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The Descendants Aims to Lay Down the Law in Hawaii

By Julia Flynn Siler

One of the most poignant moments in the new George Clooney movie, "The Descendants," is when Clooney, who plays the attorney Matt King, gazes down at a pristine sweep of coastland on Kauai. The land has been owned by the King family for generations….

Jim Burke, the producer of "The Descendants," approached making the film almost like a documentary. … Burke and the film's director, Alexander Payne, traveled to Honolulu nine months or so before shooting began. Once there, they were guided by well-known locals, including … University of Hawaii law professor Randall W. Roth. …

Roth, the co-author of "Broken Trust: Greed, Mismanagement, & Political Manipulation at America's Largest Charitable Trust," provided guidance on trust law to the filmmakers, particularly on the somewhat arcane subject of the rule against perpetuities. It's a key point in the plot: Matt King and the other descendants of a Hawaiian princess and haole (white or foreign) banker have inherited a piece of land, which is held in trust. They must decide whether to sell it because the trust itself, under the rule against perpetuities, must be wound down by a set date.

The back-story of a trust with large land holding in Hawaii echoes the realities of land and power in Hawaii. … Indeed, large amounts of land are still held in Hawaii by what are known as the Ali'i trusts – the charitable organizations set up, in most cases, more than a century ago to hold the land and other assets of Hawaiian royalty. The most prominent of these was known as the Bishop Estate, until the scandal revealed in Broken Estate hit it and it renamed itself Kamehameha Schools.

Perhaps the strongest echo of a situation facing the Clooney character was faced in real life a few years back by the trustees of Hawaii's Campbell Estate. Under the terms of the trust, the 107-year-old Campbell Estate was required to dissolve in January of 2007, twenty years after the death of the last direct descendants who had been alive at the time of the trust's creation. Some of the heirs took large cash pay-outs, … while others chose instead to roll their assets into a new national real estate entity, the San Francisco-based James Campbell Co. LLC.

Professor Roth says there have been perhaps a half dozen family trusts in Hawaii in recent years that have faced this same situation. The rule against perpetuities only applies to trusts where the beneficiaries are individuals, rather than charities – as in the case of the Ali'i trusts.

"It's a very realistic scenario," Professor Roth says about the decision facing the fictional King character and his cousins. "I was impressed that Jim and Alexander were so concerned about getting the details right, even small details that most people wouldn't be aware of."

The filmmakers credited Professor Roth … at the end of the film.