1970

Trusts and Estates (May 20, 1970)

William & Mary Law School
After a bequest of personal effects to his wife W, A left all his property outright to his two sons. The will stated "I have made other provision for my wife whereby there is held in trust for her more than half my property."

A had in fact signed a formal trust agreement listing bonds constituting at least one-half of his property; W was named life beneficiary, with power in the trustee to invade principal for W's support, remainder to the sons. A had taken the agreement to B, the named trustee, and obtained his signed acceptance thereon. A and B are now dead; the securities, all in bearer form, are found in A's safe deposit box, wrapped in a paper which says in A's handwriting "Trust for mother."

Comment on the following:
1. Is there a valid trust?
2. If the trust is valid, and no successor to B is named in the instrument, what happens?
3. If the trust should be held invalid, can the will be set aside for mistake?
4. Explain any other remedies available to W.

T's will contained the following clauses, among others.
"5. I bequeath to the following the sum set forth opposite his or her name:

| Helen Evans        | $1000   | niece |
| Edith Pierce      | 500     | niece |
| Ellsworth Cass    | 2000    | brother |
| William Cass      | 2000    | nephew |
| Bessie Vale       | 6000    | sister-in-law |
| Jane Fierbaugh    | 6000    | sister-in-law |

"I, give, devise and bequeath all the rest and remainder of my estate to the heirs set forth in item 5 above."

Under the statute of descent, the first four persons named were "heirs:" the last two were not. They were sisters of T's deceased wife. T had other heirs who were not mentioned in the will at all.

In construing the foregoing, the court had to look at precedent in an earlier case in the same jurisdiction where X by her will had made a great number of legacies. Here the court had classified the legatees as follows:
1. The surviving husband of X
2. Her collateral blood relatives
3. Blood relatives of her first husband
4. Persons not related either by blood or marriage
5. Religions and benevolent institutions
The residuary clause provided that the remainder of the estate was to be equally divided "among all the heirs herein named." Under the descent statute the husband (#1) was the sole heir; if he had predeceased X, #2 would have been heirs; under no circumstance would #3 to #5 be heirs technically.

How do you think the court should have construed the residuary clause in X's will? Why?

Bearing in mind the precedent you have created in X's case, what is your decision in T's case? Why?

In the latter, should the distributees receive equal shares, or shares proportionate to the dollar amounts in clause 5?

III. (8 points)

T, an elderly childless widow, lived in a 12 room house, adjoined by a productive farm. After small bequests to 5 nieces in paragraph 3 of her will, she left the house, farm, and other property valued at $100,000 in a perpetual trust. Under the terms of the will, A, the trustee, was to maintain the home as a memorial to T and her deceased husband, to be occupied and enjoyed by indigent widows and maiden ladies. It was stated that "in the selection of beneficiaries, the trustee is to be the sole judge of who shall be admitted, but he is requested to prefer such indigent widows and maiden ladies as are named in paragraph 3 above referred to, and their heirs, and said trustee may limit the number of persons to those that profits from the farm will comfortably support and maintain."

Discuss whether this is a valid charitable trust.

IV. (40 points)

T has become estranged from his son and sole heir, X. T thinks very highly of his nephew N who has been employed in T's office. T works out an estate plan and he puts $250,000 into an inter vivos trust (Trust #1) with B Bank as trustee under written agreement duly signed and delivered by both parties. It provides that T receives income during his life; he reserves the right to revoke or amend by a written instrument delivered to the trustee; at T's death the trust terminates and all assets are to be distributed to B Bank as trustee under T's will, to hold and administer on the terms of the trust provided in the will. (Trust #2)

T's will, duly signed and witnessed, provides that after payment of debts, etc., the estate is to be held by B Bank in trust for the benefit of N for life, remainder to be distributed to St. John's Hospital.

