Let's take a look at the character of the CCU's which are traded on the New York Stock Exchange.

4.205 In the Mesabi Trust Indenture (contract) dated July 18, 1961 concerning the CCU's we read in pertinent part:

Section 3.2. Rights of Trust Certificate Holders. The registered owner of each Trust Certificate shall be entitled to a participation according to the number of his Units in the rights and benefits due to a Trust Certificate holder hereunder A Trust Certificate holder shall have no title to, right to,

³³⁰ (... continued)

³³⁰ See §*4.183 and 4.186.

³³¹ *The ordinary trust only avoids probate, See the chart of problems solved by the will, trust, Colato, and foreign Colato respectively on page 109.*

³³² See §4.50. page 107.

³³³ *Wall Street Journal*, March 14, 1961.

³³⁴ Doesn't that sound assuring? It is, too, but look next at who has all the authority. It's not the I.R.S. or the certificate holders. In fact, the I.R.S. has already ruled they wouldn't be taxed as a corporation, so if the Mesabi withholds some distributions, there can be no unjust enrichment as in corporations, and they have to answer to no one as long as they can raise even a feeble claim to defend their needs for the capital. Please note however the question at §4.209.

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possession of, management of, or control of, the Trust Estate except as hereunder otherwise expressly provided ... *but the whole title, both legal and equitable, to all the Trust Estate shall be vested in the Trustees* and the sole interest of the Trust Certificate holders shall be the rights and benefits given to such holders under the Agreement of Trust.³³⁵

4.206 Mesabi Trust doesn't call itself a "pure" common law trust organization (Colato). How can I say it is? Remember the poem? "A rose by any other name would smell as sweet." It doesn't matter what Mesabi calls itself, it IS a Colato because the CCU holders have no legal title or beneficial interest in Mesabi or its assets. The holders have *no* voting or managerial rights in Mesabi. The holders have no vested income rights. Yes, they have a vested right to income, but said income, its amount, its frequency, etc., is a *contingency* and not a guarantee.

4.207 If the Mesabi Trust were an "associated" common law trust (CLT), the Certificate Holders would have been the owners and have the control as stockholders or the owners of corporations do. Hence it would also have been taxed as a corporation.³³⁶

4.208 Mesabi calls itself a trust. How do we know it's a Colato instead?³³⁷ Mesabi is not a trust because the tithe to its assets is not split. It's a Colato because "the whole tithe, both legal and equitable" is vested in the trustees. Remember, a trust must split legal and equitable title.³³⁸ A Colato, on the other hand, owns the whole title.³³⁹

4.209 Here's a question: Colato Certificate Units which offer (1) no legal title or beneficial interest to the holder; (2) no voting or managerial rights; and (3) no guaranteed income rights-how can they be traded on the NYSE; and why would anyone buy them? The question is rhetorical, because they've been traded for over a quarter of a century. The answer lies in the fact that income paid out over the years is a proven fact. They have easily found their own market and value. Though the factor of confidence the purchasers of certificates must place in the trustees of Mesabi is "*pure trust*," the trustees have demonstrated their trustworthiness to a fault. An example of this in the corporate world is the famous Coors Brewery, Co. We must remember that the corporation is relatively speaking the newcomer and the Colato is ancient. Coors sells its "Class 'A' Stock" which gives the owner no voting rights or company ownership whatsoever. Here is just another illustration where the corporation adopted by statute the benefits which were already available at the common law and the state thereby became the invisible partner of every corporation.

4.210 Each unit of Colato Certificates is comparable to stock in a corporation except as we've noted repeatedly there is no incident of ownership as in the case of

³³⁵ Mesabi Agreement of Trust [contract], emphasis supplied.

³³⁶ See §4.367 for a complete discussion on "associates." Also see §4.409. "How a Colato is Taxed."

³³⁷ See §4.7, *et seq.*, "A Trust Not A Trust."

³³⁸ See §3.84 "The Dividing Line."

³³⁹ See §§4.52, 4.91, 4.194, 4.205 *re* "whole title." Cf §4.93 and the case of *Hecht v. Malley*, beginning on page 326.

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common stock. Each unit is of equal value and is evidenced by the investment of property made by an investor. Therefore, the CCU's are "fully paid."

4.211 The Super Rich would be careful to see that the Indenture (contract and declaration of trust) specifies that the CCU's are non assessable. Since the agreement is between the Creator and Investor, their purpose of eliminating any assessments by contract is a right the courts are powerless to diminish; in the case someone is judicially seeking assessment rights. Therefore persons seeking to obtain judgments from those who use these types of "trusts" will not get very far.³⁴⁰ We're already discovering how the Super Rich can avoid judgments.

4.212 Colato Certificate Units should be given no par or monetary value. That is a corporate concept which could undermine the CCU's indeterminable value.³⁴¹ Capital gains taxes could become instantly due and payable, and federal gift and estate taxes, and state estate taxes could also become a problem in the event of death. Review those sections referred to in the note if this isn't entirely clear.

4.213 The investment made to create a Colato constitutes an irrevocable fixed exchange without a right or power of any Certificate Holder to change, modify, or rescind either the amount or type of the investment made. Such ensures the trustees an ill fee *simple* ownership of the assets of the Colato.

4.214 Because the investment is irrevocable, fixed, and not capable of being changed, etc., the Super Rich are able as Investor to also become the Trustee, because the Investor would have totally alienated legal and equitable title from himself as an individual. As the office of trusteeship merely controls, the Colato is the owner of the assets. The office of trusteeship can be handed down from father to son, other family members, and so on into perpetuity.³⁴²

4.215 When I say the Colato itself owns the property that's what I mean. It is a distinct legal entity.³⁴³ Further, it has been held that the certificate holders in these Super Rich Colatos are not to be treated as mere co-owners of the trust property.³⁴⁴ Since the CCU holders have no ownership in the assets of the trust, and since the officers of the trust can be changed from time to time we can see how the Colato itself *must* be the owner of the property. Of course, it must also have a trustee or it will be

³⁴⁰ see §4.85, *et seq.*

³⁴¹ Remember, the indeterminable value is a plus working (or the Super Rich. For "fair market value" see discussion at §4.139, *et seq.*, and §4.171, *et seq.* While setting a par or monetary value could conceivably create an instantaneous capital gains tax, a Colato all by itself will not save capital gains taxes. For a complete discussion of the capital gains tax exemption see §5.200.

³⁴² There is yet another reason why the Investor and Trustee can end up being the same person. The creator initially picks the trustee in an arm's length business transaction. Should the trustee be the original investor, there is nothing to keep it from happening either legal or tax wise. A stipulation in the indenture sets forth the fact that the creator is under no obligation to choose anyone. Of course these things are all worked out before signatures are affixed to the contract.

³⁴³ *National City Finance v. Lewis* (Cal App) 3P 2d 316 (Rehearing denied) 4 P2d 163. *Beilin v. Krenn & Dato* 350 III 284, 183 NE 330; *Hemphil v. Orloff* 238 Mich 508, 213 NW 867. 58 ALR 507, aff d 277 US 537, 72 L Ed 978, 48 S Ct 577. Annotation 156 ALR 32.

³⁴⁴ *Goldwater v. Olman*, 210 Cal 408; 292 P 624. This case is appended beginning at page 340.

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dissolved. More about this later.

4.216 The Colato Certificate Units are personal property of the registered record owner alone. Waivers of community property rights are important where applicable, because such is really a division of title which a Colato cannot tolerate. Again, this sometimes appears to be a disadvantage, but I challenge the reader to concretely come up with a real handicap. This isn't one!

4.217 When a husband and wife or any other group of persons makes up the owners of the CCU's they are *tenants in common*. The death, insolvency, or disillusionment of a certificate holder automatically nullifies the certificates owned by that person. This provision is a protection against divorces, seizures, bankruptcy courts, liens, judgments, etc. (As stated above, this stipulation also helps exempt the CCU holder from probate, gift taxes, estate taxes, and inheritance taxes). The main particular here is how the estate is absolutely judgment proof from personal liability problems. While the individual may get into trouble the assets of the Colato and the certificates which the Investor received for the exchange are not subject to attack and they become null and void at the very moment of the crisis.

4.218 The Investor is literally and legally a Pauper. Of course his or her life style may not reflect such indigent status, but it is legally an absolute fact.³⁴⁵ All the Investor's assets are irrevocably placed beyond his individual reach. Certainly he may control the Colatos properties as Trustee, but the common law readily recognizes that another Trustee may just as quickly control the property. The Colato owns the investment *in fee simple*.

4.219 We've talked around the "control versus ownership" status of the Super Rich since the very first pages of this book. Let's talk very bluntly about it now. Question: Would it make any difference whatever to the reader that he or she controlled rather than owned the property; would it make any difference as far as the practical aspects are concerned?

4.220 Most of us have had the opportunity to rent a car. Let's use that as an example. We pick up the car at the airport and spend a week driving around in it. It's not our car, but we treat it as if it's ours. For instance, on the very first day of the week we have the car we drive to the beach and get sand all over the interior, in the seats, the floor, and even in the head liner. We can live in that filth all week long or we can clean it up. We have the absolute choice.

4.221 The example is imperfect, because you couldn't go get a new paint job just because you didn't like the color. In the case of a Colato that is exactly the case. You don't own the asset, but as trustee, you can paint "the car" pink with chartreuse dots if you wanted to. No permission is required.

4.222 You have absolute control without any of the burdens accompanying ownership. Those burdens we're talking about are other persons suing to take your property away from you. If you don't own anything no one can touch what you merely control in your official capacity as trustee. This is why the Super Rich leave their protected Colatos out of the business arena where they would otherwise be exposed to

³⁴⁵ See page 291 for an example as to how the Super Rich make their financial statements for bank loans, etc. Take time to think through all of this very carefully. There is a lot to consider, and advice of competent counsel is imperative! Making a false statement to a bank is a felony! (Misdemeanor - jail; Felony = prison)!

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such liabilities.³⁴⁶ So as we can see there is no real disadvantage in controlling rather than owning assets.

4.223 As we've said, the life style of the trustee may be opulent while legally he or she is an absolute Pauper. There is certainly no disadvantage to this kind of life style. The Super Rich live lavishly and yet are broke. While this rule didn't "seem" to hold true to Nelson A. Rockefeller's estate, when one reads his will, it is necessary to read between the lines where all the "trusts" mentioned are being willed this and that. Anyone's guess as to what actually happened to those assets is 'as good as another's'.³⁴⁷

4.224 We've talked about the CCU's becoming extinct the moment of a crises, but what happens to them? Do they just evaporate? No, the contract creating the Colato stipulates for automatically returning the nullified CCU's to the Colato in the event they should become null and void, and the Trustees are to find a new Investor in the same manner the Colato was created in its beginning.³⁴⁸ This contributes safety to the Super Rich as they are assured no asset will ever find its way into the hands of an unauthorized person.

4.225 The holder, because of threatened death or insolvency may transfer the Certificates before they become null and void, but only with the prior approval of the trustees. It's important the discretion belongs to the trustees, or more appropriately to the office of trustee to prove genuine alienation of ones previously owned property. Of course, should you be the trustee or have a compliant trustee³⁴⁹ this restriction in practical reality is merely a legal nicety.³⁵⁰

4.226 No actual or constructive notice as to a transfer of the CCU's is effective against the Colato, because freely transferring the certificates is a corporate characteristic the Super Rich do not need nor care to have.³⁵¹ From the above, the reader may perceive some of the benefits of prematurely disposing of the CCU's.³⁵²

4.227 Ownership of a Colato certificate does not entitle the owner to any legal or equitable title in or to the Colatos properties. Holders have no right to manage the affairs of the Trustees nor control the destiny of the property, business or affairs of the Colato. This means the holders have no right or power to control the assets, or order a partition or division of property, nor even to an accounting.

4.228 Certificate holders are not permitted to anticipate any distributions nor to

³⁴⁶ See the example first given of this concept at §2.2, *et seq.*

³⁴⁷ White Plains, New York. Surrogate Court. Also *Cf* §4.225ff.

³⁴⁸ *Cf* §4.403.

³⁴⁹ For compliant trustees please see §4.303.

³⁵⁰ Please see §4.303 *re* the very important distinction of *de facto* versus legal control.

³⁵¹ Please see the Kintner Regulations at §4.378, *et seq.*

³⁵² See §4.217 concerning the CCU's becoming a nullity before a possible judgment action.

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assign the same in advance. These provisions prohibit any levies, seizures, judgements or transfers by judicial mandate, and should someone attempt to make a seizure it would be of no effect on the office of trustee.

4.229 From time to time the trustees *must* declare and pay out of net income or surplus, such royalty distributions as in their discretion they deem proper and advisable. Certificate owners of record are entitled only to their proportionate share for any such distribution.³⁵³

4.230 Certificate holders are never liable for any loss nor further contribution or assessment by the Colato. The trustees cannot bind any holder. The holders are also not personally or individually liable for payments or satisfaction of any claim, debt, judgment, award, decree, or other obligation of the Colato.³⁵⁴

4.231 In spite of the inability of persons or governments to pierce the secret Colato veil, the Super Rich realize they must keep their Colatos clear of legal liability by sheltering them with limited partnerships, corporations, etc., if they are to maintain anonymity and restrict liability.

4.232 I have laid out the peculiar characteristics of the Colatos CCU's and while the lawyer recognizes the danger of changing any of these specifics the layman will do well to consider the case authorities I have presented here and in the Appendix and consider that any change whatsoever could be disastrous! Again, I challenge the reader to find any real disadvantages in these matters. There simply aren't any!

Superior Characteristic!

4.233 Without foundation of proof at this juncture, a distinction between dividend and royalties must be made.³⁵⁵ The reader has noticed continued reference to "royalty distributions." A dividend is a corporate characteristic of payment not near similar to a royalty distribution, because there is no "tax-wise" association between the trustees and certificate holders where they divide the gains.

4.234 It is essential to retain the "pure" status in that the assets invested for CCU's are worked exclusively *for the Colato* by the trustees. Therefore, any distribution must be a royalty rather than a dividend because the money distributed is not from the joint business activities of the certificate holders and trustees, therefore they are not "associates" in the tax-wise sense we will study later in this chapter. Please refer to this subject with greater depth of explanation at §4.387

³⁵³ For the effect of a distribution to a foreign certificate holder see §5.185.

³⁵⁴ See §4.85, *et seq.*, for *Schumann-Heink v. Folsom* case where the court denied the claim against the Trust Certificate Unit holders and trustees. In addition the entire case may be reviewed in the Appendix beginning at page 323.

³⁵⁵ We continue to build towards the most distinguishing feature between the Super Rich Colato and those common law trusts (CLTs) commonly known as "Massachusetts Trusts" or "Business Trusts." The distinction of "associates" will inescapably compel one to recognize the difference between royalties and dividends. See §4.387.

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Special Sanctions Endorsed!

4.235 Several times we have noted there must be some valid business purpose or economic substance other than strict tax avoidance for any business plan to succeed with the I.R.S.. However, it will dawn on the astute thinker that a bona fide contract can hardly avoid having a multitude of business motives or purposes. Certainly, the Colato is nothing more nor less than a contract itself.³⁵⁶

4.236 Even though the Colato is a contract it does not escape the necessity of having economic substance and business motives. It, like every other kind of business vehicle must have economic substance-a business objective. It will be ignored by the I.R.S. if it is simply and only a tax savings device.³⁵⁷ Let the reader beware!

4.237 Where transactions have economic substance they are also economically realistic. In all such cases they will be recognized as correct and legal for tax consideration. However, the fact that transactions of business are so arranged that tax consequences are highly favorable (or altogether avoid taxes) affords no license to the government to recast it into a mold of less advantage-again, as long as there is a recognizable business mission.³⁵⁸

4.238 In other words, when the Super Rich set up a Colato to operate a business, they don't treat it like a sole proprietorship by commingling its funds in their personal bank account. It is treated as a distinct legal person apart from themselves.³⁵⁹ So, it's not so much that special sanctions have been created especially and only for the Super Rich as it is that the sanctions which have existed all the while have been ignored by the vast majority.

4.239 The matter is imperative so we repeat the caution in yet other words. The contractual form of a transaction (setting up a Colato) cannot control the imposition of tax liabilities if the realities of the affairs show that "form" does not represent a bona fide and actual fulfillment of agreement. It is equally true that the "form" of a Colato is the Super Rich's considered and chosen vehicle expressing the "substance" of the contracting parties, and the dignity of that contractual right cannot be judicially set aside simply because a tax benefit results whether by design or accident. Because "form" absent exceptional circumstances reflects the "substance."³⁶⁰

³⁵⁶ See "The Secret Law Can Be Used By Anyone!" at page 111.

³⁵⁷ "Sham" transactions, having no economic effect other than the creation of income tax losses, cannot be recognized for tax purposes." *Thompson v. Commissioner*, 631 F.2d 642, 646, (1980), cert. denied, 452 U.S. 961 (1981).

³⁵⁸ *Gyro Engineering, Inc. v. U.S.*, 417 F.2d 578, 582. *Peter Pan Seafoods Inc. v. U.S.*, 417 F.2d 670.

³⁵⁹ Colatos are distinct legal entities. See §4.215, page 138, and note 343.

³⁶⁰ Cf. *Edwards v. Commissioner*, 415 F.2d 578, 582. *Lewis and Taylor, Inc. v. Commissioner*, 447 F.2d 1074, 1077 (1971).

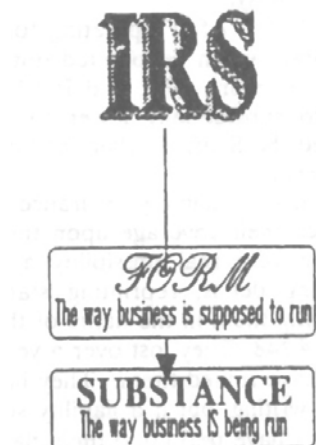
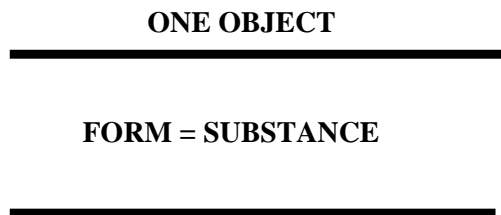
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Total Escape!

4.240 Once again, if a Colato is set up exclusively to escape taxes its creation and existence are a simple formality and subject to be pierced by the I.R.S.. For example, the substance of the business is what underlies as its real purpose. If one says he or she is operating a Colato but in reality is not treating the Colato as anything more than an alter ego, it is a tax sham. It could continue to be legal as far as the law is concerned, but "tax-wise" it would fail.

4.241 Since it is the I.R.S.'s job to pierce the formality to reveal the reality of a transaction, it would be a relatively easy task to draw an arrow from over form, piercing it to substance:

The illustration at the right assumes the transactions are mere formality. However, when the "substance" of a transaction *reflects* the form the illustration takes on another view. In such a case the "realities" of every day business are exactly the same as the "form" of the business is supposed to take. Examine the difference below.



4.242 Here is a transaction where the impending shadow of the I.R.S. is no where in sight. The "form" the business was supposed to take is identical to the realities of day to day business. Form cannot be pierced without taking the "substance" right along with it!

4.243 In a bona fide contract, it's impossible for form and substance to not be equal - one *must* reflect the other. The Super Rich never lose sight of this critically important detail. The I.R.S. would love them to slip up. Their technique in never forgetting this principle is by always speaking, thinking, writing, and acting, *at all times, and under all conditions*, as if their Colato is another person. For in fact, a Colato is a distinct legal person!³⁶¹

4.244 Bill and Valerie Shaffer recently set up a Colato to operate their successful used car dealership. By financing their own sales to persons with less than excellent

³⁶¹ See note 343 on page 138 for case authority.

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credit, and requiring only that the purchasers have a verifiable job and make weekly payments or have the car immediately repossessed, they had joined the financially elite in just a few years. The interest earnings alone on their sales made them the fantasy ideal of the banker or lending institution. (Actually the way they did it was by simply inflating the purchase price instead of charging usurious interest. Those whose credit didn't warrant another way to buy made the Shaffers very well off).

4.245 For some reason when the Shaffers created their Colato they didn't bother to close out their old bank account and commence business with a new one. Their contracts neglected to inform their buyers of the new Colato and their claim of limited liability. They continued to use up old stationery and forms. They failed to change their business and tax licenses to reflect the embarkation of a new enterprise. Further, they failed to maintain new journals and the Minutes Book of their Colato, etc. They were "just too busy."

4.246 After operating for over a year, Valerie was shocked at a visit with her accountant when he pointed out they would still be required to file their tax return as sole proprietors. She and Bill believed they would be able to split the income several ways to substantially lower their tax bracket and tax.³⁶² Moreover, the accountant believed the Shaffer's claim of limited liability was non-existent-a fact I and their lawyer confirmed.

4.247 Liability insurance premiums had eaten severely into profits, so they had cut back their coverage upon the adoption of the Colato for their business. Now there was the very real possibility a law suit could destroy them. They began anew, by recording deeds, reprinting stationery and business forms, closing all accounts and reopening them in the name of their new Colato with a new federal tax number, etc.

4.248 They lost over a year of many benefits and peace of mind. A single law suit could have ruined them. They have been fortunate. Nothing untoward has happened as of this writing, but if a liability suit had begun before they protected themselves, a court wouldn't have permitted their claim of limited liability.

4.249 If Bill and Valerie had attempted to use the tax benefits which would have formally flowed to them, the I.R.S. would certainly have disallowed it.³⁶³ The facts are that the "substance" of their business had remained as before-a sole proprietorship. The documents, while legal and bearing the "form" of technical correctness were really worthless. The Shaffers learned that "substance" controls the imposition of tax and law when "form and substance" are not equal. Their planning had been mere "form." Since 1985 they have done it like the Super Rich.

4.250 The following table will offer a few business purposes which are inherently involved with any legitimate business, and which are other than tax avoidance schemes. All Colatos easily embody these features and the following substantive business activities. Once again, when the Super Rich arrange their affairs so that "form and substance" are equal, the tax benefits flowing from the technique they follow cannot be judicially set aside. As you look through this list notice also the economic factors:

³⁶² This is no longer available since the Reagan Tax Act.

³⁶³ Bill and Valerie are saving even more substantially today than before as they also took advantage of the foreign income tax benefits we will examine in Chapter Five.

Business Purposes

1. The protection of property and assets.
2. Insulation of personal or business liability.
3. Simplified distribution of property and assets.
4. To increase profit structure.
5. To become more competitive in the market place.
6. To obtain more privacy in buying and selling properties or businesses.
7. Control, or the ability to delegate authority for transactions.
8. To expand branches of service and sales.
9. To raise capital resources.
10. Increase borrowing capabilities.
11. Increase financial rating.
12. Increase investment efficacy.
13. Operating or management efficacy.
14. Increase customer good *will*.
15. Reduce state and city taxes.
16. Eliminate probate.
17. To obtain corporate advantages without the burdens and restrictions thereto.
18. Eliminate or reduce fees, insurance premiums, and professional services.
19. To decentralize or centralize business activities and business contacts.
20. Predetermine rights, duties, privileges, and responsibilities.
21. To establish permanence.
22. To hold and/or distribute assets.
23. To avoid vexing rules or regulations.
24. To conceal business or family privacy.

4.251 Many other business purposes than those displayed are conceivable. Some of the business *activities* which have also been noted by the courts as substantive are listed in the next chart. One can easily see they would settle any questions of authenticity for an organization.

Supporting Business Activities

1. The *commencement* of the business organization.
2. Colato Certificate Units issued and records of the owners maintained.
3. Minutes Book maintained up to date.
4. New bank *and* business accounts opened.
5. Contracts and business stationery reflecting the business substance.
6. Income tax returns or other tax related filings.
7. Financial statements reflecting the business substance.
8. Suppliers and bills recognizing the business.
9. Reinvesting funds.
10. Journals, diaries, or calendars maintained.

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From Riches To Rags!

4.252 Most of us think the title should be the other way around, "From Rags to Riches." The irony however, is that the way most people think the Super Rich do it is as a Prince is exactly the opposite in legal reality! We now discover the answers to our chapter headings. Though a war has been waged between the Princes and the Paupers it's evident that the legal Paupers won! They're the ones who are free! Today many who have gone from rags to riches now earnestly desire to become Paupers. Surprising? Perhaps, but this section is devoted to some examples of how you as a Pauper can keep your money out of- somebody else's pocket! Today's news papers are full of tales how just owning an asset is dangerous - **especially if someone knows you own it!**

4.253 If you were to ask Don Saum, he would tell you he's much happier as a Pauper than he's ever been before in his life. Let his story explain, and perhaps we can all become true Princes in every sense of the word after we read and apply the principles of Chapter Six. Don and I met at the club recently for an early morning round of racquetball followed by a breakfast conference. I don't remember which of us won the "morning championship," but Don figures he's the final grand champion in his estate and tax engineering.

4.254 I hadn't seen Don in several years. I was glad to get his call. We were to discuss my potential representation of a client of his. I recalled the not too unusual, yet bizarre situation Don had been through. After twelve years of marriage and two children, his wife surprised him with divorce papers. The process server had set an appointment with his secretary under the guise of actually seeking consultation.

4.255 The marriage had had its ups and downs, but no one - and especially Don - **ever** guessed it was ready for a divorce. He was just as unprepared for the financial disaster falling from the divorce. The emotional and financial pain had been terrific.

4.256 Four years later I was glad to see Don remarry. This time a prenuptial agreement secured the property each individually entered the marriage with. Both had been married before, but the wife was childless and desperately wanted a baby. Don was eager to have the family he'd been cheated of, also.

4.257 Shortly before a daughter was born to the Saums, the couple purchased a lovely new home. They had the place entirely and beautifully landscaped, sprinkled automatically, and lit for night. A brick walkway wound around the entire place, and extended from the wooded country lane in front to a circular drive way. Don added a window to the drawing room and on the rear a two story redwood deck with hot tub was added. He had the basement finished adding another full bathroom, and he had the garage finished. The home was carpeted, tiled, draped, and wall papered throughout. In short, it was a show house. I attended the house warming and all seemed so right.

4.258 The Saum's baby reached just one year old when the process server struck again! This time, in shock and agony, Don turned to his church for spiritual guidance to sort out his life, but little consolation was offered him even though his church believed he could again remarry. I counseled him extensively, but was never certain whether he heard a word I said, or cared a lick about the work I did. He seemed to have remained numb for a year or more. He was lax or delinquent about returning my calls, then he dropped out of sight.

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4.259 Here we were catching up on the details of his life. He was literally singing the praises of his third wife whom he had met in the church. She had been married once before herself also with an unfaithful partner. They had celebrated their second year's anniversary several months earlier, and had just been informed they would be starting a family in about six more months. He was bubbling!

4.260 In a moment of quiet revelry, he sighed, almost as though he was remembering something he'd forgotten long ago. He shocked me. He said, "But I have a mistress myself nearby!" The idea of a mistress was so out of character from the Don I had known, I probed.

4.261 He wasn't even going to be secretive or evasive. With a twinkle in his eye, he leaned towards the table and grinned at me. He reminded me he'd been married now a total of three times, that his first two wives had both been "wonderful housekeepers." They had both *kept* the houses. "Remember?" he asked. I was playing "catch up," still working out the "mistress." Then he confessed to having taken my advice after the second divorce. "What advice?" "I became a Pauper!" and I caught on immediately.

4.262 The "new" Mr. and Mrs. Saum live in a nice home, but they *rent* from a Colato! The Saums were recently pleased that their "landlord" (the trustee) was agreeable about allowing them to add on a large glass enclosure off the back side of the house. Part of a wall needed to be removed, but permission to have the work done, and supervised by them was readily granted. It is actually as if the home belongs to them, but it legally belongs to the Colato.

4.263 Mrs. Saum seems to be genuinely in love with her husband-certainly not his money. Don's income *is substantially less* than it used to be, but husband and wife realize a great income tax saving, and their foreign Colato investments are doing very nicely, indeed! Don has also been able to prove a reasonable income for very adequate child support payments but which are substantially less than they had originally been or should have been.

4.264 The Don Saums have legally arranged their income, assets, investments - their lives - for maximum protection, growth, and savings. Regardless of how renegade the economy could get he would never need to take another trip to the streets without it being by his choice. Don thinks he has bought his last house for someone else, and Saums, as a team, are very content owning very little besides the clothes on their backs.

4.265 True enough, the Saums are far from leading Paupers lives, but since they no longer own anything, there is nothing for anyone to grab. From a spiritual reason, as he also pointed out, but also from a strict *material* point of view, divorce by either one is out of the question. Mrs. Saum understands that her husband's work as an international business consultant, while not a highly paid career, is filled with exotic international travel, and wonderful sights and people.'

4.266 Mrs. Saum also loves to travel. She's especially fond of the entertaining they do in "their home." Hardly anyone else enjoys their lifestyle on such modest annual income. Of course Don's company maintains the correct image for its employees, and most of all, she is happy that Don is so contented with his work. Life is far from bleak, and in a few months a new little Saum will make his or her way into their eager arms.

³⁶⁴ Chapter Five will plainly discuss how many benefits such couples enjoy from off-shore engineering. Income is arranged to produce only the taxes one desires to pay.

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The Saums are indeed solving their problems together.

Gary Miller

4.267 Gary Miller and Keith Simpson were roommates their freshman year at the School of Mines in Golden, Colorado. The young men became friends, even though they were from different social classes. Gary's dream to attend the prestigious school had been possible only because he won a full scholarship. He was sole heir to a large working ranch outside Temple, Texas, which had been in the family for several generations, but the Millers were cash poor.

4.268 By contrast, the Simpsons were a second generation family from a "wildcat" oil fortune founded near Oklahoma City. They could easily afford the college tuition, room and board. Both boys were high scholastic achievers.

4.269 Gary Miller had been interested in earth sciences rather than the cattle business, and his seeming in born intrigue for oil and gas exploration were heightened by his association with the Simpson family's geological engineers. The elder Simpson had given Gary summer employment because of urging from his son, Keith, and Gary became like a second son to the Simpson family.

4.270 Gary's mother and father passed away during his sophomore year at The Mines. His mother had succumbed to a lingering illness, but his father died just a few months later of lung cancer. Without siblings or parents, Gary was even more endeared to the Simpson family. Through the years of Gary's education, and from picking the brains of the Simpson engineers, Gary convinced everyone that oil reserves could be discovered on his own inherited lands in Temple, Texas.

4.271 In addition to the Simpsons having arranged for their engineers to survey the Miller ranch their lawyer created several Colatos for Gary's parents in anticipation of an oil discovery on the ranch. Further, a loan was secured from a Simpson Colato to drill the first well. Oil and gas were both discovered on Gary's ranch, and his fortune was assured.

4.272 Many years passed as Gary's business flourished. He married well, had a family and a palatial estate near Dallas--then the crunch! Artificially low gas and oil prices, controlled by the government, ever increasing costs for the same, or dwindling production, too many leased wells running dry, sky rocketing costs for new exploration, and a series of colossal real estate losses in Houston combined to bring financial disaster to the Miller Empire.

4.273 Forced by creditors into the bankruptcy courts, and reorganization not being a feasible alternative, Miller's creditors demanded satisfaction from the Gary Miller Estate. The bankruptcy judge was keenly aware-as was a fascinated news media-that the bulk of the Miller fortune was owned by a network of "trusts."³⁶⁵ Nevertheless, it has remained untouched by the creditors, because the judge noted that the assets were legally and lawfully the property of trusts, whose interests were not before the court.

4.274 Subsequent to the financial "fall-out" of the Miller bankruptcy, new Colatos were created. Loans to the new Colatos from the older, established and intact Colatos

³⁶⁵ It is not at all unusual for the media to report that "trusts" are responsible for such wonders. when if the truth were known Colatos are accountable for the solutions.

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has made possible a substantial come back over the last decade. Without the Colatos the Miller family would have been financially ruined. As it has worked out, several past creditors are again working with Miller, and are assured to recoup much of the loss they suffered, because Gary Miller's genius was not lost due to the uncontrollable financial situation.

4.275 The benefits of being a "Pauper" with the family blessing, saved Gary Miller and his family, financially. While he remains indebted to the Simpsons for sharing the Colatos with him, he is even more indebted to the Colatos themselves for protecting him, and giving him a second chance.

Katherine Johnson

4.276 Katherine Johnson's parents abandoned her when she was only eight years old. She was forced to spend the remainder of her growing up years shuttled from foster family to state children's home. The trauma left a resolve etched upon her mind. She vowed as an early teenager that her children would never be left homeless, even if something happened to her.

4.277 Bill Johnson persuaded Katherine to become his wife, but because the state would not permit his marriage to 17 year old Katherine, the two eloped. Regardless. Bill, 12 years her senior, has been good to Katherine. He worked hard and saved his money purchasing a lease for a filling station, and within a year after their first child was born they bought a home.

4.278 Some time after the 5th birthday of their youngest child, Bill finally heeded his wife's concerns to protect the children's welfare and the family home. A lawyer was retained who recognized Bill's liability exposure as an auto mechanic to be very great. Therefore, a simple living trust³⁶⁶ was established for the children, into which the family home and other major assets were conveyed. Unfortunately, over the ensuing years as the auto repair gained a prominent reputation additional assets acquired were left unprotected.

4.279 A building on contiguous lands to the service station was purchased, and when remodeled, a total of eleven mechanic service bays, including the two in the service station accommodated customer's cars.

4.280 Meanwhile, the Johnson's oldest child was taking on more and more duties in the family auto repair business. He eventually persuaded his father to hire one of his high school buddies as an apprentice auto mechanic. The young friend, eager to win Bill Johnson's confidence, worked ambitiously, but in his enthusiasm he made the mistake of turning a customer's brake drum to a tolerance of less thickness than either safety or the law required. Sadly, it went unnoticed. Several weeks later the brakes failed when the customer *slammed* the brake pedal to avoid an accident. The customer was injured, and an insurance investigation proved the brake repair had been faulty.

4.281 The court awarded negligence damages to the customer of more than a quarter of a million dollars *beyond* the liability insurance against Bill as the business owner. The business was all but destroyed except for the service station and its two mechanic bays, and eight men became unemployed as the result of the lost business.

³⁶⁶ See Charter Three for Trusts.

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4.282 Fortunately the home and other assets in trust escaped because they legally belonged to the trust. Except for Katherine's concern many years before, the family home could also have been lost.

4.283 While the trust was not capable of operating a business, if one Colato had been used to own the building and business equipment, and another Colato conducted the service part of the business, only the one and a half million dollar liability insurance would have been available to the plaintiff.

4.284 Bill had been very proud to call himself the owner of the Johnson Auto Repair and Service Company, but as *owner* he was personally liable. If, instead he had a Colato own everything, and had been content to have any other title except owner, he would today have been growing in business, instead of backtracking to operate only the service station and its two bays.

4.285 Not only did Bill and Katherine lose, and though they had been smarter than most, the world lost as well. How much nicer if the Johnson Auto Repair and Service Company was still in business.

The O'Briens and Browns

4.286 About two years ago George and Danielle O'Brien co-signed on a business loan for their son-in-law. The business failed, and arrangements are being made to repay the loan to the bank. Larry and Claudine Brown co-signed for their son, involved in the same business venture, but with a difference.

4.287 Arriving home at night from an extended trip, they were thoroughly rattled to find a legal notice taped to their front door, another on the front window, and still another posted on a telephone pole at the curb side of their property. The notice stated their home was to be sold in just a few weeks at a Sheriff's auction. The sale would be held on the steps of the county court house, and the property would go to the highest bidder.

4.288 Both families are "Paupers," however, only the O'Briens by choice. George O'Brien has been a school principal in the San Mateo School District for many years. Danielle has taught in the same district for nearly as long. When they made their financial statement to the bank, it showed almost all of their assets were "held in trust."""

4.289 Simple asterisks with the notation on the bottom of their financial statement³⁶⁷ clearly indicated by the declaration "held in trust" that in the event of financial trouble there would be no property to seize. Besides their home, they control two duplexes and a single family dwelling which they let out. All is safe from seizure and levies, because it is owned by a Colato which did not co-sign.

4.290 Larry and Claudine Brown are in serious trouble. They've owned their home for over 25 years, and Larry has been an appliance and furniture salesman with

³⁶⁷ Their assets are owned by a Colato not a trust. See §4.7.

³⁶⁸ See page 291 for an example as to how the Super Rich make their financial statements for bank loans, etc. Take time to think through all of this very carefully. There is a lot to consider, and advice of competent counsel imperative! Making a false statement to a bank is a felony! (Misdemeanor = jail; Felony = prison)!

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Sears & Roebuck for nearly 32 years with an attractive profit sharing program fully vested. When they made their financial statement for the bank, it showed their assets were in their own names. As such, the customary lien documents for home, furnishings, and automobile were signed along with the loan papers. All of their property is in jeopardy, by virtue of personal ownership.

4.291 Neither the O'Briens nor Browns are rich, far from it. Still, they can afford even less than the rich, to lose their property. From the bank's perspective, the O'Brien's balance sheet was more attractive than the Brown's, because it showed sophisticated and long term planning. It also showed they as the trustees controlled an irrevocable investment of assets, but the Brown's mortgaged their home to secure the large business loan. While the Browns actually put up the collateral, the O'Briens are in a better financial position to pay the debt, although they are in the driver's seat and will not suffer themselves beyond their abilities to pay.

The Potters

4.292 For nine years Chuck and JoAnne Potter had, as "Paupers," successfully operated a series of Colatos, the principal one of which was a small advertising business. They owned virtually nothing in their own names. Business was on the verge of expanding into the neighboring state, when tragedy struck the family. The eldest of their three children, Diane, as a contestant for the U.S. Olympic Ski Team fell during her qualifying run in the woman's down hill slalom.

4.293 Her spinal cord was crushed beyond repair just below the neck. Emergency surgery, and several complications-each life threatening-all followed by intensive care unit exhausted the medical insurance benefit and left a debt of over \$300,000. Even more sadly, Diane, a pretty and bright girl is a quadriplegic.

4.294 Saddled with a debt they couldn't hope to pay in twenty years, Chuck and JoAnne hesitantly considered bankruptcy. In fact, the hospital, the surgeons, and legal counsel all acknowledging their inability to pay believed bankruptcy was their only option.

4.295 Though the Potters did not own the ad business (the Colato did) they control its very life. However, sale of the Colato wasn't even a consideration. It was to be depended upon by the family far more in the future than in the past.³⁶⁹ Diane barely escaped with her life, and while she has adjusted well to a very different existence, she requires ongoing care, therapy, and sophisticated equipment for the rest of her life.

4.296 "Through the years Potter's Colato had established an excellent reputation and credit references as credit had been established, and loans made and paid solely in the name of the Colato. So, while credit would have been no problem to the Colato had the Potters gone bankrupt, they hated to think about the black mark or stigma which would rub off on their good names. Therefore, they resorted to a technique they practice today and which has made their Colato rich.

4.297 Neither Chuck or JoAnne had been born rich; in fact it was the deficiency of money which taught them the business secret of what we call "executive engineering." By considering each and every possible solution, regardless of how "corny" it may appear to be on 3X5 cards posted to a cork board, Chuck and JoAnne could "take off." Their

³⁶⁹ Chuck is President and JoAnne Secretary Treasurer of the business.

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creativity in solving problems gives them such business ingenuity and flexibility they are the envy of much larger competitive firms.

4.298 For example, they created near miracles between their domestic Colatos and off shore Colatos.³⁷⁰ Arranging "back to back" loans for expansion was one cost cutting technique their competition could not match. Further, the competitive edge their Colato enjoys "tax-wise" is another.³⁷¹ Accordingly, and desiring to do the right and responsible thing, the Potters first turned to what we call "executive engineering" and devised an ingenious plan for their predicament.

4.299 Legal counsel presented the plan Chuck and JoAnne conceived at a joint meeting of their creditors. He began by suggesting the Potters were not irresponsible, because they had the best medical policy they could have afforded. It just wasn't adequate for such catastrophic events as they had endured.

4.300 He pointed out that the creditors could seek judgment, which would solve nothing, and he added that bankruptcy would equally pay no bills. Instead, the Potters were offering to borrow money from an entity, the sum total of which would be ratably divided among the total creditors. The payment would reflect only cents on the dollar, but would be preferable to nothing. In turn the creditors would agree to legally absolve the Potters of any further debt, and sign waivers of any future claims. Additionally, no negative credit reporting would ever be made.

4.301 Of course the plan was accepted without dissent. Some money was better than none! The loan was secured from the off-shore Colato which was going to lend the money for intra-state expansion of the ad business. Of course the business expansion was set back a bit, but the Potters are satisfied they conducted themselves responsibly. In less than five years they realized their dreams of expansion, but nationally rather than simply across state lines.

4.302 Today, gross annual sales are topping \$12,000,000. The Potter's future is very bright indeed. For the last two years, substantial gifts have been granted from a certain foreign Colato to the hospital for neurological dysfunction research and applied medicine.³⁷² Diane's future looks brighter as well. She recently finished a novel, for which a publisher has already expressed an interest. Being "Paupers" has benefited everyone who touches the Potter's lives, and they're convinced there is no better way to live.

Will Campbell's Special Technique!

4.303 Will Campbell has been president of Estate Liquidators, an auction company, over 20 years. Will and his wife, Marilee irrevocably invested their interest and ownership of their sole proprietorship to a Colato. Will's best friend, Mark Visser, was creator of Estate Liquidators, and named himself trustee³⁷³ because Will and Marilee

³⁷⁰ See Chapter Five for the combination off-shore benefits With foreign Colatos.

³⁷¹ See Chapter Five for the Super Rich technique of escaping federal and state income taxation.

³⁷² See §5.212ff for the secret method.

³⁷³ See "Creating Your Secret Trust" beginning on page 117.

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felt they were a little too young to be readily accepted as the principles of the business, and because they believed having Mark was an asset to the future of their business. Since then, the y company has grown and is one of the most successful in the country.

4.304 Even though Mark Visser has been empowered with both legal and equitable titles to the assets and is free to deal as he wishes, there is no question but that Mark complies voluntarily and fully to Will's directions. Will has Mark make all the investments for the business, and additionally Will directs him as to when to make distributions, and even how much. In short, Will has exercised *de facto* control over the Colato since its inception, and Mark compliantly executes the decisions Will directs.

4.305 Two questions spring to mind: Is Will's control permissible "legal-wise," and can it fly "tax-wise?" Both questions require satisfactory answers. For the legal question, we turn to the law of contract. If there is anything upon which the law of contract hangs more than any other, it is that persons of legal age and competent understanding shall have the utmost liberty to make their contracts, and when entered into without coercion or duress they are held sacred and are thus enforced by the courts.³⁷⁴

4.306 The Colato contract/indenture dictates the rights of the parties, and such rights and obligations not against the public policy may not be judicially impaired or set aside. Public policy requires freedom of contract, and as we have noted before, our right of contract is the one right which has been judicially less hampered than all the rest of the Bill of Rights.³⁷⁵

4.307 If the law of contract was not enough to answer both questions (and it is³⁷⁶) the courts have again come to the aid of the Super Rich. When legal and equitable title,³⁷⁷ possession and control of property are legally and irrevocably passed from the investor to himself as trustee in legal contemplation, it is as though the super Rich trustee receiving the conveyance is another person.³⁷⁸

4.308 The property invested in the Super Rich Colato must be fixed and irrevocable. Thus the contracting investor may legally be recognized as a different person even when *de facto* he/she may be the same human being. The United States Supreme Court inescapably reached this legal conclusion because the trusteeship is a position created by parties at arm's length which when established is an office to be occupied by any qualified person.³⁷⁹

4.309 Now the second question: How should the Internal Revenue Service view Campbell's *de facto* control? Prior to 1976 the Tax Court had answered the question concerning an estate tax point of view. A man had conveyed his property to a Colato

³⁷⁴ See §4.66, *et seq.*, on the Law of Contracts. *Cf* especially the quote at §4.96.

³⁷⁵ See §4.67 and especially note 238 on page 111.

³⁷⁶ Assuming a *bona fide* contract has been made.

³⁷⁷ See complete discussion on legal and equitable title at §3.84, *et seq.*, *re* "splitting title."

³⁷⁸ *Commissioner of Internal Revenue v. St. Louis Union Trust Co.*, 296 US 48, 50 (1935). Shepards shows some questioning however only the reasoning cited in other cases has been faulty. The point is well settled law.

³⁷⁹ One person may be many different persons under the eyes of the law. See §3.108 on page 88.

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but exercised *de facto* control over the trustees. After his death the I.R.S. attempted to include the Colatos property in the deceased's estate under IRC §2036 (a), but the Tax Court said, "No!"

4.310 The Tax Court reasoned that the inclusion of an estate under IRC §2036 is based upon the "retention of 'rights'" by a decedent over the enjoyment of income, etc., of the property one transferred during one's lifetime.³⁸⁰ In other words, the word "rights" refers to *legal ownership*, not merely incidental *de facto* rights.

4.311 We next examine a case clearly demonstrating the Internal Revenue Service may not be bound by certain tax or legal principles for the Super Rich, as above, and later ignore those principles when a different taxpayer molds his affairs to obtain a benefit from the same form.

4.312 Hilton Goodwyn conveyed certain assets to a Colato and subsequently exercised various *de facto* powers. The Internal Revenue Service challenged the income distributions in 1976 and posed two reasons for their objection. First, they argued that under IRC §674 the income from the trust was taxable to Hilton because this section states the grantor is taxable if he retains certain "powers" rather than "rights" as we discussed above under IRC §2036. The Internal Revenue secondarily argued that Hilton's exercise of powers made him a co-trustee in "substance,"³⁸¹ thereby "tax-wise" making the trust's income taxable to him.

4.313 The Tax Court rejected both theories noting in the first instance that the powers Hilton Goodwyn exercised were not *legally* his because the trustees could have terminated them at any time. The Tax Court said its rationale was based on the fact that "powers" really meant the same *legal rights* as the word "rights" in IRC §2036.

4.314 In the second instance, the Tax court was as inescapably driven as the United States Supreme Court to the same conclusion in the former matter that the "substance" was controlled by the legal "form" that the trustees could *legally* nullify or cut off Hilton's *de facto* powers at any time.³⁸² In summary, genuine contractual obligations control the substance of this Super Rich technique!

4.315 The above revelation lays to rest the subjective judgment of any tax agent trying to claim the Super Rich technique creates a sham device, because the Commissioner has *acquiesced* the principle. The Internal Revenue Service is therefore bound by the Commissioner's ruling. Being the trustee of "one's own" Colato or having compliant trustees taking legal responsibility of actions directed by the Super Rich has very obvious advantages. Only the Colato could have worked such a miracle!³⁸³

4.316 Of the two systems: being the trustee of "one's own" Colato or having *de facto* control over the trustees, the Super Rich use the latter most often.³⁸⁴ Although

³⁸⁰ Research Institute of America. Inc.

³⁸¹ Remember, form and substance must be equal to one another or exactly the same. Review §4.240, *et seq.*

³⁸² *Estate of Hilton W. Goodwyn*, T.C. Memo 1976-238.

³⁸³ See the chart of problems solved by Colatos on page 109.

³⁸⁴ Allen, Gary, *The Rockefeller File*, *ibid.*

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there is nothing wrong with the former because of the contractual substance being trustee of property formerly belonging to the investor may not pass the "smell test." For example, any situation having an "unusual look" is liable to raise suspicious stares and having been the original owner of the property now entrusted to the same person as trustee is not understood by everybody. Therefore the compliant trustee invites less scrutiny.

4.317 One of the practical reasons Will Campbell has remained so satisfied with Mark Visser being the trustee of his Colato has nothing to do with friendship. From time to time Mark has executed an undated resignation of trusteeship to Will. There is nothing so unusual in the arrangement as they are made every day in the business world. For instance, many corporate officers elected to a board of directors tender undated but executed resignations the same day he or she sits at the first meeting.

4.318 Just a couple of caveats are in order before we leave this subject. As we have stated repeatedly there must be greater business motives than simple tax avoidance involved or the plan will not achieve its desired goal.³⁸⁵ Also, if there is a genuine and bona fide contract³⁸⁶ involved any similar "Mark Visser's" are obviously and necessarily paid for their services. It might not be much, but we must have economic reality!

4.319 Our discussion above should dispose of the oft heard objection some laymen anxiously ask, "If I needed to, could I get my property out of the Colato?" The question is far from moot. *Investments* are always irrevocable, and cannot be taken back, but a distribution to the Trust Certificate Unit holder would effectively accomplish the same thing, as long as the holder realized he would then have to be willing to carry the burden the Colato had exempted him from, and the tax liability for the distributions subsequently made! There is no real necessity to ever take the property out of a Colato.³⁸⁷

Your Very Unique Powers!

4.320 After accepting the appointment by the creator the first trustee pledges best efforts agreeing not to engage in any activity that might bring about an unfavorable reaction upon the Colato. The indenture/contract³⁸⁸ specifies the trustee's powers, duties, and responsibilities to conserve, build, and improve the financial value and rating of the Colato.

4.321 One of the major characteristics of the Super Rich Colato is that the trustees act as the absolute owners of the property, therefore they hold title, in trust, as joint tenants, and not as tenants in common. Notice, I say "the trustees act." In technical reality the Colato itself holds title to the property *in fee simple, as the office of*

³⁸⁵ Cf §4.235, *et seq.*, under "Special Sanctions Endorsed."

³⁸⁶ See §4.66, *et seq.*, re "The Secret Law Can Be Used By Anyone!"

³⁸⁷ See §4.219 on page 139.

³⁸⁸ Hereinafter called "indenture." See page 293 of the Appendix for a sample Colato indenture.

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trustee may change to a whole line of succession.³⁸⁹ Therefore, the property is titled in the name of the Colato. Some states have statutes which make this simple to do, but others may require the office of trustee to hold title.³⁹⁰ The reader may need competent local counsel to sort out these problems, or research the law for him or herself.

4.322 Because the title to property in a Colato is held by the trustees as joint tenants, the trustees' powers are absolute, exclusive, and unlimited--except where the indenture modifies or restricts such powers. While a statement to the "modification or restriction" is made in the indenture, nearly unlimited powers are provided. For example, the trustees of Super Rich Colatos even have the exclusive power to interpret or construe the intent and direction of the indenture.³⁹¹ Such provision virtually guarantees judicial interference. One is able to perceive the enormous benefits such powers provide.

4.323 Since the trustees' powers are absolute and exclusive, one of the special abilities trustees of ordinary trusts do not enjoy is the ability to delegate full rights to third persons or entities. Business may be conducted in a far greater degree of privacy than is normally obtainable by other business vehicles. For example, such delegated rights may protect the trustees from the hype and pressure in a sales decision. Further, the identities of the principles cats be shielded, which, if known, could defeat the Colatos ability to negotiate sales, acquisitions, and at the most attractive terms. Small businesses find this Super Rich tool an invaluable aid in growing larger, becoming more competitive, while appearing as less of a competitive threat. Such third persons or entities may serve under a bond if desired.

