

ESTATES & TRUSTS -- ISSUE SHEET
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- IA. lost will -- presumption of revocation by destruction
(15) - rebuttable by evidence of accidental destruction
- such evidence here: testimony
acquiescence (& ratification) of revocation by destruction?
- testimony about testator's attitude
- conferring with attorney about new will
evidence needed for proving contents of lost will
- IB. will allows unbequeathed tangible personalty to be selected by family members
(15) - CD is not tangible personalty (nor specially bequeathed)
will has no residuary clause for intangibles
- bequest to church is of residual tangible personalty only
CD falls into intestacy
express disinheritance clause explains will distribution
- it does not prevent intestacy distributions to testator's relatives
CD goes to heirs
- IC. testamentary trust to 6 named nieces & nephews "as they reach age 25"
(15) is it a class gift? NO!
- gifts to named persons, even if they have same relation to testator,
ordinarily are not treated as class gifts
- unless there is some purpose to be served by a class gift
does anti-lapse statute apply to class gifts?
- yes, if beneficiary is a qualified person
- in MO, qualified persons are testator's relatives
- nieces & nephews are relatives
- goes to lineal descendents of beneficiary *per stirpes*
is survival required?
- survival is not required
- but must reach age 25, or share is divested
result: not a class gift
- share of beneficiary who does not reach age 25 goes to residuary
- 5 nieces & nephews individually take remainder (1/6th each)
- they take possession when life beneficiary Emily dies in 1992
- John's share goes to his 3 children under anti-lapse statute
- Minerva does not take, since she died at age 24; her share (1/6th) lapses
into residuary
NOT MATERIAL TO RESULT:
rule of convenience: class closes when gift to first member of class vests
- that is not later than 1965 (5 years before nephew John reached age 30 in 1970)
- facts do not indicate any class members being born after 1965

ID. not a self-proving will; must be proved by testimony of 2 attesting witnesses
(15) 1st witness is attesting witness who recognized testator's signature
2d witness is attesting witness who did not remember testation or recognize testator's signature, but did recognize her own signature
3d witness is not an attesting witness & is an interested witness
- is sole beneficiary under will; not an heir (intestate share = 0)
4th witness is expert witness; is signature authenticator and authenticated testator's signature
RSMo § 473.053(2) allows authentication of signature of unavailable attesting witness
- testimony about testation by 1 available attesting witness is sufficient (RSMo § 473.053(1))
- but 4th witness did not authenticate any witnesses' signatures
3rd & 4th witnesses' testimony does not cure defect of 2d witness's testimony
result: will should not be admitted to probate

IE. are all stapled documents considered part of will under integration doctrine?
(15) typewritten will & codicil have testamentary formality; 2 handwritten notes do not will can incorporate prior or contemporaneous nontestamentary document
- 1st handwritten note (Jan. 1986) so qualifies
- it must be and is referred to adequately in will
- 2d handwritten note (June 1987) does not qualify: it postdates both will &

codicil

- republication of will by codicil does not help under facts
RSMo § 474.333 allows distribution of tangible personalty by post-dated nontestamentary list (no monetary limit)
- will must refer to list
- here will refers only to 1st list, not 2d list
- *issue:* can later list refer to earlier list and be made part of it?
- probably not: will (or pre-dated) list must refer to post-dated lists
- in any event, list cannot bequeath CD, because it is intangible personalty
result: items on 2d list fall into residuary

IF. father provided for all of funds used to purchase CD jointly titled with son
(15) purchase money resulting trust arises where one person pays for property titled in another person
- doctrine does not apply where titleholder is natural object of money-provider's bounty; then gift is presumed
- as here, where father provides money for CD titled jointly with son
- is rebuttable presumption
- rebutted here by father's testimony about reason for joint title
3 classes of joint tenancy: ordinary, power-of-attorney, P.O.D.
- here, P.O.D. type joint tenancy was intended
- donee/joint tenant not entitled to take property before death of donor/joint tenant
result: son must disgorge; resulting trust imposed: no gift intended

II. mutual wills? YES!

- (45) - two wills designed with compatible or common testamentary plan
- here, husband's and wife's wills designed to have common remaindermen following life estate in surviving spouse

wife's subsequent will changed legatees from those of common testamentary plan

- ordinarily testator is free to change will at any time

was there a contract by each spouse not to revoke?

