

Estates & Trusts – W2001

I. (50 min.)

- predeceased wife
 - anti-lapse statute does not apply; because wife is not a relative
 - applies to any predeceased relative of testator
 - wife's share lapses
- 120 hour survival statute
 - requires devisee/legatee to survive testator by 120 hours; otherwise is treated as predeceasing.
 - Norma survived by only 72 hours (3 days); so, she is treated as predeceasing testator
- predeceased child
 - anti-lapse statute
 - applies to any predeceased relative of testator
 - goes to predeceased relative's descendants
 - Norma is testator's child; has children
 - Norma's children take her share
- posthumous child
 - child *in utero* is treated as being alive and as a living devisee(s)
 - Rebecca clearly is a posthumous child, because she was born only 3 days after testator's death
 - Rebecca shares with Norma's 3 other children as descendant under anti-lapse statute
- predeceased child – adoption out
 - anti-lapse statute also applies to Leland (who died in 1995)
 - he had 2 children, Audrey & Richard
 - but his 2 children were adopted by Leland's wife's new husband
 - under MO statute, that causes a severance of parental-child relationship between Leland and Audrey & Richard
 - thus, Leland's share lapses (he has no descendants because of adoption out)
- adopted child
 - treated as a natural child for inheritance and devise purposes
 - Margaret takes an equal child's share
- class gift “to A and children of B” devise
 - this is the problem in *In re Moss*
 - issue: is gift to A individually and to B's children as a class, or is it to a single class which includes both A and B's children?
 - if A (testator's wife) is given an individual bequest, it lapses (as above)
 - if A is a member of the class, her share as predeceased member of class goes to other class members
 - regardless of which interpretation is used, does A get 1/2 or 1/7th?
 - DECIDE
- disposition of wife's lapsed share
 - lapsed share, if any, falls into residuary

- if no residuary clause, lapsed share goes to heirs
- no residuary clause here
- pretermitted child
 - is child born after will execution and therefore omitted from it
 - takes an intestate share
 - James was born after will execution
 - intestate share of child is 1/5th (there are 5 children whose shares haven't lapsed)
- based on class gift determination, DECIDE how much each child gets
 - take out pretermitted child's share first
 - distribute remainder of estate under gift to wife and children (as per above)
 - lapsed shares go to heirs (5 children, including adopted child and pretermitted child; Leland's share lapses because of adoption out of his children)
 - predeceased heir's share goes to her descendants *per stirpes/per capita*
 - here, predeceased child's share goes to her 4 children *per capita*

II. (30 min.)

- execution of 1987 will
 - prior signing by testator and acknowledgment of signature
 - MO statutes provide for acknowledgment of signature in lieu of signing by testator in presence of attesting witnesses
- execution of 1999 will
 - proxy signature
 - MO statutes provide for proxy signature, if signed by proxy in presence of testator and at his direction
- undue influence
 - a testator may intentionally disinherit a child
 - disinheritance is not prima facie evidence of undue influence or mental incapacity
 - undue influence is the substitution of the influencer's desires for testator's desires
 - elements of undue influence:
 - *susceptibility*: Jennie clearly was physically feeble in 1999 – but was she mentally feeble; testators often defer to suggestions by their lawyers
 - *opportunity*: Vance clearly had opportunities during his consultations with Jennie about her will
 - *disposition*: facts could support an inference of disposition to exercise undue influence, but do not prove it
 - consider Vance's failure to remind Jennie of Gertrude's past love and care
 - *unnatural will*: giving Helen the bulk of Jennie's estate, to the substantially exclusion of her other daughter Gertrude, facially seems unnatural
 - but the extended arguments with Gertrude may make it seem less unnatural

- undue influence by a lawyer
 - Vance Lodge, testator's attorney, was fiancé of daughter Helen, the sole beneficiary under the 1999 will
 - he had an indirect stake in the contents of that will, since he planned to marry the only significant beneficiary
 - thus, he had a conflict of interest between his duty to give unbiased advice to his client and his expectations to indirectly benefit from the devise to Helen
- DECIDE whether influence was exercised either by Helen or Vance
 - motive or opportunity alone are not enough to prove exercise of undue influence
 - is exercise of influence by a child considered undue?
 - exercise by a spouse is not

III. (60 min.)

- Leo & Marie's house title
 - their title is "Leo & Marie Fraser;" in MO, that creates a tenancy by the entireties
 - when Leo died, Marie got title by survivorship
 - the house did not pass to George as devisee of Leo's realty, because JT/TE property does not pass through the will or is affected by it
 - thus, Marie has sole title to the house in 1986
 - she got title to Leo's money under his will
- creation of revocable trust in house
 - a trust in land must be created by a writing; there was none here
 - this makes the transaction an invalid oral trust in land under the Statute of Frauds
 - thus, conveyance of the house by Marie to "George and Barbara Frazer" conveyed a fee simple absolute at common law
 - nonetheless, there must be an oral trust in order to have any basis for relief, even though the trust terms themselves are unenforceable (*see* below)
 - there are two bases whereby George & Barbara cannot claim absolute title
 - (1) purchase money resulting trust
 - conveyance to a grantee when the grantor provided the purchase price is treated as creating a resulting trust in favor of grantor
 - however, this doctrine does not apply when the grantee is a natural object of grantor's bounty
 - is a stepchild a "natural object"?
 - (2) constructive trust in favor of grantor
 - when a grantee induces grantor to convey title by making a promise he has no intention of keeping, a constructive trust can be imposed in favor of grantor to avoid unjust enrichment
 - here, George agreed to take care of house while Marie was in the convent. He consented to the arrangement with knowledge that Marie reserved the right to revoke it.
 - thus, a constructive trust can be imposed on the house in favor of Marie as grantor; the constructive trust can attach to the house sale