4.324 A single trustee of the Super Rich Colato may constitute the Board of Trustees, however, the first trustee may appoint a second, and they in turn may appoint a third, etc. However, the first trustee may name him or herself as Executive Trustee with powers to act independently of all other trustees subsequently appointed. The trustee merely needs to be of legal age or a qualified artificial entity. While all states have trust companies laws, one Colato may be trustee for another Colato, but under no circumstances nay it operate banking functions unless, of course, the Colato is also a bank.³⁹²

4.325 An order of succession of trustees to possess and control the property of the Colato is made by a simple Resolution witnessed before either a notary or court clerk. Such Resolution is carried as a part of the Minutes, and no trustee designations

³⁸⁹ See for example Senator William Bingham's Colato at §1.80 and understand through this part how the "beneficial" enjoyment is through control rather than ownership. In a technical or legal sense only trusts and not Colatos have beneficiaries and thus "beneficial enjoyment." Cf §§4.52, 4.91, 4.194, 4.205 for the trustees in a Super Rich Colato having the whole title or both legal and equitable title to the "trust estate." Cf similar language in sample Colato indenture at page 297 Article XXIV.

³⁹⁰ In either case this would make no difference to the Super Rich because the net effect is exactly the same. See §4.34... For till' insurance objections see the Appendix for sample forms providing these techniques on page 300.

³⁹¹ *Cohen v. U.S. Trim Securities Corporation*, 40 NE 2d 282.

³⁹² As regards a foreign Colato being a trustee for a domestic or other Colato see §5.228

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are binding on me trustees as they may change or revoke them at any time before actual investiture of a new trustee.³⁹³

4.326 It is in this manner the Super Rich "pass their estates" from generation to generation without interruption of either business or property enjoyment. The line of succession is as well thought out as any of the other business considerations, because in the case of a vacancy a court would appoint the successor. The Super Rich know all too well it is the trustee who has control, and therefore the use of the property owned by the Colato." For a successor to take over, it is merely required that the current trustee or the Executive Trustee affirm by oath that such duty will pass to the named person as successor at the appointed time."

4.327 Meetings of the trustees are covered by the Minutes, and resolutions of the Board of Trustees authorizing a special thing to be done are sufficient evidence that such a project is within their power. An affidavit extracted from either the indenture or Minutes is drafted and executed any time the trustees' powers are question. It is not so much that there exists objections to what the Super Rich are doing, in the sense objections means "dislike," but rather that the action needs to be verified. In other words, a verified statement is one which is sworn by oath or affirmation, simply stating what powers the trustees shall exercise."⁶

4.328 For a successor trustee to take over, it is merely required that one affirm by oath that such duty now rightfully belongs to the successor." A copy of such affidavit should be supplied to all one anticipates doing business with, and as far in advance to any dealings as possible.

4.329 As one can tell from the foregoing parts it is not necessary the indenture be shown to anyone. In fact, this is how the Super Rich maintain such tight controls on their privacy. Meetings of the trustees and/or their agents and employees may be held anywhere in the world.

4.330 Sometimes the Super Rich have other elected officers for the trustees or managers of their Colato. A president and secretary, for example, are more easily acceptable in the everyday business world than are trustees. Maybe it shouldn't be that way but it is and I always opt for a low profile. So, while either the trustees or their delegates may have official titles, as are usual or prescribed, the trustees may do anything any adult citizen of the world can do.

4.331 Limited liability for the trustees and/or Trust Certificate Unit holders is always added to every contract of every kind the Colato enters. A simple statement to such effect is all that is necessary." The trustees' fiduciary duties do not jeopardize

³⁹³ See and example of such a Resolution-Affidavit in the Appendix at page 303.

³⁹⁴ Study carefully the Foreword and §1.11.

³⁹⁵ See as an example the affidavit on page 303 in the Appendix.

³⁹⁶ See an example of such an affidavit at page 305.

³⁹⁷ See an example of such an affidavit in the Appendix at page 304.

³⁹⁸ Cf §4.62, *et seq.*, and §4.342 *re* limited liability notice.

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their possible individual holdings, like their CCU's, or any other possible property or assets. Further, they may reimburse themselves from the Colato for any personal expenses occasioned by them while serving as trustee.

4.332 From time to time the trustees may pay out distributions to the Trust Certificate Holders. Trustees may loan out money with or without interest and with or without security as they deem expedient. However, the Super Rich will not permit a loan to be made to themselves without fair security when they are the trustees. Such provisions eliminate any Internal Revenue Service cry of sham or self dealing, and ensure all business conducted is separate and distinct from any personal affairs. No such problem exists when the trustees are other than the Super Rich themselves, and when, in fact, they comply with the wishes of the Super Rich.³⁹⁹

4.333 Again in spite of these seeming disadvantages, the trustees may pledge the assets of the Colato so as to act as guarantor for any person or company. Such abilities make personal loans from commercial banks possible, because even though the applicant is a "Pauper"⁴⁰⁰ he or she may asterisk his or her personal financial statement indicating that all or part of the assets are "held in trust." It is usually not necessary to say the assets are held by a Colato.

4.334 Competent Certified Public Accountants (CPA's) or accountants are familiar with this system which even the United States government practices. It is called "fund accounting."⁴⁰¹ These Super Rich benefits are positively enormous! If one needs, they can list absolutely every asset all Colatos own on their personal financial statement or they may look like a Pauper as either may serve their purposes.

4.335 One reason it looks so good on a financial statement to list assets "held in trust" is because the usual connotation of assets in trust means the assets are for the "beneficial enjoyment" of the person making the statement. Either this, or the person making the declaration is the grantor now acting as trustee who could revoke the trust and replace the assets in his own name. Of course, the Super Rich don't explain the situation unless it's to their benefit.

4.336 Finally, and in spite of everything we've just covered in this part the trustees of the Super Rich are contractually free from any control or interest whatever from the Trust Certificate Holders.⁴⁰² The trustees and their successors collectively, absolutely, and exclusively manage the Colato. Therefore, the *trustees* instead of the Certificate Holders may have the most part of "beneficial enjoyment" (if it were really possible) and without the detrimental tax aspects where the grantor trust rules of the tax regulations apply. The grantor trust rules *do not apply* where the whole title, both legal and equitable, unite in the office of trustee, because (1) a Colato is not a grantor trust, and (2) because the rules can only be applied where rules of equity could enforce "beneficial" rights."⁴⁰³

³⁹⁹ See §4.303 for Will Campbell's technique.

⁴⁰⁰ See §4.218, et seq., and Cf §§4.252 through 4.302 which completely develops the Pauper concept.

⁴⁰¹ See note 345 on page 139 *re* warning in making a Financial Statement utilizing "fund accounting" principles.

⁴⁰² Cf the "control test" at §4.52, *et seq.*, and the substantial differences of the "associated" type of Common Law Trust's (CLTs) versus Colatos at §4.367, *supra*.

⁴⁰³ See the quotation at §3.93 page 84 for IRR §301.7701-4(a). A Colato is not a trust for either tax or legal consideration. Here is one place where the tax definition is the same as the legal definition. Please Cf §4.10 on page 100. and §4.15 on page 101.

Your Colato Shield!

4.337 Another of the carefully guarded Super Rich secrets is the technique used to remain immune from personal and business liability. Today limited liability is perceived to be a profoundly corporate property, and it's difficult to imagine any other way than incorporating to obtain the benefit. Limiting liability to the corpus of an entity had generally been recognized as a Super Rich characteristic, but when the state permitted the privilege to be obtained by statute, more and more ordinary people were encouraged to incorporate.⁴⁰⁴

4.338 As we discovered earlier, the Act of August 5, 1909 focused a great deal of attention on the corporation and its state approved limited liability.⁴⁰⁵ However, the Super Rich continued to use the Colato and its time honored principles of contract which antedate the corporation laws by hundreds of years.⁴⁰⁶

4.339 Those permitted to get close enough to the Super Rich's Colatos, and the few legal cases we have, all clearly show the Super Rich are not so exempt from incorporation statutes as they are operating in an entirely different arena - specifically the common law. When called upon to decide whether Colatos with their limited liability were invalid the courts have unanimously held neither public policy or the statutes relating to incorporation are offended.⁴⁰⁷

4.340 In fact, the long prevailing view goes to the heart of our premise. The majesty of the common law dictates the following: Statutes may authorize limited liability of partnerships and corporations, but those statutes do not by implication prohibit the creation of Colatos to enjoy similar immunity by virtue of the common law.⁴⁰⁸ Further, the pure or Super Rich Colato affords an even greater immunity from liability to their

⁴⁰⁴ Incorporating became recognized by most of the states during the first two thirds of the 19th Century. *Encyclopedia Britannica*, 1986. Here is proof of §§2.24f & 4.5 that so many think there has to be a statute to operate under.

⁴⁰⁵ See §1.42, *et seq.*

⁴⁰⁶ *Rice v. Rockefeller*, 31 NE 907; *State ex rel Watson v. Standard Oil Co.*, 30 NE 279; *People v. North River Sugar Refining Co.*, 24 NE 834 all late 19th Century cases with names which should be readily recognized.

⁴⁰⁷ A Colato with limited liability is not invalid because it did not comply with statutes relating to *incorporation*. *Hodgkiss v. Northland Pet Council*. 67 P 2d 811. *State ex rel Knox v. Edward Hines Lumber Co.*, 115 SO 598. *Loonus Land and Cattle v. Diversified Mortgage Investors*, 533 SW 2d 420 writ *ref n re* (1976).

⁴⁰⁸ *Goldwater v. Oltman*, 292 P 624, 71 ALR 871 annotation. The entire case is found in the appendix.

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certificate holders than is accorded to stock holders of ordinary corporations.⁴⁰⁹

4.341 In most of the states the trust certificate holders eliminate personal liability by vesting in the trustees *in fee* ownership of the property and exclusive management of the Colato. As we have stated, such ownership and control create *pure trust*⁴¹⁰ the main contractual trust relationship the Super Rich are interested in.

4.342 The indenture creating the Colato claiming limited liability and state prohibition aside, trustees and certificate holders alike may effectively guard against liability by making personal immunity a condition of a contract or obligation in all jurisdictions.⁴¹¹ Therefore, not only do the Super Rich create only Colatos, but the following style of language is found in their indenture and contracts alike:

NOTICE is hereby given to all persons, firms, and entities extending credit to, contracting with, dealing with, or having claims against this common law trust organization (Colato) or its trustees that they must look solely to the funds, property, and other assets of the "XYZ Colato" for payment or for settlement of any claim, debt, judgment (decree), award, or other obligation which may become payable hereunder. The trustee, officers, agents, and certificate holders are not personally liable when dealing with "XYZ Colatos" properties or business matters, or for any kind of obligation resulting therefrom, or for any type or class of claim.⁴¹²

4.343 Besides the contract (indenture) the creator and investor enter which normally claims limited liability the single most important rule the Super Rich religiously observe is first, last, and always to treat their Colatos as separate persons from themselves! While it should be axiomatic that Colatos cannot be entities apart from the trustees, any 'more than corporations can act without directors, some state statutes in these regards require the trustees, as trustees of "XYZ Colato," and in their official capacities to bring an action to recover damages for a breach of contract rather than the Colato by itself and in its own name.⁴¹³

4.344 Of course the reader *will* now understand that this is just a technical nicety, because there is no way for a Colato to exist with out trustees. Some human being must act as a Colato cannot act for itself. All this aside, there is nothing in any state to prevent a court from recognizing a Colato as a distinct legal entity, in its names alone,

⁴⁰⁹ *Goldwater, supra. ibid.*

⁴¹⁰ *Hecht v. Malley*, 265 US 144, 147. The entire case may be reviewed in the appendix. Please note page 147 of *Hecht*.

⁴¹¹ *Bank of Topeka v. Eaton*, (CC) 100 F 8, aff d, (CA1) 107 F 1003 Cert den. 183 US 697, annotation 156 ALR 129.

⁴¹² First America Research.

⁴¹³ *Swartz v. Sher*, 184 NE 2d 51.

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where such condition is made a part of a contract or obligation.⁴¹⁴ Of course the parties may bind themselves to any condition they freely assent.

4.345 Those states which have adopted the Uniform Commercial Code have defined Colatos as organizations with power to hold title to property.⁴¹⁵ Federal laws have adjudicated Colatos as bankrupts on both voluntary and involuntary petitions.⁴¹⁶ Finally, the indenture includes provisions of the Super Rich Colato to either sue or be sued, so there can be no doubt of a Colato being a distinct artificial entity.

4.346 Suppose a liability or negligence action were commenced against a Colato which had protected any assets it might have had through rental or lease agreements with other Colatos, and further imagine that as a part of its regular business practices it makes distributions of its income to its certificate holders. Any Temporary Restraining Orders followed by injunction to prevent the Colato from disposing its assets would be of small help to a plaintiff for two reasons. First, the claimant would already have agreed to limit any liability to the assets owned by the offending Colato. Second, because it owns nothing of import there would be very little to take hold of.

4.347 Regardless of how one may feel to the contrary, there is no room for abusive practices stemming from such limited liability, because the sales or service Colato can hardly afford the ill will against its reputation. Even greater benefit to today's society is the elimination of the frivolous claims witnessed in our courts. Plaintiff and counsel alike would be quickly appraised of the lack of any "get rich quick" ability such law suits frequently seek today. Review §4.217.

4.348 It is self evident that any meritorious actions at law would be encouraged to be settled reasonably, quickly, and outside court.⁴¹⁷ Besides the many other benefits, the immunization of personal or business liability is a major quality enjoyed by the Colato, therefore in practical form the Colato is a distinct legal entity whether a state officially recognizes it as such or not, because the practical issues are equally the same.

Roger Follett

4.349 Roger is the kind of person a lot of people dislike intensely. He is good looking, wealthy, strongly opinionated, and everything he touches turns gold - and he flaunts it all! In spite of these personal flaws he proclaims a class of patriotism towards his country that is awesome. He is in short a "Tax Rebel." It's a label he wears as proudly as his flaming red hair seems waving as the stars and stripes in the wind. As near as I can understand him he isn't against paying taxes, but he is (almost) violently

⁴¹⁴ See the annotation of 156 ALR 32 *re* the different opinions between legal cases and state statutes which declare that Colatos are distinct legal entities.

⁴¹⁵ Uniform Commercial Code §1-201(28). In those states where title insurance companies may voice objections for Colatos to hold title to real property, please see the affidavit on page 300 in the Appendix.

⁴¹⁶ See Bankruptcy, 9 Am Jur 2d, §140.

⁴¹⁷ See the technique used by the Jones' at §4.103, *et seq.*

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apposed to paying the Marxian taxes we have today.⁴¹⁸ He is an ex Marine veteran and says he took an oath to uphold the Constitution of the United States against all enemies foreign or domestic. He claims our own government is the enemy.

4.350 With his convictions he challenged the I.R.S. to send him to prison! He sent a note attached to his personal 1040 that for reasons of conviction (too many to list here) he would not pay another cent in federal income taxes! He actually wrote these words: "I hereby willfully evade my income taxes!" and he signed his name. Well, after about three years, and several television appearances, the I.R.S. got around to him and they took him up on his invitation. They sent him to prison!

4.351 As interesting a fellow as he is, the subject of our interest is what happened to his property when he went to prison. He drove a fancy white Rolls Royce which was in a regular trust, and his beautiful home was owned by a Colato. The court determined he owed several million dollars in federal income taxes. It appears from the record that the *only property* he held in his own name was some shares in an oil operation. (A lot more income producing assets were owned by foreign Colatos which we'll discuss in Chapter Five, and which were not in the court record).

4.352 Just before he was to enter prison the I.R.S. seized the oil properties and asked him to give them his Rolls Royce. He said he would ask the trustee of the trust to give it to them. They never got it because the trustee said, "No!" The home being owned by a Colato wasn't even requested by the I.R.S., and when Roger got out of Prison he went right back to his Rolls Royce and to his home! In my mind it was a foolish gesture, but Roger is a man of unusual conviction and opinion and it's what he wanted to do. The point I'm directing is that his assets which were protected were protected against one and all. He still does not own them but he sure does enjoy them. The Colato shielded him from losing his valuable property and gave him the "liberty" to be a tax rebel.

4.353 I do not condone Roger's behavior and feel there is a much better way, such as what this book suggests, but he had his own reasons. For example, his sentence was four years for income tax evasion, and he refused to be paroled when the time came along. He insisted in staying in prison until his time was up. A lot of people thought he had lost his mind, but as I've said he had his own reasons. He continues to make a lot of money, and says he's done his duty for God and Country.

4.354 Before we leave our present subject it should be noted that the Super Rich frequently use corporations or other state creatures as a "front" for the public. No doubt the most important of these other business vehicles is the bank. Near miracles can be accomplished when a Colato owns a bank. It is expected that the usual reader would not be in a position to obtain a bank charter, and they are very difficult to acquire. Still, Chapter Five will deal with the very real possibility of your Colato owning an off shore bank!

Your Day To Day Business

4.355 After the initial exchange creating the Colato additional property is acquired as any person acquires assets, by purchase, donation, or trades. The Minutes

⁴¹⁸ See Chapter Six concerning ours being a Marxian tax system.

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kept by the trustees approves of their acquisitions or sales of property. Deeds, leases, conveyances, bills of sale, notes, assignments of any part of the assets of the Colato, contracts, documents, or any other legal instruments are executed by use of the name given the Colato by the simple signature and designation of arty Executive Trustee, or all the then current trustees, or even other designated agents.⁴¹⁹

4.356 Below is a typical example of a receipt:

RECEIPT

Received this 30th day of April, 1989 Fifty and No/100ths
dollars (\$50.00) for rent of one Hild Floor Polishing Machine
from 4-23-89 until today.

Acme Tool Rental by,

James Reynolds, Manager.

4.357 No business embossing seals are ever used in certifying documents as they are too remonstrate of state granted corporate powers and the Super Rich do not care to potentially raise state curiosity. Privacy is supreme and a low profile undergirds all actions.⁴²⁰ For example, a secretary commissioned by the trustees in their Minutes, or anyone else appointed by them, attests and certifies any required or desired legal instrument.

4.358 Since the indenture is a private contract between the creator, investor, and trustee the Super Rich never file or place their indenture on record with state or county recording offices. Notice to any effect of their indentures are merely summarized and stated in, or placed on any legal instrument, document, or commercial paper to which the trustees, officers or agents may be a party. Certified copies of one or more sections are sometimes made to be circulated when deemed expedient by the trustees, and the simple signature of one trustee is sufficient to effect certification as such. In this way privacy is maintained, and it's for just this reason so few examples of the Super Rich Colatos are available for public inspection.

4.359 Without doubt the finest indenture a lawyer could draft should he compared to the one offered to First America Research's members. It has undergone many refinements extending over many years. Compare it with the sample indenture on page 293.

4.360 Many times the Super Rich substitute the given business name for some other name they choose and it is used instead-where state statutes do not prevent, and as long as the rights of another are not infringed.⁴²¹ However, it has been held that the Colato is exempt from filing fictitious name affidavits, because their names are their true

⁴¹⁹ See §4.323, *et seq.*, *re* delegation of full powers to third parties.

⁴²⁰ See §4.322 *re* the trustees enjoying the power to construe the meaning and intent of the indenture and Minutes free of judicial interference.

⁴²¹ 13 *Michigan Law Review* 208.

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given names.⁴²² Nevertheless, should the Colato assume some other name for conducting business other than its given name it must comply with those statutes which require filing, or it may execute a trade name affidavit.⁴²³

4.361 In short, because the trustees enjoy the exclusive power to direct the destiny of the Colato, their decisions reflected in their Minutes are indicative that the thing they direct to be done is within their power. The Minutes are simple informal statements reflecting the business conducted, signed and dated by the trustees.⁴²⁴ They are not so different from the type kept by a club or association of the old and new business considered from meeting to meeting.

Why Your Colato Is Exempt!

4.362 As stated earlier, the pure Colato does not violate the rule against perpetuities which regulate trusts to "lives in being and twenty-one years thereafter," because the Colato is not a trust,⁴²⁵ and it may exist into the distant future as we have seen because the assets of the Colato are held in *fee simple* by the office of trustee.⁴²⁶ However, the Super Rich are more apt to give their Colatos a lifetime of some limited duration like twenty-five years, because the trustees can always reinvest the assets to a new Colato distributing the newly acquired trust certificate units to the previous holders as a final distribution of the former Colato.

4.363 This not only discourages an ignorant bureaucrat's interest as to how such a "trust" can continue beyond the period the rule against perpetuities prescribes, but it also permits the advantage of "starting over with a clean slate." Of course the new Colato may take the name of the previous one since it has terminated all its affairs. Business good will and customer loyalty goes on as before, but new bank accounts, federal identification numbers, etc., all begin anew.

4.364 The trustees are empowered to terminate, the Colato at any time prior to the stated closing date (if any), whether because of any change in business conditions, threatened depreciation of values, or any reason deemed good and sufficient as shown in the trustees Minutes. Sometimes, the trustees are permitted to extend the time for an additional like period, but only where the indenture provides for such extensions.

4.365 After discharging all proper taxes and legal obligations the trustees distribute the remaining proceeds and assets either in cash or in kind among the then

⁴²² *National City Finance Co. v. Lewis*, 3 P 2d 316, reh den 4 P 2d 163. Revs'd on other grounds at 4 P 2d 298.

⁴²³ *Beilin v. Krenn and Dato*, 183 NE 330; *Hamilton v. Yong*, 225 P 1045, also see annotation, 35 ALR 496.

⁴²⁴ See the sample at page 306 in the Appendix.

⁴²⁵ See §4.7, *et seq.*, "A Trust That's Not A Trust."

⁴²⁶ See the Colato drafted by Patrick Henry in 1765, or the Colato created by John Quincy Adams, or the Colato which was operated for over 160 years, all at §1.78f For authority concerning the non applicability of the rule against perpetuities see *Liberty National Bank and Trust Co. v. New England Investors Shares*, 25 F 2d 493 (1928); *Howe v. Morse*, 174 Mass 491, 55 NE 213 (1899).

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trust certificate holders in proportion to their respective interests. To repeat, in lieu of this procedure the trustees may invest all or part of the remaining assets in any other Colato, account, investment, or business opportunity on a pro rata basis. When all duties and obligations of the Colato are finished then and only then are the trustees contractually fully and finally discharged, and the Colato is closed and terminated.

4.366 As one can easily see who has had experience with corporations, winding up the business is not much different save for the grant of privilege to close the business affairs which corporations must secure from the state which gives life to such creatures as it begets.

Colatos Versus Common Law Trusts

4.367 Up until this section we have primarily discussed the advantages and benefits to be gained by using the Colato, and we have thus become subtly acquainted with what the United States Supreme Court calls a "pure trust."⁴²⁷

4.368 Trusts, like varieties of ducks swimming in a pond call little attention to themselves. Then one day amongst the ducks we notice an alien breed of "trust" which when compared against the others is truly an ugly duckling. This is precisely the image one obtains when looking specifically at the pure trust's peculiar legal nature. For instance, if I was to explain that pure trusts may have no associates and no joint business purpose endeavoring together to divide the gains therefrom, most lawyers would stop looking for any benefits right there.⁴²⁸

4.369 Should my associate desire more information he would surely be repelled by the idea that centralized management and free transferability of interests was equally not among the qualities of the Colato. He or she would be instantly mindful that *all* of such "advantageous" elements *plus* continuity of life and limited liability were available by incorporating! Hardly another glance would be wasted in the ugly duckling's direction until one day, while perhaps attempting to sue a Colato, the lawyer would suddenly regard a beautiful white swan gliding by. At that point it's too late to figure out where the swan came from.

4.370 Comprehension of exactly what the Super Rich have done, and why, may finally begin to take a more tangible legal and tax form. The difficulty in researching the vast numbers of cases concerning common law trusts (CLT's) in an attempt to distinguish between the associated, partnership types, and the "pure trust" - "Colato" - is frustrated because the components the Super Rich employ are infrequently observable and thus elusive.

4.371 Law books, legal encyclopedias, legal annotations, etc., are appraisals mostly of the associated or partnership type of CLT's. The legal mind is easily drawn to the greater known quantity. Missing in that type of research, however, is a determination as to whether such "known quantities" are really a matter of practical need, or whether

⁴²⁷ *Hecht v. Malley*, 265 US 144, 147. The entire case is found in the appendix. Review it at this time noting especially page 147 of the case our page #328.

⁴²⁸ Each of six constituents will be discussed beginning at §4.382. They are (1) associates, (2) joint business purpose, (3) limited liability, (4) free transferability of interests, (5) continuity of life, and (6) centralized management.

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the acquisition might not actually constitute a tax disadvantage.

4.372 A superb example of a false first impression may be easily discerned where a state statutorily appoints liability to the certificate holders of a Colato. Where such is the case it is correctly deemed to be a very great disadvantage. Therefore, the lawyer identifying the most advantageous business vehicle may understandably overlook the Colato in favor of the corporation whose liability is fixed by statute in the same state to the company. As we should have learned however, this is no moment for pause as the stipulated agreement limiting liability with a creditor will dispose such statutory assignment of liability against the certificate holders.⁴²⁹

4.373 The corporate characteristic of limited liability normally included in the organizing indenture may be entirely eliminated where inapplicable or not desired as long as *every* contract or obligation entered contains the provision. The public is very accustomed to the essence of limited liability and it has been my experience that such language in contracts hardly raises an eyebrow.⁴³⁰ On occasions rising a quiet verbal statement that limited liability is a "corporate feature has quelled almost all of the others. Only once have I had to explain to counsel and with no difficulty whatsoever.⁴³¹

4.374 A closer look at the associated or partnership characteristic is essential to discover first whether such traits are truly valuable or not, and second to discover the greatest latitude of benefits "tax and legal-wise" which have escaped nearly all but the attention of the Super Rich.

Your Colato Is Free!

4.375 The reader has surely suspected there are several types of trust's the Super Rich are not interested in. Indeed they are not. As I have repeated many times, tax and legal considerations must constantly be in view to determine the real benefits or disadvantage. We note with particularity those substances which while perfectly legal and usually thought to be advantages will have serious detriments for the purposes of the Super Rich.

4.376 A common law trust (CLT) when cast in either the partnership⁴³² or associated forms will more frequently than not be classified as an "association" where the corporate tax rates apply, that is, a first tax upon the entity itself and a second tax on the share holder's dividend-a double tax.

4.377 In 1954 a group of physicians associated themselves together for the purposes of offering a multiplicity of medical services. Under California law they were not permitted to form a corporation so their organization was unincorporated. However, the I.R.S. discovered that the methods, modes, and procedures the doctors used for their business vehicle classified it as an association for tax purposes. While absolutely legal

⁴²⁹ See §§4.62, 4.96. and 4.342, *et seq.*

⁴³⁰ See *the method and technique used by the Jones'* at §4.110.

⁴³¹ See §4.64*f.*

⁴³² See *Commissioner v. Brouillard*, 70 F 2d 154, 159 where an attorney mistakenly regards a pure Colato as a partnership CLT

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under California law the Internal Revenue Regulations dictated the corporate income taxes-once from the association and again by each member.

4.378 In the wake of the difficult *Kintner* decision the Commissioner reconsidered his views and eventually issued his most recent expression in the Internal Revenue Regulation sections 301.7701-1 through 4. They have thus come to be known as the "Kintner Regulations."

4.379 In the United States there are but four formulas of taxation: (1) individual, (2) corporation, (3) partnership, and (4) trust. Let's examine how the corporation, partnership, and trust are taxed as we are all too familiar with how individuals are taxed. Language of symbolic form has been developed to describe the taxing advantage of the trust and partnership. These two enjoy the "conduit" tax route.

4.380 In the view of the I.R.S. those organizations whose directors are merely the owners' managing representatives are in danger of being cast in the "*tax-wise*" form of corporations whether or not they are incorporated. The owners of those associated organizations are the stock holders who will divide up the "pie" according to their token shares into dividends. Each year the I.R.S. is anxiously awaiting a share of the business pie. They also greet the stock holder at home for another bite. Since these types of organizations either obtain their lives by a grant from a state power or "*tax-wise*" conduct their affairs after the associated manner, the community claims an interest either "*legalwise, tax-wise*" or both.⁴³³

4.381 The Internal Revenue Regulations-Kintner Regulations-as well as the court cases clearly define the meaning of "associated" organizations. Our reliance, trust, and conviction will be amply rewarded just as Albert Schweitzer bade us at the beginning of this chapter by saying "Confidence is the greatest asset of any enterprise. Nothing useful can survive without it." You are about to learn a secret so useful and well kept there is truly only a handful who are benefiting from it. You should join their ranks!

4.382 In tax context "associated" relates to a *joint action and interest* of the stock holders and their directors.⁴³⁴ In other words, because the directors as the bakers of the pie receive their *instructions* from the owners of the pie-the stock holders-we easily perceive a *joint action* on the parts of the directors and stock holders. Though the directors bake the pie it's for the tastes of the owners. Further, because the possibility exists for a large number of stock holders who can freely transfer their shares without obtaining any of their other associate's permission we obviously see a *joint interest* among the stock holders.

4.383 The clearest view of the association aspect is at the stock holders meetings where the directors must take their orders. They can be hired or fired at the discretion of the stock holders. The directors and stock holders are certainly associated together in the operation of a *joint action and interest* of an enterprise.

⁴³³ The corporation being a creature of the state is eternally subject to local and national governments. See §2.3, *et seq.*

⁴³⁴ *Elm Street Realty Trust*, 76 TC No 68 (1981); *Morrissey v. CIR*, 296 US 34 (1935); *Crocker v. Malley*, 249 US 223 (1919); *Internal Revenue Regulations* 301.7701.2; *Schumann-Heink v. Folsom*, 159 NE 250, annotation 58 ALR 435. See all these cases in the Appendix. Also see *Hecht v. Malley*, 265 US 144.

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4.384 You notice the big deal I'm making of the words "*joint action and interest*?" This is because of the predominate view amongst so many lawyers that the motive of two or more persons, to make financial profit necessitates the element of associates. See footnote #432 where if the I.R.S. made the same mistake the⁺ attorney made a huge tax loss would have been suffered. It pays to learn this secret well.

4.385 Just because a number of persons associate themselves together to make financial gains does not necessarily turn them into "associates" within the meaning of the tax sense above.⁴³⁵ As an example, most partnerships are associations which are formed for the purpose of engaging in business for profit, but they are not usually taxed as associations. If Congress had desired or intended to tax every such association as a corporation it could have easily so provided in simple and unmistakable language-and it doubtless would have done so.⁴³⁶

4.386 Trusts and partnerships conduit either the tax benefits or liabilities to the beneficiaries or partners. The benefits or liabilities are deductions or gains, respectively. The beneficiaries or partners take the write-off's or pay the ordinary income tax rates on their personal tax returns. There is no tax bit at the front end as there is at the pie, because the tax payers are the owners, and the partners are working for their own interest without any representatives⁴³⁷ in *joint action*. We perceive the funnel as simply the device collecting and simultaneously distributing the income to the owners.

4.387 At this point we may more clearly distinguish between dividends and royalties. Dividends are specifically developed by a *joint action and a joint interest*.⁴³⁸ If income is derived in any other way it is not a dividend, but either a royalty or ordinary income. A partnership is like a patent in that the partners enjoy an exclusive right to market their own goods and/or services. Therefore, with the aid of the above we understand that when the distributions of trusts and partnerships are ordinary and necessary they are taxed accordingly as conduits dispensing their tax benefits or liabilities to their beneficiaries or partners.

4.388 We turn our attention now to the box below to determine the test of whether an organization will be taxed as an association where the corporate tax rates apply or in some, other way.

⁴³⁵ See note 434 on page 167 for authorities, *supra*.

⁴³⁶ *Hecht v. Malley*, 265 US 144. The entire case is found in the appendix.

⁴³⁷ *Zuckman v. US.*, 524 F 2d 129, 738 (1975). Centralized management held to be representative capacity like directors acting on behalf of owners.

⁴³⁸ *Morrissey v. CIR*, 296 US 344, 357. There must be a *union* of joint action between directors and stock holders, and a joint interest between stock holders. *Internal Revenue Regulations* 301.7701-1, 2(a)(2). Colato Certificate Holders have NO interest in Colato assets. *Cf* §§4.209 & 4.215.

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4.389 The majority of CLT's are as we have described, having

both a joint action and a joint

interest,⁴³⁹ therefore they have *both* (1) associates and (2) a joint business interest (see box above). If such associated CLT's have any three of the remaining characteristics, numbers 3 through 6, they will suffer the double tax. The only difference of such Colatos and the corporation is that the former acquires the associated style from the common law while the latter is granted the status by a state. Therefore, where states follow the federal law not only will these CLT's be taxed as corporations by the federal government, states may pursue them as well.⁴⁴⁰

4.390 It will pleasantly dawn on the astute reader that what we have been leading up to all along is an extraordinary business vehicle, because the Super Rich use only Colatos which have *neither* associates nor joint business interests!⁴⁴¹

4.391 What appear to be business advantages is only the bait which hooks the unsuspecting entrepreneur into making the government a partner. Since the Super Rich Colato does not have either associates or joint business interests it could actually have the remaining four corporate components. However as we shall note, it will only have one at the very most!

Limited Liability

4.392 In almost all cases the Super Rich Colato will claim limited liability in their organizing indenture. As noted above, where it is regulated or prohibited the Colatos merely includes the express provision in their agreements.⁴⁴² No further comments are required concerning this element as it has been thoroughly treated elsewhere,⁴⁴³ and because it is the *only* corporate characteristic the Super Rich Colatos employ.

⁴³⁹ See §4.382.

⁴⁴⁰ See note 461 on page 175 for some states which do not follow the federal law of income taxation and which require CLTs and Colatos to register with the franchise tax board or the corporation commissioner's office.

⁴⁴¹ Cf §§4.2, 4.15, 4.37, 4.47, 4.368, and 4.207.

⁴⁴² See §§4.342, 4.3 2.

⁴⁴³ Cf §§4.337, *et seq.*, 4.61, *et seq.*, 4.103. *et seq.*, 4.273, 4.281, and 4.288.

Free Transferability of Interests

4.393 First of all, "interests" implies, if it does not require, that there be some element of either legal or equitable ownership. Since the term "free transferability of interests" is corporate in context we clearly expect some incident of ownership like stock whose shares are evidence of ownership in a company. As ownership to either the legal or equitable title of the Super Rich Colato is absent, this corporate component is missing.

4.394 Along these lines, the trust certificate units (CCU's) convey absolutely no "beneficial interest" in the corpus of the Colato.⁴⁴⁴ Since the legal definition of "beneficial interests" means "equitable title," and since the whole title, both legal and equitable, are vested in the office of trustee, there is no "interest" in the legal sense of the word.⁴⁴⁵ Thus there is also no "remainderman's interest," and such a term applies to the strict trust agreement⁴⁴⁶ rather than to Colatos.

4.395 An interesting problem arises at the juncture the layman reads the cases cited, and it should be noted here. It is clear in one case that the certificate holders of a Colato had no "beneficial interests," but a similar case and situation-and sometimes the same case-the certificate holders are called "*cestui que*" or "beneficiaries" which strict legal definition requires a splitting of legal title to a trustee and equitable title to the beneficiary.⁴⁴⁷

4.396 On one hand it appears the organization is a trust agreement⁴⁴⁸ and on the other it's not, and the confusion is marvelous. Certainly it's true the whole title can't be vested with trustees and still have a "remainderman's interest," a "beneficial interest," or any "interest" whatsoever in the sense of ownership.⁴⁴⁹

4.397 The problem is ancient and not likely to go away, because the courts frequently borrow words from many other situations. Though this is not quite the proper forum I shall say it anyway, that the courts and legal writers should exercise care in their written opinions to use more generic terms, such as "certificate holders" in the cases where words of art tend to confuse rather than enlighten.'

4.398 The term "interests" does indeed mean ownership, and while the owner of a pure trust certificate has no ownership in the corpus of the Colato nor any sway of control over the trustees, what he does own is a *contingent right* to receive income when distributed by the trustees. However a contingency holds no substance of *legal right*

⁴⁴⁴ *Morrissey v. CIR*, 296 US 344. 357. Those who became beneficially interested share the advantages of a union of their interests in the common enterprise. *Bouchard v. First People's Trust*, 148 NE 895. 899. A business corporation is unthinkable where the share holders are devoid of legal rights. The entire case is appended.

⁴⁴⁵ *Bouchard, supra*

4'' Set Chapter Three.

⁴⁴⁷ See §3.84 re "*Splitting Title*."

⁴¹ See 13.77.

⁴⁴⁹ *Morrissey, supra*.

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which can be perceived at law.⁴⁵⁰

4.399 Further, the Super Rich will frequently include limiting statements in their indenture that the CCU's are not transferable without the express permission of the trustees.⁴⁵¹ Of course compliant trustees⁴⁵¹ eliminate any serious disadvantage for transfer, but the limiting language prevents the certificate holders from transferring their certificates without the written consent of the trustees which is the essential part of the corporate characteristic of *free transferability of interests*, and which the Super Rich desire to avoid.

4.400 The principle advantages enjoyed by having *free transferability of interests* is that the holder need obtain no permission to dispose of his interests. The disadvantage may spell double taxation. Still, the advantage obtained by the *lack* of free transferability lies in the inability of a court or creditor to secure beneficial or equitable interest in the personal or real property owned by the Colato by seizing the CCU's. The certificates become null and void upon insolvency of the holder and the trustees are bound thereto.⁴⁵³

4.401 The integrity of the Colato and its property is absolutely maintained. Finally, since no recordation of the certificates is necessary the units themselves are as private as bearer stock, yet the owner thereto is not required to give the government notice as is required for bearer shares.

Continuity of Life

4.402 As before reason proves why *continuity of life* is neither attendant nor useful to the Super Rich. First, the presence of "continuity" in a corporation⁴⁵⁴ is recognized by the business remaining substantially the same even though the owners or stock holders may die, change or become insolvent.⁴⁵⁵ In a Colato the reader will remember that the CCU's become null and void at the death or insolvency of the holder.⁴⁵⁶

4.403 Further, should the CCU's become void the trustees are to find a new investor as in the beginning. Such a startling change removes any possibility of a court finding the corporate element of "continuity," because a distribution of the Colatos assets becomes quite impossible without this necessity of finding new investors. Of course

⁴⁵⁰ *Estate of Hilton W. Goodwyn*, TC Memo 1976-238.

⁴⁵¹ See §4.194, *et seq.*, "You Can Use Super Rich CCU's. "

⁴⁵² "Will Campbell's Special Technique!" §4.303, *et seq.*

⁴⁵³ See §§4.152 and 4.182, 4.183 or §4.94 *re* certificates becoming a nullity upon either death or insolvency of the holder.

⁴⁵⁴ Except for certain closely held or so-called one-man corporations.

⁴⁵⁵ *Internal Revenue Regulations* §301.7701-2.

⁴⁵⁶ See §4.217.

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another Colato may easily qualify to be the new investor.⁴⁵⁷

4.404 As we can see, because the Colato does not employ *continuity of life* within the purview of corporate definition its privacy is not excelled, because it is not dependent on any others besides the parties creating such Colatos to determine the outcome of economic events, and even the parties themselves might shield their anonymity through the use of additional Colatos. Such miracles are not available in the corporate arena." Regardless the Colato does not employ *continuity of life* it may continue into perpetuity.

Centralized Management

4.405 Prior to the following United States Court of Claims case the component of centralized management was somewhat difficult to set apart. *Zuckman v. U.S.* made the clarifying decision which held that *centralized management* is where the power exercises the representative faculty. In other words, *Zuckman* follows the very same rationale as the other matters in that directors of an organization acting as the representatives of the owners or stock holders is one which achieves the corporate characteristic of centralized management.

4.406 Of course this element could also create either the associated or partnership type of CLT the Super Rich have no interest in. Colato certificate holders have no interest in or title to the Colato property, and no legal control or management over the affairs of the trustees. The trustees act in their own capacities, have *fee simple* ownership and control of the property for and on behalf of themselves as trustees, and are not therefore representatives of the certificate holders."

4.407 Another contrast of the corporate *centralized management* is demonstrated by the corporate board of directors. The Board exercises only representative power. It has only management decision making powers rather than fiduciary or trust powers. Centralized management is absolutely of no use or benefit to the Super Rich in this context. The principle advantage afforded by the lack of *centralized management* is the broad powers which can be conveyed to third parties with the express consent of the owner or the trustees.'

4.408 We should notice just how secret all of this has been by realizing that the disadvantages-particularly the double tax-which the partnership and associated CLT's may be subjected to, there is still a greater advantage in any of the two over the ordinary corporation, because of the incredible faculties they enjoy of privacy and less regulation and control by government. Of course, the Colato transcends by light years the benefits of anything near its class. Though the Super Rich Colatos savor many of the seeming corporate advantages they are able to have such benefits without either incorporating or

⁴⁵⁷ Cf §4.224.

⁴⁵⁸ Cf the privacy benefits especially with the off-shore techniques to be described in Chapter Five.

⁴⁵⁹ Cf §4.321, *et seq.*

⁴⁶⁰ See §4.320, *et seq.*

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bearing the burdens and restrictions thereto. They are in a class by themselves-depending wholly upon the common law and less upon the statutes.

Notes

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The Four Types of Trusts

TRUSTS

1

TRUST §§3.78, 3.104

CLT or Colato §§4.2, 4.35, 4.103

(1) **Statutory Types** §2.12

Three Common Law Types §§2.19, 4.21, 4.37

Not contracts §3.95

Are gifts §3.98

Regulated by state law §3.75

Creature of equity §§2.14, through 2.44, 4.412

Must split title §3.84, 3.90

Has beneficiaries §§3.94, 4.393f

Treated by Restatement Trust Act 1959 §4.10

Two basic types: Inter vivos/living trust §3.104 or

Testamentary trust §§3.123 3.149

Not trusts or gifts §§4.10, 4.14

Transfers for consideration. *Various terms:* §4.22

Common law trust §4.26

Massachusetts trust §4.25

Business trust §4.26

Contract trust §4.22

Pure trust §4.27

True trust §4.27

Blind trust §4.22

Organized Under Common Law Right of Contract §§2.6, 3.95, 4.66ff.

(2) **Partnership Type:** §§4.37, 4.388. The certificate holders have no ownership of the corpus or property, but do have some control over the trustees and the destiny of the CLT. therefore it may suffer the double tax. It has the first two dangerous elements of associates and a joint business purpose. If it should have any three of the next four elements (see §§4.37, 4.389 and the box) it will be taxed as a corporation. When a CLT has associates and a joint business purpose it is very difficult not to be taxed as an association. The advantages offered are privacy, potential tax benefits, and some restraints from government. Disadvantages presented are government curiosity, and most certainly it is not free of equity (see footnote ##84 and 93 in Chapter Two).

(3) **Associated Type:** Cf §§4.367 and 4.382ff. The certificate holders are associated together having both a joint interest in the corpus and a joint control over the trustees. The trustees are merely the certificate holders' managing agents who are representing them. By its very nature it will enjoy the advantage of limited liability, free transferability of interests, continuity of life, and centralized management. There are no tax advantages and it will be taxed as a corporation. It is a slave to equity, §2.29 by relying on statutes.

(4) **Colato Type:** §4.367. No associates, because the certificate holders vest "pure trust" in the trustees. No joint business interest, because the certificate holders have no ownership in the corpus of the Colato. Most Colatos have limited liability unless prohibited or restricted, then it is acquired by contractual inclusion. Absolute privacy, total freedom from equity, and complete escape of gift, inheritance, and estate taxes. It is free of government restraints and the protection of assets is unexcelled as they can be passed in tact from generation to generation. The disadvantage of public ignorance is overcome by use of standard titles like president and secretary instead of trustee, and/or the use of a corporate business vehicle, etc., as a front for the public. No reliance on statutes!

Is The Secret Colato Taxed At All?

4.409 Certainly one of the most exciting of all the attributes of the Colato is its ability to escape federal and state income taxation. In addition it escapes probate, gift, inheritance, and estate taxes. However, it may only escape federal and state income taxes by assimilating a foreign Colato (FORColato). Still, we must learn how the Colato is taxed so we will be able to include the greatest use the Super Rich make of their Colatos. We'll make these full discoveries in Chapter Five.

4.410 As we have observed from time to time, while the Colato has never found itself in the main stream of the federal tax code it is not an enigma to the I.R.S..⁴⁶¹ However, neither the Internal Revenue Code (IRC) nor the Regulations (IRR) specifically state how the Colato is to be taxed. We must depend upon the common law or the cases.⁴⁶²

4.411 In Chapter Two we learned quite a bit about the common law and even what the I.R.S. thought of it. Look again at their "Definitions of Law" and learn where we must turn to discover what the Code and the Regulations will not tell us. Please note with particularity the last paragraph:

4.412

"DEFINITIONS OF LAW

(1) Laws are rules of conduct which are prescribed or formally recognized as binding, and are enforced by the governing power.

(2) Common and Statutory.

(a) Common law comprises the body of principles and rules of action relating to government and security of persons and property which derive their authority solely from usages and customs or from judgments and decrees of courts recognizing, affirming, and enforcing such usages and customs.

(b) *Statutory law refers to laws enacted and established by a legislative body. All Federal crimes are statutory **but common law** is frequently **resorted to** for defining words used in the statutes. For example, statutes provide penalties for attempted evasion of income tax, but they do not define the terms 'attempt' and 'evasion'.*⁴⁶³

4.413 While the quotation deals with criminal definitions it is clear that it is the common law which must be applied where either the Code or the Regulations are silent.

⁴⁶¹ The most notable exceptions are Arizona, California, and Florida which do not follow the federal law, and Colatos cannot escape some state's corporate income taxes. Cf §4.14 to check your states' tax definition against the Colato. Also see note #235.

⁴⁶² See "choice" at §4.144.

⁴⁶³ *Internal Revenue Manual* MT 9900-26 (1-29-75), 5041.1. Emphasis supplied.

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Both the Code and the Regulations are auspiciously mum concerning how a Colato is taxed! Thus to the common law we go!

4.414 Before we can learn what the common law says about taxing Colatos we must remember that there are just four taxation formulas in the United States; (1) individual, (2) corporation, (3) partnership, and (4) trust. We should also recollect that both the partnership and the trust enjoy the conduit method of passing their tax liability to their "partners" or "beneficiaries" respectively.⁴⁶⁴

4.415 We have also learned that the Colato is not taxable as a corporation under federal law.⁴⁶⁵ We are left with either individual rates or the conduit system for trusts or partnerships. Obviously conduiting the tax would be the preferable method, but the reader may remember something about the Colato being a distinct legal entity and wonder if the individual tax wouldn't apply.

4.416 If these questions don't muddy the water there are other rules which stir the puddle quite a bit. By patiently waiting for the sediment of the common law to fall into place we will be able to clearly see the bottom of the matter. For example, the IRC states the following:

The term 'person' shall be construed to mean and include an individual, a *trust*, estate, partnership, association, company or corporation.⁴⁶⁶

4.417 We know the Colato isn't an individual, (a human being), a trust,⁴⁶⁷ estate,⁴⁶⁸ partnership,⁴⁶⁹ association, or a corporation,⁴⁷⁰ so what is it? In expanding the meaning the I.R.S. stated in their Regulations that the term "person" includes an "unincorporated organization or group."⁴⁷¹ There can be no doubt that the Colato is an "unincorporated organization." Therefore in tax parlance a Colato is a person. If the Colato is a distinct legal entity or person and the Code defines it as a person, then how is it to be taxed?

⁴⁶⁴ See the illustration at page 168.

⁴⁶⁵ See §4.380, *et seq.*

⁴⁶⁶ *Internal Revenue Code*, §7701.

⁴⁶⁷ See §§4.10 and 4.14.

⁴⁶⁸ Though this one is confusing it basically refers to an "interest" which an *individual* has in lands, or any other subject of property. The question is moot because there is no doubt that the Colato is a taxable "person."

⁴⁶⁹ See chart on page 174 and look specifically to the Partnership Types of CLTs. Also *Cf* §§4.408 and 4.376.

⁴⁷⁰ "Associations and corporations" are the same for tax purposes. See §4.374, 4.375, *et seq.*

⁴⁷¹ *Internal Revenue Regulations*, 301.7701-1(a). Also see *Internal Revenue Ruling* 73-254 concerning the tests and standards applicable to classifying unincorporated business organizations for federal tax purposes.

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common law reliance from American jurisprudence. At the worst the common law would become codified - or the method of taxation would become written into the Internal Revenue Code.⁴⁷⁹

4.423 The *Brouillard* court found the methods, modes, and forms of procedure which were used by the three groups in the conduct of their respective businesses and noted the lack of corporate attributes. In fact the court stated that:

The system and course of procedure approximates much more closely that of an ordinary partnership among personal friends reposing *full confidence* [pure trust thus a Colato] in each other. The resemblances predominate strongly in favor of a trust. Consequently, the entities should have been taxed as trusts, not associations.⁴⁸⁰

4.424 Therefore, if the income is distributed to the certificate holders the income tax will be paid by the recipient, because it will be conduited to the certificate holder. If the distribution is made to a foreigner there may be no taxes payable at all as we shall examine in Chapter Five. The Internal Revenue Service, in *Brouillard* type cases is bound to follow the distribution for collection of the tax. If the recipient is a non resident alien person, not subject to the authority or jurisdiction of the I.R.S., there is no way for the I.R.S. to collect the tax. It only becomes necessary to engineer the business, estate, or personal affairs to meet all the elements such exemptions would require. Chapters Five, Seven, and Eight will help in this regard.

Notes

⁴⁷⁹ See §2.24.

⁴⁸⁰ *Commissioner v. Brouillard, Ibid.* Entire case is found in the appendix. Brackets and emphasis supplied.

Chapter Five

The Paupers Flee!

**A man's feet must be
planted in his country, but
his eyes should survey the
world.**

George Santayana

**A merchant has no
country.**

Thomas Jefferson

5

The True Federal Tax Take!

5.1 What's the *single greatest* life time expense? You guessed it, it's taxes! I'd be willing to bet, however, that most of my readers would never guess that taxes are the main compelling reason Americans are leaving the United States - never to return! I'll offer several proofs below, but first some appalling yet revealing information as to how this is possible in Sir Francis Scott Key's "Land of the Free and the Home of the Brave."

