# Constructive Trusts: At Arm's Length

Is there a device able to ward off unseen and unwanted trusts? A magic amulet to wear around our necks to keep us safe from the "boogytrust"?

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

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

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

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

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

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

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

*Black's* 7th defines "fiduciary relationships" as:

A relationship in which one person is under a duty to act for the benefit of the other on matters within the scope of the relationship. Fiduciary relationships—such as trustee-beneficiary, guardian-ward, agent-principal, and attorney-client—require the **highest**

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

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

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

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

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

For example, I'm beginning to wonder if our invisible, external "relationships" may have a legal existence of their own that's separate and apart from our individual existence. We know that the names "Alfred Adask" and "ALFRED N. ADASK" signify two different legal entities. "Alfred" is a natural man and creation of God; "ALFRED" is an artificial entity presumably created by government. But what kind of artificial entity is "ALFRED"? Is it a trust? A corporation? Both answers have been advanced; so far, neither has proven satisfactory.

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

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


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

I'm even starting to wonder if a "relationship" might not be **the primary subject matter of most lawsuits in equity**. Is it possible that the plaintiff isn't the subject matter, the defendant isn't the subject matter; what one or the other party did or didn't do isn't really the subject matter. Is it possible that, at bottom, the real subject matter of most suits in equity is a presumed "trust relationship" between the plaintiff and the defendant?

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

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

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

So how can we use "at arm's length" or "arm's-length" to shield ourselves from the obligations imposed by constructive trusts? I'm not sure. Perhaps we could post public notices in a newspaper declaring that, unless we expressly declare otherwise, in order to preserve all of our unalienable Rights, all of our transactions will be conducted strictly "at arm's length". Alternatively, we might add an "at arm's length" disclaimer over each of our signatures or as codicils to all of our contracts to notify all others that we won't enter into an implied or presumed trust relationships.

If we can devise an effective strategy to conduct all of our transactions at "arm's length," we may be able to blunt or even eliminate the jurisdiction of courts of equity. And if they can't get at us in equity, that may leave only courts of law—and I don't think the courts want to deal with our divorces, traffic fines and tax squabbles at law.

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

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[1]If "at arm's length" serves notice that you won't act in the capacity of a "subject," it also seems to provide another shield against non-constitutional governmental authority.

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