

trust instrument. Generally, there are four circumstances when a court will permit deviation:

- The purposes of the trust have been **fulfilled**;
- The purposes of the trust have become **illegal**;
- The purposes of the trust are **impossible**; and
- Compliance with the terms of the trust may **defeat or impair** the purposes of the trust.

If a court agrees to the deviation, the court must modify the trust to reflect the settlor's interests at the time the trust document was executed.

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b) Cy Pres

(1) Court May Substitute Beneficiary

The *Cy Pres* doctrine is applicable when 1) property is placed in trust for a charitable purpose that has become impossible to effectuate, and 2) where a testator has manifested a *general* intention to devote the property to charitable purposes. Restatement of Trusts, Second, § 399. A testator may exhibit a general charitable intention by giving reasons for limiting the share of the estate to others (non-charitable bequests), and by omitting any reverter clause to take effect if the charitable bequest were to fail. *Compare, e.g. Trammell v. Elliott*, 230 Ga. 841, 199 S.E.2d 194 (1973) (*Cy Pres* applied; no reverter clause in will) with *Simmons v. Parsons College*, 256 N.W.2d 225 (Iowa 1977) (*Cy Pres* not applied because will included a reverter clause).

For example, suppose that a settlor created a trust with a beneficiary organization whose purpose was finding a cure for a certain disease. Several years later, the disease is cured. What happens to the trust? The answer depends upon what the intent of the settlor was when he created the trust. If the settlor included a clause providing that the funds would revert to his heirs if a cure was found, then the funds would revert to his heirs. On the other hand, if the settlor expressed the intent to combat illness throughout the world starting with this disease, then the court would likely substitute a new beneficiary.

c) Selection of Beneficiary Must Effectuate Settlor's Wishes

In determining which charity should receive the bequest, a court will seek to effectuate a testator's wishes as closely as possible. *See* Bogert, Trusts (6th ed.), § 147, at 521,526.

2) MODIFICATION BY THE PARTIES

On some occasions, the parties may modify the trust instrument.

a) Settlor Lacks Power to Modify Unless Settlor Reserved It

Generally, a trust is irrevocable and cannot be modified unless the settlor retained the right in the trust instrument. Interestingly, a few jurisdictions provide that a trust is presumed revocable unless expressly made irrevocable.

★★ **H. Termination of Trusts**

1) BY AGREEMENT

A trust may be revoked with the unanimous agreement of the settlor and *all* of the trust's beneficiaries. If there are unborn beneficiaries or incompetent beneficiaries, the trust cannot be terminated since their consent to terminate cannot be obtained.

a) All Beneficiaries May Sometimes Terminate Trust

If all beneficiaries of the trust agree and *no material purposes remain*, the court may terminate a trust. However, courts are reluctant to find that no material purpose remains. **A court will almost never terminate a protective trust by agreement of all beneficiaries.**

2) BY ITS TERMS

If, by the terms of a trust, the trust is to terminate upon the happening of a specified event, then the trust will terminate on the occurrence of that event unless the termination provision is invalid. Upon termination, unless the trust instrument provides otherwise, the trust principal reverts to the settlor or his heirs.

3) DOCTRINE OF ACCELERATION

Under the doctrine of acceleration, if the income beneficiary of a trust disclaims his or her interest, the trust principal becomes immediately distributable to the presumptive remainder beneficiaries of the trust, *provided no one would be harmed by making a distribution to them earlier than it would have been made had the income beneficiary not disclaimed*. See generally *Ohio National Bank of Columbus v. Adair*, 54 Ohio St. 2d 26,374 N.E.2d 415 (1978). See also Simes, *The Law of Future Interests* § 110. For example, a remainder might not accelerate if to do so would result in the class gift to the remainder beneficiaries closing earlier than it otherwise would.

★★★★ **I. Powers and Duties of Trustees**

A trustee is a fiduciary holding legal title to the trust assets. The trustee must manage trust assets exclusively for the benefit of all the trust's beneficiaries. If a trustee violates her fiduciary duties, she may be personally liable to the beneficiaries, and she may be enjoined or removed and replaced with a court appointed trustee. P. Haskell, *Preface to Wills, Trusts, and Administration* 77 (1987).