5.2 It was reported not long ago by the Federal Reserve Bank of St. Louis that (we'll study the facts at §5.9) the average 1950 American could spend approximately 75 cents out of every dollar on him or herself and only have to allocate 25 percent for taxes and interest. As low as these amounts sound today we first need to remind ourselves of the promises given by the ones who supported the income tax.⁴⁸¹ Second, we must understand that the 1950 amounts *equaled the conditions of the serf slave to the land owner of the Dark Ages who paid 25% of everything he earned to the baron king!*

5.3 What name for our age will future generations place on us? I propose something like the "Unparalleled Serfdom Age" would be appropriate, because confiscatory taxes has become the rule the whole world over. Consequently many tiny tax haven islands surfaced in just the last 25 years, and today they dot the seven seas as well as several continents of the world.

5.4 American tax reform acts have done little to nothing in turning the tide of virtually "confiscatory rates" of taxes,⁴⁸² in spite of one politician after another promising otherwise and insisting we read their lips. How can we tell when a politician is lying? My opinion says "*when their lips are moving!*" Reagan's Tax Reform Act of 1986 for example did absolutely nothing in the way of really curbing the amount we pay, because Social Security **and other hidden** taxes are climbing higher and higher.⁴⁸³ Taking less percentage from the left pocket only to take more from the right doesn't

⁴⁸¹ See §1.52 and its accompanying footnotes. Senator Borah promised that rates such as these could never happen in America! Cf §6.108ff.

⁴⁸² Cf notes 56, 660.

⁴⁸³ The sixth annual *Money* magazine survey on "Americans and their money" found two thirds of those surveyed want the rich to pay more taxes. (Where have we heard that before? See "A Very Special Tax Law." at §1.26, *et seq.*). *Money* found that 69% of the respondents said they would be more likely to vote for a candidate for the presidency who would support higher taxes for people earning more than \$100,000 a year. Nine percent said they would be less likely to vote for such a candidate, and another 22% said such a campaign stance wouldn't affect their vote. *Money* also found an increasing number of people are disenchanted with the latest federal tax law.

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substantively amount to a tax cut.

5.5 Granted, the top rates of *income and death taxes* have been reduced from their maximums of over 90% and 77% respectively, however the ever growing Social Security, state, and city levies (and as we shall examine in a moment - the hidden taxes) only increase the weight of the yoke about American's necks. Increasing numbers of individuals in our country feel they can no longer afford to ignore the imperative of engineering their affairs in order to alleviate the growing burden. They feel its obligatory of them to explore every possible option they've got to protect their privacy and assets - their very freedom! Therefore they have lifted their horizons by surveying the whole worlds' services.

5.6 Lawyer William G. Hill has written extensively how persons can effectively become "permanent tourists" and live anywhere in the world unencumbered by either taxes or citizenship!⁴⁸⁴ His revelations are explosive, but obviously in just as great a demand! While there may not be large documented numbers of people leaving America, the Exodus has unquestionably begun. I personally know a substantial number of families who have left the United States in just the last ten years. These families are lawyers, doctors, writers, technicians, engineers, and all the skilled but thinking laborers you can imagine. In short they are the brains which makes America great!

5.7 These people begging at the ballot box less confiscatory taxes are given nothing more than a scrap of stale bread in the form of one tax reform after another. Rather than going hungry they are voting with their feet and leaving the United States in droves! Others are ensuring themselves that they have the ability to leave freely and with a substantial amount of assets should the time arrive that the "brain drain" becomes noticeable to the government. I will offer proof in another part of this chapter that the United States is not beyond the act of erecting a legal barrier just as the East Germans built their wall of brick and mortar to stop the flow of "illegal immigration." Whether legal or not history proves people will always leave intolerable situations for an unfettered state.

5.8 In just thirty years since 1950 the picture isn't even recognizable. The following figures will give the reader a hint as to how it's possible for Americans to consider leaving our great land. We must understand that just like ancient Jeroboam and his people⁴⁸⁵ there have always been and always will be people who simply won't tolerate the theft of their subsistence.

5.9 If I could prove the government is taxing us at amounts greater than 100% I doubt there would be difficulty in convincing anyone (except welfare parasites) to agree that the edict exacting such taxes would be an unjust, unAmerican, and corrupt law. What I'm about to prove is actually **more shocking** than one can prepare one's self for, but it will lend the evidence to my earlier statement that "*taxes are the main compelling reason Americans are leaving the United States - never to return!*" Witness the St. Louis Federal Reserve Bank figures:

⁴⁸⁴ Hill, Dr. W. G. *PT*, Scope Books. Ltd., Hordean, Hants. Great Britain. "PT" stands for a great many things which essentially translates to a plan for living a life free of governmental interference by taxes or other coercion.

⁴⁸⁵ See § 1.22ff.

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Per capita Expenditures of Consumer Dollar As pen the Federal Reserve Bank, St. Louis, MO

	<u>1950</u>	<u>1980</u>
Food	18.5¢	12.3¢
Housing, medical, clothing, entertainment,		
Investment, savings, other	56.3¢	26.7¢
Taxes	21.5¢	27.1¢
Interest	3.7¢	33.9¢

5.10 Without carefully examining the figures above, and understanding the role inflation⁴⁸⁶ plays it appears there was only a 26% increase in taxes. As bad as that is beside the decreases in the costs of living, it's nothing compared to the approximately **150% true federal tax take**, because the interest increase is in reality a raise in taxes! Our example is tantamount to decreasing the percentage of the federal income tax while raising the social security taxes. Materially there has been a tax *increase* rather than a decrease. Let me prove where it came from:

5.11 If the federal government were to tax us at the same extent as it has spent, personal taxes would have to increase by some 50% to fund *only current* federal deficits⁴⁸⁷ accounting for more than \$200 billion a year. The subterfuge is created by the federal government financing its expenditures by sales of its debt instruments which in turn generate higher and higher interest rates. Therefore, by excluding the higher interest costs from the total cost of federal taxes the government has been able to substantially understate and deceive us concerning the true tax take. As Mortimer Caplin once said, "There is one difference between a tax collector and a taxidermist - the taxidermist leaves the hide!"

5.12 All the double talk relating federal taxes to a percentage of the Gross National Product or by comparing American taxes to foreign countries such as Japan or Israel cannot hide the persistent government deficit of past, present, and future. As a result, the interest rates have been driven to inconceivable historical levels. Simple but irrefutable proofs are found in the necessity of both husband and wife having to work to support themselves; thus the government has robbed its citizens of the lower prices which extensive advances in technology offered. We face the very real prospects of being the first generation in American history which will leave its posterity worse off instead of better.

5.13 Proof continues. Homes which sold for an average of \$10,000 in 1950 go for \$100,000 today. Mortgage money which was available at 4 - 4.5% with monthly payments of about \$65 with roughly \$55 per month going towards the interest in the early part of the loan has gone today to 10 - 12% with payments of about \$1,000 per month with approximately \$950 going towards the interest payment. With such large sums going towards the interest part of the payment there is no doubt, even with all the variables which could be used to compute, conservatively over \$200,000 will have been added to the ultimate cost of the home. In reality it's nothing more than a hidden federal tax!

⁴⁸⁶ See glossary for inflation.

⁴⁸⁷ If you don't know what deficit means look it up in the glossary and study it together with inflation.

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5.14 Integral to the federal tax law are the ever growing Social Security taxes. Given to us by President Franklin D. Roosevelt's Administration as a part solution for the Great Depression of 1929 the Social Security Act (1935) stands today as one of the greatest frauds any government has ever perpetrated on its citizens.

5.15 In Irwin Schiff's *The Biggest Cat - How the Government Is Fleecing You*⁴⁸⁸ he calls Social Security "the world's biggest chain letter!" He couldn't have been more definite. From the fly leaf of his book he quotes President Gerald Ford's statement before a Joint Session of the Congress on October 8, 1974:

Inflation,⁴⁸⁹ our public enemy No. 1, will, unless whipped, destroy our country, our homes, our liberty, our property ... as surely as any well armed wartime enemy.

5.16 I hope you read that statement carefully! Irwin Schiff then went on to say himself that:

Since it is our own government that causes that inflation - our own government is that enemy!

5.17 Irwin provides documentary examples of how the government sold the American public that its program is an "insurance program." For a fact, who has not heard of the OASDI? What does the acronym stand for? Answer: Old Age & Survivor's Disability Insurance. The two words "survivors" and "insurance" were obviously not coincidental. Each separate word compels one to think in terms of indemnity. If persons in private insurance industry had done anything even remotely resembling what the government has done with Social Security they would have been locked up and the key thrown away.

5.18 Unlike a legally enforceable insurance contract no such thing exists between the Social Security and the citizen. The benefits can be changed or terminated by Congress at any time it deems necessary, and such a unilateral change could never happen in an insurance contract.⁴⁹⁰

5.19 In addition to the obvious "insurance fraud" there has been rife fiduciary violations. We are continually appraised about Social Security's "trust funds." The Federal Old Age Survivors Insurance *Trust Fund*, the Federal Disability Insurance *Trust Fund*, and the Federal Hospital Insurance *Taut Fund*, conjures reliance to trust that the cash which was collected is sitting safely by for us in an account with our name on it. In reality no such things exist - either the cash or any account in our names!

5.20 We learned in the press just recently again what seems to always escape the public's attention that whatever cash which has been collected in the past has long since

⁴⁸⁸Schiff, Irwin. *The Biggest Con-How the Government Is Fleecing You!* Chapter Four, page 105, Freedom Books, Hamden, Connecticut.

⁴⁸⁹ See glossary for "inflation."

⁴⁹⁰ See the quotation at §4.76 where the very definition of the term "contract" was from a case involving an insurance company! *Lee v. Travelers Insur. Co. of Hartford, Conn.* 173 SE 185, 175 SE 429.

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been spent on previous wars, current bribes to farmers not to grow food, Congressional junkets, support of the United Nations, trips to the moon, etc. The ingenious method which has been used was to spend the money and replace it with government bonds. That would be tantamount to an insurance company indiscriminately spending the premium dollars collected and leaving IOU's (bonds) in a bank box! No one would tolerate that!

5.21 Of course the money which the Social Security must pay out is secured only by the taxing power, but in actuality the taxes now needed to be collected for the current liability were already gathered before!⁴⁹¹

5.22 Little wonder growing numbers of Americans don't feel they can tolerate it any longer. Before I diagnose too critical a condition I hasten to say I'm optimistic about America's future because relief is spelled FOR-CO-LA-TO (Foreign Colato = foreign common law trust organization). There's another remedy as well. It's the "pill of restoration!" We have swallowed enough of the tax reform placebos to know they are just sugar tablets that don't work. We'll examine the only medicine possible to arrest the cancer in Chapter Six. We don't care if the whole world says the pill is too bitter, (changing the entire law), because we who desire asset health merely inoculate ourselves with the syringe of the Super Rich which has given them their vitality for over 75 years! If enough of us become hale and hardy perhaps the sickies can be persuaded at some point to take the cure.

5.23 Yes, I'm very optimistic about America's future because for one thing I can write about its problems openly, suggesting methods and techniques the citizens can use which are legal, and still propose, propound, and advance solutions for the obvious problems our great country faces.

5.24 The intelligent seek vaccinations against disease, we insure against all kinds of losses, we wear seat belts, we buy fire alarms, etc., and today's intellectual is buying liberty by becoming a world consultant to the foreign Colato. Until the day comes (see Chapter Six) that liberty is a way of life the truly brilliant will align themselves with the foreign Colato to protect themselves against arbitrary and capricious government.

5.25 Some of the advantages enjoyed by a Super Rich foreign Colato are profit without the excessive federal and state income taxes, social security taxes, capital gains taxes, absolution from the hidden federal taxes, protection from divorce, malpractice claims, other law suits, judgments, seizures, liens, etc. We will cover each of these potential disasters in sections by themselves with examples as to how the Super Rich foreign Colatos completely escape them. However, an enlightening study first!

The World Of Foreign Tax Havens

5.26 In direct correlation to the problem admitted by lawyer Milton E. Meyers, Jr. in Chapter Three concerning lawyers speaking openly about the "*quackery* and *black magic*" of regular trusts to avoid probate,⁴⁹² we have exactly the same problem

⁴⁹¹ For a complete picture of what has been done please refer to Irwin Schiffs book, *The Biggest Con-How the Government is Fleecing You*, Chapter Four, page 105. Freedom Books, Hamden, Connecticut.

⁴⁹² 3.29ff

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concerning the use of tax havens. Attorney Marshall J. Langer revealed in his Preface to the Third Edition of *Practical International Tax Planning* (page vii, September, 1985) that 15 years earlier it was generally taboo for lawyers to talk or write openly about tax **havens even** though they were legal and being used. He says:

5.27

About ten years ago, these programs [for Practicing Law Institute] were redesignated "foreign tax planning" to eliminate the stigma sometimes attached to the term "foreign tax havens."

5.28 Indeed, a number of years ago in a case which I had an interest the then head of the trust department of Gonzaga University Law School testified that the Colato and foreign Colato was illegal! He was embarrassed to admit his error before the whole court. I must say that there are many lawyers just like him! They don't know anything about the subject and will sometimes jump into the fray by claiming the Colato is illegal. Lawyers lack of knowledge is not unusual, however, as we've pointed out before in the quote on page 66 that "no lawyer or judge knows more than a relatively infinitesimal part of the law." The same can still be said of tax havens, foreign tax planning, and particularly of foreign tax engineering!

5.29 Of course, if the revenue authorities of the high tax countries of the world were asked, they would almost certainly welcome the offshore tax havens to sink into the seas they occupy, but even the United States as one of the most developed and high tax countries of the world is a tax haven for foreigners and must tolerate, indeed encourages, its own use as a tax haven.

5.30 For example, if the United States was to eliminate its own exemptions⁴⁹³ of foreigners earning bank interest absolutely tax free from their deposits⁴⁹⁴ the flight of those billions of dollars out of the United States would uniformly destroy many U.S. cities which are major capital markets.⁴⁹⁵ The inevitable domino or trickle down effect wreaking havoc into all areas of American life is unthinkable, and chills the blood of even the grabbiest revenue agents.

Best Tax Haven In the World!

5.31 Certainly one of 'the attractive aspects to a foreigner having a United States saving account is either the Federal Deposit Insurance Corporation (FDIC) or the Federal Savings and Loan Insurance Corporation (FSLIC). These are guarantees of

⁴⁹³ See the definition of "exemptions" and contrast with "evasion, loopholes, and avoidance" at §1.65, *et seq.*

⁴⁹⁴ *Internal Revenue Code* §§861 (a)(1)(A), 861 (c).

⁴⁹⁵ A statement filed by the Rockefellers' Chase Manhattan Bank, N.A. with the Senate finance Committee in 1976 estimated that foreign persons held \$18 billion in bank deposits. Such funds are certainly much higher today.

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safety for funds of up to \$100,000 deposited in those participating banks.⁴⁹⁶ It wouldn't surprise me to find out that half or more of the dollars in these accounts are controlled *de facto* by Americans but owned by foreigners.⁴⁹⁷

5.32 The Edge Act is relatively unknown to Americans, but I'm sure many of the persons just described are fully aware and taking advantage of the law. What is the law? Non resident aliens (foreign Colatos included) or non U.S. citizens are specifically exempt from all government reporting requirements. Effectively this gives foreigners bank secrecy in the United States which they are used to in their own countries!⁴⁹⁸

5.33 Congress has debated the rationale of the United States' continuing to play host to tax free bank interest earnings of foreigners - because ordinary United States tax payers have complained of their having to pay rates of up to fifty percent on their bank interest earnings. In a transparently weak attempt to satisfy those complainers, Congress decided to impose a tax on bank deposit interest in 1966, but citing balance of payments deficits postponed the effective date of the tax until 1971.

5.34 The imposed tax was put off two more times until debate rising out of the 1976 Tax Reform Act once again declared the permanent exemption.⁴⁹⁹ The disapproving tax payer wasn't happy, but the years of murmuring did nothing to satiate the complaints!⁵⁰⁰ Finally, Reagan's Tax Reform Act of 1986 appeared to lower the rates, but clearly Congress is persuaded that the thirty percent withholding tax against foreign bank deposit interest would be detrimental to the U. S. economy.

5.35 Additionally, since many of the offshore techniques which can be used are absolutely private there is really no way we could even speculate how many congress persons or their "blind trusts"⁵⁰¹ use them and therefore are indirectly enjoying tax free accumulation in United States savings accounts by foreign entities they merely control *de facto*,⁵⁰² and, thus proving how really great a tax haven the United States is for foreign Colatos!

5.36 The real trick is "How to become a foreigner without giving up your U.S citizenship or passport!" Can it be done? Of course it can be done, but the question is can it be done legally without committing perjury on a 1040 or other tax reporting forms? This chapter, together with the knowledge already developed, will answer exactly how the Super Rich handle this problem.

⁴⁹⁶ Not to be debated here, but many have reported that these corporations couldn't pay more than 1/10th of 1% should there be a run on the banks.

⁴⁹⁷ See §§4.215. 4.218, *et seq.*, *re* developing the concept of control versus ownership.

⁴⁹⁸ Hill, William G. *PT* page 17. Scope Books, Ltd., Hants, Great Britain. *Cf* §7.68ff where both the Edge Act and the Bank Secrecy Act are compared.

⁴⁹⁹ See *The Daily Tax Report*, No 84, April 19, 1976 at J-3.

⁵⁰⁰ Please see §1.59 reference slavish type thinking.

⁵⁰¹ See the note 106 on page 40, and *Cf* §4.22. A blind trust is a Colato, page 174.

⁵⁰² Study the difference of legal versus *de facto* control at §4.303.

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5.37 Therefore, as we are wont to repeat over again the Super Rich choice of tax engineering is not limited to evasion or avoidance of taxes, but between the effective or ineffective use of the Internal Revenue Code, the Internal Revenue Regulations, and the court cases. Knowledge of what the law permits is the essential element of tax economy,⁵⁰³ and though the government may at first blush cast 'a raised eyebrow in the direction of tax havens, only the abuses by individuals in order to evade taxes deserves its wrath. The courts have amply stated the general rule or principle of taxation that the legal right of a taxpayer to decrease the amount of what otherwise would be his taxes, or altogether avoid them, by means which the law permits, cannot be doubted.⁵⁰⁴

5.38 As I said in Chapter One, tax engineering embraces the theory of manipulating legislation for the desired tax advantage. However, if too few people use the tools of the Super Rich to cause the legislation to be changed in favor of an equitable, honest, and just system - then so be it! We who know better must engineer our lives, incomes, estates, etc., around the laws the ignorant, selfish, and dishonest "social pressures" seek to make. More power to the liberated and educated! Ironically, the necessary engineering makes the Super Rich richer because analysis automatically requires better productivity - use of time, energy, resources, etc. Therefore, if one searches out and uses the time honored principles of tax engineering which produce the results of the Super Rich it can be said that such astute tax payer has "manipulated or arranged" his or her affairs so that the taxes are as low as possible or perhaps even eliminated.⁵⁰⁵

5.39 One writer has suggested that such manipulation or arranging is a "distortion" of ones affairs!"⁵⁰⁶ The assessment might even be correct, but especially when we consider why the law was created! Perversion always distorts, and the income tax law was a perverted, unAmerican, and immoral provision. (See Chapter One and Six). If one lowers or eliminates one's taxes by means the law permits - and that's a distortion -- it's axiomatic it's the law which has corrupted license. If it's the law that's to blame it behooves us to use what we've, got or get it changed.

Lesson Five

5.40 We learned in §1.73 that:

The very meaning of a line in the law is that you intentionally may go as close to it as you can if you do not pass it (*Superior Oil Co. v. Mississippi*, 280 US 390, 395-96).

5.41 There are several methods open to the United States taxpayer to decrease what would otherwise be his or her taxes by using offshore techniques, all by means

⁵⁰³ Tax Research Institute of America.

⁵⁰⁴ Mr. Justice Sutherland *Gregory v. Helvering* 293 US 465 (1935). However good this sounds - and is - it is paramount that more than simple tax avoidance is employed. See §§1.63f, and 4.235f

⁵⁰⁵ *Helvering v. Gregory*, 69 F 2d 809, 810 (1935).

⁵⁰⁶ See the 3d paragraph of the quote at §1.17.

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which the law permits. It's the felonious abuse by evading taxes⁵⁰⁷ the government has a right to be concerned about. However, there is another problem. We need to be aware of it, and take it into consideration. By doing so we will spot the major concerns other offshore techniques are anxious about. Hopefully, we will supply many of the answers people are searching for.

5.42 Most of us are honest upright citizens who desire to pay in taxes what we owe, and are not interested in engaging in any illegal activity. Most of us therefore are standing at or near the line in the law - taking advantage of the breaks as we can, but striving in every way to obey the laws. We are neither gangsters, illegal drug dealers, illegal money launderers, nor tax evaders. Suppose however, while standing at or near the line in the law *IT* moves. It advances and overtakes us. Whereas a moment before a certain practice was a perfectly legal and moral thing to do, it is now classified as a crime! Each year more and more law abiding Americans finds the line in the law has been redrawn to include them. They didn't cross the line from legality into illegality - the line passed them! This is a growing and very troublesome problem.

5.43 Most United States citizens aren't worried and feel the line will never reach them - until it actually does! Then they are horrified to find how arbitrary, capricious, and totalitarian the new law is and wish so desperately they had taken measures in advance which might have protected them. Usually the people who think they will never be reached will offer the belief that such legal acts as they are practicing today will be "grandfathered" or permitted to continue to escape any new regulations.

5.44 Indeed from time to time certain acts have been "grandfathered" such as the pre 1959 foundations which have abusive tax advantages the foundations created since cannot enjoy.⁵⁰⁸ However, it is rare that government should grandfather anything those officials in government are not enjoying themselves. If we are to stay ahead of changing legislation we- will have to be at least as far in advance as those who are proposing the changes, but who may be enjoying certain exemptions themselves. Nevertheless, it is the rule rather than the exception to the rule that governments are noted for their swift and sudden changes and surprises without any warnings at all.

5.45 For instance, during the 1930's banks were *suddenly* closed by government decree. The dollar was *suddenly* devalued by 40%. Just as *suddenly* American's could no longer own gold. In the 1940's *even second and third generation* Japanese Americans *suddenly* lost their property and freedom. In the 1960's, *suddenly one morning*, the holding of gold over seas was declared illegal by simple presidential decree; it's impossible to say how many people at breakfast that morning wished they had not reported their overseas accounts to the government!⁵⁰⁹

5.46 *Suddenly and without warning* in the 1970's Americans were confronted with wage and price controls, new sur-taxes, and prohibitions on buying foreign products. Oil

⁵⁰⁷ Cf §1.67, *et seq.*, for proper definition of "evasion, loopholes, avoidance, and exemptions". Also remember that any tax plan exclusively for avoidance will be treated as an abuse of the tax laws. Please see §4.235.

⁵⁰⁸ One of such foundations (Colatos) belonged to Lyndon B. Johnson, 36th President of the United States, see the appendix at page 314. Note especially §VI, Powers of Trustees, subsection H, and the exclusion of the Texas Trust Act!

⁵⁰⁹ Browne, Harry. *The Privacy Tapes*, Multicapital Services, Inc., Zug, Switzerland.

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companies were encouraged to explore for new oil by being granted relief ⁵¹⁰ from the price controls, *but suddenly* the government expanded their price controls to include the new oil which cost the producers millions and millions of dollars.

5.47 Recently individual investors were encouraged to make investments into enterprises the government wanted to promote by granting special tax concessions. However, the government *suddenly* changed its mind and refused to allow the investors to deduct the losses which they incurred in those ventures. Some lost more than property, money, homes, etc., some lost their lives and we start Chapter Six with Alex Council's case. Yes, "Government *is* the engine of uncertainty."⁵¹¹

5.48 Not long ago, and thanks to the vigil of Texas Representative Ron Paul, the United States Treasury would have advanced the line in the law far beyond where it is today. Ostensibly as a drug control measure this pernicious bill would have declared any monetary instrument⁵¹² leaving the country without giving the information required on U.S. Customs FORM 4790⁵¹³ as "contraband." As such, it would have authorized Customs agents to search and seize --- without search warrant of course - anyone or anything leaving the country ... including mail!

5.49

It would have broadened the offense from failing to file when leaving the country to "attempting to leave," without defining that attempt; it would have introduced fat bounties for information; and it would have greatly increased the penalties, up to \$500,000 and five years, for failure to file the report."⁵¹⁴

5.50 It was a transparent attempt to control the movement of money and a step towards foreign exchange controls which the United States has never embraced.⁵¹⁵ More than these it was a nefarious threat to personal financial privacy and liberty. The language, "attempting to leave" easily conjures what Ron Paul called a "characteristic of totalitarian states." When we see actions such as these it's hard not to visualize that wall of stone and mortar we talked about at §5.7!

⁵¹⁰ Please note the difference in being "granted" something by a statute -- thereby gaining a benefit or privilege not existing at the common law *Eliot v. Freeman*, 220 US 178, 185 (1911), and the Super Rich technique which has been left out of the Code for these many years establishing a precedent at the common law. One can be jerked away suddenly, the other is a right.

⁵¹¹ Browne, *ibid*. Emphasis supplied.

⁵¹² See glossary for "monetary instrument."

⁵¹³ See sample on page 307.

⁵¹⁴ Day, Adrian. *International Investment Opportunities: How and Where to Invest Overseas successfully*, page 183. William Morrow & Company, 1982, 1983.

⁵¹⁵ America, "the land of the free," stands in very small company as a nation of about twenty-five who fundamentally have no exchange controls out of nearly two hundred who do. But as a warning please see §5.57.

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5.51 No doubt in indignation the Treasury acted administratively and expanded the filing requirements on banks to include identification of persons and firms for large cash deposits or withdrawals - even to requiring passports of foreigners for their deposits or withdrawals! We must require our representatives, as well as ourselves, to judiciously stand watch for such noxious future attempts, and one thing we can be absolutely certain of is that the I.R.S. will try to introduce the same proposition in the future. You can bet on it!

5.52 Let's focus on two other frightening examples. *Suddenly and without warning* during the 1970's the United States government repudiated outright its guarantee to back its currency with gold. This was done in the face of continual assurances that the dollar was as "good as gold." It shrugged off the international run on the dollar and its disavowal by insisting instead that "the U.S. dollar is backed by *America's* tremendous resources". Similarly, in Canada the government advertised its bonds with the slogan, "backed by all the resources of Canada."⁵¹⁶

5.53 The casual observer has no idea what these two examples propose, or that he or she is in danger of irreversibly *becoming part of the resources* to which these governments are referring! Clearly, what is being said is that whatever Americans or Canadians own is now available to pay the government's debts! Indeed, there is nothing today "privately owned" in America or Canada. Compare §§5.9ff and 5.141 to see how this was secretly yet absolutely accomplished and how true it is! The government has publicly asserted that citizen assets are available to back the currency of the United States or the bonds of Canada - indeed they are! Of course, foreign held assets are beyond reach when proper *advance* engineering and planning is made to ensure there are no political reasons the United States would seize certain foreign assets, like those of Iranians when the Loyalists appropriated power.

5.54 It is the careful thinker; the one who *first* realizes that any encroachment by government of its constitutional perimeter into the realm of individual right by invoking "necessary, emergency, or temporary" clauses is just as capable of any other action whether legal, moral, or constitutional notwithstanding; he or she is the one who *secondly* anticipates problems well enough in advance by surveying the world's offers for profit, privacy, and protection of assets who will have the option of doing something if the time should come which could save his or her hard earned estates.

5.55 It's necessary to say once again to the ones who scoff that such possibilities are absurdities; nothing I say is intended to change those minds. It is assumed that the law abiding reader has either found him or herself the victim of such sudden "line advancement" or has the wisdom and ability to see the natural end of the philosophy proposing that we must return to government its demanded gain for the privilege of our having a job. We can only hope that when the line reaches out for the scoffers that it won't be too late for them to do anything but stand and deliver.

5.56 Harry Browne relates the story in his *Complete Guide to Swiss Banks* (page 3) of Hans Lubich, an affluent Jewish businessman who fled Nazi Germany, and who had perceptively smuggled 20,000 Deutsche marks into a Swiss bank account. Once he reached the United States he was able to buy a business and proceed with life without financial difficulty. Of the more interesting details of this story are all the methods the Nazi government used to try to get to his Swiss account. The frightening part is how

⁵¹⁶ Browne, *ibid.*

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analogous the techniques were to today's U. S. government practices.

5.57 Adrian Day, a London born U.S. Securities Exchange Commission investment adviser says:

Don't believe it can't happen here. Tax exiles have had to leave England, though they left in a first-class aircraft seat rather than hanging onto helicopter skids. It was prohibitive taxes that made them go rather than Communist bullets. The same is true of other "civilized, stable democracies."

It not only can happen here, it is happening here. Each year many hundreds of Americans leave these shores never to return, often quitting because of high taxes and increasing government interference in private business. Their numbers are growing year by year.⁵¹⁷ These expatriates, if they have no tax liability, can legally take their assets out with them, or even keep their assets in the United States and send for them later. (Note, though, that the I.R.S. claims a ten-year tax liability if an individual is deemed to have given up his U.S. citizenship for tax reasons.)

But the day may come, and in the not too distant future, when it won't be quite so easy for Americans to take their assets out of the country.... In the past twenty years, the United States has made numerous attempts to control this outward flow by various means - special taxes on profits earned abroad, reporting requirements, travel limits, and so forth. It is not at all inconceivable that within a few years it may be impossible for a U.S. citizen to leave the country and take his assets with him.⁵¹⁸

5.58 It is altogether too clear to the thinker; as the I.R.S. already has a law in place for the person who is giving up his or her U.S. citizenship for tax reasons, and therefore claims a ten year tax obligation against such persons, there has been more of a problem in this area than meets normal attention.⁵¹⁹

5.59 As further examples, laws now require: reporting cash withdrawals from our local banks, reporting having foreign bank accounts, reporting foreign money transfers, the giving of a Social Security number for opening domestic bank accounts, etc., etc. Though these laws were originally adapted to "stop organized crime", they have instead

⁵¹⁷ Attorney William G. Hill says "According to USA government statistics, there are over seven million USA citizens living abroad. Ninety per cent do not file tax returns or pay any taxes. According to an I.R.S. news release, over 4,000,000 Americans are believed to be residing abroad. Only 400,000 tax returns are riled from abroad. Accordingly, about 3 million American citizens living abroad now face five year jail terms." *PT*, page; 127 - 128. In another place he states "We understand that between 250,000 and a half a million US citizens expatriate themselves each year. Page 31. Scope Books, Ltd.. Hants. Great Britain.

⁵¹⁸ Day, *ibid*, page 134, 135.

⁵¹⁹ Most lawyers agree the law is unconstitutional. If one irrevocably gives up citizenship the government of the country he or she is leaving can certainly not maintain any jurisdiction over the persons expatriating themselves. Nevertheless, the expatriate may find it very difficult to obtain his or her property should the government declare the person an expatriate for tax reasons.

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made criminals of a sea of previously law abiding people whose only "crimes" were protecting their assets from predators, making legal profits, or seeking privacy of their affairs!⁵²⁰ Incredulously, most people still see nothing ominous in changing practices which have always been moral and legal into crimes!

5.60 In the last couple of decades public opinion has shifted catastrophically. Too many people regard "profit" as a dirty word, and someone seeking privacy must be a crook else they wouldn't have anything to hide. Many feel we should just go along with the excesses of our governments on the grounds they need the extra rights⁵²¹ to insure tranquillity. What will open up the eyes of these people who understand what I said in §5.9 yet who still feel placidity in their financial affairs is noble?

5.61 We must realize there is a line of tolerance as well as a line in the law, and that frequently those lines are as personal as the reasons we have chosen our own professions or religions. It appears even Senator Borah would have drawn this line himself at significantly less levels than we suffer today.⁵²² Different people will draw as many lines at as many locations as there are minds to conceive that the government has gone too far or not far enough. What seems trivial to one person produces distress in another and manifests active resistance in yet another. Haplessly these individuals are neither able to determine what those suitable functions are for government any more than they are able to plan what they want to do with their lives - the government does it all!

5.62 Thus there is a growing number of persons whose respect for the law has toppled because of the governments' extravagances. In many, instinct for personal financial survival has overcome any sense of duty they might have held in the past for their governments. They would prefer to stay this side of the line in the law, but they are convinced that the costs to do so are dangerously high. If we aren't sympathetic to their plight nothing that could be written here would arouse empathy.

5.63 Recently we have even seen agreement from a most unexpected quarter. Both the sophisticated and controversial likes, respectively, of Francis Shafer⁵²³ and Jerry Falwell have been moving in exactly parallel views. Each expresses that the Christian has a moral responsibility to turn to civil disobedience on questions of supporting abortion. Many of their followers (especially in the Shafer camp) have carried the message over into the tax arena. Citing such Biblical passages as:

Whether it be right in the sight of God to hearken unto you more than unto God, judge ye....
[but] We ought to obey God rather than men.⁵²⁴

⁵²⁰ According to Harry Browne in over ten years these laws have netted only one minor crime figure amongst the many who have been prosecuted and incarcerated.

⁵²¹ To get a view of how many rights the United States government is supposed to have see the two quotes at §4.33.

⁵²² See note 56 on page 17.

⁵²³ Shafer, Francis, *A Christian Manifesto*.

⁵²⁴ Acts 4.19 and 5.29.

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5.64 To be sure there is disagreement amongst the ranks, but to those who quote Christ's command to the tax protesters:

Render therefore unto Caesar the things which are Caesar's; and unto God the things that are God's.⁵²⁵

there are a growing number of protesters who plead they are only refusing to give unto Caesar the things which belong to God!

5.65 With these interesting revelations we are mindful of the immoral Marxian law imposed as our tax system. While we may hate it, it remains our law, and the choices available to us are the methods the Super Rich have used or to get the law changed. When enough people free themselves economically by using the choice of the Super Rich, I predict there will then be enough educated people to get the law closer to what our forefathers designed, and which would fit legally and morally within our Constitution and our Judeo Christian senses.⁵²⁶ Thus we may more easily understand why the Super Rich have always had assets hidden absolutely beyond any government's reach. Whether our application of the Super Rich techniques is for more than a simple nest egg or not it should be apparent that it must be concealed completely out of sight.⁵²⁷ For example, a savings account in Switzerland backed 100% by gold can make one sleep a lot more at ease. It's not too different from an insurance policy. Knowing one has it, whether it is ever needed or not, gives a peace of mind nothing else can provide.

5.66 Proper planning and engineering can make one able to study unknown future events as they come without the gnawing uncertainty and vulnerability which strikes the pit of the stomach when some politician announces some new program imagined to be needed but which will further infringe upon personal liberty. The kind of privacy the Super Rich have invested is the type which automatically secures time to wait things out⁵²⁸ to see what is really going -to happen. After five or ten years the turbulence may have died down and may not present such an uncertainty. Tax rates might have gone down, legal prohibitions may have been decreased, or conversely, legal and tax restrictions may be so unconscionable one needs to immigrate just to survive.

5.67 Most Americans cannot even imagine immigrating, but it should stand to reason that few of those who have come to America ever thought it would be necessary either. In the event it should become a necessity or desirable only proper planning and engineering would have money waiting for them when they arrive at their destination rather than arriving as penniless refugees begging for charity. Even the smallest nest egg,

⁵²⁵ Matthew 22.21. Cf Mark 12.17 and Luke 20.25.

⁵²⁶ See my "Model Tax Law" on page 256.

⁵²⁷ I contend it should also be out of sight, but legally so. This is not to say the noted others I will mention and have cited are suggesting it should be illegal, but they sometimes leave the question open and frankly discuss the 'sometimes necessity' of either moving beyond the line or keeping quiet about it when the line overtakes. I don't believe either choice is necessary, and I believe the foreign Colato is the method to achieve the balance most would like to have.

⁵²⁸ See §4.34.

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under such circumstances, would seem much larger and more important than today.

5.68 A personal experience 4 years ago infused this lesson, if it had not already been learned. At the end of an extended trip to Europe I needed to fly from Paris to Bangui, Central African Republic. However, all my traveler's checks, cash, and credit cards had been stolen in Naples, Italy.

5.69 Seven years previously, I had placed a paltry \$300 in an account with Swiss Credit in Switzerland and almost immediately forgot about it. I had just enough time to train to Zurich from Naples, get my cash, and make my trip to Africa. I was surprised how far that "petty" \$300 took me. The message is clear; a nest egg of any size, should the circumstances dictate, would be a welcome savior. It could buy the time needed to make a new start.

5.70 Let's talk a little more earnestly about the inconceivable idea of expatriation to draw our thinking closer together. I know several families who have immigrated in just the last ten years. Adrian Day, Harry Browne, William G. Hill, Harry Schultz, Douglas Casey, and Mark Skousen, all noted authorities on privacy, profit, and protection of assets all agree increasing numbers of Americans are leaving for tax and other reasons. In fact, Douglas Casey in his *International Man* even lists the nations offering the most of liberty. Perhaps surprising to the reader, the United States was not listed number one. Neither was Switzerland!

5.71 The thought shouldn't be as incredible as it might seem for there have actually been two other periods in America when large numbers of citizens have been forced to flee the country. In 1780 about a third of the middle and upper class citizens fled to Canada. You will remember them from your history books. They were called the Tories who supported England during the American Revolution. In 1865 it happened again: The large land owners who supported the Confederacy during the Civil War immigrated to Mexico, South America, and not too few back to Europe!⁵²⁹ In the post 1913 era - our period - many more are leaving because of taxes and other suffocating government regulations. Oh 1913! A year that will live in the annals of infamy!

5.72 Regardless of how fantastic the notion of immigrating may be, just suppose the problems continued to grow beyond personal and family endurance. If this were really to happen it would most certainly occur in an ambiance much less favorable to an exodus. As we have witnessed time and again through the centuries, when citizens took their flight they have usually been prohibited from taking any assets with them. Their real and personal properties have been confiscated and sold. Their jewels and cash have been seized at the frontier. Too many have counted themselves lucky just to have escaped with their lives.

5.73 At this point let us pause to reflect a bit of history and contemplate the future. When the taxes became intolerable for the Children of Israel they moved north. When taxes and religious persecution became too much for our forefathers they came to the new world, and when things were too heavy for their offspring they just kept moving west in America until they were free to be themselves. Today's freedom seekers have chosen the isles of the world, but where will our children go if things should continue as they are? Their methods will be no different only the terms will have changed. Instead of "offshore" they will be "off planet!"

⁵²⁹ Hill, William G., *PT*, page 20. Scope Books, Ltd.. Hants, Great Britain.

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5.74 Remember, this chapter began with the admonition of Spanish born George Santayana (1863 - 1952) who immigrated to America and became a famous American philosopher and poet. He said:

"A man's feet must be planted in his country, but his eyes should survey the world."

5.75 Obviously he realized his feet had the power to carry him to another country he could call his own. Remember, it was the careful thinker whose feet transported him or herself out of East Berlin before that infamous August morning of 1961 when the government, in the night, *had suddenly and without warning*, built the Berlin Wall to keep more feet from crossing its border. How many have actually lost their lives since that August morning to do what was perfectly legal in July, the month before, can never be fully known. Saddest of all is that so many refused to believe that the line in that law would ever come to collect them. Perhaps even more thought provoking is the fact it is "legal again" to cross that border!

5.76 Therefore, people who disregard privacy; who feel they have nothing to hide; who have their assets completely exposed in their own or others names; who have never thought it necessary to plan against the possible; who feel it could never happen to them; who refuse to hear the cries of warning from those who have gone on before: have potentially committed themselves to a loss which could reach beyond recovery. They who are relying upon the benevolence of government have forgotten or never learned: *as the natural course of government is to govern, its inherit notion is that it should govern absolutely.*

5.77 Constitutional "*safeguards*" to the contrary, when a government reaches beyond its lawful perimeters there is absolutely no sanctuary.⁵³⁰ It's such an arbitrary, capricious, and unpredictable world we live in today; what could be a better justification for a nest egg near oneself and another outside the country? The nearby nest egg could consist of some gold coins and a little paper money buried in the back yard in a hermetically sealed container. It would provide a certain amount of emotional and liquid security. The foreign nest egg might consist of other wealth nestled in a Swiss or other bank account. Assets you are not required to oversee and which would be waiting for you no matter what would happen. Such nest eggs free us of any fears from the future's worst possibilities. Certainly, providing for the future allows us to reasonably and comfortably enjoy today.⁵³¹

How to Get Absolute Privacy!

5.78 Look in a dictionary for the word "private." There appears to be a very fuzzy line between the ideas of "not public" and "secret." Actually, secrecy is nothing more than the whole of privacy. While some people think there is something

⁵³⁰ For example, read the clause in the Constitution of the Soviet Socialist Republic concerning freedom of speech, and then recall the experiences of Alexander Solzhenitsyn or Andre Sakharov, etc.

⁵³¹ Browne, *ibid.*

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fundamentally wrong with secrecy they see little wrong with privacy. In business "not public" is a very wide spectrum. It can constitute anything from an enterprise where all the books, properties, manufacturing and or sales practice, profits and salaries are all published and an open record *only to those who require the information*; to a confidential organization whose books, properties, manufacturing and/or sales practice, profits and salaries are all truly secret. To the degree an enterprise can keep its business going and maintain privacy determines just how much of the quality of secrecy it can enjoy.

5.79 Consider for a moment the lack of privacy: Checks are microfilmed and can be easily obtained because they are "third party records" and are not subject to the limitations of the Fourth and Fifth Amendments. Social Security numbers are attached to everything, and though they were never to be used as identification there isn't an identifying mark more prominent. Banking transactions are routinely reported to the I.R.S., and credit bureaus, private investigators, and competitors alike can obtain various records on your life and business. Harry Schultz says:

Privacy from government is perhaps the most important thing in life right now.

5.80 However Fred Hirschler North American Director of Zug Switzerland based Multicapital Services, in British Columbia, Canada said:

The **only way** to have financial privacy today is by going offshore!

5.81 As you read this and the above portion of text it's important to keep in mind that the paramount element of an offshore Colato this chapter presupposes is that IT is the owner of its own assets. No innuendoes to intentionally cross the line in the law is intended nor necessary. Too many writers have offered the illegal techniques tucked among the legal and then confuse the reader with a statement like, "of course to do so would be illegal." My intent is to show the techniques where legality shouldn't even be questioned. Unfortunately, this issue is raised because the average American mind will ask. "Is privacy legal?"

5.82 Dr. Mark Skousen in an urgent message concerning privacy wrote a book designed to show one how to make oneself invisible to the I.R.S., Dr. Skousen as a past Central Intelligence Agency (CIA) associate says concerning his *Complete Guide to Financial Privacy*:

This question [is privacy legal?] wouldn't have been asked 200, or 100, or even 50 years ago in America. Financial privacy was one of the premises for the Declaration of Independence, and privacy is implicit in the Bill of Rights to the Constitution. Just 50 years ago, Justice Louis Brandeis wrote, 'The right to be let alone is the most comprehensive of rights, and the right most valued by civilized men.' *Olmstead v. United States*.

My book is not for criminals. (They already know of all the illegal methods.) My book is for concerned citizens who don't want to break the law, but %van' to do everything possible to keep the government, business competitors, or prying friends or relatives out of their private lives and their

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financial affairs!⁵³²

5.83 The reader will note Mr. Skousen agrees with Harry [Schultz. above. by](#) saying that his book is not for criminals, but rather for “*privacy from government.*” Still, it comes as quite a shock to the uninformed to know that privacy from government is not only legal, but desirable, and now perhaps even essential!

5.84 In the same vein, outspoken criminal tax attorney, Donald V. MacPherson, has written a book, *April 15th*,⁵³³ in which he makes a case for privacy against governmental intrusion. Mac, as he is affectionately known, and champion of the Fifth Amendment, sets his thesis in a play. His play takes off on the reaction of a Boston schoolmaster in 1754. An attempt by a colonial government to require that citizens provide information and swear by oath the amount spent by them for liquor, to the end that the tax collector could impose an excise tax, was described by the Boston schoolmaster as “the most pernicious attack upon English liberty.” Thus he makes a valid case for the necessity of personal privacy from governmental intrusion.

5.85 For over a hundred fifty of our two hundred year old government, American citizens did very little reporting to government. We became the wealthiest, most military mighty, and affluent society the world has ever known. We are indeed a “golden age” which the rest of the world has tried to emulate. Consider the following for a moment: that we became great without income taxes, returns, and the dozens of informational reports required to be filed today.

5.86 Writers speculate on the reason we as a nation are declining in superiority: even to third world countries. We must note a truism; the bad always chases the good away. For example, it wasn't the government which started hoarding pre 1964 United States coins. It was a relatively few individuals who took the 90% silver content coins out of circulation. In other words the inferior nickel clad copper coins now minted by the United States Bureau of Treasury and Engraving chased out the good silver coins.⁵³⁴ Likewise, bad laws are chasing away our good common law and the liberty it has espoused. What do I mean?

5.87 Note carefully what Mac MacPherson has to say about the good common law:

Understand that under common law, and as guaranteed by the **Fourth Amendment, U.S. Constitution**, citizens of this country have the right of privacy. There is nothing in and of itself illegal about transacting business offshore, whether through a secret Swiss Bank account or through ownership of foreign trusts, or foreign banks, for that matter. Only if such transactions are used as means to attempt to evade or defeat the

⁵³² From his sales literature.

⁵³³ MacPherson. Donald W., MacPherson & Sons Publishers, Ltd., 3404 W. Cheryl Drive, Suite A-250. Phoenix, AZ 85051.

⁵³⁴ Much more than curious is the fact that the paper money equivalent today to buy a new car, while much greater than it was in 1950, is nearly the same amount in genuine silver dollars! A new car was approximately \$800. Today 800 *silver* dollars will still buy a new car - in fact a better one now than then! See the glossary for the definition of inflation, and notes.

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assessment or collection of federal income taxes does arranging one's affairs through offshore entities become, in the eyes of the U.S. courts, a "badge of fraud."

For years large companies such as U.S. Steel have reaped tremendous tax benefits by use of offshore holding companies. If the business activity is conducted offshore, the profits, it is argued, are those of an offshore company, thus escaping the jurisdiction and scrutiny of I.R.S.⁵³⁵

5.88 In similar manner, and the chief reason East Germany built the Berlin Wall was to stop their "brain drain." The best educated, most talented, doctors, lawyers, business professionals, scientists, engineers, etc., had seen the end of their financial and personal liberties so they took flight. In the same quarter century we have seen substantial decreases in foreign immigration to America we have seen a correspondingly high number of persons leaving the "land of the free." The bad does indeed chase away the good. In fact we will understand in this chapter how the bad law chases away money! Hopefully, this book can have even a small part in restoring the majesty of liberty, if by no other means than by bringing it to the attention of the American people who will do something about it in their own families, businesses, and personal affairs.

5.89 Some of the reasons the last fifty years have seen an increase in the loss of personal privacy and liberty can be credited to the Social Security, the I.R.S., the Census, bank credit networks, employer, and health files. Let's explore these areas, but first please note that Mark Skousen has written that each American has over 50 financial files with number and name on them. He adds that dozens of government agencies and private snoopers think it's their business to find out every incriminating detail they can about your past, and present financial status.

5.90 Let's explore each of these from the above order. A greater Ponzi Scheme has not been developed than the Social Security. If the private sector were to have offered an insurance program on the scale the Social Security has perpetrated, its principals would have been locked up long ago.⁵³⁶ Even the Social Security Administration has published the figures of how fewer and fewer are supporting more. For [example. in](#) 1950 there were 16.5 persons holding jobs for every one person on social security benefits. By 1965 there were just four persons holding jobs for every one receiving a benefit. In 1980 the figures dropped to 3.3 persons working for every one on the dole. The Social Security Administration has projected that by 1995 3.2 persons will be working for every one on social security; it will be 2.9 to 1 by 2010, and by the year

⁵³⁵ *April 15th: The Most Pernicious Attack Upon English Liberties*, page 215, 216. MacPherson & Sons Publishers, Ltd., Phoenix. AZ 602/866-9566. Cf §2.2., et seq., re the common law as treasured by the Super Rich.

⁵³⁶ See *The Biggest Con: How the Government is Fleecing You*, by Irwin Schiff. See also *The Great Income Tax Hoax*, Freedom Books, Hamden, Connecticut by the same author. It will be interesting to see what Mr. Schiff will do to obtain his freedom. Although he is a personal friend, I do not endorse his book's suggestions, but much material is presented which accurately illustrates the problems I can only slightly address here.

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2035 two will support one.⁵³⁷ Today's rates are slavery on a scale history has never recorded, and is impossible to imagine the year 2035 as a sequel!

5.91 Regardless of what one thinks the Marxian dogma of "*from each according to his ability to each according to his need*" is a well worn part of America. The irony is that today the communist nations are throwing it out while we "freedom loving Americans" are embracing it more every day!

5.92 This one immoral law⁵³⁸ is sufficient in itself to send contemplative thousands scurrying to find economic freedom for at least two reasons: (1) some can't imagine facing their children and grandchildren's questions concerning their abject slavery how they could have participated in or permitted such a scheme to operate, and (2) while it appears the debilitating federal income tax rates have come down, Social Security taxes are just as crippling and even on the rise. Together they spell commandeering!

5.93 For generations just five simple questions; name, address, age, sex, and citizenship were required on the ten year census forms, but no longer! Compare this with 1990's census! In the first 150 years as a Union most Americans were self employed and seldom borrowed money so there was no network of bank credit agencies, and the employer files which did exist were public to no one. Of course, the major reason U.S. debt is becoming heavier is because credit is being used to pay off old public debts - and the problem grows worse every year by "Federal Reserve Bank year."⁵³⁹

5.94 Today even personal health files are hardly private, and certainly not secret! A treasury of health records are held by insurance companies. The M.I.B. (Medical Information Bureau, Inc.) of Boston, Massachusetts maintains personal health records on anyone who has furnished the information to an insurance company. These records are available to insurance companies and physicians, but are unavailable directly to the individuals whose cases they represent. In addition, private investigative firms, quasi government agencies, and the government itself keeps their own files.

5.95 Mark Skousen suggests that simply giving out one's social security number and/or telephone number opens up electronic files containing every embarrassing bit of data (some of it completely false!) ever recorded about *anyone*! The very question [*is privacy legal?*]⁵⁴⁰ should shame the one who asks it. Here is a case where such ignorant and naive simplicity is far from complimentary. God help us all!

5.96 The cardinal rule in keeping something a secret is to tell absolutely no one; spouse, children, other relatives, friends, or associates - *no one*!⁵⁴¹ Many consider conducting business today necessitates the exposure of financial and business affairs.

⁵³⁷ Day, Adrian, *International Investment Opportunities: How and Where to Invest Overseas Successfully*, page 183. William Morrow & Co., 1982. 1983.

⁵³⁸ Cf §5.14ff for proof of government insurance fraud.

⁵³⁹ See §5.1, *et seq.*, "The True Federal Tax Take!"

