

Instructor: Prof. Freeman

1. Samuel executed a deed, absolute on its face and properly delivered and recorded, in which Samuel conveyed Blackacre "to Theresa." The conveyance would not have been made but for Theresa's oral promise to sell Blackacre and hold the proceeds of the sale in trust for Alice. Several months later, Theresa sold Blackacre for \$300,000. Discuss the rights of the parties

BEST ANSWER

The issue is who is entitled to the \$300,000. The Statute of Frauds requires that all conveyances, gifts, devises of land (real property) be in writing, or else it's valid but unenforceable. The statute deals with the enforceability of the conveyance and has nothing to do with the validity of the transaction.

In lieu of a writing, in compliance with the Statute of Fraud, the parties have to circumvent the rule with an exception.

This transaction may fall outside the Statute of Frauds under the separate under taking doctrine. If there are two separate agreements or two separate under takings; one within the Statute and the other not; if a party voluntarily performs the agreement that was within the Statute of Frauds & the separate undertaking was not under the S. O. F.

While Alice could not enforce the oral agreement in which Theresa promised to sell Blackacre because it was for land & must comply with the S. O. F., Theresa did orally promise to sell Blackacre & hold the proceeds in trust for Alice. Although Theresa did not have to follow her promise regarding the land, when she did voluntarily sell Blackacre she became obligated to follow through with the separate undertaking, to hold the money in trust for Alice. Personal property does not fall with the S. O. F., & therefor Alice should be able to enforce the promise of the trust.

2. On April 15, 1990, Susan executed and delivered to Terry a written instrument whereby she transferred \$400,000 "to Terry in trust to pay the income of Allen for life, then to distribute the principal to Bart." In the instrument, Susan reserved the power to revoke, modify, and amend the trust. On October 5, 1995, Susan executed a will, with the formalities required by the Statute of Wills, in which Susan bequeathed \$500,000 "to Terry in accordance with the instrument executed by me on April 15, 1990." The will left the residue of Susan's estate to Harry, her next of kin. On December 3, 1997, Susan revoked the 1990 trust. Susan died in 1998, survived by all parties named above. Discuss the rights of the parties.

The rights of the parties depend on which jurisdiction they are in, if the court employs the doctrine of independent significance the facts will be as follows: The trust will be deemed of independent significance. Therefor, Susan could revoke the estate trust regardless of the impact it may have on her testamentary distribution. There the amount in trust would become part of the residue of the estate and go to Harry.

If the court employs the doctrine of incorporation by reference, the facts come out differently. The writing would be incorporated to Susan's will. Any changes to the trust after the executing the will would have to be done with testamentary formalities under the Statute of Wills because the trust is incorporated as it was at the time the will was executed. Thus Susan's subsequent revocation of the trust would have no impact on her distribution in her will. Thus, Terry would hold the money in trust for Allen and then distribute the principal to Bart. Harry would get only the residue of the estate after the trust.

3. Sally, the owner-insured of a life insurance policy, named her brother Tim as the beneficiary of the policy. Sally and Tim orally agreed that, at Sally's death, Tim would hold the proceeds of the policy in trust for Bill, who was not related to Sally or Tim. By law, the proceeds of the life insurance policies are payable only to a spouse, parent, sibling, child or other linear descendent of the insured. After Sally's death, her spouse and children (all of whom were adults) filed suit to compel Tim to pay over the policy proceeds to them. What result, and why?

BEST ANSWER

The issue here is whether Sally may create a valid trust of the proceeds of her life insurance policy. If Sally intended to vest a present interest in Tim then Sally have created a valid *inter vivos* trust. However, if Sally intended the trust only to become effective upon her then the trust is testamentary and must adhere to the requirements of the Statute of Wills. Here, Sally clearly intended to create a trust for the purpose of paying the proceeds of the policies to Bill the beneficiary. However, the proceeds of policy are to not paid until Sally's death. However most courts hold a person may create a valid insurance trust with the right to receive the proceeds rather than the proceeds themselves as the trust res. Therefore Sally has created a valid *inter vivos* trust.

A difficulty arises because the proceeds of the policy are payable only to a spouse, parent, sibling, child or other linear descendent of the insured. Where the proceeds of an insurance policy are payable only to a specified class, a valid trust may not be created with the beneficiary as one not of the specified class. Here, Bill is not related to Sally or Tim. Bill not being a member of the class permitted to receive the insurance proceeds may not be a beneficiary to Sally's trust. Therefore a resulting trust arises with Tim as the trustee and Sally or upon Sally's death, her heirs, as the beneficiaries.