

1. Sally executed two deeds, each of which was absolute on its face and properly delivered and recorded. By the first deed she conveyed Blackacre to Terry, who had promised to sell Blackacre and hold the proceeds of the sale in trust for Alan. By the second deed Sally conveyed Whiteacre to Terry, who had promised to sell Whiteacre and hold the proceeds of the sale in trust for Bart. Terry never had intended to fulfill either obligation. Subsequently Terry sold Blackacre for \$250,000. Discuss the rights of the parties.

In both cases S conveyed land to T by a deed absolute in its face (not manifesting the intention to create a trust.) In both cases however, S relied on T's oral promise to sell the land and hold the proceeds in trust for beneficiaries. The problem is that, although oral inter vivos tracts of land are valid, they are unenforceable unless manifested and proved by a writing--as required by the Statute of Frauds.

However, T made two promises--one to sell Blackacre (which promise relates to land) and one to hold proceeds of sale (which is personal property) in trust. The SOF applies only to land. Thus the promises to sell were unenforceable but the promises to hold proceeds in trust are enforceable. Because T sold Blackacre, the express trust of proceeds is enforceable.

Although T's promises re: Whiteacre are unenforceable it is important to know that when T promised to sell land and hold proceeds in trust, he never intended to perform the promises. This willful misrepresentation of his present intent was fraudulent--tortious product on part of T--but caused S, in reliance on the promises, to convey the land to T. Therefore, because the conveyance of Whiteacre was wrongfully induced, T would be unjustly enriched were T permitted to keep Whiteacre. To prevent unjust enrichment, court will hold that T holds Whiteacre on a constructive trust (equitable remedy to prevent unjust enrichment) for Bart--the person who would have had enforceable interest absent the fraud.

2. Samuel (who never married or had children) died in 1998, making several dispositions by a will executed in full compliance with the Statute of Wills. First, he devised Blackacre to Thomas and directed Thomas to permit Alice to reside in the guest house on the grounds of Blackacre. Second, he bequeathed \$250,000 "to Thomas in trust to pay

the income to Betty's first-born child for life, then to distribute the principal to the American Cancer Society." Betty has never had any children. The residuary legatee of Samuel's will is his brother, Walter. Discuss of the rights of the parties.

A) Samuel conveyed Blackacre to Thomas, who received both the legal and equitable interest except as T was DIRECTED to let Alice reside in the guest house. The issue is whether the subject matter is definite or definitely ascertainable, which is one of the necessary elements of a trust. If the subject matter is not definitely ascertainable, Alice has no interest. Here, the term "guest house on the grounds of Blackacre" is probably sufficiently definite so as to have a valid trust--unlike the case where settler directed his wife to allow his sister to reside with the wife in the house he devised to her.

B) The income from the \$250,000 is intended to be paid to Betty's first born child. The problem is that Betty does not yet have a child. However, the requirement for a definite or definitely ascertainable beneficiary can be met even if the beneficiary is unborn. Until Betty has a child, the express trust fails in part and Thomas will hold the \$250,000 to pay the income on a resulting trust* to Samuel's estate (i.e. Walter). As soon as Betty has a child, the express trust to pay income to the child is valid and enforceable, when the child dies, or if Betty dies without ever having a child, Thomas must pay the principle to the American Cancer Society.

*A resulting trust is a trust implied by operation of law, and will be raised in any one of three circumstances--here, where an express trust fails in whole or in part--inference is that T was not intended to take equitable interest.