⁵⁴⁰ Cf §5.81, *et seq.*

⁵⁴¹ The famed Italian leather goods' manufacturer and designer, Dr. Aldo Gucci, learned this lesson the hard way. His own three sons turned him into the I.R.S. because they had knowledge of some of his intimate business dealings and they effectively "black mailed" him with their information. As a result he spent a year in jail, and then moved back to civilized Italy!

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Such information is then frequently transferred to nearly anyone requesting it, and all without any notice to you.

5.97 Here is the truly great beauty of Colatos: Even their creation is conducted in utter secrecy. After they are established only that information which is expedient to reveal is ever disclosed while the rest of the business is conducted in complete secrecy. For example, tie distributions from a foreign Colato to its certificate holders can be another foreign Colato in a country where it would be illegal to disclose anything about it. Likewise, *de facto* control can be completely hidden by a simple foreign holding company⁵⁴² together with a service company whose job it is to conduct the necessary foreign transactions. *De facto* beneficiaries can be insulated in absolute secrecy. I am not suggesting the *de facto* beneficiaries be U.S. persons, either! We'll discuss this later in the book and this chapter, but most of this should already be making a lot of sense to the careful reader. I doubt we have to "spell it out!"

Taxation Of Foreigners

5.98 Donald T. Regan, Secretary of the Treasury submitted a report to the Committee on Ways and Means of the House of Representatives and Committee on Finance of the Senate or, the level at which certain tax havens were being used to evade or avoid Federal taxes. In that report he states:

There is a wide range of uses of tax havens. Tax haven transactions may be loosely categorized as: (1) transactions that are not tax motivated; (2) *transactions that are tax motivated, but consistent with the letter and spirit of the law*; (3) transactions that take advantage of unintended legal or administrative loopholes; and (4) transactions designed to escape legal obligations through fraudulent means.⁵⁴³

5.99 Mr. Regan clarified what he meant at #2 above in the same report by later amplifying:

One of the most common tax motivated *but legal* use of a tax haven subsidiary is to convert U.S. source income to foreign source income in order to increase the limitation on the amount of foreign income taxes paid by a U.S. taxpayer that can be credited against, and thus reduce, U.S. taxes otherwise payable by the taxpayer.⁵⁴⁴

⁵⁴² *Vis a vis* a "trust company." More about this beginning at §5.121.

⁵⁴³ *Tax Havens in the Caribbean Basin*, Department of the Treasury, 1984, page B 10. Emphasis supplied.

⁵⁴⁴ *Tax Havens*, *ibid.* Emphasis supplied. It should go without saying that if the U.S. government can conceive as legal "to convert U.S. source income to foreign source income in order to increase the limitation on the amount of foreign income taxes paid by a U.S. taxpayer" the taxpayer has little difficulty determining that the same thing in reverse should be just as possible, and that it can be done legally.

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5.100 What is being said here? Please don't miss the point or the rest of this chapter will give you very little confidence in the system of the Super Rich. **He is making it absolutely clear that there is a legal way to convert U.S. source income into foreign source income!** Of course he neglects to say that a foreign, Colato which expressly desires to limit the amount of income taxes it may pay anywhere, and which chooses a jurisdiction where there are NO taxes, has just as much a legal right to convert U.S. source income into foreign source income by the same means.⁵⁴⁵

5.101 The only condition not recognizing the opportunity is tax fraud. There are several provisions in the Internal Revenue Code which are designed to prevent both tax avoidance and tax evasion. The two most important of these are "Subpart F income"⁵⁴⁶ and §482 reallocation, because they are transactional in nature; that is they require an introspective analysis of each separate transaction. Subpart F deals with the income of U.S. shareholders in a U.S. controlled foreign corporation (CFC) under Internal Revenue Code (IRC) §§951-64; and IRC §482 authorizes the Commissioner to reallocate income among related U.S. and foreign entities thereby reflecting their analogous income.

5.102 Let me explain: A CFC (controlled foreign corporation) is a corporation where more than 50% of the vote or stock is owned directly or indirectly by any number of U.S. persons. Any U.S. person holding 10% or more of a foreign corporation's stock is a U.S. stock holder of a CFC.⁵⁴⁷ Therefore every transaction conducted must be examined to determine if it was with a CFC. To escape these problems a U.S. person could be granted discretionary *de facto* powers over a foreign Colato which could own all the stock of the foreign corporation; and a U.S. person could hold 9% of the foreign corporation's stock. However, none of these techniques are necessary to the Super Rich as we shall soon learn.

5.103 Foreign entities which are organized ostensibly for sales of products to overseas markets, but whose purchase prices is in reality a fiction from a related U.S. company to escape U.S. taxation is subject to reallocation by the Commissioner because they are not an arm's length reality. Each transaction could be looked at to determine whether it was a low purchase sales price to be inflated by the related foreign company which shelters the real profits.⁵⁴⁸

5.104 However, and in addition to these obstacles there are several others in the Internal Revenue Code; they are the foreign personal holding company, foreign investment company - regular and passive, and the foreign trust. We shall cover each of these in their order to contrast the system of procedure used by the Super Rich.

⁵⁴⁵ For those new to the idea of a jurisdiction without income taxes and people moving there to be free of the burden please review §7.87 for the eight United States (i.e. jurisdictions) which have no income taxes.

⁵⁴⁶ So called because the controlled foreign corporation (CFC) provisions of internal Revenue Code §§951 through 964 are in Subpart F of Part III of Subchapter N of Chapter 1 of subtitle A in the Internal Revenue Code!

⁵⁴⁷ Langer, Marshall J. *Practical International Tax Planning*, 3d, page 39-2. Practising Law Institute, NY.

⁵⁴⁸ Internal Revenue Code §482.

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5.105 The Foreign Personal Holding Company (FPHC) is an entity whose 50% or more stock or vote is owned by not more than five U.S. persons, and 60% or more of its gross income consists of dividends, interest, capital gains from securities, and other foreign persons' holding company income.⁵⁴⁹

5.106 Foreign Investment Company's (FIC) are either regular or passive, the latter having been added by the Tax Reform Act of 1986. FTC's are foreign corporations whose stock of voting rights is owned directly or indirectly by any number of U.S. persons at any time and whose primary activities are in the securities markets.⁵⁵⁰

5.107 Passive Foreign Investment Company's (PFIC's) are those where 75% or more of their income is passive or at least half of its assets are held to produce passive income, and it doesn't matter how few shares are held by U.S. persons.⁵⁵¹

5.108 Finally we come to the Foreign Trust (FT).

[A] foreign trust [is a trust] the income of which, from sources without the United States which is not effectively connected with the conduct of a trade or business within the United States, is not includible in gross income under subtitle A [Income Taxes].⁵⁵²

5.109 First of all, a foreign trust is a *trust* which must split title.⁵⁵³ We already know the Super Rich Colatos are not trusts, therefore they couldn't be "foreign trusts". Secondly, it is a trust whose income is from "foreign" sources. Of course, U.S. beneficiaries would be taxed on their world wide income if even from a foreign trust, but the key for the Super Rich is that their foreign Colatos "beneficiaries" are not U.S. persons and are therefore not subject in any way to the tax laws of the United States.

5.110 Look at each of the problems we've encountered; CFC, FPHC, FIC, FICP, and FT's. The "F" in each of the designations stands for "foreign." Let me ask the reader a question: We began this part of Chapter Five with the subtitle, "Taxation of Foreigners." What authority or jurisdiction does the I.R.S. have to tax foreigner's? If it had any no one in the world would be safe in any so-called tax haven. The I.R.S.'s authority does not reach around the world! Some may find it difficult to believe, but it is true that the I.R.S.'s authority and jurisdiction stop at America's shores. It is also barred from reaching the foreigners accounts here in America. Therefore, let the reader understand there is no taxation by U.S. authorities of any foreigner in the world.

5.111 It should be obvious by now without saying it that the funds growing by investments made by foreign Colatos neither owned, controlled, or with U.S. beneficiaries are not proper subjects for the United States Federal Income or Social Security taxes.

⁵⁴⁹ Langer, *ibid*.

⁵⁵⁰ Langer, *ibid*.

⁵⁵¹ Langer, *ibid*.

⁵⁵² Internal Revenue Code §7701(a)(31).

⁵⁵³ See §3.84.

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Further, no reporting or other U.S. requirements are effective against them or their properties.

5.112 For U.S. owned real estate, it should be remembered that a foreign Colato can own a domestic Colato which in turn may own U.S. real-estate. Of course it may also own U.S. real estate in its own right. Foreigners are exempt from paying U.S. capital gains taxes except on real estate. However, sales of the foreign Colatos themselves are not subject to U.S. capital gains taxes. In such cases only the trustee changes and there is no transfer of the real estate itself.⁵⁵⁴ However, the reader is reminded that the trustees of a foreign Colato has both legal and equitable titles, *in fee simple* title, the highest form of title known.⁵⁵⁵

5.113 Because the foreign Colato enjoys the conduit tax advantage⁵⁵⁶ a foreigner receiving the distributions cannot be taxed. You should now understand perfectly how the U.S. source income can be converted to foreign source income.

Review §5.100.

5.114 Further, if a foreign Colato which has U.S. source income makes the election to be treated as engaged in the conduct of a trade or business in the United States it is not subject to the 30% withholding tax because it pays all its U.S. income taxes on form 1040NR. For all intents and purposes it then has the same deductions and obligations as any other U.S. tax payer. Do we need to be reminded of Jack Anderson's insightful opinion that John D. Rockefeller, III apparently manipulated his income to produce whatever tax he felt was appropriate to pay?⁵⁵⁷

5.115 From all that's been said in this book compare and contrast the conventional wisdom of statutory tax savings devices with Colatos and foreign Colatos. Please understand that the statutory variety are either loopholes or matters of legislative grace. Remember, legislatures are often required to amend laws to more reflect their original intent. If you are using systems which have been brought into existence by legislative grace, you must know that the whims of that same legislature are as spontaneous as a sigh and that a change in the law would be retroactive to its introduction. If this is not clear please reread Chapter Two.

Foreign Colatos In The Privacy Game!

5.116 One cannot play the privacy game unless he or she pays. Most do not understand, however, that we all **MUST** play and therefore all must ante up. This is one game where one may not sit out a hand, and there are only winners and losers. Consequently, the winners determine who to pay, the gourmand bureaucrats and welfare parasites or those who provide the services privacy demands. If someone perceives paying the taxes is winning then so be it.

⁵⁵⁴ See Mike and Susan George's story at "No Capital Gains Taxes!" on page 220.

⁵⁵⁵ Cf §4.321.556

⁵⁵⁶ Cf §§4.379, and 4.409.

⁵⁵⁷ §1.17.

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5.117 The wise prevent their dollars from being wasted as tax money by engineering their affairs so the government bureaucrats can't find them in the first place. What the government can't find it can't get, and what it can't get it can't waste.⁵⁵⁸

5.118 I can think of no other entity, not a trust, a corporation, a foreign bank, etc., which offers a greater degree of privacy than the foreign Colato. The reason is simple, these specialized foreign Colatos are never created or invested by Americans, nor are they controlled by any U.S. person.

5.119 What could be more private than a foreign Colato which is created by an act of two foreigners whose contract is not recorded or made a matter of any public records anywhere? In fact, how many contracts anywhere are usually recorded? Certainly very few. (Usually only real estate contracts). Terms of trusts⁵⁵⁹ created must be recorded by state law. Corporations are creatures of the state⁵⁶⁰ and are thus far from private in terms of the persons and purposes involved. Banks are just "super corporations" which have been granted the power to do banking functions are creatures of the state in which they are domiciled and thus privacy is limited.⁵⁶¹

5.120 The foreign Colato utilized by the Super Rich is a thing of superior privacy, because the persons creating and investing them do so with very little of their own property, and the returns they achieve from them are far above their investments. They are only too h.-spy to place their assets into a foreign Colato, which while controlled absolutely by someone other than themselves (but never a U.S. person), *will* generate distributions to them over the years far exceeding their contribution. There is a genuine arm's length relationship,⁵⁶² and pure trust between the parties.

5.121 As an example of how all this could happen imagine two foreigners contracting with one another to create a foreign Colato.⁵⁶³ It has been invested with let's say \$100 of the foreign investor's own money. He or she is now the certificate holder and due distributions when the trustee makes them. Among the other business objectives the investor will have are three very special ones. First, to receive a profit from the foreign Colato; second, to avoid all taxes;⁵⁶⁴ and three to fund a certain foreign foundation which has a philanthropic mission. The creator picks a bona fide foreign trust company to be the trustee.⁵⁶⁵ Further, the trust company has no U.S.

⁵⁵⁸ Laurins, Alex V., *Anyone Can Profit with a Secret Foreign Trust*, page V.

⁵⁵⁹ See Chapter Three, *supra*.

⁵⁶⁰ See §2.3.

⁵⁶¹ The Super Rich use foreign Colatos to acquire banks in foreign countries. See page 228 for more information.

⁵⁶² See §§4.134, 4.136, 4.308, and note 342 on page 138 *re* "arm's Length."

⁵⁶³ See §4.103, *et seq.*, *re* creating the secret trust of the Super Rich.

⁵⁶⁴ This has been recognized by the I.R.S. to be a very good business purpose for offshore entities, and of course the I.R.S. has no authority or jurisdiction over the entity outside the United States.

⁵⁶⁵ See §4.320, *et seq.*, *re* trustees powers.

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stock holders.

5.122 A pure trust relationship exists between the trust company and the investor who invests the \$100. Then the trust company arranges for the foreign Colato to become engaged in some business from which it will derive profits. At this point it is of no consequence what the foreign Colato does with its money, and it's certainly none of any government's business. Money could be transferred for a number of reasons and sooner or later placed into a position which any person in the world could control legally or by *de facto*.⁵⁶⁶

5.123 The foreign investor receives distributions over a period of time amounting to many times the amount of the original investment. In jurisdictions where foreigners know of these things having actually occurred over the years they are most eager to participate in such arrangements. Privacy is matchless because:

- (1) The arrangements are never subject to reporting, recording, registering, etc., and they have already been transacted by foreigners not within the

United States;

- (2) The foreigners engaged in such business value their privacy and the incomes they are earning for all the business and competitive reasons one may envisage;

- (3) The best dominions involved have strict secrecy laws which make it a crime to divulge any information whatsoever to anyone whomsoever; and (4) Because the pure trust the investor contractually places in the office of trustee, he or she is no longer entitled or obliged to know what the trustee does with the assets or the business being operated. It's even possible under the right circumstances that the trustee originally appointed can be replaced by an arrangement made by a U.S. consultant. In effect and under those special circumstances the U.S. consultant could become the only one in the whole world who knows what is substantively going on. There is no greater privacy.⁵⁶⁷

5.124 Should the reader become appointed as a consultant agent for the foreign entity's U.S. savings account (upon which it earns interest tax free⁵⁶⁸) or endowed with power to make investment decisions on its behalf in securities, or investments in other markets, in addition to enjoying many business and other peripheral benefits. the reader could earn a supplement to his or her income, and he or she is the only one who would be privy to such arrangements who may tell as few or as many others as may be desired. At this point practically nothing but the imagination may limit what may be accomplished.

5.125 The important thing here is, should it be necessary for someone to be told of your consulting relationship to the foreign entity, or should it even come about that

⁵⁶⁶ See §4.303. Also review 64.323, *et seq.* When I say "any person" this could include a natural human being to an artificial corporate or Colato person.

⁵⁶⁷ Also see "World's Most Secret Bank Account Isn't In Switzerland!" at §5.131 to learn how the Super Rich enjoy absolute secrecy in their banking.

⁵⁶⁸ Cf §5.34.

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the entire plan was laid out before the I.R.S., there is nothing anyone can legally do to prevent from working for an entity involved in earning money from U.S. sources which then changes that source from U.S. to foreign income upon which income taxes, etc., may not be collected.⁵⁶⁹

5.126 You as the consultant would report a minimum of once a year to the trustee of the foreign Colato what its income is and make the money available for distribution to the Certificate Holder. If in the first year for example the Certificate Holder gets the \$100 plus back he or she is going to be thrilled and ready to invest again. They will have an excess of profits which they will gift to the foreign charitable foundation. Remember that was the goal of the original foreign investor. In cases where the consultant has a "voice" (not legal control) in what the foundation does with its funds near miracles can be achieved.⁵⁷⁰

5.127 The foreign Colato files its income tax returns, and you pay and report your income taxes in the usual manner. There is little doubt the Super Rich use such techniques to legally manipulate their incomes to produce whatever income taxes they feel they would like to pay as Jack Anderson noted below:

We have had access to secret tax filings by members of our wealthiest families, the Mellons, the Rockefellers, the Hunts and others. Their returns have one thing in common. Each of the families has had millionaire members, who from time to time, have paid no income tax at all. Almost all of them regularly pay only a fraction of the tax- their incomes would require were it not for loopholes.⁵⁷¹

Vice President Nelson Rockefeller, for example, paid no federal income tax in 1970. *His brother, John D. Rockefeller III, pays a 10 per cent federal tax as a matter of personal principle. Apparently, he can manipulate his tax exemptions⁵⁷² to produce whatever tax return he feels is appropriate.* Paul Mellon, worth a cool one billion dollars, is able to get away with negligible income tax, as do other members of his fabulously rich family. And Texas oil millionaire Bunker Hunt has managed to live in luxury without paying any taxes at all in several years.

We do not single them out of criticism. They have made use of the law and that is their right. It is the process that is at fault, and it makes a chump out of the person who does not distort his affairs so as to benefit

⁵⁶⁹ See §5.190 for changing the character of U.S. source income to foreign source income.

⁵⁷⁰ See the case of the Potters beginning on page 151.

⁵⁷¹ The Super Rich do not use "loopholes". Cf §§1.26f & 1.63, *et seq.*, with emphasis on loopholes.

⁵⁷² Emphasis added. "Exemptions" is the appropriate word. Sec §§1.26f 1.63. *et seq., infra*, with emphasis on exemptions.

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from every possible loophole!⁵⁷³

5.128 Of course, the caveats entreated by Dr. Skousen, Harry Schultz, Mac Pherson, Adrian Day, Harry Browne, Alex Laurins, et al., *supra*, concerning privacy and secrecy cannot be over emphasized. The government must be held suspect: what it doesn't know it cannot use, thus what it doesn't have it cannot get. However, only you can determine how private your affairs will be.⁵⁷⁴

5.129 Strictly beyond the illegal sources, as Dr. Skousen said at §5.82, *supra*, and still beyond tax considerations attorney Alex Laurins says;

[R]easons to mask sources of income are to keep friends and enemies in the dark as to the extent and location of your wealth. In the case of a professional, it might make the difference between a nuisance malpractice suit or of being left alone.

The same factors apply to the *nature* of your wealth. Taxing authorities, creditors, live-in lovers and spouses, etc., may find your wealth to be easy pickings if they know it is *yours*. If your savings and investments are in easily liquidated or in public record form in your name then a secret trust may be in order to act as the nominal holder of your assets. What people do not know you have, they cannot steal.⁵⁷⁵

5.130 We have now examined some of the many reasons privacy in domestic financial, family, and business relationships urgently call for affiliation with a secret foreign Colato. We will now explore some of the practical methods the Super Rich use.

World's Most Secret Bank Account Isn't In Switzerland!

5.131 The world's most secret bank account is not in Switzerland? That's right! At least two bank officials are privy to the names associated to all "secret" numbered accounts, and pressure is mounting daily against the Swiss to disgorge their information - ostensibly to control the flow of drugs and illegal money laundering.

5.132 Imagine having an account in one of the world's leading international banks where not even the bank can determine your identity. How is this possible? It is incredibly simple and is not new --- it has actually been going on for several thousand

⁵⁷³ Jack Anderson, *The Yearly Tax Ordeal*, Syndicated column, 1977. Emphasis supplied. Our choice is not between avoidance and evasion of taxes, but between the effective and ineffective uses of the Internal Revenue Code (IRC), the Internal Revenue Regulations (IRR), and the cases of law. Strict legal use is stressed.

⁵⁷⁴ *Cf* §5.76.

⁵⁷⁵ Laurins, *ibid*, page 5.

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years! Of course, it takes a very special bank in an equally special jurisdiction.

5.133 Before we go further I know some of my readers are going to wonder about the advisability of banking in a foreign country. I've heard all the fears. From the few who actually believe that "offshore banking" means banks of oil drilling platforms launched at sea, to the majority who hold the notion it entails criminal activity - usually illegal drug trafficking, tax evasion, or illegal money laundering schemes - I contend that a foreign bank account today is absolutely mandatory! If the reader thinks otherwise I encourage reading from the start of this chapter.

5.134 Still. I know others intrigued by the high interest rates and other advantages offered by foreign banks are counseled by lawyers, accountants, banks, or financial planners that offshore banking is too risky. Fear, suspicion, and skepticism grip the hearts of the populace while U.S. banks pay less and less real earnings on interest accounts and the I.R.S. taxes more and more of the incomes they produce. -

5.135 What does "offshore" mean? It simply means outside the jurisdictional bounds of the United States. Canada or Mexico for example, is "offshore." In his book, Jim Straw of *Offshore Banking News* states:

If it weren't for the lies, distortions, and self-serving propaganda distributed by the Government, the I.R.S., and the Bankers, you wouldn't cringe every time you hear the term "Offshore Banking."⁵⁷⁶

5.136 Of course the banks, the I.R.S., and the government know the more money held outside the United States the less control they have over the lives of the individuals whose accounts they represent. In short a conspiracy exists to keep the public uninformed, and the trio sings in harmony, *'The Perils of Offshore Banking.'*

5.137 For answer to the question as to why the offshore banks pay higher interest rates the excuse is given by domestic banks who fear the loss of those dollars, that a greater risk necessitates a greater inducement to the depositor. The naked truth of our domestic banks is draped behind their marbled columns and carpeted atriums.

5.138 Many offshore banks have small offices and equally small overheads and can thus pay greater profits. Adrian Day invites us to prove it to ourselves by seeing this truth in the financial section of our daily newspapers. True enough, when you compare the current U.S. T-Bill rate to the Euro-dollar bond rate, the Euro-dollar bond rates are always higher by at least 20%!

5.139 Many of the best offshore banks lie in jurisdictions which by definition are tax havens - having little or no taxes. Tax haven rates are those from a high of 20% to as low as 0%. Those banks in such jurisdictions are not burdened with the U.S. required yet unrecoverable expenses of the I.R.S. policing activities. The lack of such costly endeavors understandably produces more profitable institutions. In fact, some jurisdictions which have significant tax structures exempt their banks from taxes on their own earnings from foreign accounts.

5.140 Next time you are in your local domestic bank ask for a copy of *their* financial statement. Their "gross profits" against losses will range from 25% to 40% while they have laws limiting the amount of interest they are required to pay.

⁵⁷⁶ Straw, Jim. *Offshore Banking Is Not Evil*, Offshore Banking News, Dalton. GA.

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Convenient, isn't it?

5.141 Perhaps the greatest myth of all is the risk of losing of your money in an offshore bank. There is almost no truth in the suggestion. Every country in the world regulates its banking industry as no society could tolerate less than complete confidence in their financial institutions. The fact is that their laws are notes restrictive as to stifle profit incentives. Actually, many offshore banks are "self insured" by having in reserves a liquidity factor of 100% or better of their deposits! This is a far cry from U.S. banks which only offer insurance on amounts not exceeding \$100,000 - and now the U.S. taxpayer faces the "bail-out" of the Savings & Loan Banks. Now we face the specter of having to pay to insure our own accounts!

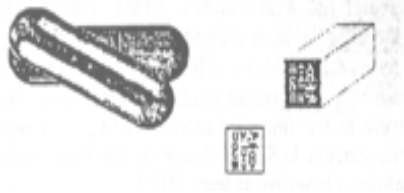
5.142 *American Banking* magazine reports that of the largest banks in the world only one U.S. bank, Citibank, NA, of New York City, was ranked among the ten financial giants. The top contenders were ALL in the Far East. The reason one sees so few advertisements in America from offshore banks is due to the restrictions of laws upon advertising - unless they sell themselves out to U.S. banking laws and thus require themselves to apply the very same laws you and I and the domestic banks are subject to.

5.143 Jim straw's *Offshore Banking News (OBN)* is a monthly news reporting service with financial correspondents worldwide duplicating some of the ads which by law cannot appear in U.S. publications. Since *OBN* is merely reporting the financial and business services available, and because they do not offer advertising space, the interested person can take advantage of such knowledge.

5.144 For more than three millennia dating back to the Yan Dynasty the Chinese have used "name chops" as signatures. Three thousand seven hundred years ago clay tablets were only being developed by the ancient Babylonians who lived near the Tigris and Euphrates Rivers; and the Egyptians were plucking reeds from the Nile to form papyrus "papers" as wall as experimenting with various inks; but the Chinese were "chopping down" everything!

5.145 Museums display chops from this era made of animal horn, bone, jade, other stones, and even bamboo roots. A name chop consists of intricately carved Chinese characters on either a piece of jade, ivory, or wood. The nobles would keep these tiny "rubber stamps" in special pockets sewn into the seams of their garments. Historically the Chinese chop has been used very similarly to the way major Western corporations' today use rubber stamps or facsimile signatures on corporate checks or other documents. Not surprisingly, the tradition of the chop survives in China today.

5.146 As name chops are just as common among the modern Chinese as their ancient ancestors, the banks still accept chops as the form of identification. Therefore, almost all Chinese citizens, literate and illiterate, small or great. have their own chop. Chops enjoy an infinite number of uses today stemming from official government documents to use by artists to identify their works.



Bank With Total Anonymity! Hand Carved Chop
Measures about 1 1/2" Long With 1/2" Square Imprint.
No Signature Required! Kit Conceals Chop & Has Its
Own Long Lasting Chinese Red Ink Pad!

*Super Secret Hong Kong Chop
Account!*

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5.147 Usually, a chop is approximately one and a half inches long by a little more than a quarter of an inch square. They are usually carried in tiny cases not much larger than the chop itself and is complete with a tiny pad of long lasting Chinese red ink.

5.148 It's impossible to forge or counterfeit a chop "because of the incredible intricacy of the design, its being hand carved by special artisans of great skill; to say nothing of the complexity of the Chinese characters themselves. They are as interminable and different as the human fingerprint. As we shall learn this is one of the greatest secrets to privacy in banking!

Undetectable Banking!

5.149 The largest and most reliable banks in Hong Kong accept chops as the sole means of identification to control a bank account. The single greatest advantage of such an arrangement is that whoever has the chop ultimately commands the funds in the account when the bank is requested to use the chop as the sole method of transferring money. A disadvantage of the innovation could be realized if the chop became lost, because so also would be the money in the account! So, while the account can be freely transferred to another person; the safety of the chop itself is of paramount concern.

5.150 The availability of such a method in banking is as new to the Western mind as the element of privacy is light years ahead of the Swiss numbered accounts. The secrecy and confidentiality provided by such a technique is absolutely unequaled in any other part of the world, because the chops and thus control of the account's funds can be freely transferred by gift, sale or exchange. Unfortunately, the greatest limitation of such a private affair is that the accounts are only available to Hong Kong citizens! One can imagine the spectacle a person not of Chinese extraction would make if he or she were to walk into a Hong Kong bank and request to open a chop account. Without the proper credentials - all banks the world over require -the task would be most difficult indeed. The bank's questions would be more than just a bit demanding to answer!

How To Open Your Own Account!

5.151 Since chop accounts are only available to the Chinese, we must ask, are there any ways around this dilemma? Yes, there are! Certainly one of the several options to acquire a chop account would start with packing a bag and taking a trip to Hong Kong. Once arrived perhaps you could locate a citizen who might be persuaded to open an account and transfer the chop and the account balance and its number to you.

5.152 There are a teeming five and a half million Chinese who cram themselves into only 35 square miles of British territory, and another 370 square miles Great Britain leases from mainland China. No doubt someone somewhere would be willing to help you for the right fee. Were the accomplice dishonest, the reader's mind can finish the story better than my pen. The honest Hong Kong citizen will have a concern of their own. Since they opened the account, they would continue to be personally liable for the account. This would erect an additional problem as to whether they can trust you!

5.153 Nevertheless, let's assume you believe you could find such a person. Hong Kong's Kai Tak International Airport is served by major airlines from all parts of the

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world. For example, flying time from San Francisco is about fourteen hours. When it is 9:00 P.M. in New York (or 6:00 P.M. in San Francisco) it is 10:00 A.M. the next day in Hong Kong! Adjustments must be made for daylight savings time as Hong Kong does not observe the convention.

5.154 From the closest point in the United States, air fare, food, and lodging for a week's stay should cost about \$4,500. Add another \$1,000 for miscellaneous expenses, total well over \$5,500 and probably a lot closer to \$6,000. Your first visit could even be to a bank. While it's not entirely unheard of you may find a banker who for the right fee would be interested in helping you acquire a chop account in your own name. It would probably be a lot easier, quicker, and more certain to ask bellmen of the hotel you're staying in or even a taxi cab driver for someone who may be disposed to help you. These people know nearly everyone and everybody's business. They can be an invaluable source of help. You might even consider interviewing several people for the job if several applicants could be found. Just be sure any person you chose has a valid identity card. Be sure also to have some way of proving your own integrity.

5.155 Next, if you are able to open up your own chop account, with a banker's help, perhaps by purchasing an old account no longer being used, you would make your way to the Central business district to a narrow street named Mah Wah Lane. Here you will find a number of specially trained artisans who carry on the ancient tradition of carving name chops. You would first need to determine an appropriate name for your own Chinese chop. Most Western names can be reduced to Chinese characters in some fashion. Then commission a craftsman to carve the chop for you. It could cost as little as \$30 unless you use the more expensive jade or ivory.

5.156 Some chops run many hundreds of dollars. Sometimes you can find a craftsman who will even use plastic. The more expensive jade or other precious stones I do not recommend because if dropped it may chip, and a chip on the chop might flop! On the other hand you don't want a terribly cheap chop as a better one is impossible to forge. Artists' reputations make chops more expensive and are usually not warranted. Best to stay somewhere in the middle of the road.

5.157 While you are waiting for your chop to be fashioned a little sight seeing would be in order. Hong Kong is an island tax haven, however it prefers to consider itself a "financial center." Indeed it is one of the most important financial centers of the world. For example, there are no economic controls or restrictions on foreign exchange or foreign investments. Its gold exchange is open 24 hours a day! Canny investors with *savoir-faire* are pulling in small fortunes! They use Hong Kong as their own financial center for great profits and tax savings!

5.158 Hong Kong is politically stable, a British Crown Colony, and English common law generally prevail. Attorney, Marshall J. Langer, expresses continuing confidence in Hong Kong in his *Practical International Tax Planning*:

The lease of the New Territories by China to Hong Kong expires in 1997. Since more than 90 percent of the present territory of Hong Kong is covered by the lease, it has been apparent for some time that there could not be a viable separate British colony unless the PRC agreed to renew the lease. Britain and the PRC have now reached an agreement under which all of Hong Kong will become a part of the PRC in 1997. Under the agreement, Hong Kong will remain a self-governing capitalistic enclave until at least the year 2047. Although Hong Kong will certainly change

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when Britain leaves, the prospects of its continuation as a viable commercial center appears strong since the PRC has made increasingly greater use of Hong Kong as its window on the outside world.⁵⁷⁷

5.159 Excitement is at an all time high in the People's Republic of China as today great numbers of people are studying and becoming very proficient in English, anticipating the coming day when they too will be able to share the wealth Hong Kong has enjoyed for so long. The recent problems of the PRC only suggest that things one day must get better for the mainland as they have been so good for the island of Hong Kong. Too many mainland people have heard of the legendary wealth Hong Kong has cultivated.

How to Use Your Account!

5.160 You may directly deposit checks into your chop account and withdraw the funds either in person or by mail. Withdrawn funds can be mailed or wired to you or any other person or entity you chose anywhere in the world - whether you are present or not. The funds received by you can take the form of a simple check to cashed secured items or even cash. Some people use the postal delay (about 10 days) to create a lag in the time certain bills are paid which effectively gives them an interest free loan for the time it takes an item to clear the bank. One could hold the money there, pay bills from there, and control investments from there, or even deliver cash to someone you trust there. You could even open up a safety deposit box with the chop itself and hold or transfer valuables any way you wish. Only the limits of your mind and the law need be your guide.

5.161 Since Hong Kong is not a party to any tax treaties and there are no taxes on bank deposit interest you may want to explore the many other financial advantages which exist. (Yes, your account will be paid interest!) Not a party to any tax treaties means there is no sharing of financial information between Hong Kong and the United States. This is not an invitation to tax evasion, however, it just means the bank privacy in Hong Kong is absolutely certain. Of course, with control of an account the bank can't even detect the element of privacy is the utmost. There are also no exchange control restrictions on Hong Kong's currency.

U. S. Dollar Accounts!

5.162 Any account you may open whether in your own name or in the name of your associate Hong Kong citizen and then transferred to you will be held and maintained in Hong Kong dollars. Citizens are not allowed to hold accounts in foreign currencies. The exchange rate can be determined from your daily news paper. Currently the value of the Hong Kong dollar (HK\$) is pegged to the U.S. dollar and has equaled US\$0.13 for quite some time.

5.163 Some people chose to have their funds held in U.S. Dollars, and those who do must obtain a corporation for this need. You could choose to open up a corporation and have it administered by local professionals while visiting there. However it generally

⁵⁷⁷ Langer, Marshall J., *Practical International Tax Planning*, Third Edition, November, 1989 release, Page 84-9. Practising Law Institute, 810 7th Avenue, New York City, N.Y. 10019.

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takes about four weeks to incorporate a new Hong Kong corporation, and the articles of incorporation and by laws must actually be printed, so your stay might be longer than you wished. And, visiting in Hong Kong is very expensive.

5.164 As long as the corporation has no profits from Hong Kong sources it is able to obtain an exemption from filing returns. The corporation must also have at least two directors and a secretary, and the meetings of the directors and stock holders may be held anywhere in the world. Bearer shares are not permitted.

5.165 A routine corporation should cost about \$US800 to US\$1,800 to create and about US\$1,500 a year per company to maintain including the local directors, a secretary, and the auditing fees.⁵⁷⁸

Foreign corporations establishing a place of business must register and pay a small filing fee, and theoretically the branch is taxed and treated the same as an ordinary Hong Kong corporation. There are approximately 130,000 incorporated companies there.

5.166 Hong Kong's professional facilities are absolutely excellent. With over 300 deposit taking institutions and over 130 licensed banks, there are also a very good number of legal and accounting firms. There also exist a substantial number of trust companies. You might want to negotiate the services of one or more of these professionals to refrain from personally having to file I.R.S. form 90.22.1⁵⁷⁹ showing your signatory control over a foreign bank account. You will also remember the question is asked on Schedule B of form 1040 as to whether you enjoy signatory control over a foreign bank account. Please keep in mind Title 18 of the United States Code §1001 makes it a crime to falsify information to an agent of the United States government. It is punishable by \$10,000 and five years imprisonment or both! "A word to the wise...."

5.167 If you find you need any of the above services. I recommend you contact me and I will be glad to formally introduce you to competent persons and companies with impeccable credentials, however don't miss §5.177ff!

5.168 Both trusts and Colatos may be created and are quite satisfactory for use in Hong Kong. For trusts, the Trustee Ordinance⁵⁸⁰ is quite similar to Great Britain's 1925 Trustee Act. As long as the trust does not carry on any business in Hong Kong and its assets are invested abroad no Hong Kong tax should be payable on either its capital or income. In fact, it's quite common for Hong Kong trusts to hold all of their assets in holding companies incorporated elsewhere.⁵⁸¹

Instant Account!

5.169 It the wait and the extra expense, now rising well above \$7.500 is not your cup of tea, but you would like all the advantages the U.S. Dollar chop account could provide you, and you don't want the uncertainty of your success in finding someone you

⁵⁷⁸ Langer, Marshal J., *ibid*, page 84-8.

⁵⁷⁹ For a sample of this form see page 308 in the Appendix. Please also Cf §5.177ff.

⁵⁸⁰ Laws of Hong Kong ch. 19, as amended.

⁵⁸¹ Langer. Marshall J., *ibid*, page 84-8.

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could trust, who would also trust you; you could hire a company to provide you with all the necessities.

5.170 One California based enterprise was the first to sell everything you need for maintaining an account in U.S. Dollars for just \$5,000 plus the annual corporation fees. They are an excellent firm and their name will be supplied upon request with your self addressed stamped envelope (SASE). However I know another firm who can also provide everything you need for just a fraction of the cost were you to make the trip for yourself or hire the only other company we know of offering essentially the same thing. As we've seen, while it is relatively easy to have a Hong Kong citizen open the account and transfer it to you, the choice of that citizen, the bank, and the type of account you want is another matter. My source can provide the best privacy the world has to offer, a U.S. Dollar chop account, and corporation, for just thirty-five hundred dollars! Contact me if I can help.

5.171 With the delivery of your account, usually in just over a week, complete with its nominal initial deposit, detailed instructions are included as to how you operate the account. You and only you will know the location of the chop and you will then establish it as the official signature of the account. Your instructions to the bank will make you free to make large or small deposits or withdrawals as you like. Remember, your account will only have a nominal amount of cash so you will need to make your first deposit - of any size - along with your instructions to inaugurate the account for your specific purposes.

5.172 Test the new account to satisfy your own needs and you will find it's business as usual. Make several debits and deposits to learn how easy it is to use. Mail to and from Hong Kong is just about a week. Many people will find astonishing ways to make new money for which such an account will be invaluable.

5.173 While a name chop and the account number are all that are required to transact business, you will "need some other instructions which will be sent to you with your account. If you desire to keep from having "constructive" signatory control over a foreign bank account, certain things need to be done. We are not encouraging you in any way to break any laws. Indeed, it is unnecessary to do so. The law provides adequate opportunity for the individual who desires to keep it.

5.174 Usually a wait of only about a week to receive your chop account is necessary, however, in the event it will take longer you will receive a phone call appraising you of the length of time required. Detailed instructions complete with forms necessary to initiate the deposits, and withdrawals will accompany your chop account.

5.175 For still extra privacy, you may want to obtain the services of a financial consulting and/or mail forwarding company in Canada. I will supply several names of competent companies upon request for \$1 and SASE. These inexpensive services ensure a low profile as the Hong Kong banking envelopes are then remailed to you in another envelope from Canada. Instructions to the bank or your deposits or debits are inside a sealed envelope with another outside envelope addressed to your Canadian mail forwarding company. The mail forwarding company opens their envelope and in turn posts your mail to your bank in Hong Kong.

5.176 We close this part with a most interesting quotation - believe it or not from the ancient Code of Hammurabi, c. 2000 B.C. - we may all wonder at how much the line in the law has moved, but engrossingly as we have noted above, the laws have provided for the few who are willing to pay those who have the knowledge of what to do: See §5.116 reference the privacy game:

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Money for which no receipt has been taken is not to be included in the accounts.

I.R.S. Concessions to You!

5.177 The I.R.S. requires form 90.22.1⁵⁸² to be filed whenever a United States person has "signatory authority or other authority" over foreign bank accounts with an aggregate amount of over \$10,000. Of course foreigners don't file this form even when the account is situated in the United States.

5.178 Americans possessing a chop to a foreign account requires the filing of I.R.S. form 90.22.1 if the aggregate amount is over \$10,000, however there are several ways to make your demands exempt from the filing. One way is to hire a firm who specializes in such services. These concerns may be your local trust companies or other organizations. If you have any needs along these lines contact the author.

5.179 The presupposition of the I.R.S. saying you can have a foreign account of up to \$10,000 is the same as saying the line in this law can be moved swiftly downward and your privacy ruined. I feel its better for a Colato own these foreign accounts and to purchase the services of a firm which can take care of this responsibility. However, it is true that the Colato Certificate Holders (CCU Holders) have no legal interest over such an account of any size. Nevertheless I would rather stay as many steps away from the line in the law as I could.

5.180 Schedule B of Form 1040 requires an answer for the following question:

10a At any time during 1989, did you have an interest in or a signature or other authority over a financial account in a foreign country (such as a bank account, securities account, or other financial account)? (See page 27 of the instructions for exceptions and filing requirements for Form TD F 90.22.1.)

b If "Yes " enter the name of the foreign country

5.181 The instructions for Form 1040 on page 27 clearly state the exception among other things, "Check No if any of the following applies to you: The combined value of the accounts was \$10,000 or less during the whole year." Therefore an honest "No" can be checked on form 1040 Schedule B as long as the aggregate amount is \$10,000 or less during the entire year. Every member of the family could have signatory control as long as the amount didn't exceed \$10,000. If interest was paid to an account which had the limit of \$10,000 in it then you would need to file form 90.22.1, so it might be better to have an account in a stable world currency and forego any interest earnings.

⁵⁸² See a sample of the form in the Appendix at page 308.

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Foreign Colato Privacy Is Absolutely Superior!

5.182 We should remember that Colatos and foreign Colatos are absolutely private because they are created by two parties the contract of which is not normally recorded with any public official or office.

5.183 While it is entirely optional for the existence a foreign Colato to be recorded there may be either an advantage or disadvantage. The various reasons for it include when you want a known presence for others around the world to be able to detect when an entity exists. Most of the times for privacy reasons foreign Colatos will not be recorded. Only the individual together with counsel can determine whether it's a good or bad idea to record the existence of a foreign Colato. If for example a foreign Colato is to own real estate either in the United States or abroad there may be good reason to record its existence.

5.184 In Belize. Central America it is not possible to have the registrar take notice of any forms of trusts, but Belize is an ideal place for Colatos to be created! This law could be substantially beneficial for the foreign Colato desiring **absolute anonymity**. If it was desirable but not possible to record a foreign Colato in Belize at least a real estate transaction should be recorded in the county clerk & recorder's office with the name of the foreign Colato used in the instruments recorded.

Virginia Mitchell

5.185 Virginia Mitchell has always been the feisty enterprising type. One day while browsing through *The Wall Street Journal* she responded to an advertisement seeking a U.S. Business Consultant. The trustee for the foreign Colato which had placed the ad determined Virginia was the person they were looking for and she was hired. She was given some pretty extraordinary powers.⁵⁸³ Though she was called "President." she could not control the destiny of the company, the trustee, nor did she have a voice or legal interest in the company's affairs. However, she could control the day to day business as the trustee saw fit, and to all outsiders it appears that she has all the control there is. Documentation was provided her from the trustee which made this possible.⁵⁸⁴ Usually it is not necessary for her to show any documentation to any one as she just assumes the position and uses the title, but in legal reality she's an employee.

5.186 Should Virginia need to show documentation for the authority she would be exercising to anyone she would merely sign a sworn statement to the effect that she had the power to do whatever was needing to be done. Once quite an objection was made where she wanted to open up an account with a securities brokerage company. They wanted copies of all the creating documents of the foreign Colato, etc. Virginia simply filed a sworn affidavit over seal of notary that she was the principal who had exclusive authority to open up said account and had those absolute powers necessary to authorize business. In addition she asked for the brokerage's creation papers! After she tendered this affidavit no further problems were encountered and she directs the trades to this very day.

⁵⁸³ See the complete section on "Do the Super Rich Have Their Cake & Eat It Too?" Page 224.

⁵⁸⁴ See the sample form at page 285.

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5.187 One of the first things she had to do was open a bank account. The bank requested and she provided an Employers I.D. number which the I.R.S. issues.⁵⁸⁵ Her signature was the only one required to make withdrawals. Virginia has provided her daughter a General Power of Attorney and a list of instructions so that she could access the funds in the event of her death or incompetency.⁵⁸⁶ Of course no need to worry about probate, gift, inheritance, or estate taxes⁵⁸⁷ because a foreign Colato is completely exempt from such nonsense.

5.188 The business receives its checks and she deposits them to the account she opened. After she pays the ordinary and necessary business expenses out of the account - which are all tax deductible - the money that's left is the gross taxable profit. As she has been instructed, she merely writes a check for the amount of money the trustee dictates to be paid to the CCU holder and she mails it to that person. The distribution having been made her job is done.

5.189 Most of us know there isn't a better receipt than a canceled check and the I.R.S. looks at them as prima facia evidence that the distribution was in fact made. Then the trustee files the foreign Colatos tax return on 1040NR from Virginia's reports and pays all of its taxes.

No Federal Income Tax!

5.190 "Virginia's Colato" was created by foreigners for foreigners in a foreign country under foreign law. It is therefore subject to that foreign country's laws and tax statutes. Because all Colatos enjoy what is termed as the "conduit" tax arrangement⁵⁸⁸ where the tax is conduited to the "beneficiary"⁵⁸⁹ we understand what we noted above⁵⁹⁰ that the source of the income is transformed from U.S. source to foreign source income! This is the only conclusion one can come to when the statutes and cases (which we have thoroughly examined) are all taken into account. The I.R.S. may not have one rule of tax for one person and another for a different fellow. We must have equal justice under the law. Since the I.R.S. has no authority to tax foreigners it is legally possible to do just as the courts have recognized as possible - altogether avoid any taxes! This makes even more sense when we ponder the fact that taxes are legal creations themselves. The presupposition of legally created taxes is that there will always be a legal way to escape them, and the courts have ever thus been persuaded.

⁵⁸⁵ See the sample SS-4 form at page 287. One of these forms would have to be filled out in advance to opening a bank account.

⁵⁸⁶ See the sample General Power of Attorney on page 288.

⁵⁸⁷ For probate see the section "No Probate." For any of the others, gift, inheritance, estate, etc., consult the Index by simply looking up "No" and then the area of your interest for the page number.

⁵⁸⁸ See full explanation of "conducting" at §4.379.

⁵⁸⁹ Not "beneficiaries" in either the legal or tax sense. See §4.394*f*.

⁵⁹⁰ See §5.98*ff*.

TAX FREE! How the *super rich* do it!

5.191 Virginia has all of the necessary powers she needs over the affairs of the business she is running except the legal and tax responsibilities. Those are retained by the trustee. The rule of tax law is that the tax collector must follow the money until it reaches the person who earns it. The foreign CCU holder passively earns the money that is distributed and there the tax liability disappears because there is no I.R.S. authority in that foreign country. Since the Colato pays all of its U.S. taxes due and since there is also no Tax Treaty with the country in question there is absolutely no way for the I.R.S. to collect more tax than is actually due.

5.192 You will remember that I said in §5.190 that the foreign Colato is subject to its own laws and taxes. Answer this question: Even if there is NO tax in its country, is the foreign Colato *subject* to the tax laws in its own country? Of course so! It is well within the legal capacity of any sovereign country to impose, lay, and collect taxes! If however, that country either neglects or desires not to have a tax, the subject of the tax is free from taxes in both countries!

5.193 This is what is missing in Mr. Regan's clarifying declaration above.⁵⁹¹ He doesn't have to say that foreign Colatos which expressly desire to limit the amount of income taxes may not have to pay until their jurisdiction gets around to imposing a tax. But they are *subject* to pay because they are under its law.

5.194 A *legal right* of a foreign Colato to convert U.S. source income into foreign source income exists for the same reason as when a Colato distributes money⁵⁹² to its CCU holders. The exciting thing about Mr. Regan's statements are that he as the Secretary of the Treasury recognized said *legal right*! He doesn't say how it's done, he just recognized that it's not only possible legally, but that it is also "one of the most common tax motivations!" Even though he speaks in terms that the results are for "reducing" U.S. taxes the courts have established that the limits of "reduction" end at complete elimination of the tax!⁵⁹³

5.195 Virginia operates the foreign Colato in the state of Texas where there is no state income tax. but if she operated in a state which follows the federal tax laws as its own tax law the money she distributes to the CCU holder is not subject to the tax as long as the foreign Colato has also elected to be treated as though it is engaged in the conduct of a trade or business in the U.S. It does this by filing a 1040NR tax return" (non resident alien 1040 tax form) with the Philadelphia office of the I.R.S. and paying all taxes due. Otherwise, there would be a withholding tax at the source of the income paid to the foreign Colato.

⁵⁹¹ See §5.100.

⁵⁹² See "Is the Secret Colato Taxed At All?" at page 175.

⁵⁹³ "The **legal right** of a taxpayer to decrease the amount of what otherwise would be his taxes, or altogether avoid them, by means which the law permits, cannot be doubted." Justice George Sutherland in *Gregory v. Helvering*, 293 US 465, 469 (1934). "In the interpretation of statutes levying taxes it is the established rule not to extend their provisions, by implication, beyond the clear import of the language used, or to enlarge their operations so as to embrace matters not specifically pointed out. In case of doubt they are construed most strongly against the government, and in favor of the citizen." *Gould v. Gould*, 245 US 151, 153.

⁵⁹⁴ See sample 1040NR on page 309.

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5.196 It is no concern to Virginia's foreign Colato because it is not domiciled in a country which has a tax treaty with the United States, but if it was so domiciled the trustee would no doubt have provided Virginia with I.R.S. Form 1001 which is a Certificate of Exemption from withholding!⁵⁹⁵ In turn, Virginia would have given it to the persons who would have had the duty to withhold.

5.197 Though the foreign Colato may be required to pay no tax at all, I always recommend it should pay at least 10%. This will be determined by what the trustee and perhaps what Virginia helps the trustee to determine. Why do I recommend paying a 10% tax? I think it's right, the Super Rich have always done so, and it has worked well for them. There's also no sense in provoking anyone and you will certainly irritate those who think you aren't "paying your fair share."

5.198 You will remember that columnist Jack Anderson reported that John D. Rockefeller, III paid a 10% federal tax as "a matter of personal principle" even though Jack went on to report that:

Apparently, [John D.] can manipulate his tax *exemptions* to produce whatever tax return he feels is appropriate.⁵⁹⁶

No State Income Taxes!

5.199 Essentially there are no state income taxes for the same reasons there are no federal income taxes, however this is not entirely true in the state of California where the state law has not followed the federal law. Either a Colato or a foreign Colato operating in the states of California,⁵⁹⁷ Arizona,⁵⁹⁸ or Florida⁵⁹⁹ may be subject to the State Tax or other rules. Persons desiring to operate in those states should check with competent counsel or research the law carefully with this book. (See §7.87 for the eight states which have no income taxes).

⁵⁹⁵ For an example of I.R.S. form 1001 see page 290.

⁵⁹⁶ See § 1.17.

⁵⁹⁷ 1939 Corporation Income Tax Act. Statute (chapter 1049), §1 (b). "The term 'corporation' as herein used shall include ... every business organization consisting essentially of an arrangement whereby property is conveyed to one or more than one, trustee for purposes *other than* the mere conservation of assets.... See also *Koenig v. Johnson* 71 Cal App 2d 739 (1945), 163 P 2d 746.

⁵⁹⁸ See *Arizona Revised Statutes* ARS § 10-500ff. Also see *Rubens v. Costello* 251 P 2d 306 (1953). The Colato appears not to be included in the definition of ARS §10-501. Review the definitions found on page 174. Arizona statute appear to be defining the Common Law Trust (CLT) which is an association for tax purposes.