Three years later T discovers that N has been misappropriating funds in his office and determines to sever all connections with him. Meanwhile T and X have become reconciled. One step T took, as shown by the evidence, was to initiate an amendment of trust #1. His attorney drafted an amendment for T's signature providing that after the life estate the corpus should be distributed to X outright, instead of going to trust #2. However N upon learning of this was able to intercept the outgoing mail and destroy the amendment before it reached the trustee. A week later T died.

T's will could not be found. His attorney produced an unsigned carbon copy which he and the 2 witnesses would say is the will T signed. The attorney also testified that he had delivered the signed original of the will to T, and produced T's receipt therefor.
There is no further evidence as to the will. This jurisdiction operates on common law rules as to proof of lost wills, there being no statute. T's estate (exclusive of trust #1) will net $200,000.

(1) N submits to the probate court the above proof of lost will.
   (a) Can X make any objection to the jurisdiction of this court? Explain.
   (b) Explain what additional objections should be made by X to the admission of the will to probate.

(2) Assume that the will is admitted to probate and that, per provisions of Trust #1, B Bank transfers the assets to itself as trustee under T's will. It now has 2 trusts operating under the will: #1 for $250,000 and #2 for $200,000.

X now files suit in a court having general chancery jurisdiction, against B Bank and N, and makes the following alternative contentions:
   (a) The admission to probate should be set aside because the probate court acted on insufficient evidence and an incorrect view of the law.
   (b) The trust agreement should be held to have been amended so that the property will go where it belongs, to X, rather than rewarding N, a wrongdoer.
   (c) B Bank should be held a constructive trustee as to the $250,000 for the benefit of X, with a duty to turn this sum over to him rather than holding it pursuant to the will's provisions.
   (d) N's equitable life estate in the $250,000 trust should be held in constructive trust by him for the benefit of X, so that X and his successors will enjoy the income for the life of N.
   (e) Trust #1 is invalid from its very beginning as in the nature of a testamentary disposition not properly witnessed as required by law.

Comment on each of the above contentions.

(3) Assume that the probate court has jurisdiction, denies probate and is correct in so doing (disregard all statements in question #2 for this purpose). Who is entitled to how much, and why?

V. (10 points)

We have studied "Restraints on Alienation of the Beneficiaries Interest" as embracing not only the "spendthrift trust" as it originally evolved but several other types of arrangements designed to curb the beneficiary's access to the income or principal of the trust fund.

Starting with "true spendthrift trust" state and explain as many categories of those arrangements as you can. Illustrate each with an example (in one or two sentences if possible).
VI. (15 points)

T at age 75 made his will disposing of a substantial "gentleman farm," securities worth $500,000 and miscellaneous personal property. Most of the property fell in the residuary estate which went to Lionel Greedy, a nephew and T's sole heir. Controversy arose over two paragraphs of the will, namely:

"Fourth, I hereby appoint Fred Bender executor of my will. It is my desire that the items of 18th century furniture in my home, with which my executor is familiar, be distributed by him to such persons or organizations as he may select as their absolute property."

"Ninth, I leave to Fred Bender in memory of our many happy times together, my white horse."

The testimony of Mrs. Frump, T's housekeeper, showed that he and Fred Bender were drinking companions of long standing; that Bender visited T at least two evenings a week, and each morning thereafter she would find one or more empty bottles labelled "White Horse Scotch Whiskey:" that T knew well that Fred Bender feared and distrusted horses, to the point that he would not even go near the fence where they were confined on T's farm.

The testimony of T's hired man of long standing was that T had remarked to him two or three times that he had really taken care of Fred Bender in his will by giving him enough whiskey to swim in.

When T died he owned eight horses, one of which was white and of little value; in the wine cellar there were 14 cases of White Horse Scotch.

Discuss:
A. Lionel's contentions that:
   1. T has invalidly delegated to Bender, in giving the power of selection in paragraph fourth.
   2. The furniture in the house now is not the same as when the will was made so the bequest is uncertain and void.

B. The interpretation of clause ninth and the admissibility of the testimony of either of the two witnesses.

C. Lionel's contention that the bequest to Bender as T's attorney who drew the will and was T's confidential adviser, is invalid.