proceeds if the house cannot be recaptured from the purchaser
Edgar

- creation of revocable trust in money
 - an oral trust can be created in personalty if the settlor expresses the trust terms orally to trustee before witness(es) and transfers title to the trust corpus
 - here, the oral trust terms, including the right of revocation, were expressed face-to-face to George and before Helga (as witness)
 - thus, there is a valid oral trust in the \$500,000
- duties of trustee
 - trustee is obligated to manage the trust assets as a fiduciary for the benefit of the beneficiary Marie
 - trustee has duty of loyalty to beneficiary
 - this means he cannot treat trust property as his own personal property
 - here, George breached duty of loyalty in 3 ways
 - (1) he induced Marie to convey title to him & Barbara without indication of the trust
 - (2) he sold the house, without consent, as sole owners free of trust
 - (3) he asserted title by adverse possession
 - George & Barbara will not be allowed to assert title by adverse possession
 - the prudent investor rule applies
 - maintenance of house in order to retain its value
 - at a minimum, law of waste applies
 - here, there was no lack of maintenance or loss of value from neglect
 - no investment in nonproductive assets
 - doesn't apply to house, since George as trustee was to take care of it
 - disinvestment in declining assets and reinvestment
 - here, investment in .com stocks generated huge capital gains; although no dividends were paid, doubtful a court would hold these were imprudent investments
 - particularly since George sold them at the peak in value, and reinvested in "blue chips" (which are always OK except in the worst of economic times)
 - *no inquiry rule* (in force in MO) means that trustee is liable for all losses, regardless of good faith
 - but, here, there were no losses
 - thus, a court would likely rule that George's potentially imprudent investments in fact did not generate any losses
 - all of George's assets derived from Marie's original \$500,00 are subject to the trust
- right of revocation as affecting trust validity
 - courts have ruled that settlors can reserve the right to revoke without affecting trust validity (even if settlor is trustee, which here she was not)
 - Marie can revoke the trust in 2001 and require transfer of trust assets back to her
- liability of purchaser from trust
 - in traditional equity, a purchaser has an obligation to determine whether he is purchasing from a trust and whether trustee has the power of sale
 - Edgar did not do either

- but under modern law, purchaser has no inquiry obligation absent actual notice that title is held in trust by seller.
 - here, George & Barbara represented that they held as fee owners, and the recorded title did not contradict that representation
 - thus, Edgar took title as a *bona fide* purchaser
- house is not subject to recapture by Marie; but she is entitled to the house sale proceeds

IV (20 min.)

- 1990 will is validly executed – it has testator’s signature, 2 witnesses’ signatures and self-proving will affidavit
- holographic instrument
 - subsequent will?
 - no! MO does not recognize holographic wills; does not have usual testamentary formality (no witness signatures)
 - subsequent list of personalty dispositions
 - MO recognizes validity of subsequent list(s) of personalty dispositions
 - must be signed and dated by testator
 - does not need any witness signatures
 - cannot alter express dispositions in prior formal will
 - can dispose of tangible personalty only, not intangible personalty
 - money is intangible personalty
 - not valid
 - validity of hand-printed “signature”
 - issue is whether this is a customary signature format used by testator
 - only evidence is testator’s use of cursive signature on formal will
 - DECIDE
- trust for care of pet
 - valid in MO for 21 years
- RESULT: formal will should be probated, and holographic instrument not probated

V (15 min.)

- account: “A in trust for B”
 - is Totten Trust; recognized in MO
 - creates trust account, not a joint account
- account: “A as custodian for B” (Uniform Transfers to Minors Act)
 - creates custodial account for a minor
 - only trustee can withdraw funds – must be used for benefit of minor, not custodian’s personal benefit
 - minor entitled to funds upon reaching age 21
- bank has no authority to convert Totten Trust account to custodial account, or to show Eric as a joint owner on conventional joint account
- since bank improperly showed Eric as a joint owner, it cannot benefit from statute immunizing

it from liability for allowing one joint owner to withdraw funds when actually that person does not have that right

VI. (35 min.)

Briefly define the following terms:

- (1) draw down rule
- (2) acts of independent significance
- (3) rule of convenience
- (4) ademption
- (5) satisfaction
- (6) exempt property
- (7) spendthrift trust
- (8) insane delusion
- (9) cy pres doctrine
- (10) latent ambiguity
- (11) mutual wills
- (12) abatement