⁵⁹⁹ Though Florida is one of the eight states which have no state income taxes competent and up-to-date counsel should determine whether a Colato is required to register under the corporations law. I am certain that Common Law Trusts must register!

TAX FREE! How the *super rich* do it!

No Capital Gains Taxes!

5.200 Component of the federal income tax law is the capital gains tax. The reason foreigners are exempt from capital gains is because the I.R.S. has recognized it's too difficult to collect. However, beginning in June, 1980 a capital gains tax is collected where a foreigner sells real estate situated in the United States. The reason the Super Rich are exempt from the tax (where foreign Colatos own U.S. real estate) is that they sell their foreign Colatos rather than the real estate. There are simply no capital gains taxes on any sales other than real estate.

5.201 Mike and Susan George's story will help us understand what I'm saying. A foreign Colato had purchased a 35+ acre ranchette in 1981. The foreigner recorded the fact that it owned the land. A magnificent 3,444 square foot log home was built on the land with the foreigner's money. The Army Corps of Engineers had been proposing a dam which began construction not long after the George's built the log home.

5.202 By 1987 property was in great demand as the area was turning into a resort district. Because the situs of the foreigner's property was not only within view of the water which had backed up, but because a boat house could be built to take advantage of the shoreline, several offers had been made on the property.

5.203 Deferring all but substantial offers made the foreign arrangement very convenient and advantageous. The George's as the foreigner's agents put out the news that a commission split would be paid to any Realtor who would bring a buyer for the property. One of the Realtor's who had contacted them earlier came back with an almost unbelievable offer. A wealthy buyer was ready to purchase at almost any price! The foreigner was in a position to get a very substantial gain out of the property.

5.204 Finally, a negotiated price was agreed upon which would create a huge capital gains tax. Normally the capital gain would be taxable at the regular income tax rates. None of this presented a problem to anyone as it was easily agreed that the buyer would simply become the new trustee of the foreign Colato. The buyer however was as shrewd as the George's and after some difficult searching was put in touch with me when he learned that the owner would not suffer the capital gains tax. Instead of the buyer becoming the trustee of the foreign Colato I arranged for another foreign trustee to take over.

5.205 As things turned out the buyer paid the money to the original trustee, the George's moved out, and the buyer moved in. What about the George's? A certain foreign Colato purchased a 70 foot Ketch sail boat and Mike and Susan retired to the South Pacific -- their life's dream! A trust owns a motor home which they use about four months out of each year to visit their two children and several grand children. I was absorbed in their life style as they shared with me how with just a little over \$100,000 cash left from the sale of the mountain property the George's live the lives of the rich and famous, actually running into such people from port to port. They have no debt and will live more than comfortably for the rest of their lives!

5.206 The only thing which was done to effectuate the change of occupants in the log home was to record a document showing the change in trustees! These kinds of transactions generate a lot of good will, because they are so good for everyone involved.

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No Social Security Taxes!

5.207 If the reader understands what was written in the forgoing subsection (5.116) until here It should be axiomatic as to how the Super Rich are free of Social Security taxes. If you are having any trouble understanding read these sections again.

No Lawsuits, Judgements, Seizures Or Bankruptcies!

5.208 As the dawn of light rises in our understanding it becomes self evident how the foreign Colato is lawsuit, judgement, seizure and bankruptcy proof!⁶⁰⁰ There is simply no authority or jurisdiction for a court to intervene where everything has been carefully guarded off shore. Having to sue in a foreign court would be frustrating enough to keep all but the most stubborn off your back.

5.209 The only trouble you can get into here is by not paying heed to the way the Super Rich play their economic chess game. They protect their Colato and foreign Colato "kings" with every move they make. They don't put their "king" into jeopardy by exposing him to the cruel world of business. They shelter him with other entities or persons in the law such as the corporation or limited partnership. In short, their Colatos and foreign Colatos are the "King of the Jungle."

5.210 This is also why they have more than one Colato. They never combine assets with other assets in one Colato. Everything is protected from everything else.⁶⁰¹ Congratulate yourself! You've come far enough to see for yourself what the Super Rich have known and used for a long time! You can see why they are legally exempt from:

Death Taxes §4.183

Probate §4.170
Gift §4.182
Estate §4.182
Inheritance §4.186

Living Taxes §3:150ff

Federal §5.190ff
State §5.199ff
Social Security §5.14ff
Capital Gains §5.200ff

Living Hell §4.252ff

Bankruptcies §4.231
Lawsuits §4.331
Judgements §4.290f
Seizures §4.349ff

5.211 As we said before, since taxes are "legal creations" it fits there would also be a legal way to skirt them. You've come a long ways. You have placed each thread into its intricate place and your cloth is of the same pattern the Super Rich wear. Is there any wonder why the rich just get richer and richer? They are reaping what they sowed!

⁶⁰⁰ See and *cf* §§4.349ff and 4.217.

⁶⁰¹ See page 274 "How to Stop a Law Suit Cold! Even if It's Already Started!"

TAX FREE! Hhow the *super rich* do it!

Virginia's Dollar Bill

5.212 Let's take an interesting but imaginary journey with a dollar bill which Virginia Mitchell has controlled. Please remember that the dollar bill doesn't belong to her, she merely controls it. You should also remember, however, that the secret of wealth is control rather than ownership. (See page xi). It may just have happened that the business Virginia is controlling is a business she has a lot of experience and expertise in. Surely the foreign Colato wouldn't want anything less than the best U.S. consultant it could find. Now for the journey:

5.213 A U.S. dollar bill flows into XYZ Enterprises by a simple deposit of the item into XYZ's bank account just down the street from Virginia's house. She writes checks against the dollar bill to pay XYZ's ordinary and necessary business expenses. Of course all of these are the deductible items. For example, she writes a check to herself for a management consulting fee. This is the amount that is tantamount to what created Mr. Rockefeller's 10% tax shown on page 219. All the rest of the money is made payable to the "beneficiary,"⁶⁰² Harlan Thomas.

5.214 Virginia reports the income, costs of doing business, and the distribution made to Harlan to the Trustee of XYZ Enterprises and the Trustee will make out the 1040NR tax return and send it to the Philadelphia I.R.S. Since Harlan is a foreigner our dollar bill goes "offshore" and is at that time *legally converted* from U.S. source income to foreign source income because it is the tax liability of Harlan. However, since Harlan is a foreigner there are no U.S. taxes. Harlan pays his own country's taxes - *if ally!* Harlan spends his return on investments and then makes a gift of the dollar bill to a charitable Foundation who makes loans to deserving foreign entities. The Foundation makes a loan' to Dan Owen who signs a note promising to repay the dollar. Dan now has our dollar bill.

5.215 Then - since this is an imaginary journey and just to see what could really happen lets just suppose the Foundation gifts the note to a Colato of which Virginia Mitchell is Trustee. Virginia's Colato only has the *note*, not the dollar bill! Virginia then makes inquiry to her tax adviser and is told that the *note received* is not income and is also exempt from the U.S. Gift Tax.⁶⁰³ Virginia as trustee of the Colato makes a demand against Dan Owen for the dollar bill - proving up that her Colato owns the note. Dan pays the dollar bill to Virginia's Colato, Virginia signs the note "PAID" and returns it to Dan. Of course Virginia keeps a copy of it for her own records, but our dollar bill has come full circle back to the United States where it started its journey.

5.216 This would work just as well as if Virginia herself was gifted the note. She could use the money in any way she wanted, and there is no line on an I.R.S. Form 1040 which requests information on such funds.⁶⁰⁴ Though there is absolutely nothing wrong

⁶⁰² Not "beneficiaries" in either the legal or tax sense. See §4.394f.

⁶⁰³ Internal Revenue Code §2501.

⁶⁰⁴ Once in a while I'm asked why this gift cannot be taxed once it has become tangible. Since the inception of our tax system, and with each new reenactment, the income tax has targeted "income." Income is derived essentially from the labor and efforts of the taxpayer or from the use or disposition by (continued...)

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with this technique, you can imagine there might be a little less privacy in a situation where you are gifted a note personally.

5.217 A reason Virginia would not care to have a note gifted directly to her is because if she were to die her heirs would have an estate problem. Therefore, such gifts should be made to Colatos instead of to an individual to have none of the problems you see on page 109. Further, foreign Colatos making a gift of a bank account, whether that bank account is situated in the United States or as in her case a foreign country, (you will see this at §5.219), makes no difference at all "*tax-wise*." Since 1967 the *Internal Revenue Code* has actually provided that a blanket exemption from federal gift taxation is provided for all gifts made by a nonresident alien of **intangible** property even though the situs or location of that intangible property is within the United States.⁶⁰⁵

5.218 Of course this dollar bill's journey was fictitious, but while it would be perfectly legal if it had happened as we put forth there are many other arrangements which are far more likely. I just wanted to show you what is possible. Only the limits of your mind and the law should be your guide.

5.219 Last summer Virginia took an interesting trip, *but her trip was for real*. Her trustee asked her to check out a business proposition in Australia. The dollar bill had been deposited in a bank in Monserrat, British West Indies. Virginia was given a bank Visa Credit Card in the name of the foreign Colato, but prepared for her signature. Actually the card is a "debit card." You have no doubt seen them as all banks the world over issue them. They look just like the credit card version. but they are actually like checks which are debited against a deposit account. She used the credit card which was backed by a substantial amount to take care of her food, travel and lodging expenses here ' in the United States and abroad. For example, she booked her air passage from her home near Houston through her local travel consultant for the trip.

5.220 All her expenses on that trip, food, travel, and shelter were "charged" against her Visa Card. Of course not one penny was taxable to her and in effect a lot of the money which had been foreign source income became reconverted to the United States. That's good for the United States, and the tax man got a piece of it from the places she patronized! She enjoyed an extensive South Sea Islands cruise holiday from such proceeds - not only tax free, but with complete privacy as the charge vouchers are paid by a foreign bank.

⁶⁰⁴ (...continued)

them of capital. The term "income" as used in the Sixteenth Amendment is not the equivalent of "economic income" which term might well include decreases in or additions to one's wealth from any source derived. (See 73 ALR 1536, annotation, *Magill*, "Taxable Income," page 358 (1936). Essentially, the statutes promulgated since the Sixteenth Amendment have drawn this distinction by specifically providing that property acquired by gift, bequest, devise, or inheritance is not included in gross income. (IRC §102).

⁶⁰⁵ IRC §2501 (a)(2). All **intangibles** include stock, bonds, funds, notes or other certificates of indebtedness (not Federal Reserve Notes "green backs" or U.S. currency, or checks drawn on U.S. banks - IRR §25.2511-3(b)(4)(IV)), bank accounts, or U.S. government bonds, etc.

TAX FREE! How the *super rich* do it!

Do the Super Rich Have Their Cake & Eat It Too?

5.221 While it appears the Super Rich are *de facto*⁶⁰⁶ trustees of these kind of foreign Colatos they exercise no incident of ownership any where along the way. Each of the transactions are (and must be) real with all parties at arms length.⁶⁰⁷ You might wonder how the parties operating at arm's length might be rewarded in such interesting engineering. The answer is economically simple. Harlan Thomas originally invested \$100 into the foreign Colato which Virginia Mitchell controls on a daily basis. Harlan was glad to make his investment because he knows of other people who over the years in his country have also invested as much money in a similar enterprises. They all receive many times more than their original investment in distributions. In fact, the \$100 is usually paid off and earnings of a similar like amount in the first year! That's a 100% return on investment. That also encourages Harlan to make comparable investments into other foreign Colatos. He's making good money!

5.222 You will also remember that Harlan is investing his money into a "pure trust" situation - a foreign Colato if you please. He knows that he must trust the trustee completely, and he's willing to do so just like people in the United States are willing to buy CCU's of The Mesabi Trust.⁶⁰⁸ There is absolutely no difference!

5.223 The trustee and subsequently Harlan Thomas are free to do anything they wish to do with their money, but without any tax considerations at all because there is no tax in their country. They have seen the long term advantage to be very philanthropic with their moneys and thus they make gifts to several foundations which in turn have helped many around the world. There is an economic reality in the system of the Super Rich because there is a material advantage to everyone each step of the way so it is not merely a sham device to repatriate money which has escaped U.S. taxation.

How to Create Your Own Foreign Colato!

5.224 How do you as *de facto* trustee get something like this going for your benefit? You might start with a search in several volumes at your local law library to research countries which have either low taxes or no taxes at all. The skills you learned in Chapter Two will pay off handsomely at this point. After finding a *common law country*⁶⁰⁹ with the tax structure you desire, you would likely pack a bag and take a trip to visit.

⁶⁰⁶ See §4.308ff for definition of *de facto*.

⁶⁰⁷ See §4.134 and note #279 for the definition of "arm's length."

⁶⁰⁸ See §4.201ff for the story on Mesabi Trust.

⁶⁰⁹ Absolutely mandatory. Remember a foreign Colato can only be created in a common law jurisdiction. One of the best clues to a common law jurisdiction is to determine whether English is the official legal language, such as in Hong Kong.

The Paupers Flee!

5.225 Since many of the countries you might pick are small their economies depend a great deal on "tax haven" business. You could ask the first taxi driver you encounter if he or she knows someone who might help you. Don't be surprised if your driver takes immediate charge and personally volunteers to assist you. It would then be necessary for you to lay out your suggestions and hope someone will be looking to make the kinds of investments such plans require. They will also have to know how to get the foreign Colato established.⁶¹⁰

5.226 In any of the countries you pick you are going to have to find someone wealthy enough to make the initial investment, and you will also have to have an honest trustee for the foreign Colato. In addition a *non* profit foundation should be part of their established program.⁶¹¹ Further, it would be advisable for the counter part to "Dan Owen" at §5.214ff to own a Chop Account which could then be entirely gifted to a needy person - *perhaps* someone you love, have an interest in, or perhaps another Colato. In any event, it will be necessary to find someone who is trustworthy and whose business acumen is tractable.

5.227 You might want to visit the local trust or holding companies⁶¹² and appraise them of your desires. The usual problem with this is that the great majority of them are formed for specific or private concerns. You will have to find one which is looking for U.S. consultants to manage various business for them. One of the things which the Dahlstrom or American Law Association would do was to create their own Trust Companies and then have themselves appointed trustee over that company which in turn would be the trustee of other foreign trust organizations. These arrangements are of particular interest to the I.R.S. and over 30 of such combinations have been attacked and lost in court. See for instance the entire case appended at page 351 entitled *Ackland v. CIR* 767 F2d 618.

5.228 You could have a foreign trust organization formed which can act as a holding or trust company (which is why there are usually so many private ones already created) but Karl Dahlstrom now warns that the one who does this will have to resort to perjury and secrecy in order to succeed. I hope you agree that such a thin; is suicidal thinking! Anyway, when you walk down a street you will see signs above or on the side of the doors of nearly every building - homes or business buildings - you will see the names of businesses nailed to the house. This means that house number is the legal address used for all the businesses you see listed there. Usually those are corporations rather than foreign trusts or Colatos but foreign Colatos could also list their names if there was some benefit to be derived. Usually for the sake of privacy foreign Colatos will not list their presence at all. In any event by simply walking down a street you may see a sign which informs you that it is a holding company.

⁶¹⁰ An indenture or contract forms the Colato or foreign Colato. See §4.359 on page 163 also see the sample indenture beginning on page 293.

⁶¹¹ These foundation are very nearly like the pre 1959 types of foundations President Lyndon B. Johnson established for himself. See the appendix at page 314.

⁶¹² A trust company or a holding company is one and the same. This note will provide the necessary link whether the term "trust" or "holding" has been used to describe the trustee. I say "trustee" and that is correct, but it will still be necessary to have an individual person be the trustee or chief executive officer of the artificial trustee.

TAX FREE! How the *super rich* do it!

5.229 If this seems to be a bother, and it is because that kind of research could take days, it would be much more simple to research for a jurisdiction where holding or trust companies can be created with little or no difficulty, or where such facilities already exist. One way to conduct your research is to write to the banks in a given jurisdiction to determine whether they offer positions you would be interested in. If they write back right away and include nice brochures inviting your resume you will know they are generally the type you might work for. Most of these however, will be unfamiliar with foreign Colatos and it would be necessary for them to become familiar with them. You could make sure they purchase a copy of this book.

5.230 A number of other things should be included in your research. The distance from you to your tax haven country should not be too great. For instance Jersey or Guernsey of the Channel Islands which are off the coast of Britain would be a possible jurisdiction, but would be better suited for some one in London rather than the United States. There are common law jurisdictions in Central America and in the Caribbean which would be much closer for Americans. Hong Kong or other common law jurisdictions in the South Pacific are also potential choices.

5.231 After determining a country which would be close enough to expedite your interests you should determine whether transportation facilities would be adequate for tax haven operations. Once the business is established it shouldn't be necessary to do very much travel to and from the location, but you would want to be certain that such would be adequate.

5.232 Of paramount concern should be the political stability of your chosen jurisdiction. Be certain that the political climate of the country is very stable or you could be out of a job in hurry! Political upheaval and unrest is obviously something to be wary of. .

5.233 Telephone, facsimile services, and telex should connect your chosen jurisdiction with the rest of the world. Further, mail and courier service should be sufficient for tax haven operations.

5.234 The legal framework of your chosen domain or the language and the law should above all be English and the common law must prevail. Currency exchange controls would be a negative although it would be unnecessary to do any banking where your foreign Colato was formed. Banking can easily be conducted in any other part of the world.

5.235 So called secrecy laws or confidential ordinances should be present. This means that banks should not be able to even give out credit references without first receiving the customer's authorization to do so. Tax treaties would be out of the question, because they permit a free trade of information between the United States and the province of the country you choose. Most of the Central American and Caribbean countries have signed agreements that give the United States Attorney General access to confidential information when it is to be used for evidence in cases relating to trafficking in narcotics.

5.236 In July 1986, the United States, the United Kingdom, and the Cayman Islands signed a mutual legal assistance treaty. It generally covers all mutually recognized crimes but not pure tax crimes. However, tax crimes are covered where, for example, a false income tax return has been filed concerning unlawful proceeds from some other criminal offense or a taxpayer has failed to report or pay tax due on any such unlawful proceeds. The treaty must be ratified before it enters into force. A protocol permits the United States and Britain to extend all or part of the treaty to Anguilla, the British

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Virgin Islands, Monserrat, or Turks and Caicos by an exchange of notes.⁶¹³

Instant Foreign Colato!

5.237 If the wait and extra expense involved in local and foreign research is not your cup of tea, but you would like all the advantages this book has exposed, and you don't want the uncertainty of your success in finding someone you could trust, who would trust you; you can apply for membership into First America Research (FAR) which can help you with these concerns. FAR will introduce qualified individuals to a company who is looking for people who can immediately become U.S. consultants for preinvested foreign Colatos.

5.238 It is possible to become a U.S. consultant for a foreign Colato without being a member of First America Research, and those special cases are reviewed on a case by case basis. I should think there would be a lot more benefit if you are able to become a member of the Association.

5.239 To determine whether you might be a good candidate for consideration as a consultant (whether a member of First America or not) you may send to me five dollars (\$5) with your own Self Addressed Stamped Envelope (SASE) with **just the total figures or answers** from the columns of the questionnaire found on page 276. I can't even begin to tell you how important it is for you to answer the questions honestly - even if it seems a negative to you. That's all I can say!

5.240 Currently for a fee of \$1,440 (whether a member or not of FAR) one may apply through a personnel research company to several foreign Colatos looking for U.S. Consultants. If they are not able to place you with a company your fee is refunded in full. If you are the type of person who is generally moral and not involved or interested in any criminal enterprise you may qualify as a U.S. consultant.

5.241 For membership in First America Research's (FAR's) association one must also be of generally good moral character and not interested in any criminal enterprise. FAR is a private fraternal society which offers its members the results of its research in all the areas we have discussed in this book, and more. They do not do the work which would be required of an attorney, but with the help of the membership they can help a person do for themselves what a lawyer would be needed to do. In addition to foreign Colatos who are eagerly looking for consultation in any business interests as long as the business involved does not require a professional license, such as real estate, insurance, medicine, or law, there are many more state side advantages. Contracting licenses are in another category and U.S. Colatos work well for them.

5.242 Members are encouraged to help one another and over the years several national as well as regional and international workshops and meetings have been held. While FAR is not a secret society like the Elks or other lodge, they do require their members to affirm and attest their fidelity to their trade secrets. Persons who apply for membership are from all walks of life and only persons who are directly or indirectly employed by government are screened intensely. Persons who are involved with government are not prohibited from becoming a member, but their motives are closely

⁶¹³ Langer, Marshall J. *Practical International Tax Planning*, third edition. Page 60-8. Practicing Law Institute: New York, N.Y.

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examined. The members then contractually agree to permit a law suit to be maintained where one member discloses the identity of a member *even to another member* when the disclosure is made without that member's express permission.

5.243 While FAR will admit to having multiple members in all of the United States and many foreign countries it will not disclose the size of its membership. So, that means there are at least 102 members. FAR maintains no news letters and its rank and file membership list is available to no one residing in the U.S. Privacy is preeminent and foremost in all considerations. In fact no regional or national meetings have been held for many years, and it is unlikely any future large gatherings will be hosted. Everything is kept very small, private, and low key.

5.244 FAR is not a political organization or even *quasi* political - though some have erroneously attempted to define it as such. Its members certainly discuss and analyze political thinking, but FAR attempts no lobbying or other partisan activities. Their members are required to assent belief in:

[T]he Sprit and Sound Principles set forth in the Declaration of Independence, the Constitution of the United States of America and the Bill of Rights.⁶¹⁴

5.245 Their Creed is worthy of being reprinted here but for the fact it appears in the appendix on page 349. The reader should also examine their Resolution which follows at page 350. Study these documents. It will be a worthwhile activity.

5.246 Essentially everything the serious reader could want is provided in a most unique convention - within the law of association, and by becoming a member of FAR. Foreign bank accounts, indeed even acquisition of private bank charters, as well as a host of other member benefits can be enjoyed. Consult *FAR* for introduction to the right parties.

5.247 FAR explains they no longer have a regular news letter due to the fact that so few changes in the law have even been anticipated that such news letter is unnecessary. The desirous reader can contact First America Research by writing it's International Executive Director at PO Box 620592, Littleton, Colorado 80162-0592. Their phone number is 303-933-4792, and FAX is 303-759-8678.

Create Your Own Bank or Insurance Company!

5.248 First of all, when I say create "your own" bank or insurance company I do not mean "legally owning" anything. I'm more interested in control than ownership as you know! When I use this kind of language I do so to make understanding a little easier, but I never want to let go of the legal realities. Let's begin discussing life insurance for the person consulting a foreign Colato or even just a Colato.

5.249 Life insurance needs should be much less for the person engineering their affairs with Colatos and foreign Colatos, because no insurance is needed to provide for probate, gift taxes, estate taxes, inheritance taxes, and capitol gains taxes. Those extra dollars are available for a number of things the primary interest of which should be investments to provide for the rainy day.

⁶¹⁴ See the document located in the appendix at page 348.

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5.250 At this point only the reaches of your imagination are required to invent new and profitable methods to employ the Colato or foreign Colato. For example, a foreign Colato insurance company can save enormous premiums for literally every kind of insurance imaginable. As long as the insurance company makes no solicitations to Americans at large there is no American who cannot buy from a foreign company if they desire to do so.

5.251 The premiums paid to a foreign Colato insurance company are tax deductible to the U.S. payor but are not taxable by the federal government (or states which tax laws follow the federal law). Nor are foreign Colatos earnings taxable from such dollars it may invest anywhere in the world. The ways to make money and lots of it are legion when taxes aren't figured in. if only because competition is sharper when the tax man isn't a financial partner.

5.252 Having your own foreign bank is truly exciting and the financial miracles which you can accomplish are beyond the scope of this book. I can only mention a few of the possibilities and then allow your imagination to fill in the desires of your heart. For a long time many Americans have thought that foreign bank accounts were hiding places for ill-gotten gains. Today, however, most people are waking up to the fact that banks in Switzerland, the Bahamas, Grand Cayman, etc., represent some of the most respected business names in America - U. S. Steel, American Express, Sears and Roebucks, Boeing Aircraft, Exxon, Firestone, Monsanto, etc., just for a small example.

5.253 In fact, among the above list are companies which have established *their owns banks*. Why? To make money! Advantages such as capturing flight capital from other countries, gaining access to vast amounts of Eurodollars, back to back loans, wholesale borrowing, escrow funds for short term interest, the movement of money off shore and back to the United States again by coded messages between banks, profit from the "float" while waiting for checks to clear banks, writing "your own" letters of credit and financial guarantees, etc., make it possible to compete against the world's major banks for those multi million dollar contracts. The possibilities are endless!

5.254 In addition to the banking advantages you could also shelter a lot of the insurance dollars you are currently paying out. Your foreign insurance company can purchase reinsurance at the wholesale rates, and the difference can be invested world wide. Once again, using a foreign Colato for these endeavors makes a lot more sense from the privacy point of view. The more visible a bank or insurance company is, the more susceptible it is to regulatory attack.

5.255 Everyone knows how hard it is sometimes to get loans. Almost as many people also know that if it were possible to borrow a lot of money a greater amount of money could be earned. This has been known for decades as OPM or "other people's money." With your own private international bank it is possible to get as much as you need for any worthwhile project! You know how important a letter from a bank can be for business purposes in establishing credit, getting loans, or giving good credit history, etc., etc?

5.256 Is there anybody who has not wished they could receive inside credit information'? As a member of the elite banking fraternity you can obtain privileges others don't even dream about! Your ability to tap into information concerning creditors, competitors, and others you need to know about it unexcelled when your Colato or foreign Colato owns its own bank charter.

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5.257 Do I need to say anything about the political clout one can exercise with Congressmen who are always looking for a campaign donation? What better way could one attract warranted attention than with a letter to a politician on a bank letter head? The possibilities are endless are the near miracles which can be achieved with a foreign bank charter.

5.258 Because of the flight capital from America and other countries of the world you can attract a lot of deposits from people and you can afford to pay much higher interest rates than U.S. banks because of your small overhead expenses. Personnel, physical plant, and modern banking or insurance equipment can easily be *limited to* a telex, a FAX, telephone, and one part time person to take care of mail and administrative duties.

5.259 As an example a single ad placed in *Time International* magazine at a cost of \$7,000 secured over a million dollars in deposits! What could you do with a million dollars! Could you make money on it' The ad I'm talking about offered 14% on three year certificate of deposits (CD's) to as low as 11% on six month CD's. Your depositor's money can usually if not always be held in dollars with 100% bank secrecy guaranteed. Of course all the money your bank would earn can be tax free! Yes, a private foreign bank belonging to your Colato can open doors of wealth and influence you can scarcely wonder at.

5.260 There are many international management companies who fulfill an important role for private world banks and other financial administrative needs. They are usually not located in the country where the private bank is chartered, but they are able to provide a very real presence with agents or local directors and officers. These management companies are able to achieve absolutely any kind of transaction the Colato owner desires to* undertake - and all from the country where the private bank is located! If the reader is interested in further details of benefits in these areas, please write the author.

Notes

Chapter Six

Let's all be Princes or Die as Paupers!

I find the Great thing in
this world is not so much
where we stand, as to
what direction we are
going.

Goethe

The light here kindled
hath shone unto many.

William Bradford

6

Fruit of the Poisonous Tree!

6.1 On April 6, 1990 Kay Council of High Point, N.C. testified to the Senate Finance Oversight Subcommittee the following story: *Nine years after* they had taken a \$70,000 tax-shelter loss the I.R.S. sent Alex and Kay Council a bill for ultimately \$300,000 in taxes, interest, and penalties. Alex did everything he could think of to correct the happening but to no avail. Even though the courts would later declare that the Council's owed the I.R.S. *absolutely nothing* they were caught in a predictable "I.R.S. screw up and ... couldn't get out of it." They had no money in which to fight the I.R.S. to prove their point.

6.2 Remember, when dealing with the I.R.S. you are guilty until proven innocent. - I am not being cute by turning around the oft quoted legal phrase "innocent until proven guilty." I am stating an absolute fact.⁶¹⁵ (What more proof anyone would need to show that our tax system is unAmerican I can't conceive). Alex and Kay discussed how they might raise the money to fight the I.R.S., but the I.R.S. had taken liens against their property and their credit rating had been ruined as a result. Alex realized he was not going to be able to prevail against the I.R.S. without money to fight them. So, he made what he called "a business decision."

6.3 One night in June of 1988 Kay returned home and found the following note from Alex. It said:

My dearest Kay - I have taken my life in order to provide capital for you. The I.R.S. and its liens which have been taken against our property illegally by a runaway agency of our government have dried up all sources of credit for us. So I have made the only decision I can. It's purely a business decision.... you will find my body on the lot on the north side of the house.

6.4 Kay Council testified that she was sure she would never have gotten into a courtroom had her attorneys not known of the \$250,000 from Alex's life insurance policy. Alex's martyrdom for his wife, family, and country⁶¹⁶ may seem unusual perhaps, but the facts precipitating his action are a lot more common and typical than most would ever imagine. I personally know of people **right now** who are going through the identical problems faced by Alex and Kay Council - the 1988 Tax Payers Bill of Rights notwithstanding. It is the law which is at fault.

⁶¹⁵ See §2.60, *et seq.*

⁶¹⁶ Alex was a student of the United States Constitution.

Let's all be Princes or Die as Paupers!

6.5 Any school child knows that the absence of injustice is justice. The idea is just so axiomatic. If we have a law which breeds injustice, indeed where injustice is flourishing, reason dictates it is the law which is at fault and nothing can fix it. No matter how one tries it's not possible to sweeten poisonous fruit to be acceptable to the palate. The only solution is to cut the poisonous tree down and plant another one in its place.

6.6 The entire proposition imposed by our tax law is like toying to mix oil and water. The two simply don't mix! Common law and the civil law have always been opposing forces, and they are absolutely unsuitable partners. In like manner, Karl Marx and Thomas Jefferson (the author of our Constitution) would have made strange bed fellows - just as Karl Marx's tax and the U.S. Constitutional tax provisions are alien to each other.

6.7 In order to adopt Marxian tax principles we had to throw out the earlier Constitutional proviso and by amendment we adopted Karl Marx's ideal, but a communist or socialist law in a common law country cannot long endure without bringing terrible consequences along with it. We have already seen this. As shocking as it may be to some I must tell you that Alex Council is not this country's first tax martyr. He may now become the best known of such persons, but he was not the first. The people I know cannot fight the I.R.S. because they don't have the money to do so -- shades of Council's!⁶¹⁷ They must either be content with the loss of their homes, their businesses, their life savings - or one of them must sacrifice their life so their families can rescue some of what they worked for. Who was it that said, "Give me liberty or give me death?" Was it really Patrick Henry?

6.8 What about the saga of Alex and Kay Council? It is far from over. The 1988 Tax Payers Bill of Rights was to provide among other things restitution of the legal fees for the taxpayer who wins in court. Kay received a check for \$27,900 from the I.R.S. which isn't even half of the over \$70,000 she spent to win her case. Of course the lawyers aren't done with her either. They are billing her for more! What about the \$27,900? That was the I.R.S.'s limit for lawyers fees at \$75 per hour. Does the reader know of a lawyer anywhere who only charges \$75 per hour?! Kay's charged \$135 per hour and she has to eat the difference. She has to be glad she won her case at her own expense!

6.9 Columbia Broadcasting Systems has insinuated to Kay that the I.R.S. is **now** labeling the Council's as "Tax Cheats" perhaps to dispel the obvious embarrassment this shadow casts. Even more space than this book can give is the rest of the compelling story of how I.R.S. Commissioner Fred T. Goldberg, Jr. tried everything he could to get Kay to sign away waivers for every tax year other than the one in question "so he could speak freely about the case in front the Senate!"

6.10 Unfortunately and in spite of the fact that the above story appeared on the front page of every newspaper in America there are very few who will take notice of these things.

⁶¹⁷ In fact, Kay told me that she has been inundated by calls, letters, and postcards from people all over America claiming that they are in exactly the same predicament - and all of this in the **second year** of the "Tax Payers Bill of Rights!"

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This is why I recognize the futility of trying to proselyte converts for "a cause." One either instantly recognizes the inherent evil in a system that permits such an atrocity to ever happen - let alone it be found by the Congress of the United States to be the rule so they finally enact the 1988 Taxpayer Bill of Rights -- or they simply aren't capable of the insight.

6.11 These sightless ones still complain that the Super Rich should pay more. They fail to see the evil in their proposition. To them it is completely moral to take from one to give to another - because they are on the taking rather than the extorted end. Sadly, wisdom teaches that there is absolutely no way to change these people. We must let them be! When their ox gets gored they may suddenly get indignant and then **perhaps** they will see the debauchery and be moved to the side of liberty.

6.12 If the Taxpayer Bill of Rights of 1988 seems to be a step in the right direction please take a moment to examine the following from the 1975 Internal Revenue Manual:

Statement of Principles of the Internal Revenue Tax Administration

The function of the Internal Revenue Service is to administer the Internal Revenue Code. Tax policy for raising revenue is determined by Congress

With this in mind, it is the duty of the Service to carry out that policy by correctly applying the laws enacted by Congress; to determine the reasonable meaning of various Code provisions in light of the Congressional purpose in enacting them: and to perform this work in a fair and impartial manner, with neither a government nor a taxpayer point of view.

At the heart of administration is interpretation of the Code. It is the responsibility of each person in the Service, charged with the duty of interpreting the law, to try to find the true meaning of the statutory provision and not to adopt a strained construction in the belief that he is "protecting the revenue." The revenue is properly protected only when we ascertain and apply the true meaning of the statute.

The Service also has the responsibility of applying and administering the law in a reasonable, practical manner. Issues should only be raised by examining officers when they have merit, never arbitrarily or for trading purposes. At the same time, the examining officer should never hesitate to raise a meritorious issue. It is also important that care be exercised not to raise an issue or to ask a court to adopt a position inconsistent with an established Service position.

Administration should be both reasonable and vigorous. It should be conducted with as little delay as possible and with great courtesy and considerateness. It should never try to overreach, and should be reasonable within the bounds of law and sound administration. It should, however, be vigorous in requiring compliance with law and it should be relentless in its attack on unreal tax devices and fraud.

Let's all be Princes or Die as Paupers!

6.13 Please also take a long look at *U.S. v. Dickerson*. 413 F2d 1111, 1116 (1969) which came down in 1969:

The average citizen, moreover, believes that the government prosecutes only the recalcitrant, uncooperative individual who is unwilling to pay what he owes. Who would believe the ironic truth that the cooperative taxpayer fares much worse than the individual who relies upon his constitutional rights!

6.14 As one can readily see these kinds of acknowledgements and reform measures have been going on long enough! These kinds of atrocities are precisely "the long train of abuses" which moved the Colonist to declare their independence from England's King George, III, and finally to wage a bloody war! Think for a moment about another case from the other side of things. As I said above, there is no way to sweeten the fruit from a poisonous tree, and there is no way the Communist Manifesto and the Constitution of the United States can peaceably coexist. One or the other must go!

6.15 Lew Davies had worked out of his home in the restaurant equipment business for many years. As his business grew he used a Postal Box for his business mail, incoming orders, invoices, etc. After many years of operating out of his home he opened a business front in the commercial part of Atlanta. It was some 32 miles one way from his home, and for the convenience of having mail posted regularly in his Postal Box he kept it as the official postal collection center rather than receiving his mail at his new business address. He found it convenient to pick up his mail once in the morning when driving to work and again at night when returning home. The Post Office was just 2 miles from his home.

6.16 While Lew was working out of his home he was able to deduct every mile he drove for business purposes, which was extensive. He would usually put 35,000 business miles on his automobile each year. This deduction made a considerable dent in his federal tax liability. However, his accountant pointed out at the end of the tax year and after his move to town that the considerable distance both ways from home to work, 64 miles each day, could no longer be considered a deductible business expense. Lew was sick! The accountant explained the I.R.S.'s rules that the first and last trip of the day were not deductible expenses. Then Lew asked why his first and last trip of the day - to and from the Post Office - couldn't be considered as the two trips the I.R.S. counts thus allowing him to deduct all but 4 miles each day. When faced with the additional information the accountant told him he was lucky and could indeed deduct all but the 4 miles!

6.17 What if Lew had not kept the Postal Box? He would not have been able to deduct the 60 miles to and from work each day. What if Lew had never had a business Postal Box? He could have opened one to meet the criteria as long as it would have been done exclusively for business purposes. These kinds of problems only slightly depict the standard business decisions which plague every person in this country. If you don't know the answers to these questions you end up paying a lot more money in taxes than the person who does know them. A multitude of services is available which distribute publications designed to help the average person. If we are to get ahead of the game we literally become slaves to the information system, and even then aren't guaranteed success.

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6.18 Our problems may seem insurmountable. Little wonder why so many are revolting or expatriating; lack of privacy, ever higher taxes in the face of one "tax reform" after another, corrupt social policies, unworkable "solutions," law suits, corrupt or uncertain governmental practices, procedures, and tactics, and the list goes on and on.

6.19 The Super Rich on the other hand don't worry so much. Have you ever read of a case where the Super Rich were treated like the Council's or Lew Davies? No. and we aren't going to because they have carefully engineered their incomes and estates to be **exempt** from the "get go" - of probate, gift, inheritance, and estate taxes: capitol gains taxes, federal and state income taxes, Social Security taxes; and bankruptcies, lawsuits, seizures, and judgments. Yes, let's either cut down the unAmerican tree and plant an American one or enjoy the exempted fruit of the Super Rich.

An Open Letter to the Prince's!

6.20 During 1988 First America Research conducted a national poll concerning several questions. I present one of those questions to you in the same form they presented it then:

Circle the correct answer. America was designed by our forefathers as:

- (a) a democracy;
- (h) a republican state; or
- (c) a socialist state.

6.21 The answer is so obvious, but you would be surprised to know that two thirds of the people polled believed America was supposed to be a democracy! What did you say? I wonder if you would be troubled by your answer if you were to quote the pledge of allegiance: "I pledge allegiance to the flag of the United States of America and to the democracy for which it stands...."

6.22 The point I'm trying to make is that most of us have opinions which are dead wrong, and if left unchecked, uncorrected, and untrue what end can we hope for? If anyone has any disagreement with this book it will surely be found in this chapter. I know it and mention it to aver the fact, not as an excuse for writing what I shall say. I stand behind every word! The vast and overwhelming majority of people the world over are followers rather than leaders -- mere sheep with no desire for freedom and liberty. Further they frequently have no wish even to be allowed to think for themselves. They want others to tell them exactly what to do and how they should think. I know the truly intellectual will be *inescapably driven* to the conclusions my thesis presents whether or not they like my sources, and I don't care whether they like them or not, because they speak for themselves. I therefore present my sources and solutions boldly and confidently because they spring from the fountain head of all our customs, laws, and beliefs.

6.23 Yes, one of the things this chapter will presume is a change in our present law. However, it will certainly shock the reader who begins reading here to see my proposal that I don't care whether or not what I submit is approved or rejected. The force of my thesis is not dependent upon persuading the majority to change anything!

Let's all be Princes or Die as Paupers!

6.24 Anyone who has spent a trifle of time with this book and particularly Chapters One, Four, and Five will be convinced that our present law is the embodiment of evil. It is (1) unfair, (2) immoral, (3) unAmerican, (4) corrupt, (5) socialistic, (6) communistic, (7) unpatriotic, and -- *what else is there!* Post Holocaust thinkers recognize that just because there is a law does not make it moral. However, I'm not advocating tax striking. That will not work! What I am saying is that those of us who engage ourselves in the secrets of the Super Rich will enable ourselves - just exactly as the Super Rich - to ignore what the masses want to do, or what they believe in. or what new laws they are able to enact.

6.25 We are the ones who become free, but a true Prince should have some tokens of liberty - the solution - in his pocket should the rest of the world want one. Let's share the wealth of liberty with anyone who truly wants it. We must remember, liberty is free, it cannot be sold! When you, I, and the others who read this book put into practice what liberty depends upon. I believe the solution will spread as easily as the invention of the electric light bulb. No salesman ever had to twist any arms or shove down people's throats the solution to their illumination needs.

6.26 In like manner, no one will ever have to twist any arms to get the ready and able to apply the secrets of the Super Rich. When one is *ready* he or she will simply commence! When there are enough of us we will then be *able* to more easily share the secrets of liberty to the rest of the world. Let us resolve not to lavish diamonds upon cockroaches! If and when our neighbor desires to change his or her own mind, and genuinely desires to allow liberty to reign free we will be in a position to convince them of the truth.

6.27 I implore you: let these people alone who continue to suggest that the rich should pay more and they should pay less. **Let them alone!** Ask them instead if they are really 'interested in fairness and justness. Probe to make sure. When you are asking them your questions use the technique of making them argue against the absent contender. Ask them, "What would you say to the one who says (thus & such)." Ask them, "What do you mean?" Allow them to expound freely and you listen very carefully. Look for the handles you discern which are ignorant or stupid and say again. "That's very interesting! But how do you counter the one who says (present a logical offense)?"

6.28 Using the above technique will free you of having to appear as a contestant and it gives the party you are talking to the chance to admit for themselves that perhaps they need more information, etc. YOU are then in a position to offer the truth, but again I appeal that you go slowly, one step at a time, until you are convinced the one you are studying with is ready to convert. Allow them to convert themselves, you don't need to twist any arms.

6.29 In America every man and woman is a Prince, but too few of us know it and would actually rather be Paupers. If you don't believe it then don't act like it and stand proud with your garment of the Colato wrapped around you. Get some knowledge, but with your knowledge also get understanding - unless we shape the future for life it will be cast into a Paupers grave. Our thoughts and actions build habits. Habits display character. Character predicts destiny! Let's start acting like the Prince's we legally have the right to be!

6.30 The warning to the Prince's is that Truth and Time are on the side of experience. The Super Rich have clearly shown us the way! If you haven't carefully compared your personal opinions against their inevitable ends I suggest that those who have will be able to help you only if you are ready for what works rather than for what merely sounds good. If you do not perceive yourself a tax slave you either do not know what is in Chapter Five or you're convinced of your opinions and don't want to be bothered with facts. In either case we couldn't care less. Do as you wish.

TAX FREE! How the *super rich* do it!

6.31 If on the other hand you understand what I've been writing about and you want personal freedom, put the secrets of the Super Rich to work for yourself, your family, your business or estate. The practical long term effect of our doing well by ourselves will shape our posterity to expect the same for themselves. It doesn't matter that we are convinced the country needs a fair, just, and American law. We will only be able to share what we have when we have it to share. Liberty is a purely personal thing. We can only give it away to those who want it when we have it to give.

6.32 Lastly let me say that I am optimistic for America - the bastion of liberty! Though freedom is presently a memory of distant past (pre 1913) this is the country where the citadel of liberty was genuinely established. Since it was, and since America is still so great I'm confident we can rid ourselves of the slavish mentality of our Congress and demand that the bulwark of freedom be restored. I'm so confident because the secrets of the Super Rich revealed to those who can think and act for themselves will shove the responsibility upon those who must learn to live free or be bent over by their chains. To the tax slave - the true Pauper - I openly say: We seek not your comfort or alliance. May your chains set lightly upon you, and may your peers forget you were ever our countrymen.

Lesson Six

6.33 We learned that as long as there are business motives one may avoid the tax by whatever legal means is available. We also learned however, that tax avoidance becomes tax fraud when escaping the tax is our only motivation. There must be business considerations for changing our operations which rest on more than simple tax avoidance.

6.34 Since national liberty and justice for all is not currently in vogue we have learned that the only real escape presently is to use the tools of the Super Rich. In addition we must be ever watchful and prepared for either the opportunity to save America or leave it to the dogs. Interestingly, using the secrets of the Super Rich give us the option of either saving it or leaving it. We are not bound to one or the other. If we find leaving America is the only chance we have to retain our freedoms all we have to do is leave. As I've said in the last chapter, attorney William G. Hill has written extensively concerning becoming a citizen of the world in his book, *PT*. This chapter however, will focus on saving America because I'm optimistic enough to believe that enough people using the secrets of the Super Rich will pragmatically save America from herself.

6.35 We have kindred brothers and sisters who have attempted to escape the injustices by tax evasion techniques. They have proven that anyone else who tries such means are running the risk of losing everything they have accumulated. The other method is to get the law changed. Now, that may seem as great or greater an impasse as the problems we face. We must not lose sight however that the law was changed - legally, though not morally - in 1913 by Constitutional amendment. We are given some hope when we remember that the Supreme Court of the United States overturned its own decision on the *Dread Scott* case wherein the high court held that Afro-Americans were legally chattel property. Further hope is resurrected when we recall the 18th Amendment to the United States Constitution concerning prohibition: it was also repealed. The only real hope for America is to repeal the 16th Amendment! (The income tax amendment).

Let's all be Princes or Die as Paupers!

6.36 This suggestion gives apprehension to many who conceive our country couldn't operate without taxes. Of course they are correct - we must have taxes! Anxiety is also suffered by those who realize what radical and dangerous precedents were forged in America early in 1913. In January of 1913 we got the Second Plank of Karl Marx's *Communist Manifesto*, and in December of the same year we got the Fifth Plank, the Federal Reserve Act. Yet I remain convinced that when enough people avail themselves of the secrets of the Super Rich a genuine solution will be gladly received by both sides --- the Super Rich, the poor, and everybody else.

6.37 It appears that our country is damned by not collecting taxes and we are damned by the techniques it uses to procure what it must have to sustain us all. If taxation is good, it reasons there must also be a good way to collect it without insult and injury. There is such a good way to collect taxes! Unfortunately what we lost sight of is the honorable, righteous, honest, American and fair techniques. We undisputedly adopted the Communist's ideology for our tax law. All we need to do now is embrace what the peoples of the communist world are accepting today. They have revolted! They have suffered the indignities of the unworkable communism and said "**enough!**" While they seem to be heading the right direction by escaping from the grip of communism, America blissfully and ignorantly heads the direction they are retreating from. There is a balance, however, and that balance when the honest and equitable system is imposed will free us all!

6.38 As the insightful and brilliant economist Thomas Sowell wrote:

Much of the social history of the Western world, over the past three decades, has been a history of replacing what worked with what sounded good. In area after area - crime, education, housing, race relations - the situation has gotten worse after the bright new theories were put into operation. The amazing thing is that this history of failure and disaster has neither discouraged the social engineers nor discredited them.

We may be entering an era when the greatest dangers to the survival of Western civilization will come from internal social deterioration. Other great civilizations have declined and collapsed. We may be the first, however, to slowly sink into the quagmire, still beaming from ear to ear in self congratulation at how "innovative" we are in our social policies.⁶¹⁸

6.39 For the same noble sounding reason - "a community that cares" - the honest, just, and equitable system of taxation was replaced for one that has produced death, chaos, and discord. Our current tax system since its inception in 1913 has not been based on actual experience of what works, but on untested theories and lofty rhetoric. As hindsight is 20/20 vision we should easily recognize that the test has gone on long enough and it should be exposed for what it really is - communism, unworkable "democratic socialism."

⁶¹⁸ Sowell, Thomas; *Social Engineers Sinking Western Society*, Scripps Howard News Service, December 18, 1989. Mr. Sowell is a senior fellow at the Hoover Institution in Stanford, California.

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6.40 Is it not time we reexamined as solutions what our forefathers gave us? After all, did they not give us a written constitution which has lasted longer than any other in the world? Did they not also give us by such liberties greater happiness than any other regime the world has ever known? Is there a solution that can be proved that is more than high-minded verbosity?

6.41 I won't argue that it would never be possible any other way to reach the same conclusions as are offered in Judeo Christian Scripture. In fact many have independently come to identical resolutions offered by Judeo Christian Scripture. For example, "what goes around comes around," is a restatement of what Hesiod wrote in c 700 B.C.:

Do not seek dishonest gains: dishonest gains are losses.⁶¹⁹

6.42 Both the modern and ancient sayings are confirmations of what scripture began saying nearly 4,000 years ago, to wit:

According to what I have seen, those who plow iniquity and those who sow trouble harvest it.⁶²⁰

Do not be deceived, God is not mocked; for whatever a man sows, this he will also reap.⁶²¹

6.43 I have no doubt some will instantly argue my forum is wrong for this discussion, but it should be axiomatic by now from the earliest parts of this work that it is we who have long departed from Truth. Because I've so often heard asinine exhortations concerning the futility of serious study of scripture it's time popular literature should present even controversial truth when reason imposes no other channel. Therefore this forum is better than most because it's right where we live that the principles of truth must emerge if we are to enjoy a better life.

6.44 The crux of my obvious premise that scripture holds the answer for our mess is surrounded with the problem concerning reliability of scripture and the usual mindless conclusion "that with so many errors in scripture" it should be dismissed from any scholarly consideration.

6.45 As I can only briefly touch on this subject I must do it enough justice to cause the reader to consider the weight of my conclusion as substantive authority. Nothing less has been required for the presentation of our entire subject, therefore I will continue that form because it will require the sensible person to carefully consider what I now present. If scripture is found to be true then what Christ offers in His Word, "baptism into life with a capitol 'L,'" must be considered as rationally as any alternative plan. I attest and avow this is the deepest longing *of every one's heart!* No one **never** wanted life without a capitol "L." We're all searching for it, striving for it in one arena and then another, but as the secret of the Super Rich - which in reality is no secret - has been hidden from most of us here's another even more important discover- waiting for the few who turn aside long enough to ascertain the veracity of what is offered and how dependable the promises are.

⁶¹⁹ *Works and Days.*

⁶²⁰ Job 4.8.

⁶²¹ Galatians 6.7. First century B.C.

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6.46 Christ himself said:

"The thief comes only to steal, and kill, and destroy; I came that they might have life, and might have it abundantly." ⁶²²

6.47 The perceptive thinker knows that destruction, theft, and murder has been our common fortune and he or she is ready to seriously locate and consider an alternative. No evidence is necessary nor will he offered to "prove the Bible," and we shall understand why below, but evidence is clearly obligatory for providing a *basis* for determining whether or not the Bible can be intellectually depended upon. Is it or not some fanciful unreliable superstition or is there a basis of historicity that *compels* honest enquiry? The question demands the analytical approach.

6.48 If we can determine with reasonable acuity the historical reliability of scripture it's logical to conclude that the Truth it offers is as ancient as it is modern. In other words, if there is Truth it is immutable, fixed and unalterable, and any claims it makes to problematical solution sufficiently warrants our attention. Let us therefore rationally inquire whether scripture is historically reliable. First, another question: Won't the reader grant that the test which has been established for the historical reliability of any ancient document should be the same criteria for the Bible? Why should there be one bibliographic test for works of antiquity and another for the Bible? I think wisdom dictates the test *should* be the same whether for Homer's *Iliad* or for God's Bible. The standard test uses the following three basic axioms:

1. The bibliographical test,
2. The internal evidence test, and
3. The external evidence test. ⁶²³

Why This Works! The Acid Test!

