

Instructor: Mr. Freeman

1. In 1990, Sally bequeathed \$200,000 "to Terry in trust to pay the income to Albert for life, then to pay the income to the children of Albert, and to pay the principal to the children of Albert when the youngest of them reaches the age of 30." Albert died in November of 1995, when his two children, Betty and Charles, were 30 and 22 respectively. Today Betty is 32 and Charles is 24. Charles has serious medical problems that prevent him from working, and his income from the trust is not sufficient to pay his medical bills. Betty and Charles have filed suit to compel Terry to terminate the trust and make an immediate and equal distribution of the principal, now valued at \$300,000, to them. What result, and why?

BEST ANSWER

The court will allow the beneficiaries of the trust to compel termination of the trust. The trust is known as a Claffin trust and under the majority American view, it is a valid restraint. The restatement provides that the beneficiaries, even if they consent and do not suffer from incapacity, cannot compel termination of the trust if the continuation of the trust is necessary for a material purpose of the trust. Here, the material purpose would be to postpone Albert's children from acquiring the property until reach an age of majority. Under the minority view, if the beneficiaries are entitled to the interest – there are no condition precedents, and they consent and have the capacity – then they can compel termination of the trust – this view hates restraints on alienation, while the restatement takes the view that the testator can dispose of his property in a way he desires.

Notwithstanding the fact that this is a Claffin trust, the restatement also provides that a court may direct or permit a trustee to deviate from the terms of the trust and pay that income or principle or either which is necessary for the support of the beneficiary before the beneficiary may be entitled by the terms of the trust to such income – and may even authorize the trustee to do an act unauthorized by the trust. The material purpose of the trust is to prevent Albert's children from getting the money until they reach an age of maturity where they will spend the money wisely. The testatrix was worried they would spend the money on frivolous things if they acquired it too early. But, because Charles has medical problems, that is not a concern. Betty's interest will not be impaired – especially since she is consenting and does not suffer from an incapacity. Therefore, since the purpose of trust is satisfied, the court will allow them to partially terminate it.

2. In 1980, Samuel bequeathed \$1,000,000 "to Taylor in trust to pay the income to Alice for life, then to distribute the principal to such objects of benevolence and liberality as Taylor should select." After Alice's death in the fall of 1997, Taylor decided to divide the principal, now valued at \$2,500,000, equally among five organizations recognized by both federal and state law as being charitable. Samuel's next of kin have filed suit to prohibit the distribution to the charities and to compel distribution to them pursuant to the statute of descent and distribution. What result and why? Would your answer be any different if the trust were *inter vivos*?

BEST ANSWER

Because the beneficiary of the trust is indefinite, the parties will argue over whether it is a charitable trust or private trust. But the court will likely find that it is not a charitable trust – but if it was then the fact that the beneficiaries were indefinite would not matter since by statute, it can be enforced by the Attorney General.

Since the beneficiaries are indefinite – a valid trust requires definite beneficiaries so someone can enforce the trust – and this is a private trust – the result will depend on what jurisdiction they are in. The majority American approach is that, while the beneficiaries are indefinite, the trust is valid – just unenforceable. The Restatement provides that when property is transferred for a general purpose then he may do so as long as it does not violate the Rule Against Perpetuities, or if the class is so indefinite that it is impossible to ascertain if an appointment would fall within it. Here, Taylor is willing to perform the trust and the trust authorizes him to apply the property to the organizations he has selected. Therefore, in a majority of jurisdictions – Taylor will be allowed to perform and the relatives would lose.

Under a minority approach, when the beneficiaries are indefinite the trust is not only unenforceable, but it is invalid. Therefore, the express trust would fail and Taylor would hold the property in a resulting trust for Samuel's estate.

The answer would be similar if it was an *inter vivos* grant in a majority jurisdiction. If it is an *inter vivos* transfer in trust, then agency principles would apply. Any transfer of property in trust for a purpose unenforceable for lack of ascertainable beneficiary can be carried out by the transferor subject to the revocable power of the transferor – death and incapacity of the transferor acting as a revocation. If the transferor does revoke his power then the transferor holds the property in a resulting trust for the transferor. Here – Taylor would be able to donate the money to charities until Samuel revoked his power.

3. In 1992, Smith created a revocable *inter vivos* trust in which he gave \$500,000 "to Theresa in trust to pay the income to Allen for life, then to pay the income to the children of Allen for their lives or for the life of the survivor of them, then to distribute the principal to the grandchildren of Allen." Allen died in 1995 and Smith died last month without having released the power to revoke. What are the rights of the parties?

BEST ANSWER

With regard to Smith's right to revoke, it does not need to be released. Smith's right to revoke terminates at his death. Likewise, Allen has no rights in the trust because he is now deceased.

However, with regard to the trust as a whole, the power to revoke reserved by Smith postponed the period of the Rule Against Perpetuities until the right to revoke was terminated. Thus, the period within which all interests must vest begins at Smith's death. The Rule Against Perpetuities provides that an interest must vest, if at all, within 21 years after a life in being at the creation of the instrument. The Rule is modified in the case of a revocable trust to begin running at the termination of the right to revoke.

In the present case, an interest must vest within 21 years of a life in being at the termination of the right to revoke. Since when the right to revoke was terminated (Smith's death), Allen was already dead and could have no more children, the subsequent class of A's children was closed. Since the class was closed, the last surviving of A's children becomes the life in being, and all the interests of any grandchildren will rest within 21 years of the youngest child's death – because all the parents would be dead and could not increase the class.

Therefore, since there is no Rule Against Perpetuities problem, the trust is valid and will continue – A's children will receive the income and the grandchildren will receive the principal.