- *elements*: intent, evidence of terms, consideration
- intent & consideration are issues here
- intent exists: testimony of friends about spouses' expressions of common testamentary plan
- change of circumstances later doesn't vitiate enforceability
- consideration exists: other spouse's agreement to common testamentary plan
- is enforceable! wife cannot change will

would wife's handwritten will otherwise be probatable? YES!

- handwritten will had 2 witnesses: if both witnesses are valid attesting witnesses, will qualifies under ordinary rules; if not, then will must be a valid holographic will
- *interested attesting witness*: Alex Rains is a beneficiary under will
- interested persons cannot act as valid attesting witnesses
- unless they purge down to an intestate share
- since will bequeaths all property to "heirs", an heir who attests the will takes no more than an intestate share
- Alex Rains can serve as attesting witness; will is valid as ordinary will
- *holographic wills*: not recognized in MO
- defined as handwritten will not attested to by 2 witnesses
- but, holographic wills are probatable in MO under Uniform Execution of Wills Act (RSMo § 474.360), if:
- (1) executed under MO law, (2) executed in state recognizing them, or (3) executed in state of domicile
- here, will was executed in state recognizing holographic wills; will would also be valid as holographic will and would be probatable under Uniform Act in MO

but wife's handwritten will violates contract not to revoke prior mutual will, and cannot be probated

result: therefore, 1/2 goes to husband's 2 sisters (in equal shares) & 1/2 goes to wife's "heirs"

- heirs defined as of moment of wife's death
- the 1/2 to "heirs": to parents, brothers & sisters in equal shares, to descendent *per stirpes*
- simultaneous death of wife & her brother: both died upon impact
- USDA applies when it cannot be determined which of 2 persons died

first

- USDA presumes legatee died before testator
- brother presumed to die first
- lapse of brother's share? NO!
 - anti-lapse statute applies: brother is relative of testator
 - goes to brother's descendents; here, niece Beth Hanning
- adopted children inherit identically to natural children
 - nephew Alex Rains takes predeceased sister Margaret Rains's share
 - goes 1/3 to niece Beth Hanning, 1/3 to brother Tom, 1/3 to adopted nephew Alex Rains (nothing to niece & nephew Robin & Rick Hoyt - they are children of Tom Hoyt)

disclaimer: disclaimant treated as predeceasing testator

if Tom Hoyt disclaims, all brothers & sisters will have predeceased testator, and only nieces & nephews will survive

4 nieces & nephews then will take in equal shares (1/4 each); shares of Beth Hanning and Alex Hoyt will be reduced from 1/3 to 1/4

III (45)

A. distribution under 1990 trust

1/2 goes to Martha's spouse, if any; she died unmarried; goes under alternative beneficiary provision

whole goes to such 1st cousins that testator appoints by will

- testator failed to appoint
 - this was a special power of appointment:
 - donee is to select among a defined group (here, 1st cousins)
 - upon failure of a special power, all objects take in equal shares
 - where objects are defined by kinship, intestacy rules define who are objects
- are posthumous 1st cousins included? NO!
- posthumous child rule applies to children & descendents of decedent, but not to other relatives (RSMo § 474.050)
 - hence, posthumous 1st cousins do not qualify
- all cousins would take in equal shares (1/4 each)

B. if pour-over into trust fails, there is a lapse

since pour-over was of residuary assets, lapsing causes those assets to fall into intestacy survivors are 3 siblings and 4 nieces & nephews

but brother George Henry died 4 days after testator

RSMo § 474.015 requires heir to survive decedent by 120 hours

brother George did not survive that long; treated as predeceasing testator

anti-lapse statute (RSMo § 474.460) applies to all relatives

but posthumous child rule applies only the testator's children & descendents (RSMo § 474.050), not to other relatives

facts do not state whether George Henry had any other children (*i.e.* among the 4-1st cousins mentioned in facts); assume he had no other children

hence, the other 2 siblings would take in equal shares

C.