6.49 As I have alluded above we should not be surprised to learn that some of the ancient ways of things are solutions to our modern problems, because some of the old ways *corrected* many of the difficulties we presently face. Therefore it cannot lone be considered as valid that we're facing new problems because our society is experiencing different times when the facts show that the situation is as old as civilization!

⁶²² John 10.10.

⁶²³ Sanders, C. *Introduction in Research in English Literary History*. Page 143. New York: MacMillan Co., 1952.

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6.50 The very problem we must solve personally (and hopefully nationally) was once solved in both ways, and not so long ago, but long enough ago that any sensible person could easily judge its effectiveness for reconsideration. That's why it's imperative we look at a few of the justifications science and history validate. They are in complete harmony with each other in this area, as the entire economic and political form springs from this fountainhead.

6.51 This is why I have said that "my solution is hardly new and hardly mine!" It can only be called mine by those who have never been taught about it anywhere else, and it can only be called new by those who have never heard there was ever anything else. For example, I get quite a shocked look from today's 20 year olds when they learn that the federal income tax is only 75 years old. They can't believe it! As far as they are concerned it has been with us since the birth of our Union.

6.52 This is also why we shall embark upon the path I've laid out as we shall be inescapably driven to the conclusion when enough facts have been brought to the light of reason. The following material will bring us to the rational conclusion that an intelligent creator knew what He was doing when he mandated that "the rich shall not pay more and the poor shall not pay less." Hey, we've tried everything else and it hasn't worked so why shouldn't we try this? The interesting part of my question is that our Constitution got very close to this ideal (before we adopted Karl Marx) and we produced the best civilization the world has ever known. I think there is something here to seriously consider.

6.53 Therefore, let's follow -along and critically examine these tests: The bibliographic test is an examination of the textual transmission by which an ancient document finally reaches us. For instance, since we have none of the biblical originals the question deserves an answer: "How reliable are the extant manuscripts we have today which were made from a copy which itself was made from multiple generations of copies from copies of still other copies?" If this problem itself weren't enough then what about the time interval between when the original was written and the extant copies we have in our possession today? There's lots of time gaps, plus the known problem of "interpolation" - the unintentional adding or deleting of text by the latest transcriber.

6.54

Perhaps we can appreciate how wealthy the New Testament is in manuscript attestation if we compare the textual material for other ancient historical works. For Caesar's Gallic Wars (composed between 58 and 50 B.C.) there are several extant MSS [means actual, surviving, multiple generation copies of manuscripts in our *current* possession], but only nine or ten are good, and the oldest is some **900 years later than Caesar's day!** Of the 142 books of the Roman history of Livy (59 B.C. - A.D. 17), only 35 survive; these are known to us from not more than 20 MSS of any consequence, only one of which, and that containing fragments of Books III - VI, *is as old as the fourth century*. Of the 14 books of the Histories of Tacitus (ca [means circa or about the year] A.D. 100) only four and a half survive; of the 16 books of his Annals. 10 survive in full and two in part. The text of these extant portions of his two great historical works depends entirely on two MSS, one of the *ninth century* and one of the *eleventh*.

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The extant MSS of his minor works (Dialogus de Oratoribus, Agricola, Germania) all descend from a codex (means a book rather than the scroll which had previously been used] of the *tenth century*. The History of Thucydides (ca 460 - 400 B.C.) is known to us from eight MSS, *the earliest belonging to ca A.D. 900*, and a few papyrus scraps, belonging to *about the beginning of the Christian era*. The same is true of the History of Herodotus (B.C. 488 - 428). **Yet no classical scholar would listen to an argument that the authenticity of Herodotus or Thucydides is in doubt because the earliest MSS of their works which are of any use to us are over 1,300 years later than the originals.**⁶²⁴

6.55 John Warwick Montgomery came to the conclusion I am presenting. He said:

[T]o be skeptical of the resultant text of the New Testament books is to allow all of classical antiquity to slip into obscurity, for no documents of the ancient period are as well attested bibliographically as the New Testament.⁶²⁵

6.56 Sir Frederick G. Kenyon was the director and chief librarian of the British Museum until 1930. He is still considered second to none in substantive authority for his issued statements concerning ancient manuscripts. He said:

... besides number, the manuscripts of the New Testament differ from those of the classical authors, and this time the difference is clear gain. In no other case is the interval of time between the composition of the book and the date of the earliest extant manuscripts so short as in that of the New Testament. The books of the New Testament were written in the latter part of the first century; the earliest extant manuscripts (trifling scraps excepted) are of the fourth century - say from 250 to 300 years later.

This may sound a considerable interval, but it is nothing to that which parts most of the great classical authors from their earliest manuscripts. We believe that we have in all essentials an accurate text of the seven extant plays of Sophocles; yet the earliest substantial manuscript upon which it is based was written *more than 1400 years after the poet's death*.⁶²⁶

6.57 Concerning the time gap between the original and the earliest copy extant please compare the differences between the New Testament and the most classical works of ancient literature from this chart:

⁶²⁴ Bruce, F. F. *The New Testament Documents: Are They reliable?* Pages 16, 17. Emphasis supplied. Downers Grove; IL 60515: Inter-Varsity Press, 1964.

⁶²⁵ Montgomery, John Warwick. *History and Christianity*. Page 29. Downers Grove, IL 60515: Inter-Varsity Press, 1971.

⁶²⁶ Kenyon, Frederick G. *Handbook to the Textual Criticism of the New Testament*. Page 4. Macmillan and Company, 1901.

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Truth and Time!

Compiled from Josh McDowell's *Evidence That Demands A Verdict!*

<u>Author</u>	<u>When Written</u>	<u>Earliest Copy</u>	+	<u>Time Span</u>	<u>No. of Copies</u>
Caesar	100-44 BC	900 AD		1,000 yrs	10
Livy	59 BC-AD 17	350 AD		350 yrs	20
Plato (Terralogies)	427-347 BC	900 AD		1,200 yrs	7
Tacitus (Annals)	100 AD	1100 AD		1,000 yrs	20(-)
minor works	100 AD	1000 AD		900 yrs	1
Pliny the Younger (History)	61-113 AD	850 AD		750 yrs	7
Thucydides (History)	460-400 BC	900 AD		1,300 yrs	8
Scutonium (De Vita Caesarum)	75-160 AD	950 AD		800 yrs	8
Herodotus (History)	480-425 BC	900 AD		1,300 yrs	8
Sophocles	496-406 BC	1000 AD		1,400 yrs	193
Lucretius	died 55 or 53 BC			1,100 yrs	2
Catullus	54 BC	1550 AD		1,600 yrs	3
Euripides	480-406 BC	1100 AD		1.5(X) yrs	9
Demosthenes	383-322 BC	1100 AD		1,300 yrs	200 all from 1 copy.
Aristotle	384-322 BC	1100 AD		1,400 yrs	48 of any one work.
Aristophanes	450-385 BC	900 AD		1,200 yrs	10
Homer (Iliad)	900 BC	400 BC		500 yrs	643
New Testament	40-100 AD	124 AD		25 yrs	24,000+

6.58 Of the above ancient works Homer's *Iliad* compares the best with the New Testament. It was considered "sacred." has about 15,600 lines whereas the New Testament has about 20,000 lines. Of the New Testament only about 40 lines or 400 words are in doubt whereas 764 lines of the *Iliad* are questioned. The five percent textual corruption of the *Iliad* compares to one-half of one percent similar emendations in the New Testament. The national epic of India, the *Mahabharata*, has suffered even more corruption. It's about eight times the size of the *Iliad* and *Odyssey* together, about 250,000

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lines, and of these some 26.000 lines or nearly ten percent are textual corruptions.⁶²⁷

6.59 There is almost no disagreement concerning the textual variations in the New Testament, and such differences are mostly in the guise of whether the word "and" or "even" was the original. Benjamin Warfield who served with great distinction as Professor of Systematic Theology at Princeton Theological Seminary until his death in 1921 quoted the earlier Ezra Abbot concerning "nineteen-twentieths" of the New Testament textual variations. The critically acclaimed *Evidence that Demands a Verdict* concluded with Warfield's quotation of Abbot saying that they:

... have so little support ... although there are various readings: and nineteen-twentieths of the remainder are of so little importance that their adoption or rejection would cause no appreciable difference in the sense of the passages where they occur.⁶²⁸

6.60 The result of all the differences of opinion come down to simple agreement and the following has been quoted by nearly everyone embarking the subject:

We possess so many MSS, and we are aided by so many versions, that we are never left to the need of conjecture as the means of removing errata.⁶²⁹

6.61 Scholars are satisfied and it cannot be too strongly asserted that in substance the text of our New Testament is certain! The number of manuscripts of the New Testament, of the earliest translations of it, of the early quotations from it, is so large that it is **certain** that the true reading of any doubtful passage is preserved in some one or other of the ancient authorities - *and this can be said of no other ancient book in the world!*

6.62 Though scholars are satisfied that we possess substantially the true texts of the principal Greek and Roman works of Sophocles, Thucydides, Cicero, Virgil, etc., they admit our knowledge hangs on a mere handful of manuscripts, whereas the number of New Testament manuscripts are in the tens of thousands! When the facts are known and compared, one is inescapably driven to the conclusion as Sir Frederick Kenyon put it, that:

[T]he Christian can take the whole bible in his hand and say without tear or hesitation that he holds in it the true Word of God, handed down without essential loss from generation to generation throughout the centuries.⁶³⁰

⁶²⁷ Geisler, Norman L. and William E. Nix. *A General Introduction to the Bible*. Pages 366-367. Moody Press. 1968.

⁶²⁸ McDowell, Josh. *Evidence that Demands A Verdict*. Page 43. Here's Life Publishers. Inc., San Bernardino, CA 92402. 1979

⁶²⁹ Tregelles. *Greek New Testament*. "Prolegomena," P.X.

⁶³⁰ Kenyon, Frederick G. *Our bible and the Ancient Manuscripts*. Page 23, New York: Harper & Brothers. 1941.

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6.63 Concerning the Old Testament we don't have near the abundance of manuscript authority as we do of the New Testament. Until recently the oldest complete extant Old Testament manuscript was circa AD 900. That computes a time gap of at least 1,300 years assuming the Old Testament was completed about 400 B.C. as scholars generally agree. At first blush it would appear the Old Testament is no more reliable than other ancient literature. (See the chart above on page 244).

6.64 However, the discovery in 1947 of the "Dead Sea Scrolls" presents the solutions to the same questions we began this part with. The "Dead Sea Scrolls" were a discovery made in 1947 by a Bedouin shepherd boy. A cave about 8 miles south of Jericho in the cliffs on the west side of the Dead Sea unearthed several large jars containing leather scrolls which had been carefully sealed for nearly 1,900 years. The jars were placed there by a religious community of Qumran in A.D. 68. The discovery of some 40,000 inscribed fragments have reconstructed over 500 books, and established once and for all the genuineness, reliability, and credibleness of the Old Testament books.⁶³¹

6.65 As the oldest complete Hebrew manuscript was from about A.D. 980 the find at the Qumran cave gave archeologist a MS more than 1,000 years older than any MS they had previously possessed!⁶³² For an example of the absolutely incredible faithfulness in the transcription of the text we possess today in our modern language Old Testaments there is only one word in Isaiah 53 which is in question and as the reader *will* discover the audition or deletion of that one word has no significant change in the meaning of the passage. The word in question is "light:"

As a result of the anguish of His soul, He *will* see it (light) and be satisfied: By His knowledge the Righteous One, My Servant, *will* justify the many. As He will bear their iniquities.⁶³³

6.66 In other words, we could pick up that ancient leather scroll unwrap it from its linen cloth and read substantially word for word what we have today! Millar Burrows is quoted by Geisler, Nix, and McDowell as follows:

It is a matter of wonder that through something like a thousand years the text underwent so little alteration. As I said in my first article on the scroll: 'Herein lies its chief importance, supporting the fidelity of the Massoretic tradition.'⁶³⁴

Internal Evidence Test!

6.67 Josh McDowell quotes what John Warwick Montgomery recognized, and what the "Dead Sea Scrolls" discovery has proven. that literary critics should still follow Aristotle's dictum that:

⁶³¹ McDowell, Josh. *Evidence That Demands A Verdict*. Pages 39 - 79. Here's Life Publishers, Inc., San Bernardino, California 92402.

⁶³² McDowell. *Ibid*, page 58.

⁶³³ Isaiah 53.11.

⁶³⁴ Geisler, Norman L. and William E. Nix. *A General Introduction to the Bible*. Page 261. Chicago: Moody Press. 1968. McDowell. *Evidence That Demands A Verdict*. Page 58. *Ibid*.

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"the benefit of the doubt is to be given to the document itself, not arrogated by the critic to himself." ⁶³⁵

6.68 Of course that only makes too much sense, therefore we need to listen to the claims of the document being analyzed and not assume fraud or error unless the author disqualifies him or herself by either contradictions or known factual inaccuracies. In amplification of this point Josh McDowell quotes Robert Horn:

Think for a moment about what needs to be demonstrated concerning a 'difficulty' in order to transfer it into the category of a valid argument against doctrine. Certainly much more is required than the mere appearance of a contradiction. First, we must be certain that we have correctly understood the passage, the sense in which it uses words or numbers. Second, that we possess all available knowledge in this matter. Third, that no further light can possibly be thrown on it by advancing knowledge, textual research, archaeology, etc. *Difficulties do not constitute objections.... Unsolved problems are not of necessity errors.* This is not to minimize the area of difficulty; it is to see it in perspective. Difficulties are to be grappled with and problems are to drive us to seek clearer light; but until such time as we have total and final light on any issue we are in no position to affirm. *'Here is a proven error, an unquestionable objection to an infallible Bible.'* ***It is common knowledge that countless 'objections' have been fully resolved since this century began.*** ⁶³⁶

6.69 There is also a "primary source" value that cannot be disputed. The writers of the New Testament, for example, wrote from first-hand experience. Look at some of the statements we can produce:

In as much as many have undertaken to compile an account of the things accomplished among us, just as those who from the beginning were eyewitnesses and servants of the word have handed them down to us, it seemed fitting for me as well, having investigated everything carefully from the beginning, to write it out for you in consecutive order, most excellent Theophilus; so that you might know the exact truth about the things you have been taught. Luke 1.1-4.

For we did not follow cleverly devised tales when we made known to you the power and coming of our Lord Jesus Christ, but we were eye-witnesses of His majesty. 1 Peter 1.16.

What we have seen and heard we proclaim to you also, that you also may have fellow-ship with us; and indeed our fellowship is with the Father, and with His Son Jesus Christ. 1 John 1.3.

⁶³⁵ McDowell, Josh. *Evidence that Demands a Verdict. Ibid*, page 61.

⁶³⁶ McDowell. *Evidence that Demands a Verdict. Ibid*, page 61 quoting from the **1881** work by Fenton John Anthony Hort and Brooke Foss Westcott. *The New Testament in the Original Greek*. Emphasis supplied. New York: Macmillan Co., 1881. Vol. 1. Even greater light has come to us during this 20th Century than in the 19th. The discoveries beginning in 1947 are no doubt the greatest. The intellectual is driven inescapably to the veracity of scripture so long as he or she entertains all the facts.

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Men of Israel, listen to these words: Jesus the Nazarene, a man attested to you by God with miracles and wonders and signs which God performed through Him in your midst, just as you yourselves know.... Acts 2.22.

And he [John the apostle is speaking of himself in the third person "he"] who has seen has borne witness, and his witness is true; and he knows that he is telling the truth, so that you also may believe. John 19.35.

And while Paul was saying this in his defense, Festus said in a loud voice. "Paul, you are out of your mind! Your great learning is driving you mad." But Paul said, "I am not out of my mind, most excellent Festus, but I utter words of sober truth. **For the king knows about these matters, and I speak to him also with confidence, since I am persuaded that none of these things escape his notice; for this has not been done in a corner.** Acts 22.24-26. Emphasis supplied.

6.70 Couple these remarks with this one, and note the kind of internal proofs which are available to the thinking person who really wants to know the truth – who suspects "*and you shall know the truth, and the truth shall make you free*"⁶³⁷ just might be correct:

Now in the fifteenth year of the reign of Tiberius Caesar, when Pontius Pilate was governor of Judea, and Herod was tetrarch of Galilee, and his brother Philip was tetrarch of the region of Ituraea and Trachonitis, and Lysanias was tetrarch of Abilene.... Luke 3.1.

6.71 This primary source is so valuable because the earliest preachers of the gospel had to consider that there were many others who were also conversant on an eyewitness level of the main facts concerning the ministry, death, and resurrection of Christ. The Apostles could hardly afford to risk inaccuracies - to say nothing of willful manipulation of facts - which would be exposed immediately by those who would have had a great deal to gain in such exposure. "We are witnesses of these things" is substantiated by "as you yourselves also know!" Any departure from the facts would just as surely have met corrective notice from the presence of hostile witnesses in the audiences of the New Testament preachers and writers. Further, there is no ancient work which even attempts to discredit the writers!

6.72 There is now no contest in bibliographical research that the Bible is not completely reliable in each and every claim it makes.

External Evidence Test!

6.73 Are there any other historical sources of materials apart from the literature being analyzed that either substantiates or refutes its accuracy, authenticity, and therefore its reliability? The evidence by early writers is just too great to refute, indeed no one even tries! I will mention a few who axiomatically regarded the scripture as accurate and _reliable; Eusebius in his *Ecclesiastical history* preserves writings of Papias, the bishop of Heirapolis (AD 130) which Papias got from the Elder (apostle John); Irenaeus, Bishop of Lyons (AD 180) was a student of Polycarp, Bishop of Smyrna, and martyred in AD 156 for his relentless devotion to Christ and the scriptures, had been a Christian for 86 years, and was a disciple of John the Apostle. He wrote:

⁶³⁷ John 8.32.

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So firm is the ground upon which these Gospels rest, that **the very heretics themselves bear witness to them, and, starting from these [manuscripts], each one of them endeavors to establish his own particular doctrine.** [So what's new?] For as there are four quarters of the world in which we live, and four universal winds, and as the church is dispersed over all the earth, and the gospel is the pillar and base of the church and the breath of life, so it is natural that it should have four pillars; breathing immortality from every quarter and kindling the life of men anew. Whence it is manifest that the Word, the architect of all things, [ref John 1.1-14], who sits upon the cherubim and holds all things together, having been manifested to men, has given us the gospel in *fourfold form*, [ref: the four gospels, Matthew, Mark, Luke, and John] but held together by one Spirit [ref: many of Paul's epistles. Cf Ephesians 4.3 - 4]. Matthew published his Gospel among the Hebrews in their own tongue, when Peter and Paul were preaching the gospel in Rome and founding the church there. After their departure [tradition holds their deaths accountable to the Neronian persecution in AD 64] Mark, the disciple and interpreter of Peter, himself handed down to us in writing the substance of Peter's preaching. Luke, the follower of Paul, set down in a book the gospel preached by his teacher. Then John, the disciple of the Lord, who also leaned on His breast (ref: John 13.25 & 21.20] himself produced his gospel, while he was living at Ephesus in Asia.

*Against Heresies III.*⁶³⁸

6.74 Ignatius (AD 70 - 110) was Bishop of Antioch and was martyred for his faith in Christ. He knew all the apostles and was a disciple of Polycarp who was a disciple of the apostle John. Ignatius who was thrown to the lions in the colosseum at Rome said:

I would rather die for Christ than rule the whole earth. Leave me to the beasts that I may by them be partaker of God.⁶³⁹

6.75 Certainly Ignatius was a man who had sufficient material and witnesses to rely on or discount the trustworthiness of scripture. No greater test of faith has ever been given, nor by so many too numerous through the ages to recount here. See Fox's *Book of Martyrs*.

6.76 Flavius Josephus was a Jewish historian during the Christian age who was not converted to Christianity. His writings substantially confirm the Old and New Testament Scriptures.⁶⁴⁰ Tatian (AD 170) even organized the scriptures in order and put them into the first "Harmony of the Gospels" called *The Diatessaron*.

6.77 Then we have the vast confirmations of archaeology. Nelson Glueck the renowned Jewish archaeologist wrote:

⁶³⁸ McDowell. *Evidence that Demands a Verdict*. *Ibid*, page 63.

⁶³⁹ Mover. Elgin S. *Who Was Who in Church History*, Rev. ed. Chicago: Page 209. Moody Press, 1956.

⁶⁴⁰ *Josephus, Flavius. Flavius Josephus Against Apion. Josephus. Complete Works*. Translated by William Whiston, Grand Rapids: Kregel Publications. 1960.

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It may be stated categorically that no archaeological discovery has ever controverted a biblical reference.⁶⁴¹

6.78 He continued his affirmation of "the almost incredibly accurate historical memory of the Bible, and particularly so when it is fortified by archaeological fact. "⁶⁴² The excessive skepticism towards the Bible today is a carry over from certain important historical schools of the 18th and 19th centuries, because the arguments raised today are from those same schools of thought even though they have been progressively discredited. William F. Albright, known as the eminent archaeologist raised this very point and stated in opposition:

Discovery after discovery has established the accuracy of innumerable details, and has brought increased recognition to the value of the Bible as a source of history.⁶⁴³

[A]rchaeology has rediscovered whole nations, resurrected important peoples, and in a most astonishing manner filled in historical gaps, adding immeasurably to the knowledge of biblical backgrounds.⁶⁴⁴

As a critical study of the Bible is more and more influenced by the rich new material from the ancient Near East we shall see a steady rise in respect for the historical significance of now neglected or despised passages and details in the Old and New Testament.⁶⁴⁵

6.79 The most incredible thing these things show us is that the situation of unbelief has actually gotten worse instead of better - even after the astounding discoveries of the latter half of this century. I confess I don't understand how it is that demonstrable error has neither discouraged the skeptics nor discredited them. Their exalted sounding rhetoric, in spite of evidence to the contrary, seems to sway a greater number of people than the truth. However, here I believe is the cause for the unbelief:

The excessive skepticism of many liberal theologians stems *not from a careful evaluation of the available data*, but from an enormous predisposition against the supernatural.⁶⁴⁶

6.80 The Yale archaeologist adds his influence to the above declaration: On the whole, however, archaeological work has unquestionably

⁶⁴¹ Glueck, Nelson. *Rivers in the Desert: History of Negev*. Page 31. Philadelphia: Jewish Publications Society of America, 1969.

⁶⁴² *Ibid.*

⁶⁴³ Albright, William F. *The archaeology of Palestine*. Rev. ed. Page 128. Harmondsworth, Middlesex: Pelican Books, 1960.

⁶⁴⁴ Unger, Merrill F. *Archaeology and the Old Testament*. Page 15. Chicago: Moody Press. 1954.

⁶⁴⁵ Albright, William F. *From the Stone Age to Christianity*. Page 81. Baltimore: Johns Hopkins Press. 1946.

⁶⁴⁶ Vos, Howard. *Can I Trust My Bible?* Page 176. Chicago: Moody Press, 1963.

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strengthened confidence in the reliability of the Scriptural record. More than one archaeologist has found his respect for the bible increased by the experience of excavation in Palestine.⁶⁴⁷

On the whole such evidence as archaeology has afforded thus far, especially by providing additional and older manuscripts of the books of the Bible, strengthens our confidence in the accuracy with which the text has been transmitted through the centuries.⁶⁴⁸

6.81 Josh McDowell who wrote *Evidence That Demands A Verdict*, and from which we have quoted liberally, set out to disprove the reliability of scripture. He relates his personal experiences, and summarizes the problem for us:

After trying to shatter the historicity and validity of the Scripture, I came to the conclusion that it is historically trustworthy. If one discards the Bible as being unreliable, then he must discard almost all literature of antiquity. One problem I constantly face is the desire on the part of many to apply one standard or test to secular literature and another to the Bible. One needs to apply the same test, whether the literature under investigation is secular or religious. Having done this, I believe one can hold the Scriptures in his hand and say, "The Bible is trustworthy and historically reliable."

6.82 Here is a verse from Sir Walter Scott's *The Monastery* that warrants our attention as it poetically calculates what the scriptures themselves have long declared:

Within that awful volume lies
The mystery of mysteries
Happiest they of human race
To whom God has granted grace
To read, to fear, to hope to pray
To lift the latch, and force the way:
And better had they ne're been born,
Who read to doubt, or read to scorn.

6.83 The difference in "opinion" at this point would appear to be "attitude." and attitude cannot change until one comes voluntarily to the table to seek the Truth from amongst all that which only poses as truth. So many things get in the way, its time to consider whether a much closer and intellectual look is not now prescribed and ordained.

6.84 With the evidence I have presented - and I have barely scratched the surface - I trust the reader would seek some answers for him or herself - because to those of us who have tasted the great riches belonging to Christ as His joint heirs has come the true recognition:

... that His divine power has granted to us [who are in Christ) *everything* pertaining to Life and godliness, through the true knowledge of Him who called us by His own glory and excellence. For by these He has granted to us His precious and magnificent promises, **in order that by them you might become partakers of the divine nature**, having escaped the corruption that

⁶⁴⁷ Burrows, Milla. *What Mean These Stones?* Page 1. New York: Meridian Books. 1956.

⁶⁴⁸ *What Mean These Stones?* Ibid. Page 42.

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is in the world by lust.⁶⁴⁹

6.85 I testify to you most sincerely, that within the deepest recesses of your heart is a desire which only scripture and obedience to that scripture can secure. There is no peace without it. Look at the world. They mouth the familiar phrase "what goes around comes around," but they practice stealing any way and exalt it as "the American way" when referring to our tax system. In truth it is as unAmerican as it is ungodly. It may seem to be easy to excuse stealing in the form of our taxes because "it's the law." but there is never an excuse for not obeying what intuitively we know to be the Truth of God: that no one whose sins have not been washed away can be a **partaker of the divine nature**.

6.86 I have contended earnestly that it is stupid not to look into Judeo Christian Scripture for some answers to our tax dilemma. Logic dictates that when so much of what we are springs from Judeo Christian sources, we do ourselves a great harm to think its counsel is outdated. Contrary to popular belief and application, those principles are just as dynamic concerning the human emotions - anger, envy, avarice, hate, love, sorrow, and zeal - as they were when they were written. In fact the English common law for the most part is built upon that standard. Our forefathers were certainly influenced by its exhortations. I suggest we look intently in scripture, because either we will adopt the solution or the lack of one will destroy Western civilization. The solution is not so badly needed as it is imperative! Interestingly, the solution is not only held there, but like the common law which has remained the same - we are the ones who left it for the lofty rhetoric of ideas which sounded good, but which when tested by time have been found wanting. However, the door is open wide enough for any who will go in.

Basis for My Proposed Legislation

6.87 Because of the above examination we are compelled to ask whether Holy Scripture offers any advice on how to tax? Indeed it does:

The Lord also spoke to Moses, saying, "When you take a census of the sons of Israel to number them, then each one of them shall give a ransom for himself to the Lord, when you number them, that there may be no plague among them when you number them. This is what everyone who is numbered shall give: half a shekel according to the shekel of the sanctuary (the shekel is twenty gerahs), half a shekel as a contribution to the Lord. Everyone who is numbered, from twenty years old and over, shall give the contribution to the Lord. *The rich shall not pay more, and the poor shall not pay less* than the half shekel, when you give the contribution to the Lord to make atonement for yourselves. And you shall take the atonement money from the sons of Israel, and shall give it for the service of the tent of meeting, that it may be a memorial for the sons of Israel before the Lord, to make atonement for yourselves."⁶⁵⁰

⁶¹⁹ 2 Peter 1.3-4. Emphasis supplied.

⁶²⁰ Exodus 30.11-16.

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6.88 We would be wise to come back to the age old system of counting the people and simply assessing an equal amount to each so that no one pays more and no one pays less. With the advantage of hindsight from history we are inescapably driven to the conclusion offered here. We departed from fairness, truth, and justice thus they no longer reign and the mess has become our Master. We must return before we can expect it to benefit us. Alas, the only choice now is to use the tools of the Super Rich. But use them we must if we are to force the issue. I believe it's the right way.

6.89 Forcing the issue is the right way for one major reason. It's the template which has already been struck by those who brought us the Marxian tax. How did we get to where we are? Economic avarice and greed motivated our country to adopt the Marxian principle of "from each according to his ability to each according to his need." Had that been true we wouldn't see millions in the communist capitals fleeing it today. It's not true. It's a lie. It sounds good, but doesn't work. It's a violation of an immutable law: theft. Stealing is stealing, whether it's done by legislative fiat or not.

6.90 The principle is clear: we do not exact from one class anything more than from the rest. It must be equal taxation under the law or there can be no respect for any law at all. As a Union we tried to get the Super Rich to pay for us. Therefore they created the system and the statutes protecting themselves from the Amendment which was designed make them our slaves. The middle class thought their Amendment would make only the rich pay. Instead the only ones who have ever paid are the middle class! Therefore the road back from serfdom can be found on the same map which brought us to where we are. If a few of us shelter ourselves from the Marxian iron grip on our economic lives - and thus enslaving us mentally, physically, and spiritually - we can turn back up the long road we have come down. Yes, just a few of us could change the whole thing!

6.91 You say, "How could just a few accomplish what would obviously take many to support?" Just a few, possibly as few as 3% of our population were the active parts which brought us the 16th Amendment, the (Act of 1913) Federal Reserve Bank, and the I.R.S.⁶⁵¹ We have the template of history and there's no reason we can't use it now to turn things around. Certainly it is true that the Super Rich control the Federal Reserve, etc., today, and they won't easily turn loose of their control. They will be glad, however, to turn them loose when they can be assured of just two things:

- (1) That there is no way they can stop the tide, as in 1909, and
- (2) That there is no way they will have to pay more than the rest.

6.92 Our solution lies in one simple stroke. Go back and undo what was intended to rob the few which now robs the many. Make rich and poor alike pay the same. You say, "but the poor could never pay!" The truly poor could not, that's true, and they will always be with us, but the truly capable can, should, and would! I believe the only way to bring this to pass is to use the tools the Super Rich have used for a hundred or more years. Use them to bring others to realize that they can be free by using them as well. Once enough people are using them there will be more than enough people to enact fair, just, and honest taxation. We will then no longer hear that our Marxian system is "the American way." How it makes me sick at heart to hear Americans make this declaration! As I said before, maybe, just *maybe* we could re-enact the Constitution of the United States of America as our law. At least we should legislate liberty, but only liberty and justice for all! And we should do it in our time! *How the Super Rich Do It!* should be changed to *How We All Do It!*

⁶⁵¹ Oh, 1913! A year that will live in the annals of infamy.

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6.93 I am not suggesting we go back to exactly what our forefathers gave us in apportionment. As fair as it may have been then it would certainly not be fair today. Dividing the total cost of the federal government by the fifty states and then the taxable persons of each state paying their allotted share wouldn't be as fair for the people of Rhode Island versus California or New York. Of course apportionment was never even used by our forefathers, so we don't know whether it would have been fair then or not! It may not have been as possible as it is be today to simply take the cost of government and divide it among every able bodied man age 18 and over and each woman who wants to hold a job. I think it would have been possible then, and that's what the census was for. I think our forefathers simply didn't have the courage to go as far as they needed to and that was divide the cost equally among every able bodied male person.⁶⁵²

6.94 I am opposed to a "federal sales tax," which would neither be equal nor fair, because it would be as progressive as the system Karl Marx devised. The one who spends more would pay more. That's a violation of the principle that we each pay an equal share. I am also opposed to a "flat tax" for the same reasons. That's a system where we each pay a prescribed percentage of our incomes to the government. There is no difference to the Marxian system we have now and it just doesn't work and makes people slaves. Further, it makes cheats out of others because they feel the greater pinch.

6.95 What could be more fair, more simple, and more just than taking the census just as Congress was directed (that's the reason it's there) and then assess each person over the age of 18 or 20 his or her share of the total cost of government divided by the total number of persons? Contained in this number would be every corporate person *including Colatos!* This is not a magnanimous gesture. It is just as my proposition states - each person pays his or her fair share.

6.96 The only objection this type of system would receive is that there would be a double tax where every corporate type entity was to be used, once at the entity itself and again at the share holder level. However, this would operate as an incentive for people to do business in their own names again except where size would dictate otherwise, and then the corporate type entities could pay the tax as a person under the law. Since they would pay exactly the same amount as any other person there would be no loss of stimulus for them or any natural person to do as well as possible financially.

6.97 There can certainly be no real objection to having each and every person paying his or her fair share, because it would indeed be "fair." The only ones who would oppose such a system are those who would obviously be looking for other work due to the fact taxes would be so simple we wouldn't need the exhaustive volumes which are regularly pumped out to help us understand the law or to know how much we need to pay or to learn how to get out of paying something, etc. Let me ask the reader a question: What genuine values do these people put into productive America? Answer: Absolutely none! To those I say, you have my sympathy - even my empathy, but it's time you produced something that will give a value back to America instead of only providing a service which perpetuates a system we do not need and cannot afford.

6.98 True, my proposal (hardly new & hardly mine) would not control government spending. Governments would still be able to spend more than they took in. but the solution to that problem is a balanced budget. Such nonsense of indiscriminate government spending must be as illegal as it is immoral, and the Congress person voting for any measure which would spend money the government doesn't have should either pay the bill him or herself or go to jail for imposing the theft upon the people. The government must not be allowed to spend any more than it takes in. I also don't think we need an Amendment to the Constitution for such a thing. Congress simply needs to

⁶⁵² Cf Exodus 30.15. Another reason suggests that since the federal government was so small it really didn't need the taxes very much.

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make it a law. What business or family operates on anything differently. We must realize the government is no less responsible than we force it to be. I also think such a law would pretty quickly see the end of the fiscally stupid welfare programs some feel civilized governments need. We would see a resurgence of the churches taking care of the family welfare problems only they have the ability to supervise and stay on top of. They are in the community where the "rubber meets the road", and not some cold branch of government which can't possibly stay ahead of the facts.

6.99 We must take a lesson from the successful church welfare programs. They work because they are fair, right, honest, and know whether their resources are being, properly used or abused. The church I'm a member of (small and far less known than most) has a welfare system that works, and even has a surplus, because not only is it right, honest and fair it has the ability to determine the truly needy. Most all other churches have similar programs. The only reason they don't work so well is that so much of their member's money is taken by wasteful bureaucratic government. If we were to scrap the government programs altogether, the only ones who would be crying are those who refuse to work.

6.100 Interestingly, the New Testament says something about those who refuse to work:

Now we command you, brethren, in the name of our Lord Jesus Christ, that you keep aloof from every brother who leads an unruly life and not according to the tradition which you received from us. For you yourselves know how you ought to follow our example, because we did not act in an undisciplined manner among you, nor did we eat anyone's bread without paying for it, but with labor and hardship we kept working night and day so that we might not be a burden to any of you: not because we do not have the right to this, but in order to offer ourselves as a model for you, that you might follow our example. For even when we were with you, we used to give you this order: *if anyone will not work, neither let him eat*. For we hear that some of you are leading an undisciplined life, doing no work at all, but acting like busybodies. Now such persons we command and exhort in the Lord Jesus Christ to work in quiet fashion and eat their own bread. But as for you, brethren, do not grow weary of doing good. And if anyone does not obey our instruction in this letter, take special note of that man and do not associate with him, so that he may be put to shame. And yet do not regard him as an enemy, but admonish him as a brother. Now may the Lord of peace Himself continually grant you peace in every circumstance. The Lord be with you all! ⁶⁵³

6.101 Sometimes a solution can be so simple. Such a beautiful and simple solution would see the end almost over night of the third generation welfare parasites! I'm not suggesting the programs end over night, but only a short time is necessary to warn everyone that on a certain date the free lunch will end. The undisciplined will get some discipline pretty fast and we would be free to admonish them as our human brothers. I'm certain we could even make them productive brothers! Regardless of what one may think about holy writ we are inescapably driven to its solutions for our problems - they work! In fact, they worked very well until the social engineers devised programs which haven't worked because they are ungodly, unAmerican, and immoral.

⁶⁵³ 2 Thessalonians 3.6 - 16. Cf 2 Peter 1.3 re how much we have been given for life and for godliness. Cf I Thessalonians 4.11.

⁶⁵⁴ Cf §6.38f

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Model Tax Law

6.102 As long or until this law becomes part of the Supreme Law of the Land⁶⁵⁵ the reader must use the tools of the Super Rich to enjoy the liberty this law would provide everyone! I genuinely believe and have shown that the way for America to adopt this amendment is for as many as wish to use the devices of the Super Rich. If we would do that, motivation would be provided from the pocket book level to change the corrupt law from its gross unjust and unpatriotic place to a fair, just and **American** law. Upon all the above considerations and basis I offer the following model tax legislation:

An Amendment to the Constitution of the United States

Section 1. The sixteenth article of amendment to the Constitution of the United States is hereby repealed.

Section 2. The Congress shall have Power To lay and collect Taxes on incomes, without apportionment among the several States.

Section 3. No capitation, or other direct, Tax shall be laid, unless equal and in Proportion to the Census or Enumeration herein before directed to be taken.

6.103 Compare the above with the 16th Amendment:

The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration.

6.104 You will note I dropped the two following phrases from the 16th Amendment:

"...from whatever source derived..." and "...without regard to any census or enumeration."

6.105 Let's analyze my proposal, to the United States Constitution and why these two clauses were deleted. First of all, can there be any doubt that our present day law is immoral and unAmerican? Witness and compare the second plank of the Communist Manifesto:

2. A heavy progressive or graduated level of income tax.⁶⁵⁶

That Marxian ideal became embodied in our 16th Amendment, and it was ratified in 1913. It is unAmerican and immoral because it is progressive and graduated. The proof

⁶⁵⁵ "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof: and all Treaties made, or which shall be made, under the Authority of the United States shall be the supreme Law of the Land..." Article VI, §2. *Constitution of the United States of America*.

⁶⁵⁶ *The Communist Manifesto*, by Karl Marx and Friedrich Engels, Washington Square Press. Pages 93-94. It doesn't matter whether it was Congress' intent to adopt a communistic principle. The outcome had that precise result.

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for that statement comes from hindsight - it's 20/20 vision. It had to be progressive and graduated because it was "sold" as a "soak the rich" scheme, and that's the reason the amendment called for ignoring the census. You will note that I put it back in just as our Forefathers understood the imperative.

6.106 The practical aspects of progressive and graduated taxes was clinched by disregarding any part of equality through the census and apportionment⁶⁵⁷. By any other standard it would have been called theft! *It is theft!* 1913's version of low rates - only 1% on annual income of up to \$20,000, and its maximum rate of 6% on annual sums of more than \$500,000 *in 1913 dollars*, - ensures that the law's intent cannot escape comprehension. In 1913 less than 1% of the population was required to pay income taxes. By 1918 the maximum rate was boosted to 77% for incomes of more than one million dollars and 5% of the population paid taxes. Finally, World War I was used along with volunteer public speakers to persuade the people that paying those progressive and graduated taxes for the war effort was a "*patriotic duty*"! ⁶⁵⁸

6.107 Legislated theft made it possible to tax only one class of our society, but that group was never to be the Super Rich. It was to be the class who knelt before the nefarious law, and they have been the only congregation who have ever had to pay the tribute. Almost 3,400 years ago (scholars believe) the virtuous standard for a census and tax was emphatically laid down:

Everyone who is lumbered, from twenty years old and over, shall give ... [and] the rich shall not pay more, and the poor shall not pay less...."

In other words, count the people, divide the cost of government expiation, and send every person of legal age a bill for like amounts.⁶⁶⁰

6.108 Wallace E. Olson, then president of the American Institute of Certified Public Accountants mocked our income tax system and rates. He reported on the debates held in Congress that:

A fear expressed by a number of opponents was that the proposed law, with its low rates was the camel's nose under the tent - that once a tax on incomes was enacted, rates would tend to rise. Sen. William E. Borah of Idaho was outraged by such anxieties, and derided a suggestion that the rate might eventually climb as high as 20 percent. Who, he asked, could impose such *socialistic, confiscatory rates*? Only Congress. *And how could Congress - the Representatives of the American People - be so lacking in fairness, justice and patriotism?*⁶⁶¹

⁶⁵⁷ Apportionment was some of the best our forefathers could give us. It was equal only to the extent that it divided the total government cost among the total states, but that's where the equality of the law broke down. The greater the population in one state the less the citizens of that state had to pay. My proposal would be equal across the board. For more on apportionment see §1.27ff

⁶⁵⁸ *Understanding Taxes*, 1986. United States Department of the Treasury, Internal Revenue Service Publication 21 (Rev. 10-35) Module 3, "History of Taxation." page 22.

⁶⁵⁹ Exodus 30.14f

⁶⁶⁰ Cf §6.102 and note the equality. Concerning the poor amongst us see §6.92ff and Cf with §6.99ff

⁶⁶¹ *Wall Street Journal*, October 5, 1973. Page 8 at columns 4-6. Emphasis supplied.

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6.109 There can simply be no other conclusion than our current day 16th Amendment is *socialistic and confiscatory*⁶⁶² - *therefore lacking in fairness, justice and patriotism!* It is absolutely immoral, unethical, and unAmerican!

6.110 The reason I dropped the clause "from whatever source derived" is because Americans are taxed on their world wide income. Very few nations in the world have stooped to such degradation. This terribly unwise language - or at least the Supreme Court's interpretation of it - drives the best brains, talent, skill, and ability to seek shelter in other countries. Why I ask, should our law drive away our very best and most productive people?

6.111 This interpretation in our law came as an attempt to prevent tax movie stars from residing abroad for more than 6 months and not paying federal income taxes. As a result of this policy (only about 30 years old) the United States is losing upwards of \$200 Billion per year in exports! Americans who change their citizenship to void income tax requirements get a far better deal economically!⁶⁶³ That \$200 Billion would go a long ways towards solving the balance of payments problems America faces the world today!

6.112 Possibly even Congress has realized this interpretation was another great national blunder because it now exempts from federal taxation the first nearly \$100,000 of annual income derived from outside the United States. However, only an amendment to the United States Constitution could totally solve this problem. When the people are ready for it they can all be free instead of only the class who plays the privacy game.⁶⁶⁴

6.113 Attorney William G. Hill recognizes the severity of this particular problem and several full size books deal with it. If we would think about it for only a moment we would understand quite easily that the money a person makes in a foreign country is going to come back home to benefit all of America. Instead the notion that we should tax our citizens on their incomes "from whatever source derived" is keeping a substantial sum of money in Eurodollars or whatever else.

6.114 In final analysis of my Model Law Sections 2 and 3 are merely restatements of Article I §8, the first and last clauses of same. So, you can see why I said earlier that my Model Law was hardly mine and hardly new. Our Forefathers understood the crucial necessity of such language and took painstaking efforts to make it a part of the Supreme Law of our land. The Supreme Court recognized this position in the case of *Pollock v. Farmers' Loan and Trust Co.*, 157 US 429. Rehearing 158 US 601 (1895). Then the 16th Amendment was created.

6.115 Once again, the free man or woman does not wait for the above law to become ratified. He or she merely uses the secrets of the Super Rich and waits patiently for the time when enough people will recognize the truth. When the middle class who bought and sold the concept of taxing the rich says *OUCH!* from the tax impact they face it will be time to help them realize that liberty is waiting for even them! Until then the masses seem to enjoy their masochistic Marxian tax scheme. Like the Super Rich we who chose liberty must say *let them alone!*⁶⁶⁵

6.116 This book offers its readers those choices a free man would seek.

⁶⁶² Cf §5.10 to see that our current day federal tax take is more than 150%

⁶⁶³ Hill, William G *PT*, page 92. Scope Books. Ltd.. Hants, Great Britain.

⁶⁶⁴ See §5.116.

⁶⁶⁵ Let the one who does wrong. still do wrong; and let the one who is filthy, still be filthy; and let the one who is righteous. still practice righteousness; and let the one who is holy, still keep himself holy. Revelation 22.11.

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Conceivably, social pressure by enough of us using the techniques of the Super Rich will swing the pendulum of Constitutional amendment back far enough to restore the design of the Constitution of the United States; to revive the spirit of the Declaration of Independence, and perhaps - *just perhaps* - to restore the first principles our founding fathers laid of a nation "under God," - who understood that their God was one who would not permit His people to get by with theft.⁶⁶⁶

6.117 May we one day be able to stand and say as William Bradford:
The light here kindled hath shone unto many.

If we could be so fortunate as a whole Union to see this a reality then we will truly understand Goethe who said:

I find the Great thing in this world is not so much where we stand, as to what direction we are going.

Let us resolve individually if not collectively to head in the direction of Life and Liberty!

⁶⁶⁶ "Do you not know that the unrighteous will not inherit the kingdom of God? Do not be deceived; neither the ... thieves, nor the greedy ... will inherit the kingdom of God". I Corinthians 6.10f.

Chapter Seven

The Prince Is Groomed!

**Have a definite, clear
practical ideal - a
goal, an objective ...
have the necessary
means to achieve your
ends - wisdom,
money, materials and
methods ... adjust all
your means to that end.**

Aristotle

7

Charting Your Course

7.1 Have you ever been driving in your car towards your destination and realized you were going the wrong way? You probably stopped at a gas station to look at their map. What was the very first thing you had to know as you looked at the map? Of course, you had to know *where you were on the map!*

7.2 Our economic maps are no different. We must have a clear yet practical objective or goal to reach. If financial independence is your goal and you understand the advantages trusts, Colatos, or foreign Colatos can provide it can be stated irrefutably that you will never reach that goal until you know *exactly how you will get there*. However as we have just pointed out you will never be able to know how to get where you want to go until you also know exactly where you are.

7.3 This chapter is designed to help you do it just like the Super Rich. Like being lost however, you must determine where it is you want to go and then plot the course you will run. That is why this chapter is the most important chapter in this book. Chapters Seven and Eight are also the most subjective chapters, because everyone's situation is vastly different from anything which could be modeled as "boiler plate." However, Chapter Eight's *Chart Room* will be useless to you unless you do a good job with Chapter Seven. So in order to help you we will begin with a series of questions which will help you determine (1) where you are and (2) where you want to go.

7.4 There was never a man⁶⁶⁷ who desired to be broke by his retirement age, yet Health, Education, and Welfare says 95% of the men aged 65 are "dead broke," or dependent on some other source for their livelihood. In this country - the most propitious the world has ever known - a person working from age 25 to 65, **for 40 years**, has the odds stacked against them by **95%!**

7.5 A rudderless ship wandering aimlessly on the high seas could be expected to reach a safe harbor and slip just as predictably as an aimless person or their Colatos will reach financial dependence. It just can't happen without sophisticated engineering, plotting, planning, and with a steady hand on the wheel constantly adjusting the course.

7.6 Your goal cannot merely state the objective "I want to be financially independent." All ships want to be moored at the slip of safe haven, but without a navigable chart giving wide berth to the dangerous rocks and reefs there is no chance the vessel will ever get where it *claims* it wants to go! Likewise the lack of specificity in your own personal planning will get you where you're heading – **nowhere!** Your goals must be reduced to writing exactly and precisely describing what you desire. I'm not kidding, it must be deducted right down to the colors you want - if colors can be figured in on the plan.

⁶⁶⁷ Sorry ladies, the statistic to be quoted didn't include women, but you are assured the findings and figures would have been identical had you been included. This is yet another area you are equal to men!

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7.7 This part of the subject we are reviewing is vast, and I can't go into much detail. However, my research has uncovered a startling simple yet powerful learning program in this area. I found it was superior to any I have ever studied in the past and its cost is far less than its value. It is Brian Tracy's *The Psychology of Achievement*. Brian has lived in many foreign countries and made a fortune by the time he was 25 years old. Please obtain information concerning this program from Nightingale Conant at 7300 North Lehigh Avenue, Chicago, Illinois 60648. Credit card ordering can be facilitated by calling 1-800-525-9000. Ask them for a free catalogue of their other products.

7.8 One of the things Brian says is that "there is no secret to getting rich in America, but there are fundamental truths of *how* to get rich." How true that is! Now you can learn many lessons from a number of courses Nightingale Conant offer which are absolutely imperative for a successful voyage over the seas of life. Truly, Aristotle summed it up neatly when he said "Have a definite, clear practical ideal - a goal, an objective." Think about the weight of those words and you will get an idea of how important this part of my book is.

7.9 You now have the major Super Rich secrets at your disposal. *Without a chart outlining how or when you will personally use what you know, you will never employ the secrets effectively.* Don't allow the beautiful Colato or foreign Colato to fall into disrepute for reckless piloting. Use them eruditely and you and your family for generations to come will thank you!

Lesson Seven

7.10 I assume you already have acquired a Colato or foreign Colato and that you are ready to put them into operation. If you have not obtained your Colato you will need to contact your attorney, draft the indenture (contract) yourself,⁶⁶⁸ or become a member of First America Research where you can secure the benefit of their research. Certainly, even a lawyer would save many thousands of dollars and hundreds of hours of time to make use of First America's research. You should consider the benefits of membership as economically speaking it would make a lot of sense.

7.11 I must warn you however, that First America Research does not regard its indenture as being "for sale." It is considered property belonging to the association and they will not simply market it. They are only seeking members and only sell memberships, and there is a criteria imposed on becoming a member. One may not simply walk in off the street and expect to buy a membership. It doesn't work that way.

7.12 Think carefully about this and review their Constitution, By Laws, and Creed.⁶⁶⁹ If you find yourself in harmony you will want to make application to join. Be sure to shoot straight with them as you will be subjected to a thorough personal evaluation. They do not have memberships available for corporate or artificial entities. Only individuals are permitted membership.

⁶⁶⁸ Review §§4.103, *et seq.*, to be sure you know what is necessary and combine it with the elements from §4.21 through §4.424.

⁶⁶⁹ See page 348.

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Steering Your Course

7.13 The very first thing you must do is to sit down at your captain's table with a notebook, lots of paper, and a pencil with a big eraser on it! The notebook will become your Captain's Log. Begin by *writing out* a clear and candid statement of where you are today. Be as mature as possible. We will provide some questions in *The First Tack* to help you along with this very exciting and worthwhile task. *Writing* crystallizes thought and thought will inspire your actions. Next prepare a list of the things you would like to accomplish in the rest of your life. While you're at it you should list both the tangible and intangible things you want. Scan the entire horizon of your life; the professional, social, financial, spiritual, family, health, sports, and educational areas.

7.14 Once you have completed your list go back and arrange them in priority. Be careful your priorities are not all coming from one area of your life. Consider them all! I can't tell you how important this all is, because you are going to find out that a lot of the things you thought you wanted are not nearly as important as you first thought when you are able to view them in the big picture you will draw.

