1. Sam transferred \$250,000 "to Terry in trust to pay the income to Alice until Alice is 35 years old, then pay the principal to Alice." Sam also transferred \$250,000 "to Theresa in trust to pay the principal to Billy until Billy is 35 years old, then pay the principal to Billy." years ago when Alice was 30 years old, at Alice's request Terry transferred the principal of Alice's trust to Alice. Alice lost the entire Sam was unaware of this transfer. amount in a bad investment, and has brought suit to compel Terry for breach of the trust. Earlier this year Billy, who is 30 years old, requested Theresa to distribute the principal of Billy's trust to Billy. Theresa refused, and Billy brought suit to compel Theresa to make distribution. Sam consents to this distribution. What are the results of these suits, and why?

Both trusts are "claflin" trusts—trusts for a sole beneficiary with postponement of enjoyment. Ordinarily beneficiaries can compel termination of a trust if all beneficiaries consent and have capacity to consent. Here they do. However—the exception is that beneficiaries cannot compel termination if it would defeat a material purpose of the settlor. Here the material purpose is to keep management of a property out of hands of Alice and Billy until they are 35. This purpose would be defeated if beneficiary could compel early termination—so they cannot.

However, Terry at Alice's request did in fact terminate the trust early. This was a breach of the trust as Terry violated a duty imposed on her by the trust. However as Alice consented, and had capacity to consent, and is the sole beneficiary, she is estopped from complaining. Because she was the sole beneficiary, nobody else has standing to sue, so breach cannot be remedied.

Although Billy cannot terminate his trust, the settlor consents to early termination. Billy alone cannot terminate as it would defeat S's material purpose. S cannot terminate as he did not reserve the power to revoke (trusts are presumed to be irrevocable unless S manifested intent to reserve power to revoke- no such facts here). But if beneficiary wants early termination, and settlor consents, beneficiary can compel termination. Sam's consent means that his original material purpose is no longer material.

2. In 1995, Sally gave her 12 year old dog, named Fang, to Tim and also gave \$1,000 "to Tim in trust to spend to provide for the care of Fang." Tim has faithfully followed Sally's Sally died in March 1999. In her will, instruction. (a) bequeathed \$500,000 "to Theresa for the Sally: erection and perpetual maintenance of my cemetery plot and tombstone," and (b) left the residue of her estate to her three adult children. Tim is willing to continue providing for Fang, but Sally's children want the trust fund (now \$350) returned to Sally's estate. Theresa is willing to comply with Sally's instructions, but Sally's children also want to prohibit Edward, who is both Sally's brother and executor of Sally's will, from making any distribution to Theresa. What do you, as the executor's attorney, advise the executor?

Both the inter vivos trust for Fang and the testamentary trust for the tombstone lack definite beneficiaries--i.e., definitely ascertainable persons who will benefit from the performance of the trust. Because neither trust has a definite beneficiary, they both are unenforceable--as only beneficiaries can enforce the trust (standing to sue). However, these trusts while unenforceable usually are valid--the trustee may perform if willing. If trustee is not willing to perform the "honorary" trust (trust for specific non-charitable purpose without definite beneficiary), a resulting trust for Sally's or her estate will be imposed.

However, an honorary trust is invalid--not merely unenforceable--if it violates Rule v. Perpetuities or is capricious. This is the problem will the trust for the tombstone. As there is no definite beneficiary, the equitable interest remains non-vested as long as the trust lasts. Because the trust could last more than 21 years after any life in being, this trust violates the orthodox Rule v. Perpetuities. Also, \$500,000 is excessive- or capricious and for this reason also the trust is invalid. If the trust is construed as charitable it is valid (Rule v. Perp. Doesn't apply to charitable trusts.) and enforceable by state. But court will reduce \$500,00 to a reasonable amount and balance will go on resulting trust to Sally's estate.

The inter vivos trust ended at death of Sally. Inter vivos honorary trusts are considered to be agency relationships not trusts, and death or incapacity of principal(s) terminates the agency. Since trust ended, the problem with rule or lack of beneficiary to enforce the trust.