elements of trust satisfied: (1) intent, (2) delivery of trust corpus to trustee, and (3) acceptance of responsibilities by trustee

- intent is satisfied: trust is in writing
- delivery & acceptance not required:
 - settlor named herself as trustee
 - settlor changed stock registrations
- where settlor is trustee, a written or witnessed oral declaration of trust is required
 - trust declaration was written

can royalties from future books be a valid trust corpus? NO!

- corpus must present legal existence at time of transfer to trust
- royalty rights have no legal existence until book contract is executed
 - [do students know this? -- however, they should recall *Speelman*, which has analogous issue concerning play production rights, and *Brainard*, which involves future stock trading profits]
- 1990 trust is valid
 - 1991 trust doesn't have this problem: corpus are royalties from a preexisting book contract

does settlor's right of revocation affect validity of trust? NO!

- reserving right of revocation usually held not to affect trust validity
- only if settlor reserves too many powers that trust looks like sham, and is invalid
 - while theoretically improper, courts often look at settlor's subsequent behavior to determine original settlor intent
 - here, evidence suggests settlor regarded trust as genuine

are "pour-over" provisions in wills valid?

- testamentary "pour-over" into preexisting trust held not invalid testamentary disposition
- "pour-over" must be into preexisting or contemporaneous trust
- 1990 will pours over into 1990 trust created previous day: OK
- 1990 will cannot pour over into 1991 trust (created when 1990 trust was

revoked):

- trust post-dates will
- 1991 codicil (which would have republished will, giving it later date) would have validly poured over into 1991 trust
- but 1991 codicil was not executed: POUR-OVER LAPSES

can 1991 problem be cured by will language interpretation? NO!

- reference in 1990 will to 1990 trust is clear
- patent ambiguity rule would prevent use of extrinsic evidence to show ambiguity

- actually this is not an ambiguity problem: no ambiguity existed when 1990 will was executed

dependent relative revocation doctrine does not apply to trust revocations, only will revocations; cannot be used to undo revocation of 1990 trust

result: pour-over lapses into intestacy and "heirs" take: 2 surviving siblings

IV. Define the following terms:

- (1) *exoneration*: devisee takes realty free of mortgage -- estate must pay mortgage; rule reversed in most states; *bonus*: MO imposes exoneration only for mortgages executed after will execution
- (2) *line-of-sight test*: defines "in presence": testator & witnesses must sign within view of each other
- (3) *rule of repugnancy*: grantor/testator/settlor cannot both grant a fee simple and place limitations on the estate conveyed; all limiting words following grant of fee simple have no legal effect
- (4) *refusal of letters*: alternative to probate for small estates; granted to surviving spouse (or unmarried minor children) if exemptions & allowances exceed value of estate; if none, granted to creditors if value of estate does not exceed \$5000
- (5) *prudent investor standard*: trustee must make investments as a prudent person would invest his/her own property
- (6) *semi-secret trust*: trust mentioned in will, but terms not described there or incorporated by reference; traditionally is considered a void bequest as taking property away from devisees/heirs without testamentary formality; resulting trust imposed in favor of devisees/heirs; *bonus*: today enforced in some states and not in others
- (7) *ademption*: specifically devised property does not exist in estate when testator dies; devisee gets nothing
- (8) *general power*: power of appointment empowering donee to appoint anyone, including him/herself
- (9) *cy pres doctrine*: power of court to modify terms of trust when trust purpose becomes impossible or very difficult to carry out; court can reform trust to an analogous purpose; prevents lapsing; used particularly for charitable trusts
- (10) *spendthrift trust*: beneficiary denied right to transfer, anticipate, or encumber trust income or corpus prior to time trustee makes distributions