7.15 Now that you have prioritized your goals you will next develop your own plan. A plan put down on paper makes it a lot easier to make the things you want in your life to happen. You will have a lot less decisions to make when you are able to view the entire picture of what it is you are trying to accomplish. Constantly keep this one question before you: "Will what I'm about to do help me to attain my goals or not?" This is why your plan will always help you make the best possible decision of "what to do now!" The most important aspect you will derive from this kind of procedure will be that you will be the one who is steering instead of the one who is controlled.

7.16 Even though planning like this will not make your future divinely predictable it will allow you to anticipate what is most likely to occur in the seas of your life. A person who will be successful in life is like the sail boat which tacks from point to point under the prevailing winds of circumstance. It reaches its long term goal or harbor by charting out the course and by tacking when the winds of change, alteration, or amendment makes it necessary. The captain of the ship always has land fall in the sights by determining whether the next action will be an asset in reaching the harbor or not.

7.17 Begin now to chart out just how you plan to go about achieving your goals. I want to encourage you to use an eraser and lots of paper. After determining your distant port write out where the potential reefs and barriers might be. I realize this is the hardest part of the plan, but it can also be the most fun. It's the most challenging and like a game you want to win it will reward, motivate, and enliven you! Then assuming the weather does happen to change you will be well ahead of it and running before the wind!

7.18 The experienced sailor knows that periodic check points are essential. Decide upon a date when each of your goals should be accomplished. This will enable you to take each objective in legs, in other words you will be able to break each accomplishment down into smaller achievable steps. Then keep your log book up to date. Review and replan. By using your charted course *act on the decision you make. Just do it!* You will begin to notice that you are enthused about your life. What you have to do on a daily basis won't be as painful as it once was. It also won't be as difficult, because you will know exactly why you are doing what you are doing, and you will know exactly where you are going. You will then have the time enjoy your life and the events it encounters.

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Your First Tack!

7.19 In your Log Book write down each of these questions and supply your own answer. Think for only a moment about the answer and pretty much write down your first impression of **where you WANT** to be. State your answer as though it were already true!

Instructions

It's okay to list as many goals and dreams as you can think of in each of the areas below. In fact, you may want to use a whole sheet of paper or more for each of the areas "a" through "h" below. The most important direction of all? Be absolutely honest. Once you have completed each number go back to each area and prioritize the list.

1. If I only had one year left to live what goals would I want to be sure I'll have reached?? Please, *just do it!* Write out both the questions with the personal pronouns and give your answers with the personal pronouns "I, me, my, mine, etc., and write as though you had already reached your goal!

- a. Professional
- b. Social
- c. Financial
- d. Spiritual
- e. Family
- f. Health
- g. Sports
- h. Educational

Were you honest? Did you write in the personal pronoun? Did you write as though the goals were already achieved? Did you prioritize each goal in each of the areas "a" through "h?" Now chart a plan to reach each goal breaking it down into smaller realistic and achievable goals. Get it down to a monthly, weekly, and then daily plan. **Review daily! Now just do it! Work your plan!** (Don't neglect your twenty year goals as I have a surprise waiting for you at that point)!

2. In Five years from today I will be:

- a. Professional
- b. Social
- c. Financial
- d. Spiritual Family
- f. Health
- g. Sports
- h. Educational

Were you honest? Did you write in the personal pronoun? Did you write as though the goals were already achieved? Did you prioritize each goal in each of the areas "a" through "h?" Now chart a plan to reach each goal breaking it down into smaller realistic and achievable; goals. Get it down to an annual, bi-annual, and then monthly plan. **Review daily!**

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3. In Ten years from today I will be:

- a. Professional
- b. Social
- c. Financial
- d. Spiritual
- e. Family
- f. Health
- g. Sports
- h. Educational

Continue as before, prioritizing and then charting a plan to reach each goal-breaking it down into smaller realistic and achievable goals. Get it down to an annual plan. **Review daily!**

4. In Fifteen years from today I will be:

- a. Professional
- b. Social
- c. Financial
- d. Spiritual
- e. Family
- f. Health
- g. Sports
- h. Educational

Continue in the same manner. Review daily!

5. In Twenty years from today I will be:

- a. Professional
- b. Social
- c. Financial
- d. Spiritual
- e. Family
- f. Health
- g. Sports
- h. Educational

Continue in the same manner. **Review daily!** Don't be surprised that by your constant revision that you will reach your twenty year goals in ten! Go ahead! Dream! Let your thoughts soar!

7.20 Now on as many sheets of paper as are necessary write the following across the top: (1) Description; (2) % of interest; (3) Monthly Payment Amount; (4) Balance Due; and (5) Months Remaining. The top of your page would look like this:

<u>Description</u>	<u>% Interest</u>	<u>Mo Pmt Amount</u>	<u>Bal Due</u>	<u>Mo Remaining</u>
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7.21 Along the left side of these sheets under the Description Column write the following items. Include anything additional I may have left out: (1) Mortgage (also include the original amount for any mortgages in the Description Column); (2) 2d Mortgage; (3) 3d Mortgage, (4) etc.; (5) Other real estate; (6) Automobiles; (7) Personal

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loans; (8) Credit Union; (9) Loan company; (10) Bank; (11) Friends, relatives; (12) Other, etc.; (13) Non-Corporate business loans; (14) Credit cards; (15) Department store accounts; (16) Oil credit cards; (17) Medical; (18) Dentist; (19) Eye care; (20) Taxes due; (21) Other debts.

7.22 Next total your debts for the monthly payments and for the total debt load. Bring those totals at the bottom of your sheets for the Monthly Payment Amount and for the Balance Due columns.

7.23 On a separate sheet of paper next write down your gross and net wages or salary for you, your spouse, and then the combined amounts. Include any other net income as well and total these amounts at the bottom of that page.

7.24 On another piece of paper write down your monthly expenses as follows: Food; clothing; life insurance (include its face amount, & whether it is term or whole life); homeowners insurance (include any deductible); health insurance (include any deductible); car insurance (include any deductible); utilities; telephone; education; child care; travel & entertainment allowance; car maintenance; residence maintenance; emergency funds; taxes (other than income); other, etc.

7.25 Now draw a total at the bottom of these sheets to find out your basic monthly expenses. Subtract this figure from the one you found in §7.23. Your answer will be how much you have available to be applied to investments and to secure your future.

7.26 I realize some people will not have anything or much of anything for this next part. Whether you do or not I counsel you to provide sheets for it anyway! The reasons why will become obvious in the next several months. Finally, on yet another sheet of paper write down your investments for your dreams and future security. Write down the *value or equity* of your cash reserves in the forms of savings; money markets; etc; real estate holdings; stocks; bonds; funds; unit trusts; coins; precious metals; art; other collectibles; annuities; zero coupon bonds; other investments; and finally your own business. Compute the values at the bottom of this sheet and this will be your total investment portfolio.

Your Second Tack!

7.27 It should now be obvious that even thinking about having the benefits of a Colato would be time wasted if you didn't do the parts in the First Tack. Now you will know how much you need to correct your course for the second tack. This is when you will have the Colato created. The very first thing you need to do after acquiring the Colato is to get rid of all old stationery or other business forms which were used for your previous business - if any.

7.28 This means getting new banking accounts and a new Employers Identification Number from I.R.S. an form SS-4 - assuming you are operating a business or will need a U.S. bank account. If this doesn't apply you may avoid this step. A sample of the SS-4 form is included in "the chart room" at page 287 (the Appendix). You also need to tell any business vendors or other companies you are working with that you are starting a new business. Once again, old bank accounts should be closed and new ones opened, etc.

7.29 Be sure that all statements or invoices have printed on the front something that says "see additional terms on the reverse side hereof." Then you need to print the limited liability notice there. See the example given for Limited Liability Notice in the Appendix on page 292.

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How to Make a Financial Statement

7.30 Personal or business financial statements for banks or other financial institutions are very important. Utilizing the same kind of accounting procedures the United States government uses called "fund accounting" will enable you to use an awesome tool of the Super Rich. Look at the sample of a financial statement at page 291. Please hold your finger here and look at the form while I describe some interesting facts.

7.31 You will note the asterisk at the top of the column where you see the word "assets." You will see the asterisk again at the bottom of that column. Please note the statement which says: "includes assets held in trust." You may include or not any asset held by trusts, Colatos or foreign Colatos. Many times new businesses will use the assets of Colatos to get bank loans, make better business impressions, etc. Only the limits of the law and your imagination should prevail.

How to Put Real Estate Into Colato

7.32 You should look at the deed you have of any real estate you now have. How did you get it, by warranty deed or quit claim deed? Which ever method was used to you is probably the right one to use to convey the real estate into a Colato. There should be no capital gains taxes to pay because the transfer is an even exchange. This may not be true in California where Proposition 13 tax rates prevail. Though there would be no capital gains taxes (review the sections beginning at §4.139, *et seq.*) there may easily be "new and higher property taxes. Weigh the advantages against the disadvantages if this is the case.

7.33 Investing real estate in a Colato is very simple. A warranty or quit claim deed is drafted in favor of the Colato and the legal description of the real estate appears on the schedule enumerating the real properties invested of the indenture or contract of the Colato. Usually the form of the deed to you is all the form you need to follow in conveying the real estate to the Colato, but be sure it is notarized!

7.34 Persons in states where Colato's are relatively unknown should follow the example of form given on page 300 concerning title insurance. One school of thought concerning the warranty or quit claim deed to the Colato is to not record the deed with the county clerk and recorder's office. There is no right answer. If you have done your charting as outlines above you will know the right answer for you. Some feel there is more privacy if the deed is not filed, but there can actually be more seclusion if it is recorded. Only you can figure the right way for you.

7.35 To determine whether you should record the deed or not take a plain sheet of paper from your Log Book and draw a single line from top to bottom down the center. Label the column on the left "For Recording" and the other column "Against Recording." Once you have listed all the reasons for and against count them! This suggestion is courtesy of Benjamin Franklin - the Benjamin Franklin Balance Sheet.

7.36 I never recommend or suggest the conveyance of real estate (or any other kind of U.S. property) to foreign Colatos. There have been so many negative court rulings since *U.S. v. Dahlstrom*, 713 F2d 1423 (see page 374 where the entire case is reproduced) which are classic American Law Association cases. A number of other cases under this theory of law are found in the Appendix. Suffice to say that if you were able to invest property into a foreign Colato it probably wouldn't be foreign for tax purposes. Indeed, the I.R.S. refuses to acknowledge the American Law Association technique for tax purposes. In addition there could be problems under IRC §482, etc. Remember, make your affairs legal, but also be sure they pass the smell test!

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How to Put Personal Property Into A Colato

737 A list of the property to be invested should appear on another schedule in the indenture or contract of the Colato. This list does not have to be detailed as to color or shape of property unless there could be confusion without it. Usually a list simply describing pieces of furniture in a room is all that is required. If on the other hand some of this property is an heirloom or very important a more adequate description may be necessary. You will also want a Bill of Sale and an example is found on page 310.

7.38 In addition to conveying this property into a Colato you will also have a list for insurance purposes, however make sure when insuring the property that it is the Colato doing the insuring and not you - unless on the insurance application you asterisk and state that the list includes property held in trust. See the identical example on "How to Make a Financial Statement" at §7.30 and its example on page 291.

7.39 When making up your list for the schedule of the Colato do not assign any values to the property. A second list for such values can be kept with the insurance papers, but you don't want to inadvertently raise the issue of the exchange having been a capital gain. This is what I mean by maintaining a low profile: Though there can absolutely be no gain you can accidentally raise the issue and then be bothered to give an answer. There is no suggestion of two sets of books in this example, and to repeat myself I am not recommending anything shady or illegal. There is simply no reason to raise an issue which should never be one. Research this subject again if necessary as it is thoroughly treated at §4.139, *et seq.*

How to Have a Secret Safety Deposit Box!

7.40 Many people keep very important papers and valuable assets in safety deposit boxes thinking they are completely safe, but they don't realize that the name on the box is not private! There have been more than one race to the bank by survivors to get bank assets before the bank found out the principle owner died. Many have lost out, because the accounts and box will be impounded. Additionally there are several organizations who for a fee of about \$100 will run a search of every bank in the country to see if you hold a safety deposit box there.

7.41 The solution is very simple. Create a Colato with your attorney being the creator. He can name you trustee. Make a Minute which states that the *exclusive* purpose of the Colato is to rent a bank box or a Post Office Box. When you actually go to the bank for the box it will be rented in the name of the Colato and you can give the lawyer's office address for any correspondence. Your name and signature will be on the bank signature card, but you will be acting in your official capacity as trustee. Just be sure you sign your name ending with a comma and add your title.

7.42 Be sure also to pay in cash and there will be no banking record of the box's existence. No other business should be conducted by this Colato if you desire to keep everything secret. Of course you will not be done until you provide a list of successorship to the office of trustee. You can also name another person as signatory to the box if you like or provide a specific or general power of attorney.

How to Have a Secret P.O. Box!

7.43 The most important thing the U.S. Postal Services are looking for when opening a P.O. Box is a valid address. To avoid giving your own name or current

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residence address you once again do as we suggested beginning in §7.41f You will not be the owner of the box, the Colato is, and post office will not have your address. Of course your lawyer has your name and address, but unless you, the lawyer, or both of you are breaking the law attorney-client privilege will keep him from disclosing your name or address.

How to Hold Securities In Secret!

7.44 Of course it's a lot easier to have a Colato buy the securities in the first place, but if you need to convey them because they are presently your assets for asset protection ask your broker to "street endorse" the securities for transfer "into trust." Of course your Colato is not a trust, but this is where a lot of privacy can come in. The Super Rich have been using this technique for a century or more. Virginia Mitchell did this and when the brokerage firm asked for a copy of the Colato's indenture she asked for a copy of the brokerage legal papers. That stopped everything! You can also make an affidavit for the purposes they may desire. See an example of said affidavit on page 305.

7.45 One of the advantages to this kind of transfer is to establish once and for all that the securities are the property of the Colato. The indenture, a bill of sale (see page 310 for a sample Bill of Sale), and the broker's records establish the ownership of the securities.

How Colatos Slash Life Insurance Costs!

7.46 Colatos can substantially reduce the need for large insurance policies. With the cost of dying one usually needs to include the Federal Gift and Estate Taxes because they have to be paid in cash nine months after the death of the deceased! With a simple Colato however, there are no such costs so a substantial amount of your need can be cut right there! Figure out what the family would need just to take care of normal needs and forget the rest.

7.47 One thing I don't want to get into very heavily here is the difference between "whole life" insurance policies and "term" policies. So much has been written in other places let me just say that if you are spending or investing any money on an insurance program which allows you to borrow "cash values" then you are being ripped off! Contact me with a SASE and I'll recommend the best I know of.

7.48 Have your Colato own the "term" life insurance policy. That way it is not included in your gross estate. This can be accomplished with a simple policy ownership change, but if insurability is not a problem it would be wiser to have the Colato purchase a new policy on your life. Your spouse will naturally be the successor or joint trustee so you can see it is much better for the Colato to be the beneficiary than the spouse which would create a taxable estate.

How to Create Your Own Trust

7.49 Creating a trust is very uncomplicated. We have a sample inter vivos (living) trust in its most simple form on page 312. Be sure to review Chapter Three for all of your questions about trusts. In the most simple language, a trust is created to hold property for the benefit of someone for whatever specific purpose(s) the grantor of that property has in mind. The conveyance can be either revocable or irrevocable - one which can be altered, amended or revocable, or one which cannot be taken back at all. In the former case the gift is incomplete while in the latter it is legally complete and the gift tax is due and payable immediately.

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7.50 In creating a trust you decide what property you want to protect or conserve for whomever. You decide what events would complete the conveyance of the property to the beneficiary. Once you have these elements in mind, you can sit down and write out your intentions, have it notarized and it's done! Don't forget to record the terms of the trust, the names of the grantors, the beneficiaries, the name of the trust, etc., with your county clerk and recorder's office. Each state has its own law you will want to be familiar with.

7.51 Any time someone is picked to hold property (real or personal) for the benefit of another person you have the element of splitting title. This is undoubtedly the most specific element which characterizes a trust. If there is no splitting of title? Whatever you have it is NOT a trust.

7.52 Let me ask a question: What do cars, trucks, boats, trains, planes, trailers, tractors, and motor homes have in common? Liability problems are common with all of the above. More accidents are caused in what I call "rolling stock" than anything else. For this reason I do not recommend putting any of these kinds of assets into Colatos. Ordinary trusts are great for any of these kinds of assets.

7.53 About the only exception I can think of is an heirloom like a 1957 Chevrolet convertible in mint condition. No doubt this kind of an asset is trailered from show to show and you might want to protect it with a Colato instead of a trust. It doesn't make a lot of difference unless the gift, estate, and inheritance taxes are a consideration. A trust cannot escape those taxes! However, the one thing I would strongly suggest is to keep each piece of rolling stock in a separate trust (or Colato if desired) all by itself.

How to Open a Domestic Bank Account

7.54 You would think this would be easy. Actually it's not! The I.R.S. has made the United States banks its policemen. The multitudinous forms which government wants to help it keep tabs on its citizens has become the job of the banks. It takes many hours to comply with these rules and regulations, and in all cases personnel has been secured at much greater expense just to keep up with government demands. For an example of this see Form 4789 (sample on page 311) "Currency Transaction Report." In the instructions for filing the form for one of these transactions the I.R.S. admits will take on the average of 24 minutes! Somebody has to pay for the clerk to do the work and I guarantee it's not the government - or the bank!

7.55 Actually, and in one way the bank *is paying* the cost of doing the I.R.S.'s policing, but not in the way you might think! They are paying by the loss of customers because more and more people are attracted to the simplicity, privacy, and convenience of opening up a foreign bank account that they are losing more and more customers! Once again we see that the bad is chasing the good away. This is a natural and immutable law!

7.56 No, it is not easy to walk into a bank and ask to open an account for yourself or a domestic Colato. They need numbers, identification, references, etc., just to open an account you may need to operate a business or for your own personal banking needs. Bankers have always been noted for their suspicious natures, but now the I.R.S. has seen fit to exacerbate this problem. Don't miss reading Form 4789, because now the instruction sheet says the following:

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In addition, this form may be filed for any suspicious transaction, even if it does not exceed \$10,000.⁶⁷⁰

7.57 Doesn't the government recognize such measures as Gestapo tactics? Don't we! How much more will we tolerate? Isn't 150% of our incomes⁶⁷¹ enough that we should allow the government to take away our rights to privacy too? Everything the government wants to do in the name of drugs interdictment which tramples on the liberties and rights of the majority is really no enigma. We must view it like it is. It is a special license for government to practice financial voyeurism. I don't know why it really needs it when you understand what its real take is on the tax it collects!

7.58 You will need a federal tax identification number for the Colato which wants to do banking in the U.S. The Bank Secrecy Act is another of those characteristically good sounding laws which no one could possibly object to - especially when the chief aims are "to control the illegal drug trade!" The Bank Secrecy Act has had little to nothing to do with catching drug dealers - even under General Noriega's regime! It's actually a tool for our government to track each and every dollar we spend and take in and eliminate financial privacy. If it were possible to completely eliminate currency and make us do all our buying and selling with an identifiable paper trail they would have passed the law ten years ago!

7.59 Don't misunderstand me, I'm not opposed to paper trails. I do not encourage anyone to try to launder money or paper trails in any way! The Super Rich would be lost without substantial paper trails because if the I.R.S. wanted to look into their affairs they would be able to prove with receipts like canceled checks that their dealings are for real and with ample economic substance.

7.60 What I am talking about is the loss of privacy we have been disposed to suffer. However, many Americans are refusing to abide any more indignities for the sake of government interdictment, because the real reason for the laws is as we read from the stated purpose, of the law itself:

(1) The Congress finds that adequate records maintained by insured banks have a high degree of usefulness in criminal, tax, and regulatory investigations and proceedings. The Congress further finds that microfilm or other reproductions and other records made by banks of checks as well as records kept by banks of the identity of persons maintaining or authorized to act with respect to accounts therein, have been of particular value in this respect.

(2) It is the purpose of this section to require the maintenance of appropriate types of records by insured banks in the United States where such records have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings.

7.61 In other words, the records which the banks devised to help them and their customers are now mandated by the government for its admitted *regulatory investigations and proceedings*. Don't you love the sound of that language? Just let the Treasury Department interpret what this means! It seems to me that some bank needs to rise up which refuses to be insured by the phoney FDIC and offer privacy as a service. I'll bet its deposits would run wild if it would contract with its customers that the records kept and maintained would belong to the customer whose accounts the records reflect!

⁶⁷⁰ Page 3 of Form 4789.

⁶⁷¹ See §5.1ff "The True Federal Tax Take!"

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7.62 Yes, in no country in the world since the days of Hitler has a government gone to such lengths to keep track of its citizens money. As we've seen above the rhetoric of drugs interdictment is no longer going to be believed when the government's actions belie interdictment and when innocent persons' banking is scrutinized on the level it is being investigated today! The American Law Association learned this lesson the hard way -- so has the NAACP whose rank and file membership was in jeopardy to harassment by the state of Alabama. All the government had to do under the Bank "Secrecy" Act was simply walk into the bank where the American Law Association kept its bank account and get the microfilm records of each of the deposit which were made. There was a beautiful list of the rank and file members for the I.R.S.'s uses. Did they use them you dare to ask!

7.63 If you choose to have a U.S. bank account you are going to have to comply with the regulations imposed upon the banks. In spite of the fact that Colatos are not associations under the meaning of the tax term (discussed fully at §4.367) it would be my suggestion to ask the bank for its "association" account signature cards. As we've noted this may be difficult to do, because its the banks duty to do the policing and they may ask far more questions than you want to answer. Some folks have found it advantageous to ask whether the bank has accounts available for bowling leagues, and if so they easily acquire the association signature cards. There seems to be a marginal degree of privacy greater than with the other types of accounts. Of course you will need an SS-4 form filled out for the employers tax identification number - whether or not your Colato will employ anyone! See the sample SS-4 on page 287.

How to Hold Secret Master/Visa Cards!

7.64 Do you remember Virginia Mitchell from page 223 and her trip to Australia? You will remember that she used a special Visa credit card for all her purchases. Master Cards are also available for these same purposes. You can easily imagine that there are many times when not having a paper trail lead to you would cause less scrutiny by nosey neighbors, business associates, and even the I.R.S. As you know the I.R.S. wants every penny documented and this can be very troublesome, time consuming, and a waste of productive time.

7.65 When it's to their advantage not to have such a high profile for trips they make, people they entertain, or offshore business which is not necessary to be deducted from any income taxes, etc., these Visa/Master Cards can be absolutely secret with no financial records left in the United States!

7.66 As you can easily understand merchants being handed a card looking identical to all others they take for their sales aren't going to notice that the card is issued from a foreign bank. It wouldn't matter even if they did notice, but the important thing to remember is that the only record showing up in the United States is going to be on the merchant's bank records.

7.67 The I.R.S. is hardly interested in checking every merchant record in the whole country to track Virginia's purchases, and the voucher goes back to the bank which issued her the card! This way she can have absolute privacy! Since she pays all of her taxes and the money she was spending had nothing to do with her income she is doing nothing but protecting her own right to privacy. She's breaking no laws, and the I.R.S. couldn't be less interested what she does with her employer's money. Go back to page 223 and review this Super Rich technique!

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How to Open a Foreign Bank Account

7.68 Opening a foreign bank account is a lot easier than you might think. Just write to the banks in the countries you might be interested in. If they write back quickly with nice brochures, etc., simply check out the owners, their liquidity, and get an audited financial statement. Then upon your satisfaction make your deposit! It's as simple as that and can be done entirely through the mail. If you need, any help in these regards contact the author.

7.69 Remember if the aggregate amounts in your foreign accounts are over \$10,000 there are some reporting requirements. Please review §5.177^{ff} for the forms you need to pay attention to.

7.70 If you're a foreigner it appears that you could take advantage of genuine bank secrecy right here in the United States. (See §5.32). The Edge Act made it possible for foreign banks to offer services here mainly for the benefit of the importer and exporter. It also seems when comparing the Bank Secrecy Act there is one peculiar section which could give foreigners as much privacy here as in their home countries:

7.71 The provisions of this section shall not apply to any foreign bank except with respect to the transactions and records of any *insured* branch of such bank.⁶⁷²

7.72 Has the Congress passed a law requiring all banks to be insured? I will have to research this question for future updates to this book and it will appear at that time.

How to Stop a Law Suit Cold! Even if it's Already Started!

7.73 No doubt you've heard it said, "put all your eggs in one basket and then watch that basket!" When it comes to assets this is one rule the Super Rich do not observe. Their minimum rules are as follows: Assets should be divided into three classes. Those which suffer a high risk or exposure to liability suits or other problems, those which have medium jeopardy, and finally those which should have little or no risk at all. Then each asset is placed into its own Colato to protect it from the "rotten egg" principle. First, review §4.217 and then continue.

7.74 Your home should be one of those assets which should be exposed to little or no risk whatsoever. It should be in a Colato by itself and not be bared for any reason at all. That should be the one asset which you would never permit to be put at risk! If you had a basket of eggs and one egg turned rotten the smell and eventually the rot would permeate the whole basket of eggs. For an absurd example you wouldn't put a car in a Colato with your home. If the car got into a lawsuit the litigation could take not only the car but the house also! Each asset should be in a Colato by itself. Cars should be in trusts by themselves, see §7.52^f.

7.75 Remember, with fund accounting principles (§7.30) you can list the assets you have "in trust," without having to expose them to creditors, etc.

7.76 There is a way to stop a law suit from its devastation even if it has already begun! Granted it would depend on how far along the suit has progressed, but if it's in the early stages you can stop it cold. The technique would certainly require excellent

⁶⁷² Bank Secrecy Act of 1970, U.S. Code 1982 Title 12 §1829b(i).

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counsel and advice, and the author would be glad to put you into touch with the best legal brains this advice requires. Essentially you invest your assets into a limited partnership under Internal Revenue Code §704.

7.77 Your purposes in doing these things need to be as well thought out as anything else, but some of the main reasons could be to spread income among family members or to be able to control the family assets in the event of a divorce, etc. If the limited partnership agreement is carefully drafted by competent counsel it should provide among other things that the earnings of the partnership shall be distributed annually, but for the exception when they are retained as needed by the partnership, and to be determined at the sole discretion of the general partner.

7.78 I hope you can figure out who the general partner might be! State laws do not permit the confiscation of the principle assets of a limited partnership, and further it can be so arranged that the creditor has to pay the federal income taxes on money they never get! Be sure to contact me personally if you need special direction in these regards.

7.79 There are better ways than the technique just described, but they require forethought and advanced tax and estate engineering. The above is offered for those extreme needs where it might be required. One of the things I don't like about the limited partnership plan is that it is a statutory technique. If too many people were to use the idea I've just revealed no doubt we could expect the legislature to close the door on this kind of planning. Once again we see the value in engineering rather than planning. Get it all done now! As it has been humored, it's a little hard to remember that your original job was to drain the swamp when you're up to your neck in alligators!

How to Become a Foreign Consultant

7.80 First of all read the section beginning at §5.237 on page 227. If this is something you are truly interested in answer the questions beginning at §7.82. No one will see these answers but you -- so be **brutally honest!** If any of your answers have an asterisk with it, then circle **all the letters** following that question. At the end of the questionnaire just total the number of letters circled. Send me the total of each of the letters you will have circled in a Self Addressed Stamped Envelope (SASE) together with five dollars (\$5.00), a short resume, and the answers to the following questions:

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Please Type or Print CLEARLY!

(If I can't read it I'll send it back at your expense!)

7.81

1. What is your chosen profession?
2. Besides your job, how many extra hours would you be willing to work per week if you knew you could be debt free within 2-3 years.
3. What are your hobbies?
4. Do you enjoy selling? What have you sold?
5. My ideal vacation is:
6. I subscribe to what publications (newspapers - magazines)?
7. What I think of my chosen profession? (What I'd rather be doing)?
8. I currently have the \$1,440 available if I should be interested in a U.S. consultation position. (If not please explain).

7.82 If your answer to the following questions has an asterisk circle all the letters following the question or write the letters to that question on a separate sheet of paper.

1. I have a family budget? Yes _____ No* _____ . A
2. If "Yes," I deviate from my budget? Never _____ Sometimes* _____ Often*
3. I am able to save 10-20% of my income consistently? Yes _____ No* _____
B, C.
4. I can afford most _____ some* _____ none* _____ of the luxuries I want. B, C.
5. I am basically living from paycheck to paycheck? Yes* _____ No _____
Usually yes* _____ usually No_. B, C.
6. I have a well-planned and outlined retirement plan? Yes _____ No* _____ . B.
7. I have a definite plan of how I will be able to help my children with college? Yes _____
No* N/A . B, C.
8. My records are accurate, easy to find and complete each year for tax returns? Yes _____ No* _____ . A.
9. I have 3 to 6 months cash reserves in case of an emergency? Yes No* _____ . A, B, C.
10. I usually complete a financial statement? _____ Annually _____ Every 2-3
Years* _____ Very seldom* _____ . A, B.
11. I am paying on a N/A 10 Yr. 15 Yr. 20 Yr.* 25 Yr.* 30 Yr.* mortgage? B, C.
12. I am prepaying my mortgage principle? Yes _____ No" _____ . A, B, C.
13. I have mortgage insurance'.' Yes* _____ No _____ . B.
14. I usually buy new cars? Yes* _____ No _____ Sometimes* _____ Never _____ . B.
15. I am currently making monthly payments for a car" Yes* _____ No _____ . A,
B, C.
16. If "Yes" to #15, I got credit life insurance when I bought my car? Yes* No _____ . B.
17. I normally place less than` _____ more than _____ a \$450 deductible on my car insurance policy? B.
18. I have* _____ do not have _____ a Visa/MasterCard/Discovery credit card'? A, B.
19. I usually _____ sometimes' _____ hardly ever' _____ pay off my credit card balances each month. A, B, C.
20. I normally prepare my own income tax returns? Yes' _____ No _____ . A.
21. I usually break about even* _____ pay additional* _____ get a refund* _____ on my taxes? A, B.

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22. I am presently subscribing to a tax or money management newsletter or magazine? Yes No* B.
23. I own my own business or am self employed? Yes No* A, B, C.
24. I have a regular or passbook savings account? Yes* No B.
25. I have an IRA or Keogh account? Yes No* A, B, C.
26. I have a savings and/or investment account that is presently earning over 18%? Yes No* . B.
27. I own precious metals in my financial portfolio? Yes No* C.
28. I have a whole life* term insurance policy? B.
29. I have health insurance for myself/family? Yes No* B, C.
30. My job is great okay* awful* ____ . A, B, C.
31. My family fights over money problems a lot* sometimes*
never_ . A, B, C.
32. I would judge my credit rating to be excellent fair* poor* . A.
B, C.
33. Being debt free would be a worthwhile achievement? Yes* No
A, B, C.

7.83 Now, count how many A's were circled ()? How many B's ()? How many C's ()? Send just these totals to me along with your answers in §7.81. Send your SASE and \$5.00 to me at P.O. Box 620592, Littleton, CO 80162 and I will tell you whether you are potential candidate and qualified to become a foreign consultant. If you are qualified you will receive a packet of information from me. Currently a personnel agency charges a fee of \$1,440 for professional search and placement of the applicant with a foreign Colato. The money is completely refunded if they are unable to place you.

How to Create Your Own Foundation

7.84 Creating a foundation is really no more difficult than creating Colatos. If you know how to do one you can do the other. The foundation this book gives a sample of is the one which was created by President Lyndon B. Johnson and his wife "Lady Bird." The type illustrated on page 314 is no longer legal to be made in America. This is NOT to say that the President did something illegal! To the contrary, what he did was perfectly legal in 1956, it was the line in the law which moved to make all such future acts in the United States illegal. You can study this situation at Lesson Five beginning on page 187.

7.85 Of course the thing which makes this kind of a foundation illegal in America is our current tax law. You can clearly see the potential that President Johnson had available to him to make full use of his rights under the law to protect and conserve his assets and to expedite the uses he could make of them.

7.86 One other thought this brings us to is the uses a foreigner can still make of this kind of foundation when his or her native country has no tax laws which would render this use of a foundation illegal. You can easily understand that if President Johnson found a beneficial uses of such a foundation our foreign friends would have similar needs and desires.

7.87 I am familiar with several foundations which foreigners have created for just such purposes as President Johnson sought. They are legal and quite right where the tax laws have not made them illegal. This kind of "shopping" is no different than the person who picks a state to live in where the income tax is either less burdensome than a neighboring state or perhaps non existent! There are several of the states which have no state income tax and there would be nothing illegal, immoral (or fattening) about living

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in a state where there are no state income taxes. Here are the eight states which have no state income taxes, South Dakota, Texas, Washington, Alaska, Connecticut, Florida, Nevada, and Wyoming.

7.88 I mentioned at the beginning of this chapter that this one chapter would be the most important to you in the whole book. You can see why now as you are ready to embark upon your personal voyage. If you have not decided where it is you want to go please go back and fix your goals before you move on.

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Chapter Eight

The Prince's Treasure Chest'.

**Do not turn back
when you are just at
the goal.**

Publilius Syrus (First century B.C.)

**Business is a
combination of war and
sport.**

André Maurois (1885 - 1967)

8

The Chart Room

8.1 If you have not charted your course in Chapter Seven this Chapter will be no *real good* for you and I urge you to go back and fulfill all the duties Chapter Seven requires. The Chart Room is full of all the forms you will need, but they will make very little sense unless you have a navigable course already charted. Go back to Chapter Seven if you have not done all it requires. I will make no attempt to customize the forms and everything which is offered is extended as a sample only!

8.2 This chapter cannot, and is not intended, to take the place of *competent up to date counsel!* If legal or other expert assistance is required, the services of those professionals should be sought.

8.3 André Maurios correctly noted that business is a blend of war and sport. Some of us make sport of activities others consider bloody combat. For example, one of the things I hate most are tax forms. I detest reading their instructions and filling them out! I'm not even good at it! I have found that accountants and CPA's enjoy that kind of work. Thus I am much better off doing the creative part of the work and leaving what I consider the mundane to those who enjoy it.

8.4 All that aside, the Chart Room is necessary because it contains all the maps which could potentially be used in our economic voyage. If you have done the work correctly from the last chapter you will know many of the forms you would need. This chapter will give you some ideas on approximately how you should use them.

8.5 In order for all *of* this to work for federal income tax purposes you need to be very sure that your mission includes the following:

1. The production of income.
2. The management, conservation, or maintenance of property held for the production of income; or
3. The determination, collection, or refund of any tax.

There may be other reasons, too, but these must be the primary ones.

8.6 Why do I insist these must be your primary economic and business motives? Because the *Internal Revenue Code* makes any of the above three considerations tax deductions under *IRC* §212. These are your "*ordinary and necessary*" expenses which you will spend to make your family, business, and estate dreams become a reality. Therefore, keep these constantly in view in order that your achievements can be economically real and not subject to the I.R.S. calling it all a "sham."⁶⁷³

⁶⁷³ See *Zmuda v. Commissioner* which is reprinted in full in the Appendix at page 365.

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8.7 Keeping every economic business transaction *real* is paramount to a successful passage around and through the many barriers. If you commingle the funds belonging to your Colato with those of your own you're going to end up a wreck on the rocks of *Title 26 of the United States Code!*⁶⁷⁴ The Super Rich would never make this mistake. When they talk of their Colatos it's as though they are talking about a certain Aborigine of Australia. They may talk of him or her as a friend, but they do not combine their own personal money with the wealth of their Colato. They may control everything *de facto*,⁶⁷⁵ but they are not interested in having ownership.

Lesson Eight

8.8 I need to say something more concerning privacy. If you allow your affairs to become the focal point of the Tax Slave Community they are going to have you in court -- someday or the other. You are going to become pressured to reveal things you ordinarily wouldn't tell anyone, and it's all going to become public record for the whole world to see! You are going to invariably become a witness against yourself. "Hey! I don't have anything to hide!" That's the catch phrase of our day.

8.9 If you have any doubt about what I'm saying, read the cases from the Appendix. If your heart is not wrenched out from your breast as you read the cases something other than blood flows through your veins. Our tax law is evil because it came from an evil source. Good fruit does not grow from a bad tree nor does bad fruit come from a good tree. Read those cases. You will find the law far from libertarian, truth seeking, or inviting justice. I am not saying that America has become a bad place to live. Far from it! It is still the bastion of liberty! I wouldn't want to live any where else or I'd already be there! I am worried though that the tree which first gave the world the fruit of liberty is to be cut down and burned.

8.10 I'm an American and if I can defend our way of life I'm going to call your attention to the fact that since the beginning of our Republic there have been reformers. Even the Supreme Court has had to reverse itself from unconscionable rulings which for the time it lasted was the law! Was a person any less moral or American because he or she professed the law was evil? I'm persuaded that evil is evil where ever it is found.

8.11 I am also not saying that we have merely sown the seeds of conflict I am saying that the weed is full to flowering, and if we don't root it out now and burn it at the pocket book level it will squelch out the life of our beautiful tree of liberty. I am saying that the signs of the times are ominous and threatening. We must exercise caution on every hand. If it's not our neighbor whose out to sue us because they slipped on our walkway, it's our own government determining what we may or may not do.

8.12 Not long ago I heard a catchy sounding remark from a man who works in a sensitive branch of the federal government. If you want to know what so many people working in the government are thinking; if you want to know what they *truly believe*; if you want to know what they have planned for us, just listen to this:

The greatest liberty is in the greatest conformity.

⁶⁷⁴ The Infernal Revenue Code!

⁶⁷⁵ Be sure you understand the difference between *de facto* and legal control. Study Will! Campbell's technique beginning on page 152.

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8.13 I don't know where he learned this, and I won't tell you who said it, but I am going to say something about it. There's both truth and error in the message. We had better take a long hard look at it and determine what needs to be done from a practical side. In Chapter Five where we talked about privacy⁶⁷⁶ I said the cardinal rule in keeping something a secret is to tell absolutely no one. That's correct, but the dominant precept of privacy is no less the same - *keep your business to yourself!*

8.14 Every new court case which comes down draws the line in the law closer and closer. It makes what *was* legal *illegal* and a little more difficult for the person who desires to abide the law. If push should come to shove our government will erect an even greater and more forbidding wall than the Soviet Block countries ever built. God forbid America should become the next land where masses of people must vote with their feet just to remain free. Could we imagine immigrating to the Soviet Union to be free? Don't laugh. The directions each country seems to be going at this writing wouldn't preclude it couldn't happen in America!

8.15

Ivan to Joe: "What's the difference between Russia and the United States'?"

Joe: I don't know tell me!

Ivan: The United States still has a Communist Party!

8.16 Of course we have prided ourselves in the fact that people were free enough in America to even have the Communist Party represented. I've been very proud of that fact when I have come in contact with different people during my world travels. I'm still proud of it! However, this is where my friend working in the federal government is wrong. The crowd tells us they have nothing to hide. The presupposition of their attitude is that they have a right to know in detail what we're doing. The pressure for us to conform actually reduces to a demand to get into the line which is diving off the precipice!

8.17 If we don't use the tools of the Super Rich and impose truth and liberty at our pocket book level on those who want for nothing what they're unwilling to work for we will wake up after it's too late and find all that's left of freedom will be gotten only by vaulting the wall of Western Socialism.

8.18 After thinking about what I've just said you may wonder why I'm not suggesting we take up the banner of freedom and hoist it for all to see. This is precisely what I want, but as the Super Rich I realize it cannot be accomplished by mere flag waiving rhetoric. If it's true it has to be able to work *quietly, silently, but it must unequivocally work!*

8.19 Here is where my friend in the federal government is *correct*. In fact this is the vantage point the Super Rich have enjoyed for over a hundred years. They blend into a sea of humanity so there is seemingly no contrast in what they are doing versus what everybody else is doing. That's what this chapter is all about. Let's learn how the Super Rich do it in the chart room!

The Charts - Sample Forms

8.20 Conformity to the law is the first prerequisite. Passing the "smell test" is another! It's one thing for something to be legal, but it's just as important that nothing you do will raise an offended eyebrow! In other words the more we can conform without lying at the feet of those who would trample us the better off we'll be.

⁶⁷⁶ Page 199, §5.96.

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8.21 The Super Rich technique has never met the resistance of the I.R.S. or even their audits. It is unique in that while it is completely legal it ironically enjoys the ultimate in privacy because it tries to hide nothing! Think about that and all I've said so far in this chapter! This is another of the reasons the Super Rich Colato is light years ahead of anything near its class! It is substantially different from any other program the world has to offer.

8.22 Nearly 10 years ago in Seattle, Washington during a *U.S. v. Dahlstrom* pretrial I had the opportunity to speak to one of the I.R.S. Special Agents. I explained what I was doing in contrast to what Dahlstrom and Ripley were doing and he said, "Well, if that's the way you do it we'll never find that, and if we do - there wouldn't be anything we could do about it anyway! I realize that wasn't a declaration of a court, but if there had been something wrong with it they would have come down on it _long before now.

8.23 Though I am not a lawyer I am frequently mistaken for one, and among other lawyers I have trained in this special area of tax and law is John I. Forry.⁶⁷⁷ Some may recognize the name. He is Senior Partner of Morgan, Lewis & Bockius, an international Philadelphia firm. John is in the Los Angeles office. After attending my seminar I asked John for his opinion on a scale of 0 to 10 (ten being the highest) as to the ingenuity and legal back up of my plan. We agreed there was no *tax plan* which could rate a perfect "10."⁶⁷⁸ Without batting an eyelash he said, "A Nine!" He was to later testify under oath where he repeated his conviction.

8.24 The following forms are intended as samples only, and are marked "Sample" to avoid the appearance of selling them. They are just representative of what you may or may not need. Order them through the Government Printing Office. I heartily recommend the use of competent and up-to-date counsel before launching to sea!

⁶⁷⁷ John didn't know anything about the Colato before we met. Oh, his books mentioned the existence of them, but beyond that he was blind. He has agreed that First America Research holds a proprietary interest in the secrets I exposed to him, and therefore has agreed to obtain FAR's permission when a client asks him for representation.

⁶⁷⁸ *Ten!* the motion picture played that year.

The Prince's Treasure Chest!

Agent's Powers Minute and Letter of Authority

MINUTE NO. 34

OF

XYZ ENTERPRISES

A Colato

AT A SPECIAL MEETING of the Board of Trustees and in view of the powers the undersigned has to delegate authority it was decided to appoint Virginia Mitchell as Consultant for specific business to be entertained in the United States of America. She shall only have the authority to act as agent of this Trust Organization with power to open bank accounts and conduct business in the name of this Trust Organization the same as if the Trustee were able to do such things for itself. She shall report the income and provide the distribution to the hereinbefore named Certificate Holder, and the Trustee hereof shall be given ample proof of such duties done and shall maintain the tax filing and reporting duties.

DATED THIS 21st day of November, 1977.

ABC Trust Company, Ltd., Exec. Trustee By

Dennis Williams, Exec. Trustee

(Here is a copy of the letter she received): November 21,

1977

Dear Virginia:

At a special meeting of the Board of Trustees of XYZ Enterprises, it was suggested, and unanimously resolved that you shall be appointed as the President of XYZ Enterprises, and that you shall have our authority to act for, and on behalf of the Board of Trustees for such specific business as the Board of Trustees may approve, and when you act with such approval it shall be the same as if the Board had acted for itself.

This authority may include the power to execute contracts of any kind and description; to buy, sell and deal with and in property of all kinds and descriptions, wherever located; to direct and control the routine management of XYZ Enterprises; to sell, exchange, pledge, and convey **assets**; to make investments in securities, commodities of any and all sorts and kinds; to pay its debts and obligations; to issue and negotiate commercial paper; to borrow money, with or without security; and to perform any and all other acts or functions we may invest in you.

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Your signature as President SHALL be sufficient to execute any conveyance, lease, contract, commercial paper, debt, obligation, or any and all other kinds of documents or agreements binding upon XYZ Enterprises when the Board of Trustees so approves. FURTHER no seal of XYZ Enterprises shall be necessary on any such documents, and the identity of the Board of Trustees shall not be violated without our express consent. Therefore should it be necessary for you to verify with anyone that you enjoy whatever specific powers it will only be necessary that you specifically request and obtain same from the Board and the party with whom you are dealing shall have no right to know either the application of the business you shall negotiate or the identity of the Board of Trustees.

With your signature you hereby accept the position together with the powers, duties, and responsibilities relating thereto.

ABC Trust Company, Ltd., Exec. Trustee By

Dennis Williams, Exec. Trustee

Virginia Mitchell

NOTARY PUBLIC

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IRS FORM SS-4 - For Employer's I.D.

8.25 Your Colato will need its own employers identification number, even if all it's going to do is have a bank account. The I.R.S. has required the banks to refuse banking privileges until one has the identification number.

Form SS-4 (Rev. August 1989) Department of the Treasury Internal Revenue Service		Application for Employer Identification Number (For use by employers and others. Please read the attached instructions before completing this form.) Please type or print clearly.		EIN OMB No. 1545-0003 Expires 7/31/91	
1. Name of applicant (True legal name) (See instructions.)					
2. Trade name of business, if different from name in line 1			3. Executor, trustee, "care of name"		
4a. Mailing address (street address) (room, apt., or suite no.)			5a. Address of business (See instructions.)		
4b. City, state, and ZIP code			5b. City, state, and ZIP code		
6. County and state where principal business is located					
7. Name of principal officer, grantor, or general partner. (See instructions.)					
8a. Type of entity (Check only one box.) (See instructions.)					
<input type="checkbox"/> Individual SSN		<input type="checkbox"/> Estate		<input type="checkbox"/> Trust	
<input type="checkbox"/> REMIC		<input type="checkbox"/> Plan administrator SSN		<input type="checkbox"/> Partnership	
<input type="checkbox"/> State/local government		<input type="checkbox"/> Other corporation (specify)		<input type="checkbox"/> Farmers cooperative	
<input type="checkbox"/> Other nonprofit organization (specify)		<input type="checkbox"/> National guard		<input type="checkbox"/> Federal government/military	
<input type="checkbox"/> Other (specify)		<input type="checkbox"/> Church or church controlled organization		<input type="checkbox"/> If nonprofit organization enter GEN (if applicable)	
8b. If a corporation, give name of foreign country (if applicable) or state in the U.S. where incorporated			Foreign country		State
9. Reason for applying (Check only one box)					
<input type="checkbox"/> Started new business		<input type="checkbox"/> Changed type of organization (specify)			
<input type="checkbox"/> Hired employees		<input type="checkbox"/> Purchased going business			
<input type="checkbox"/> Created a pension plan (specify type)		<input type="checkbox"/> Created a trust (specify)			
<input type="checkbox"/> Banking purpose (specify)		<input type="checkbox"/> Other (specify)			
10. Date business started or acquired (Mo., day, year) (See instructions.)			11. Enter closing month of accounting year. (See instructions.)		
12. First date wages or annuities were paid or will be paid (Mo., day, year). Note: If applicant is a withholding agent, enter date income will first be paid to nonresident alien. (Mo., day, year).					
13. Enter highest number of employees expected in the next 12 months. Note: If the applicant does not expect to have any employees during the period, enter "0."			Nonagricultural		Agricultural
			Household		
14. Does the applicant operate more than one place of business? <input type="checkbox"/> Yes <input type="checkbox"/> No					
If "Yes," enter name of business.					
15. Principal activity or service (See instructions.)					
16. Is the principal business activity manufacturing? <input type="checkbox"/> Yes <input type="checkbox"/> No					
If "Yes," principal product and raw material used.					
17. To whom are most of the products or services sold? Please check the appropriate box.					
<input type="checkbox"/> Public (retail)		<input type="checkbox"/> Business (wholesale)		<input type="checkbox"/> N/A	
<input type="checkbox"/> Other (specify)					
18a. Has the applicant ever applied for an identification number for this or any other business? <input type="checkbox"/> Yes <input type="checkbox"/> No					
Note: If "Yes," please complete lines 18b and 18c.					
18b. If you checked the "Yes" box in line 18a, give applicant's true name and trade name, if different than name shown on prior application.					
True name			Trade name		
18c. Enter approximate date, city, and state where the application was filed and the previous employer identification number if known.					
Approximate date when filed (Mo., day, year)		City and state where filed		Previous EIN	
Under penalties of perjury, I declare that I have examined the application, and to the best of my knowledge and belief, it is true, correct, and complete.					
Name and title (Please type or print clearly)					Telephone number (include area code)
Signature					Date
Note: Do not write below this line. For official use only.					
Please leave blank	Gen.	Ind.	Class	Sub	Reason for applying
For Paperwork Reduction Act Notice, see attached instructions.					

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Power of Attorney - General

8.26 You would want to be very careful before you give someone your **general** power of attorney. This one is quite wordy, but it shows how complete it is. For a specific power of attorney, language would be drafted to permit only a special power under special or general circumstances. In other words, it would limit what power the person was able to do. This one is *unlimited* use it carefully-like with a spouse.

POWER OF ATTORNEY

KNOW ALL MEN **BY** THESE PRESENTS, that I, the undersigned, L. Robert Turner, residing at 1073 Ridge Road, Lancaster, California 93534 do hereby constitute and appoint Alison L. Turner my true and lawful attorney -in-fact, for me and in my name, place and stead, and on my behalf, and for my use and benefit:

1. To exercise or perform any act, power, duty, right or obligation whatsoever that I now have, or may hereafter acquire the legal right, power or capacity to exercise or perform in connection with, arising from or relating to any person, item transaction, thing, business property, real or personal, tangible or intangible, or matter whatsoever;

2. To request, ask, demand, sue for, recover, collect, receive and hold and possess all such sums of money, debts, dues, commercial paper, checks, drafts, accounts, deposits, legacies, bequests, devises, notes, interests, stock annuities, securities of any description or kind, commodities, pension and retirement benefits, insurance benefits and proceeds, any and all documents of title, choses in action, personal and real property, intangible and tangible property and property rights, and demands whatsoever, liquidated or unliquidated, as now are, or shall hereafter become, owned by, or due, owing, payable or belonging to, me or in which I have or may hereafter acquire interest, to have, use, and take all lawful means and equitable and legal remedies, procedures, and writs in my name, for the collection and recovery thereof, and to adjust, sell, compromise, and agree for the same, and to make, execute and deliver for me, on my behalf, and in my name, all endorsements, acquittance, releases, receipts or other sufficient discharges for the same;

3. Without limitation of anything foregoing, to endorse for deposit any and all checks, drafts, notes, bills of exchange and orders for the payment of money, either belonging to or coming into my possession, and to sign any and all checks, drafts or orders against any and all funds at any time standing to my credit on deposit with banks, and said banks are hereby authorized to honor any and all checks, drafts and orders so signed, including, but not limited to those drawn to the individual Order of said attorney-in-fact without further inquiry or regard to the authority of said attorney-in-fact, or the use of the checks, drafts and orders or the proceeds thereof;

4. To lease, purchase, exchange and acquire, and to agree, bargain and contract for the lease, purchase, exchange and acquisition of, and to accept, take, receive and possess any real or personal property whatsoever, tangible or intangible, or interest thereon, on such terms and conditions, and under such covenants, as said attorney-in-fact shall deem proper;

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5. To maintain, repair, improve, manage, insure, rent, lease, sell, convey, subject to liens, mortgage, subject to deeds of trust, and hypothecate, and in any way or manner deal with all or any part of any real or personal property whatsoever, tangible or intangible, or any interest therein, that I now own or may hereafter acquire, for me in my behalf, and in my name and under such terms and conditions, and under such covenants, as said attorney-in-fact shall deem proper;

6. To conduct, engage in, and transact any and all lawful business of whatever nature or kind for me, on my behalf, and in my name or the names of those entities I control.

