

Instructor: Mr. Freeman

1. Samuel gave \$300,000 "to Tinker in trust to pay the income to me for life, then to distribute half of the principal to persons designated in a memorandum to be found at my death in my safe, and half of the principal in equal shares and proportions to the person or persons in my employ at the time of my death." Samuel died intestate (without a will), survived by one nephew as his next of kin. In his safe was a memorandum designating Arthur and Betty to divide half of the principal equally. Undisputed evidence shows that Charles was the only person in Samuel's employ at the time of his death. The trust corpus is now valued at \$400,000. Who received the \$400,000, and why?

BEST ANSWER

The issue is whether the disposition is valid. There are several beneficiaries here: Samuel is the beneficiary of a life estate of income of the trust. This is a valid, active *inter vivos* trust. It is active since the words "to pay the income" require Tinker to perform acts in addition to just serving as Trustee (so it survives the 1535 Statute of Uses, which only executes passive trusts). The requirements for an *inter vivos* trust are met with respect to the life estate to Samuel since Samuel (1) manifested an intention to create a trust – in the language and (2) he parted with dominion and control (= delivery). This is a trust of personal property so no writing is required. But another issue arises with regard to the remainder/disposition of the principal. By the language directing ½ the principal to go "to persons named in a memo to be found at my death in a safe," no interest will be transferred to the beneficiaries until after Samuel's death, thus this is a testamentary disposition and must satisfy the Statute of Wills, which requires a valid will (1. writing, 2. signed by testator, 3. witnessed by 2 witnesses, and 4. attested and subscribed by witnesses in testator's presence). Since Sam died intestate, there was no will and this disposition fails the Statute of Wills requirement. When an express trust fails in whole or in part, a resulting trust back to the settlor results. So here, ½ the principal goes back to Sam's estate by resulting trust (w/resulting trust, Sam's intent is inferred - inferred that Tinker is not to get the beneficial interest). With respect to the ½ to go to the employees, this is valid. Like the contents of a drawer or safe deposit box, the persons in employ = Facts of Independent Significance. They have a reason naturally occurring/for being done apart from solely to affect testamentary disposition of property. The Statute of Wills requires that the beneficiaries, subject matter, intent, and purposes be ascertained from any or a combination of the following sources: the will, documents properly incorporated into the will, and/or by Facts of Independent Significance. Here, this requirement is met, so the ½ principal will go to Samuel's employee Charles.

2. In 1995, Saul transferred \$400,000 to Terri in trust to pay the income to Saul for life, then distribute the principal to Alan. Saul reserved the power to revoke, modify, and amend, and the power to control Terri in the administration of the trust. Saul died intestate (without a will) in 1997, survived by his wife, Wilma, and two children, Betty and Curt. The trust corpus now is valued at \$500,000 and Saul's net probate estate is valued at \$100,000. Discuss the rights of the parties.

BEST ANSWER

Saul has likely created a valid *inter vivos* transfer in trust of personalty. All of the elements of a trust are present and the Statute of Frauds is inapplicable because the trust property is personalty. Saul's reservation of powers – including the most significant, the power to revoke, will be held by most American courts to be valid because most courts will recognize as valid a revocable *inter vivos* trust. In such a jurisdiction, Alan will receive the corpus of the trust and the wife and kids will be limited to the probate estate. If this were a testamentary trust, the wife could take against the will and be entitled to a share of the corpus (if not all) but – this is an *inter vivos* trust in form (because the transfer was made during Saul's lifetime) and there is no will. Some courts might construe this trust as a testamentary trust because Saul did not give up all dominion and control and therefore, because it does not comport with the Statute of Wills would be invalid. In substance, the trust appears to be just that, but like was noted above, most courts will view the reservation of power as acceptable in an *inter vivos* trust. However, the best argument for the wife, which is contrary to majority law, is that the power to control Terri effectively nullified any transfer because no intent to create a trust and no relinquishment of dominion and control. If they are in a majority jurisdiction though, Alan will get the corpus as the trust provides.

3. Sally gave \$500,000 "to Theresa in trust to pay the income to Ellen for life, then to distribute the principal to my heirs or next of kin; but I hereby reserve the power to appoint the principal by will, and if I exercise such power, then at my death Theresa shall pay the principal according to the appointment that I have made." Discuss the rights of the parties. Would your answer be different if Sally's disposition had been by will and had not reserved the power of appointment? Why or why not?

BEST ANSWER

This trust is an *inter vivos* trust that will survive the Doctrine of Worthier Title because of the reservation of power of appointment. The Doctrine of Worthier Title creates a presumption of Sally's intent that Sally intended, by creating a remainder in her heirs, to effectuate a reversion to Sally's estate, rather than a remainder because title is worthier by descent than by purchase. However, the presumption can be rebutted. Sally's reservation of power of appointment is just the kind of evidence that would rebut the presumption because Sally would not have reserved the power if she intended to create a reversion – the reservation in that case would be redundant. Sally most likely believed and intended to create a remainder interest, and reserved a power of appointment to be able to change who that remainder would go to. If changed the remainder by will appointment, it would be away from his estate. Because the presumption can be rebutted, the remainder interest will survive the Doctrine and will pass according to will. If Sally had not reserved the power of appointment, the Doctrine would've prevailed because there would be no evidence to rebut the presumption of Sally's intent; and the trust corpus, because it was personalty, would pass to Sally's next of kin. If the trust had been testamentary, the Doctrine would not apply at all because it only applies to *inter vivos* transfers. In that case, the trust would have effect as it is worded – with remainder to the heirs or next of kin.