7. To make, receive, sign, endorse, execute, acknowledge, deliver and possess such applications, contracts, agreements, options, covenants, conveyances, deeds, trust deeds, security agreements, bills of sale, leases, mortgages, statements of adjustment, including, without limitation, with respect to any and all real property where ever situated, assignments, insurance policies, bills of lading, warehouse receipts, documents of title, bills, bonds, debentures, checks, drafts, bills of exchange, letters of credit, promissory notes, stock certificates, proxies, warrants, commercial papers, receipts, withdrawal receipts, and deposit instruments relating to accounts or deposits in, or certificates of deposit of, banks, savings and loans, or other institutions or associations, proofs of loss, evidences of debts, releases, and satisfactions of mortgages, lines, judgments, security agreements, and other debts and obligations, and such other instruments in writing of whatever kind and nature as may be necessary or proper in the exercise of the rights and powers herein granted;

8. In regard to my said attorney- in-fact, I grant full power and authority to do, take, and perform all and every act and thing whatsoever requisite, proper or necessary to be done, in the exercise of any of the rights and powers herein granted, as fully to all intents and purposes as I might or could do if personally present, with full power of substitution or revocation, hereby ratifying and confirming all that said attorney-in-fact, or his substitute or substitutes shall lawfully do or cause to be done by virtue of this Power of Attorney and the rights and powers herein granted;

9. This instrument is to be construed and interpreted as a General Power of Attorney. The enumeration of specific items, rights, acts or powers herein is not intended to, nor does it, limit or restrict, and is not to be construed or interpreted as limiting or restricting, the general powers herein granted to said attorney-in-fact;

10. This Power of Attorney shall not be affected by the disability or incapacity, either physical or mental, of the principal, and the attorney-in-fact appointed hereunder shall continue to have all of the powers and duties conferred herein in the event of any such disability;

11. The rights, powers and authority of said attorney-in-fact herein granted shall commence and be in full force and effect on the date hereof, and such rights, powers and authority shall remain in full force and effect thereafter and shall not be affected by my death or disability.

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DATED THIS 11th day of December, 1978.

L. Robert Turner

NOTARY STATEMENT AND SEAL

IRS FORM 1001 - Exemption Certificate

8.27 This is the form used to acquire an Employers Tax Identification number. Remember that Colato's are NOT trusts. The I.R.S. recognizes Colato's needs by calling them "Unincorporated Business Organizations" (UBO's). It's quite possible the only needs of the tax identification number is for banking purposes. Fill in the form or call your district office for the tax number.

Sandi Crawford
Secretary Treasurer

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Financial Statements

8.28 Here is a simple financial statement of a small company. In reality the only asset which was "held in trust" in this particular case was the car. You will notice there is no mention of which assets are "held in trust." Do think very carefully about you financial statements to the banks as a false statement is a felony!

8.29 There is no reason many of the assets listed in a financial statement cannot be assets in trusts or Colatos. Notice how unobtrusive the asterisk is. This sample is an example of "fund accounting principles." Ask your accountant or CPA - they will know how all of this works.

BROMSTRUP & LEWIS, LTD.

May 15, 1989

Assets*		Liabilities
Cash on hand	\$ 2,260	0
Furniture	23,490	
Office Machinery	16,300	
Futures Contracts	59,600	
Automobiles	<u>4,500</u>	
TOTAL	106,150	

*Includes assets held in trust.

Assets	106,150
Liabilities	<u>0</u>
Net Worth	106,150

Bank Account First National Bank

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Notice of Limited Liability

NOTICE is hereby given to all persons, firms, and entities extending credit to, contracting with, dealing with, or having claims against this common law trust organization (Colato) or its trustees that they must look solely to the funds, property, and other assets of the "XYZ Colato" for payment or for settlement of any claim, debt, judgment (decree), award, or other obligation which may become payable hereunder. The trustee, officers, agents, and certificate holders are not personally liable when dealing with "XYZ Colatos" properties or business matters, or for any kind of obligation resulting therefrom, or for any type or class of claim.⁶⁷⁹

8.30 Be sure to review the entire sections beginning on page 159.

⁶⁷⁹ Copyright First America Research.

Sample Colato Indenture

8.31 Here is a sample indenture (contract) which is by no means as complete as the one First America Research has designed. I was not permitted to use their indenture in my book as it is the property of their members. Please see page 227 "Instant Foreign Colato" on how to become a member.

8.32 Note Article XXXI Shareholder's Requests: I don't like the language used even though the language used "Requests" continues the purity of the Colato. Competent counsel is imperative!

WASHINGTON-ESSEX BUILDING TRUSTEES

DECLARATION OF TRUST

February 12, 1920

We, William H. Dunbar, George E. Brock and J. Haris Aubin, hereby covenant and declare that the terms of this Trust are as follows:

Article I. Name - The name used by these Trustees as such shall **be** WASHINGTON-ESSEX BUILDING TRUSTEES.

Article II. Trustees - There shall be three Trustees until such time as the number is changed by a vote of the Trustees, as hereinafter set forth. The first Trustees shall be William H. Dunbar of Cambridge, George S. Brock of Boston, and J. Harris Aubin of Newton.

Article III. Purposes - The purpose of this Trust is to acquire, improve, develop, alter, lease, operate, mortgage and dispose of the land and building in Boston, Massachusetts, surrounded by Washington **Street**, **Hayward** Place, Harrison Avenue and Essex Street, and any other lands, buildings, leases, rights, licenses, contracts, options, stocks, bonds, notes, securities and other properties and interests which will in the judgment of the Trustees be of benefit to the main purposes aforesaid of the Trust, and to convert the principal and income of the Trust into money as soon as in the judgment of the Trustees, it is expedient so to do, and to distribute the net proceeds of principal and income to the cestuis que trust, but the Trustees shall not be required to make such conversion or distribution of principal until the end of the term of the Trust.

Article IV. Cestuis Que Trust. - The cestuis que trust shall be those to whom certificates for shares are issued by the Trustees. The cestuis que trust shall be trust beneficiaries only, and to the extent hereinafter defined only, and not partners or associates or in any other relation whatever between or among themselves with respect to the trust property.

Article V. Certificates - The cestuis que trust shall each receive a certificate or certificates from the Trustees showing the number of shares of beneficial interest to which such cestuis que trust is entitled and the character of such interest.

Article VI. Transfer - The interests of the cestuis que trust shall not be transferable except by operation of law but if the cestuis s Rue trust surrenders his certificate for cancellation with an order

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for substitution of another cestuis que trust in his place, in such form as the Trustees may approve, the Trustees will accept such surrender and issue to new holders certificates for corresponding numbers of shares and no surrender shall be operative until the holder of certificates has, with respect to said shares, been stricken from the books of said Trustees as a cestuis que trust, and the new holder has been entered thereon as a cestuis que trust in his place. But the certificate of the Trustees shall be conclusive evidence in favor of the holder that this has been done.

Article VII. Form of Certificates - The certificates issued by the Trustees shall be in such form as the Trustees may from time to time by vote determine and may be with or without par value as the Trustees may determine and the Trustees shall not be required to recognize any certificate not in the form prescribed by them.

Article VIII. General Powers of the Trustees - The Trustees shall have no power to bind the Trustees or any of them or the trust assets unless it be by instrument in writing signed in the manner hereinafter set forth or be from time to time determined by recorded vote of the Trustees and sealed with the seal of the Trustees and executed in accordance with a special or standing vote recorded on the books of the Trustees, and by documents so executed the Trustees shall have the power to take, receive, collect, acquire, buy, sell, borrow, lend, mortgage, pledge, encumber, lease, release, contract for or concerning, compromise concerning, or otherwise deal with or concerning any property of or for the trust, or in any way connected with its interests, as the sole and absolute owners thereof at law and in equity, and with as full powers as if such absolute owners at law and in equity and without leave or intervention of any court, and in whole or in parcels and at public auctions or at private sales, or otherwise, and upon such terms and for such sums as the Trustees deem advisable, and to make partition with co-owners or joint owners outside the trust having any interest in any properties in which the Trustees are interested, and to make such partition either by sale or by set off or by agreement, or otherwise, and to make such leases even if the terms thereof extend beyond the duration of the trust, and for such purposes to determine the valuation of such properties, and when *anything* is dependent upon the value of any property, and/or upon the existence of any fact to determine such value and/or such fact, and the certificate of such Trustees to such determination shall be conclusive in favor of anyone noting thereon in good faith, and the Trustees shall not be limited to investments which are lawful for Trustees.

Article IX. Power of majority - The majority of the trustees at the time may exercise all of the powers of the Trustees provided they act by vote duly recorded on the records of the Trustees passed by such majority at a meeting of which all the Trustees at the time have had two days notice in writing sufficiently specific to indicate the general subject matter to which the vote relates, except that amendments to the Declaration of Trust shall be made and Trustees removed or appointed only as hereinafter stated.

Article X. Signature - The signature of the Trustees shall be in the form from time to time determined by vote of the Trustees or in the form:

"Washington-Essex Building Trustees

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By _____

Majority of Trustees

Article XI. Seal - The seal of the Trustees shall be an impression seal containing the words:

"Washington-Essex Building Trustees. Liability limited by Declaration of Trust February 12. 1920."

Article XII. Limit of Trustees' Liability - No obligation of the Trustees or any of them as such shall bind the Trustees or any of them as such or individually beyond the extent of the trust assets and any judgment obtained against any of the Trustees for *anything* connected with *the* trust shall be deemed fully satisfied on the application to it of *such* trust assets as are available therefore, having regard to the claims of other creditors of the trust, and anyone contracting with the Trustees or any of them by. so doing agrees not to enforce any contract except to the extent provided in this Article, and no contract shall be binding on the Trustees or any of them unless it contains this Article or incorporates the same by express reference, and the Trustees and each of them shall be entitled to indemnification from the trust assets against any claims against any or all of the Trustees as such or individually concerning matters growing out of the action of any of them as Trustees, whether such claims are well founded or not.

Article XIII. Liability of Trustees for Default - No Trustee shall be personally liable for any act, omission, neglect, default or misconduct of any or all other Trustees or for any cause except his own willful misconduct, and no Trustee shall be liable for his failure to exercise good judgment or for the exercise of poor judgment, or for more money *than* he actually receives, but on the contrary, the obligation of each trustee shall be limited to carrying out in good faith what h. believes to be his duties under this Declaration of Trust.

Article XIV. vacancies and Appointment of Trustees - The powers of the Trustees shall be determined and exercised by the Trustees at the time irrespective of the fact that there are vacancies, except that no votes shall be binding unless there are at least two Trustees voting in favor. A Trustee may resign at any time by having his *resignation* recorded in the Registry of Deeds for Suffolk County, Massachusetts, except that no resignation that would reduce the number of Trustees below two shall become effective until additional Trustees have been appointed sufficient to maintain at least this number. After resignation a Trustee shall continue to have the powers of a Trustee to fill vacancies until his successor is chosen and qualified. Vacancies may be filled at any time by the majority of the Trustees (subject to the notion of the mortgagees as in this Article provided) by vote recorded in said Suffolk Registry of Deeds, provided the new appointee is (except as in this Article hereafter stated) approved in writing by the holders of a majority of the then outstanding ordinary shares in the Trust but such new appointments shall not become operative until the appointee has caused his acceptance to be recorded in said Registry of Deeds. Successors to the trusteeship held by J. Harris Aubin need not be approved by the holders of a majority of the then outstanding ordinary shares and shall be only those nominated in writing by the John Hancock Mutual

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Life Insurance Company and the President and Fellows of Harvard College as long as the principal of the mortgages held by them amounts to \$2,300,000 or more on any property of the trust, and no Trustee shall be chosen who is not approved in writing by said mortgagees so long as the principal of the mortgages held by them amounts to \$2,300,000 or more on any property of the Trusts. The Trustees shall take prompt action at all times to keep the number of Trustees in office at three. The number of Trustees may with the approval in writing of said mortgagees be reduced by a vote of the Trustees at any time after July 1, 1921, without amendment of this Declaration of Trust.

Article XV. Officers, Committees, and Delegation of Powers - The Trustees may by a unanimous vote of three Trustees from time to time appoint from their own number one or more as a committee or committees, either standing or temporary, as they may determine by vote and delegate to such committee or committees any powers and discretion that the Trustees may by such vote determine, and the Trustees may employ agents not of their own number and by such unanimous vote of three Trustees may delegate to them such powers and discretion as the Trustees may determine.

Article XVI. Terms of Trust - This Trust shall continue until twenty (20) years after the death of the last survivor of three (3) persons first above specifically named as Trustees and of their now living children, unless the proposes of the trust, including final distribution, have been completed and the Trustees have voted to terminate the trust prior to such termination date.

Article XVII. Distribution of Principal and Income - The net income of the trust (after the payment of operating and other current expenses and after making charges for depreciation and after establishing reserves for payment of taxes and other maturing debts, for depreciation of capital assets and for other charges which the Trustees deem to be proper against income) shall be paid over as soon as may be after the first of February and August for the six (6) months ending with the preceding 31st day of December and 30th day of June to the cestuis que trust registered as such on the records of the Trustees on said first days of February and August respectively, and in accordance with the priorities to which any class of them may be entitled and the proceeds of the sale of capital assets shall be paid over to the cestuis que trust in accordance with their priorities as rapidly as the interests of the trust permit and except so far as devoted to the acquisition and proceeds of capital assets may be applied to the reduction of mortgages. Notwithstanding the provisions of the preceding portions of this section income may be applied to the reduction of mortgages.

Article XIX. Priorities - The Trustees may borrow money temporarily or on time or long time loans, payment of which shall have priority over any rights of the cestuis que trust and may also provide for different classes of cestuis que trust having priority one class over another. No such priority class shall be established or enlarged without the consent in writing of the holders of a majority of such class and of each deferred class respectively and without giving the deferred class or classes an opportunity to contribute to the priority class and acquire the rights incident thereto.

Article XX. Compensation - The Trustees shall receive reasonable

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compensation for their services to be determined in accordance with the responsibilities incurred, services performed and success of the trust.

Article XXI. Meetings and Notices - Meetings of the Trustees may be held at any reasonable time and place in Boston on the call of two Trustees of which two days written notice shall be given to all the trustees, and the depositing of such notice in the mail, postage prepaid, properly addressed, to such Trustees at their respective business addresses as recorded on the records of the Trustees shall constitute such notice whether received or not, and except as otherwise provided by vote such meetings shall be held at Top Floor, 161 Devonshire Street, Boston, Massachusetts.

Article XXII. Records - The records of the trustees shall be kept in loose leaf or bound book form and shall be open to the inspection of any Trustee or cestuis que trust at all reasonable times.

Article XXIII. Certification - The certificate of two Trustees as to any fact and as to anything upon the records of the trust shall be conclusive in favor of all persons acting in good faith thereon.

Article XXIV. Character of Title - The Trustees at the time in office shall be the owners in their own right of the entire legal, equitable and beneficial title and interest in the trust assets and shall hold the same in fee simple as joint tenants and not as tenants in common. When any person ceases by death or otherwise to be a trustee the entire title shall survive to the remaining Trustees and the deceased or ceasing trustee shall have no right in the property. On appointment of a new trustee he shall become seized as a joint tenant with the other trustees of the entire trust assets without further conveyance. Trustees and persons causing to be Trustees shall at all times execute any further conveyances necessary or desirable to carry out or further evidence these transfers of title among trustees. The Trustees shall none of them as such be entitled to share in any income or profits or distribution of principal, and shall not be liable for leases, and shall not be partners of each other or in any association with each other. The cestuis que trust shall have no interest, legal or equitable, or beneficial, in the trust assets. Their rights shall be to receive distribution of the income and of the cash proceeds of the principal when and as provided in accordance with the terms of the trust. They shall have no share in the profits as such and shall not be liable for losses, and shall not be partners nor in any other manner in association with each other. Their rights and the certificates representing them shall be personal property and not real estate.

Article XXV. Court Appointment of Trustees - If for any reason there is a failure for an unreasonable length of time in the appointment of trustees under this trust agreement, such trustees may be appointed by the Supreme Judicial Court of the Commonwealth of Massachusetts on the application of interested parties and notice to all parties in interest.

Article XXVI. Resignation of Trustees - Any Trustee will forthwith resign after January 1, 1922 if the holders of a majority of the ordinary shares outstanding at the time request him in writing so to do.

Article XXVII. Liability of Purchasers for Application of Purchase Money - No purchaser from the trustees shall be liable for any acts of the other or from to their care of above..

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Article XXVIII. Liability for Acts of Agents - The liability of the Trustees for acts of their agents shall be limited to the exercise of reasonable care in the selection of agents and the Trustees shall not be liable as Trustees or personally for any of the acts or misdeeds or non-action of agents.

Article XXVIX. Plan of Organization - The Trustees shall at the instance of Max Mitchell and others who have executed a contract of this date with the mortgagees aforesaid (a copy of which identified by the signatures of these Trustees is filed with the records of the Trustees), receive conveyance directly or indirectly from the Trustees of the Department Store Trust created by Declaration of Trust recorded with the Suffolk Registry of Deeds at Book 2924, Page 274, covering the meal estate and building now or heretofore held by them bounded by Washington Street, Hayward Place, Harrison Avenue and Essex Street, subject to the mortgages and encumbrances thereon, and in return for said conveyance and for the obligations undertaken by said contractors Max Mitchell and others to the John Hancock Mutual Life Insurance Company and the President and Fellows of Harvard College, mortgages as aforesaid, for the benefit of this Trust, by said contract, the Trustees shall assume the obligations contemplated to be performed by them in said contract and shall issue to the order of said Max Mitchell 23,000 cumulative preferred shares of a par value of \$100 each, and 25,000 ordinary shares of no par value, both of said classes of shares to be issued is fully paid and non-assessable; and each of said preferred shares shall (subject to the obligations of said contract) be entitled out of any income as above described to be (or such lesser rate as said contractor Max Mitchell shall before issue determine) per share annually, payable in equal parts semi-annually on February 1st and August 1st cumulatively, and to preference to the extent of their par value and any accrued and unpaid dividends over the ordinary shares in distribution of capital, and the holders of ordinary shares shall be entitled to receive all distributions of income and capital above that required for the preferred shares as aforesaid. Additional issues for cash or otherwise may be made and this plan may be modified in any manner, by vote of the Trustees without amendment of this Declaration of Trust.

Article XXX. Plan of Operation - A portion of said premises shall be altered into a theater and leased for thirty (30) years to a separate corporation or trust in which the shareholders in this Trust may be interested and at a rental of One Hundred Twenty-five Thousand Dollars (\$125,000) a year, the tenant to provide its own heat and inside repairs but to pay nothing toward interest, taxes or insurance on the building or theater. This plan may be modified in any manner by vote of the Trustees without an amendment of this Declaration of Trust, but any modification shall be subject to the rights of John Hancock Mutual Life Insurance Company and the President and Fellows of Harvard College under said contract of Max Mitchell and others with them of even date herewith.

Article XXXI. Shareholders' Requests - If anything is done by the Trustees in the organization, management or termination of the Trust upon the written request of the holders at the time of a majority of the then outstanding ordinary shares, such request shall be a full justification to the Trustees for such motion with respect to all shareholders.

Article XXXII. Accounts - The Trustees shall render accounts to

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the cestuis que trust on or before March first in each calendar year for the preceding calendar year.

Article XXXIII. Mortgagees - Wherever in this instrument, the term mortgagees or John Hancock Mutual Life Insurance Company or President and Fellows of Harvard College is used, it shall include their respective successors and assigns.

Article XXXIV. Amendment - The terms of this Declaration of Trust may (subject to all rights of said mortgagees) be amended at any time by the unanimous action of three Trustees if approved in writing by the holders of a majority of the then outstanding ordinary shares in the Trust and recorded in the Suffolk Registry of Deeds, provided that no rights of holders of preferred shares shall be diminished unless the holders of a majority of such shares outstanding also approve such amendment in writing.

Article XXXV. Covenant of Trustees - The Trustees signing this instrument, and all other Trustees hereafter becoming such in accordance with the terms of this instrument as it is, or as it is from time to time amended, hereby adopt as theirs the common seal hereunto affixed and covenant with each other and with the cestuis que trust and agree that they will faithfully carry out all the terms of this trust which by the provisions thereof are for them to perform.

Witness our hands and a common seal this 12th day of February, 1920.

WILLIAM H. DUNBAR
GEORGE E. BROCK
J. HARRIS AUBIN

COMMONWEALTH OF MASSACHUSETTS.
Suffolk ss.

February 27, 1920: Then and there personally appeared the above named William H. Dunbar, George E. Brock and J. Harris Aubin, to me known and known to be the persons who executed the foregoing Declaration of Trust, and acknowledged the same to be their free act and deed, before me,

George P. Davis, Justice
of the Peace.

My commission expires
March 12, 1926.

The foregoing is the real estate trust organized pursuant to the requirements of the agreement of February 12, 1920, between John Hancock Mutual Life Insurance Company and President and Fellows of Harvard College and Max Mitchell, Benjamin A. Prager, Lassar Agoos and Reuben Broomfield.

Max Mitchell (JOHN HANCOCK MUTUAL LIFE INSURANCE COMPANY,
 (PRESIDENT AND FELLOWS OF HARVARD COLLEGE)
 By their attorney John L. Wakefield

Title Insurance Objections

8.34 As a result several of the Western states enacted legislation to remedy the situation. Colorado is one of those states where a statute has recognized such powers inherent to Colatos. The following affidavit is drafted and there has never been a problem since. Even though the affidavit is called an "Affidavit for Property of *Trust*" don't let the word "trust" intimidate you. We, as the Super Rich, use the word when we must, and clarify only where we want to.

8.36

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The Prince's Treasure Chest!

8.37 Of course the signature is to be followed with a Notary Public's statement and seal to make the document a legal instrument. It would then be recorded with the county clerk and recorder's office in the county in which the real estate lies. As I said this vehicle has solved all the problems we encountered over title insurance companies refusal to insure title of property to a buyer.

8.38 It is interesting to note however that even in those states where we initially encountered these problems that the title insurance companies insured the titles when Colatos were the buyers! The problems were only encountered when the Colatos tried to sell! Review the piece at §4.321. One who experiences difficulties with a title insurance company may either go to a state such as Massachusetts where Colatos are well known or apply the principles of the 9th and 10th Amendments of the United States Constitution, or use a corporate or other entity as a nominee to hold title in an "insurable" name.

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Resolution Sample

MINUTE NO. 8

OF

ABC FORCOLATO

A Colato

AT A SPECIAL MEETING of the Board of Trustees it was resolved that the annual meeting of the Board of Trustees should be held in Nassau, Bahamas, B.W.I. at the Cococabana Hotel. Also resolved that the U.S. Agent and Consultant, Doug Taylor and his wife of Safford, Arizona should be sent for and all their food, travel, and lodging should be paid for by this Colato.

DATED THIS 3rd day of April, 1981.

Kent Trust Company, Ltd., Exec. Trustee By

Allen Farnsworth, President

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Affidavit For Successor Trustee

8.39 Be sure to understand the part written at §4.326.

MINUTE NO. 22
OF
CENTURY COLATO
A Colato

AT A SPECIAL MEETING of the Board of Trustees the following Resolution was made:

THAT IN THE EVENT of the death or incompetency of Kenneth T. Watson, Sr. as trustee of this Colato that Kenneth T. Watson, Jr. of Athol, Massachusetts shall succeed to the office of Trustee, and by his signature over seal of notary he shall be deemed to have accepted all the rights, duties, and responsibilities pertaining thereto.

UPON THE DEATH or legal incapacity (confirmed by no less than three competent physicians) of the current Trustee this Minute shall become an irrevocable part of the Minutes of this Colato, but shall be amenable to any change until then.

DATED THIS 14th day of October, 1980.

Kenneth T. Watson, Sr., Executive Trustee

NOTARY STATEMENT & SEAL

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Affidavit Of Successor Trustee

8.40 Be sure to understand this which has been written at page 157.

MINUTE NO. 18

OF

BELL PRODUCE

A Colato

AFFIDAVIT

AT A SPECIAL MEETING of the Board of Trustees, after first being duly sworn, it was ruled that the following persons are hereby appointed as full and equal trustees of this Colato, and that they shall have all the rights, powers, and duties conferred upon them by this indenture.

TO WIT: Sean K. Bell of 9374 Kent Ave., Minneapolis, MN 55440; Debra Ann Singer of 5415 Brookdale, Orem, UT 84057; Daryl T. Bell of 150 S. McClelland St., Salt Lake City, UT 84102; and Sharon S. Smith of RR#2 Box 989, Safford, AZ 85546

BY THEIR SIGNATURES appearing here below they do constitute themselves as members of the Board of Trustees of this Colato, together with the rights, privileges, immunities, and duties as herein provided, and promise to do their best to maintain the dignity of' this Colato as it has been established. FURTHER, investiture of all said rights is hereby confirmed.

FURTHER AFFIANT SAYETH NOT.

DATED THIS 16th day of October, 1977.

Sharon S. Smith, Trustee

NOTARY STATEMENT AND SEAL

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Affidavit of Trustees Powers

8.41 Sometimes it's necessary to give someone an affidavit of the powers you enjoy. You would need to make a list of the powers generally stated on the pages beginning with page 155ff. A sample of such a list is as follows:

AFFIDAVIT AND NOTICE

COMES NOW the Executive Trustee of this Colato, Gary R. Hinton, under oath and says the following:

I AM THE EXECUTIVE TRUSTEE of Trinity Co. and that as such I have the exclusive authority to act for and in behalf of the name Trinity Co., and that my authority includes (without limitation) the power to execute contracts of any kind and description; to buy, sell, and deal with assets or property of all kinds; to direct and control the routine management concerning any opportunity that may benefit the Colato; to sell or exchange assets; to make *investments* of any and all kinds; to pay debts and *obligations*; and to perform any or all other *actions* or functions, and have full powers which any person in the world would have naturally or by law. Further, the signature of the Executive Trustee shall be sufficient to execute any conveyance, deed, lease, contract, commercial paper, debt obligation, and any other document or agreement binding upon Trinity Co.

THIS AFFIDAVIT may be recorded at the option of the Trustees with the County Clerk and Recorder's Office in whatever state and county the Trustee deems to be beneficial to this Colato.

FURTHER AFFIANT SAYETH NOT.

DATED THIS 11th day of April, 1980.

Gary R. Hinton, Executive Trustee

NOTARY STATEMENT AND SEAL

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Sample Minute

MINUTE NO. 5
OF
IMPERIAL ESTATE
A Colato

AT A REGULAR MEETING of the Board of Trustees, it was suggested, and unanimously resolved that regular annual meetings of this Colato should be held on or before the 19th day of October of each year.

ANNUAL MEETINGS may be held at any expedient place in the world. The trustee(s) shall ratify all the business which was conducted through the business year.

DATED THIS 19th day of October, 1989.

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Paul D. Stuart, Executive Trustee

Customs Form 4790

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Bill of Sale

April 11, 1990

For full and valuable consideration of 100 Colato Certificate Units and \$10.00 I hereby transfer all my rights and interest in or to that personal property described as a Hersheide Grandfather Nine Chirre Clock to The Barron Company.

Seller s Signature

NOTARY STATEMENT

The Prince's Treasure Chest:

IRS Form 4789

Currency Transaction Report

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Sample Inter Vivos (Living) Trust

8.42 Here is a sample of a regular trust. You can see the "splitting of title" and that the transfer is a gift very easily. Trusts are covered in Chapter Three. Remember the terms of the trust must be recorded.

DECLARATION OF TRUST

The Ballard Family Trust

whereas we Joe and Carolyn Ballard of the city of Littleton, Colorado, Jefferson County, State of Colorado are the owners of certain personal or real property which is set forth in Schedules A and B respectively, attached hereto and made a part hereof. Now therefore know all men by these presents that we as grantors do hereby acknowledge and declare that Joe and Carolyn hold and will hold said personal and real property and all rights, title and interest in and to said property as trustees in trust. This Inter Vivos Declaration of Trust shall be known as the "Ballard Family Trust."

For the use and benefit of all children of this marriage as beneficiaries and upon the death of the survivor of us our successor trustee is hereby directed forthwith to transfer said property and all right title and interest in and to said property to said beneficiaries absolutely and thereby terminate this trust.

It is further declared that community property will retain its character as community property. We as grantors reserve unto ourselves the power to place mortgages or other liens upon the property and to collect any rental, interest, dividend, royalty and or other income *which* may accrue from said trust property, and in our sole discretion as trustee either to accumulate such income as an addition to the trust assets being held hereunder or pay such income to ourselves as individuals. All distributions of community property and income from the trust during the joint lives of the grantors will be distributable to us as our community property.

We reserve unto our selves the power and right during our life time to alter, amend, or revoke in whole or in part the trust hereby created without the necessity of obtaining the consent of the beneficiaries and without giving notice to the beneficiaries. Upon the revocation of this trust all of the community property in the trust will be returned to the grantors as their community property.

Upon the death of either grantor the surviving grantor shall have the right at any time to alter, amend, or revoke the trust as to the surviving grantor. Upon the death during our lifetime of the beneficiaries designated hereunder we reserve the right to designate a new beneficiary(s).

Upon the death or legal incapacity of one of us the survivor shall continue as sole trustee. Upon the death of the survivor of us or if we should both die in a common accident we hereby nominate and appoint as successor trustee all children of this marriage to be trustees upon their 18th birthday. Until that

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time Matthew Harris residing at 2217 W. Balsam Street, Littleton, CO 80123 shall be the Interim Trustee which position shall expire when the youngest of our children shall have reached her 18th birthday.

This declaration of trust shall extend to and-be binding upon the heirs, executors, administrators, and assigns, of the undersigned and upon the successor to be trustee(s).

The trustees and successor trustees shall serve without bond.

This Declaration of Trust is executed in the State of Colorado and shall be interpreted and construed under the laws of the same.

In witness whereof we have hereunder set our hands and seals this 12 day of March, 1982.

Grantors

NOTARY STATEMENT (also the Schedules showing the property).

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President Lyndon B. Johnson's Foundation

THE LYNDON B. JOHNSON FOUNDATION

THIS TRUST INDENTURE made and entered into this 2nd day of March, 1956, by and between LYNDON B. JOHNSON and wife CLAUDIA T. JOHNSON, (herein sometimes called Founders), and Lyndon B. Johnson, Claudia T. Johnson. A. W. Moursund, J. C. Kellam, and Donald Thomas (herein called Trustees),

WITNESSETH:

Section I. The Trust Estate

The Founders hereby give to the Trustees, for the purposes of The Lyndon B. Johnson Foundation, the sum of One Hundred Dollars (\$100.00) in cash. The Founders contemplate that they and others who may desire to use this Foundation to make sifts for charitable, Scientific, literary, religious and educational purposes, from time to time may hereafter give, bequeath or devise other funds and property to this Foundation, as herein defined, and subject to special provisions and conditions, and thereupon the funds or property so acquired as part of this Foundation shall be administered for such purposes and subject o such special provisions and conditions, so long as in the opinion of the Trustees the same is practicable. Except to the extent that the conditions of the particular Gift otherwise provide, every gift to this Foundation shall be governed by the provisions of this indenture, but anything in this indenture to the contrary notwithstanding, no gift shall ever be accepted by this Foundation unless the administration, use and distribution of same is within the purposes of this Foundation, and no principal of or income from any gift shall ever be used, disbursed or distributed for any other purposes. The Trustees in their discretion may reject any gift which they believe to be unwise, undesirable or impracticable.

Section II. Definitions

The term 'Gift.'" as used herein, shall embrace every bequest, devise, assignment, transfer or conveyance to take effect either in present or future, of any estate, right, title or interest whatever in and to any real or personal property, any chose in action, or any right or thing whatever.

The term "donor" shall include all Trustees and their successors hereunder acting at any given time.

Section III. Purposes

The purposes of this foundation (hereinafter sometimes collectively referred to as general purposes of the Foundation) shall be:

A. To assist deserving persons by gifts or loans, to the end that the innate capacities of such persons may be developed to the fullest extent; and if such loans are made, they may be made without regard to ordinary business principles and not as investments for the Trust Fund, but with the realization that, while treated as loans, they may be made to persons not ordinarily regarded as good business risks, and may later be regarded as gifts. In all cases in which assistance is extended by means of loans, the Trustees, in their discretion, may take promissory notes or other evidences of indebtedness from said persons, upon such terms and conditions as the Trustees may determine, so that, if repayment should be made, the funds may be used again to help other deserving persons.

B. To aid such religious, charitable, scientific, literary or educational uses and purposes as in the judgment of the Trustees shall be in the furtherance of the public welfare and tend to assist, encourage, and promote the well-doing and well-being of mankind of deserving persons or the inhabitants of any community.

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C. In no event and under no circumstances shall any part of the trust estate or the income therefrom be distributed to or inure to the benefit of the Founders, or either of them, or the heirs or personal representatives of either of them, or any Trustee hereunder, or for the benefit of any other person, firm or corporation Who may hereafter make am contribution to this Foundation, or to his or their heirs, personal representative, successors or assigns, except, However, that any of the persons hereinabove in this paragraph enumerated and the employees of any corporation making a contribution to this Foundation may receive reasonable compensation for their services to the Foundation, or may become a proper beneficiary under am of the general purposes of the Foundation.

D. No part of the activities of the Foundation shall consist of carrying on propaganda or otherwise attempting to influence legislation, and it shall not participate in or intervene in any matter whatsoever, whether by the publishing or distributing of statements or otherwise, in any political campaign on behalf of any candidate for public office.

E. The enumeration of specific purposes at any place in this indenture shall not be deemed to be a limitation upon the scope of the purposes stated in paragraph B of this Section III.

Section IV. Distributions

The Trustees shall have the power and authority and are directed to apply from time to time to the general purposes of the Foundation such amounts of income or principal, or both, of the trust estate as they in their discretion may appoint, order or direct, and shall not be restricted in any manner or to any extent in the selection of the specific uses, objects and purposes to which the said trust estate and/or its income shall be so applied, subject, however, to such special provisions and conditions, if any, as may be contained in the instrument under which any part of the trust estate may be received by the Foundation. If, pursuant to the powers herein given, the trustees shall distribute the entire principal of the trust estate, this trust and the Foundation shall thereupon cease. Application of principal or income may be made by the Trustees either directly to individuals or groups, or through or to any organization organized and operated exclusively for religious, charitable, scientific, literary or educational purposes, provided that such organization shall comply with all of the following provisions, to Wit:

A. Such organization shall be a corporation, trust or community chest fund or foundation which is organized and operated exclusively for religious, charitable, scientific, literary or educational purposes.

B. Transfers of property to such organization shall, to the extent then permitted under the statutes of the United States, be exempt from gift, succession, inheritance or estate taxes.

C. Such organization shall, to the extent then permitted under the statutes of the United States, be exempt from United States income taxes.

Section V. Trustees

A. *Majority.* Except as otherwise expressly provided in this indenture, the acts of a majority of the Trustees shall be and constitute an exercise of the trust powers and discretion conferred upon the Trustees collectively.

B. *Meetings.* Meetings of the Trustees shall be held in the manner of meetings of a board of directors of a corporation, and minutes of such meetings shall be maintained by the Trustees. They shall appoint a Secretary of the Foundation, who may or may not be a Trustee, and who shall have the duty to keep the minutes of the meetings and to receive and safely keep such written instruments as may be filed With the Secretary. The meetings of the Trustees shall be held upon such reasonable notice to all of the Trustees as may from time to time be determined by the Trustees. Three Trustees attending such meetings shall constitute a quorum. If at any such meeting the vote in favor of any action shall be cast by less than a majority of the Trustees, then such action shall be effective only on written assent to the same, either before or after the holding of the meeting, from enough of the Trustees who are absent to make a majority in favor of such action. If no meeting is held in accordance with the foregoing provisions of this paragraph, the

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Trustees may nevertheless take action hereunder, provided that they do so unanimously and express their action in a writing or writings signed by all of them.

C. Employees and Agents. The Trustees may from time to time employ or retain advisors, investment counsel, accountants, investigators, attorney, and other agents and employees and may from time to time prescribe the powers and duties of such persons, and may delegate to any of such persons the execution and administration of any acts of the Trustees, and may fix and pay to such persons out of the trust estate such compensation as they may deem just and reasonable.

D. Expenses and Compensation. The Trustees may from time to time fix such compensation, if any, as shall be paid to them or to any of them for their services as Trustees. They may engage any one of their number as an employee or otherwise to perform any of the duties referred to in paragraph C above, and may pay such Trustee the same compensation for performing such duties as would be paid to any other person for similar services, which shall be in addition to the compensation, if any, to which he is entitled for his services as Trustee. The Trustees shall pay out of the trust estate all reasonable expenses incurred in the administration of the Foundation and all just claims and charges against the Foundation or against the Trustees or any of them arising out of their acts or omissions in their capacity as Trustee hereunder.

E. Bank Accounts. The Trustees may open and maintain bank accounts in the name of the Foundation in which the funds of the Foundation may be deposited in such amounts as the Trustees shall determine, and withdrawals from said accounts may be made upon such signature or signatures and upon such terms and conditions and under such circumstances as said Trustees may prescribe by written instrument signed by all of said Trustees and filed with the respective banks. Any bank in which any such funds shall be deposited shall not be bound to inquire into the nature, reason for, or ultimate disposition of any withdrawal made from such bank account. The Trustees may place all or any of the securities or other instruments at any time constituting a part of the trust estate in custodian or safekeeping accounts with one or more banking corporations selected by them.

F. Liability of Third Parties. No person paying money or other thing of value to the Trustees shall be liable for the application, or be answerable for the misapplication, of same; nor shall any purchaser of any property from the Trustees be bound to ascertain or inquire into the necessity or propriety of, any sale.

G. Liability of Trustees. No Trustee shall be answerable for any act, receipt, neglect or default of any other Trustee, nor shall any Trustee be liable for any error of judgment or for any act done or any step taken or omitted upon the advice of counsel, nor for any mistake of fact or of law, but each Trustee shall be liable only for his own bad faith or dishonesty.

H. No Bond. No bond or other security shall be required of any Trustee at any time serving as such hereunder.

I. Resignation. Any Trustee acting at any time hereunder may resign by giving thirty (30) days prior written notice by registered mail to the Secretary of the Foundation or, if there be no such Secretary, then to the other Trustees, and upon the expiration of such thirty (30) days such resignation shall become effective. Incapacity of any Trustee to serve as such shall have the same effect as his resignation.

J. Vacancies. In the event of a vacancy in the office of Trustee by reason of the death, resignation or inability to act of any Trustee herein named or hereafter appointed or for any other reason, or as often as said events may occur, a successor to said Trustee shall be appointed by a majority of the remaining Trustees.

Section VI. Powers of Trustees

Except as otherwise specifically provided in this indenture or by the terms and condition of the particular gift, but only for the general purposes of this Foundation, the Trustees of any gift hereunder shall have and exercise the following rights and powers and be subject to the following duties and responsibilities

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A. Unless the donor otherwise specifically directs, the Trustees receiving any gift may mingle the same with other gifts then held or later acquired by the Trustees, and may administer the whole as a single trust hereunder without obligation to retain the particular gift as a separate trust or in such manner that the properties representing the same may be afterward identified as separate property; but any donor may specifically direct that any gift be held and administered as a separate fund and that it be not so mingled with other gifts, and in such case such gift may be maintained as a separate trust fund to be administered and distributed under the terms of this indenture and of the particular gift.

B. The Trustees shall have full power and authority to hold, manage and conserve any and all properties transferred to the trust estate by gift and shall likewise have full power and authority to hold, manage and conserve the properties into which any and all properties transferred to the trust estate by gift might be converted through liquidation of a corporation or corporation or otherwise. In connection with the properties transferred to the trust estate by gift of the properties or business into which the same might be converted, the Trustees shall have the same power and authority with respect to such properties as they have pursuant to the terms of this indenture with respect to properties acquired by the trust estate as an investment. The Trustees at all times shall have full power and authority to hold, manage and conserve, in accordance with the terms and provision of this indenture or in accordance with the particular gift, any and all properties owned by the trust estate at any time. To that end they may take all action deemed necessary or appropriate for the purpose of managing, protecting and conserving the interest of the trust estate in all of the properties owned by the trust estate, and may exercise all of the rights and powers that a prudent owner of any such property would have an exercise in managing, protecting and conserving properties of a like kind.

C. The Trustees shall have full power and authority to acquire by purchase or otherwise a limited partnership interest in any limited partnership conducting lawful business, and shall also have the right to transfer trust property or funds to any limited partnership which will carry or is carrying on any lawful business at such valuation as may be determined by them and to become only a limited partner therein. The Trustees shall have no power or authority to become a general partner in any partnership nor to participate in any business or venture in which the liability of the trust estate is not limited to the amount of its contribution to such business or venture.

D. The Trustees for investment may purchase or otherwise acquire, upon such terms and conditions as they may deem appropriate, stock, stock rights, warrants, bonds, debentures, convertible debentures, notes, certificates of interest, certificates of indebtedness, or any other thing of value issued by any person, firm, association, trust, corporation or body politic whatsoever.

E. The Trustees, as an investment for the trust estate and not for the purpose of conducting a business therewith or for means thereof, may acquire, upon such terms and conditions as they may deem appropriate, real estate and personal property of any kind, and in connection therewith the Trustees shall have full power and authority to hold, manage and conserve the same in a manner that will redound to the best interest of the trust estate. The Trustees may lease such property under a lease or leases, to commence at once or in the future, and upon any terms, and for any period or periods of time, although such period or periods might extend beyond the duration of the trust estate and may renew and extend leases. The Trustees may employ rental agents to rent and collect rents whenever and to the extent they may deem desirable. In conservation and management of any real estate the Trustees shall have full power and authority to construct or make improvements thereon or additions thereto.

F. The Trustees, as an investment, shall have full power and authority to invest in and purchase, or otherwise acquire, oil, gas and other similar or dissimilar mineral royalties, overriding royalties, production payments, oil payments, gas payments, net profit overriding royalties, and net profit interests. The Trustees shall have no power or authority to acquire by purchase any interest in a working interest in an oil, gas and other mineral lease. If the working interest in such a lease or a fractional part of the working interest in such a lease should come into the hands of the Trustees by gift or by liquidation of a corporation, or otherwise than by purchase, the Trustees shall within a reasonable time dispose of such working interest for such consideration as they may deem proper. In the disposition of any such working interest or interest therein, the Trustees are specifically authorized and empowered to reserve such overriding royalties or limited overriding royalties as they may deem proper and appropriate.

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G. The Trustees may form a corporation or corporations to carry on any lawful business or participate in the formation of any such corporation or corporations and convey to it or them all or any part of the trust estate to the extent permitted by this indenture or by any particular gift and hold, subject to the provisions of this indenture, the consideration accruing therefrom, whether the same be in the form of shares of stock, bonds, debentures, certificates of interest, or any other thing of value.

H. Any property acquired by the Trustees by gift or otherwise, as herein provided, shall be deemed a proper investment and the Trustees shall be under no obligation to dispose of or convert any such property. Investments need not be diversified, may be of a wasting nature, and may be made or retained with a view to possible increase in value. The Trustees may invest and reinvest all funds available for investment or as they may deem desirable in such investments as they are permitted to make pursuant to the terms of this indenture. They are expressly authorized to invest in non-income-earning property if in their judgment the best interest of the trust estate will be served thereby. The Trustees, except as herein otherwise specifically provided in respect of a particular gift, shall have as wide latitude in the selection, retention and making of investments as an individual would have in retaining or investing his own funds and shall not be limited to or governed by Article 45 of the Texas Trust Act or by any other laws, statutes or regulations respecting investments by Trustees, except that Article 10, 11 and 12 of the Texas Trust Act shall be binding upon any and all Trustees hereunder.

I. The Trustees, for any consideration or purpose permitted by this indenture or by the particular gift, may sell, exchange, alter, mortgage, pledge, or otherwise dispose of the investments of the trust estate; borrow any sum or sums believed by them to be necessary or desirable at any time and from time to time for the purpose of protecting and advancing the interest of the trust estate, or for any other purpose which in their opinion may be proper and for the best interest of the trust estate; pay all reasonable expenses, execute obligations, negotiable and nonnegotiable, join in by deposit, pledge or otherwise any plan of reorganization or readjustment of any investment of the trust estate, and vest in a protective committee or committees or other legal entities such power as, in their opinion may be desirable; assume the payment of or extend and renew any indebtedness incurred by the Trustees then acting, or prior Trustees; sell, for cash or credit, or for part cash and part credit, all or any part of the trust property; appoint, remove and act through agents, managers and employees, and confer upon them such power and authority as the Trustees may deem necessary or desirable.

J. The Trustees may partition any trust property from any other property with which it may be commingled or in which the Trustees may hold an undivided interest, and may exchange any trust property for any other property which they may deem wise.

K. The Trustees may consent to the extension, revision or renewal of any security, obligation, written contract or right.

L. Notwithstanding any provision to the contrary in the Texas Trust Law, the Trustees may determine whether money or property coming into their possession hereunder shall be treated as principal or income, and whether to charge or apportion any loss or expense to principal or income.

M. The Trustees may provide for the payment or reduction of any mortgage or lien upon any trust property by setting apart, in such manner as they shall deem proper, a sinking fund or funds out of the income of the trust property.

N. The Trustees may conduct the affairs of the Foundation, and may make, execute and deliver all instruments in writing relating thereto in the name of The Lyndon B. Johnson Foundation, or in their names as Trustees, as they may see fit.

O. The Trustees may plat real estate and lay out and dedicate streets, alleys and ways.

P. The Trustees may sue and be sued; join in, institute, defend, settle, compromise, or otherwise dispose of, any litigation affecting this Foundation; and may settle and compromise any claims for or against any trust property or in anywise affecting this Foundation, and shall use their discretion in all matters to protect trust property and the interest of the Foundation from attack of any kind, and to uphold the validity of any gift, conveyance, devise or bequest made to this Foundation for any general purpose of the Foundation, provided they believe it proper and desirable to accept such gift, conveyance, devise or bequest.

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Q. The Trustees shall make and preserve accurate and complete records of all gifts received by the Foundation and of all investments, reinvestment, purchases, sales, exchanges, receipts and disbursements, and of all claims and debits to income and corpus, and of all income and yield from each item of corpus. The Trustees in their discretion may cause an annual audit to be made by independent auditors of good standing of all or any of the affairs of the Foundation. Each auditor's report, as well as the records of the Foundation, shall be open at all reasonable times to examination by any Trustee.

R. The Trustees may make, execute and deliver any and all receipts, bills of sale, conveyances, assignments, transfers, proxies, powers of attorney, agreements or other instruments of writing as they shall deem advisable in the management and operation of the trust estate or which they may deem necessary or appropriate in the exercise of the powers herein conferred upon them. The Trustees may lend the credit of the trust fund, and on behalf of the trust fund endorse or guarantee obligations of others in aid of any of the general purposes of the Foundation.

S. Except where herein otherwise specifically provided, or except wherein otherwise specifically provided by the particular gift, the Trustees shall have and exercise, and shall be subject to, all rights, powers, duties and responsibilities contained in the Texas Trust Act or with my hereafter be embodied in the laws of Texas with respect to Trustees, to the extent that same are not in conflict or inconsistent with the provisions of this indenture or of the particular gift. Wherever and to the extent any provision of this indenture of the particular gift may conflict or be inconsistent with any provisions of the Texas Trust Act or of any laws hereafter existing in Texas with respect to the rights, powers, duties and responsibilities of Trustees, the provisions of this indenture or of the particular gift shall govern in all such cases, except to the extent that the particular gift is made wrongful and prohibited by law.

T. All or any of the Trustees may apply to a court of competent jurisdiction for interpretations and instructions under this indenture or under the terms of any particular gift.

Section VII. Incorporation

In the event that at any time during the continuance of the Foundation the Trustees then acting hereunder shall determine that the trust estate can be more conveniently or efficiently administered, or the general purposes of this Foundation can be more effectively accomplished, by a corporation than by the Foundation hereby created, the Trustees may cause a corporation to be organized under the laws of the State of Texas or of any other state, under the name hereinbefore given to this Foundation or under any other name which they shall deem appropriate, and with such powers as in their judgment shall be necessary or advisable to accomplish the general purposes of this Foundation: may cause the certificate of incorporation, charter, constitution, or bylaws of such corporation to contain such provision; as the Trustees shall deem necessary, advisable or proper to that end: and may cause to be conveyed, assigned, transferred and delivered to such corporation the entire trust estate, provided that such corporation assumes the obligation to administer and distribute the trust estate for the general purposes of this Foundation and in accordance with its provisions. Upon the organization of such corporation and such conveyance, assignment, transfer and delivery to it of the trust estate, it shall have, and may freely and fully exercise, consistently with the laws of the state of its incorporation, every power, authority and discretion respecting the trust estate and the administration and distribution thereof which is hereby granted to or vested in the Trustees, and the Foundation herein created shall cease and this indenture shall be at an end.

Section VIII. Miscellaneous Provisions

A. This trust is irrevocable, and, subject to the provisions contained herein, shall exit in perpetuity.

B. The founders and the survivor of them acting unanimously by written instrument duly executed and acknowledged and filed with the Secretary of the Foundation or in the absence of a Secretary, with the Trustees may at any time and from time to time during the lifetime of such Founders or the survivor of them amend any of the provisions of this Trust Indenture, with the exception of Section III hereof.

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which shall at all times remain in full force and effect in its present form, and shall not be subject to alteration or amendment.

C. The Trustees join herein for the purpose of accepting the trust, and hereby agree faithfully to perform their duties as Trustees.

IN WITNESS WHEREOF, the parties hereto have set their hands at Johnson City, Texas, the day and year first above written.

Lyndon B. Johnson

Claudia T. Johnson

FOUNDERS

J. C. Kellam

Lyndon B. Johnson

Donald S. Thomas

Claudia T. Johnson

A. W. Moursund

TRUSTEES

NOTARY'S STATEMENT