1972

Trusts and Estates (May 1972)

William & Mary Law School

Repository Citation
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TRUSTS AND ESTATES
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May, 1972

(14 points)
I. Paul Parishioner made a gift of $50,000 to the First Baptist Church of Belleville by an instrument which stated:

"Hereewith my check for $50,000, denominated as the Young Peoples Fund. I want this Church to make a strong effort to attract young people, beginning in childhood. For example, I feel strongly that the Church should combine Sunday School with Little League Baseball in summer and ice skating in winter, and make these activities open to all children, whether their families are atheists or church-goers. This money and its income should make the program a success."

After five years of the above program, the governing body of the Church decides it is a failure; they conclude instead to rent and furnish a recreation center in a poor section of Belleville, using all of the present and future income and $10,000 principal of the fund as a "start up" for this purpose.

Incensed, Paul brings suit in equity against the Church for an accounting, alleges breach of trust and demands that the $50,000, plus all income be returned to him.

As counsel for the Church, appraise the situation by listing every issue that might rationally be urged by either plaintiff or defendant: indicate in the margin of your bluebook your characterization of each issue as "weak" or "strong." Then shift to the role of judge and decide the case.

(13 points)
II. Explain the doctrine of dependent relative revocation, setting out two different fact situations where the doctrine might be applied. In each of these, show the legal consequences, which will follow from application of the doctrine.

(35 points)
III. T's attorney, A, mailed to T's office in a nearby city, a carbon copy of a proposed will, which A's secretary had typed. Three days later, T telephoned to say that the draft was all OK so A mailed him the original for signature and witnessing. T, remembering the instructions A had given him, called in two of his employees, signed the original, stated that it was his will, and requested them to sign as witnesses. This procedure followed the requirements of the state statute.

T died shortly thereafter and the will was presented for probate. The provisions in dispute are as follows:

Third, I leave to my uncle U my eighteenth century mahogany sofa.

Fourth, I leave all the rest and residue of my property to X, in trust to distribute to such persons as X may select, and in such respective amounts as he sees fit.

In the probate court there was offered in evidence the following, in addition to routine proof of execution:

1. Testimony of the attorney and his secretary that in typing the will from the attorney's original notes, the secretary had inadvertently omitted after "persons" the words "included in my blood relatives."
2. Testimony of Y that T had, just before his death, told him that he had left all his property where it would stay in the family.

3. Evidence that T owned at death two eighteenth century mahogany sofas: one was in excellent condition, a scarce antique, upholstered red and valued at $6,000; the other was in bad shape, colored green, and worth about $250 in its present condition. There was also evidence that Uncle U, who was wealthy, had the hobby of refinishing old furniture; that he had coveted the green sofa for years, but T had always teased him by putting him off and promising to leave it to him in his will; that T had told a member of the family that U would get his wish for the green sofa eventually.

The court admitted the evidence at items 1, 2 and 3 over objection, reserving decision until later ruling on admissibility.

X filed in court a document whereby he selected C and D, brothers of T, to receive the residue.

A. Discuss whether or not the evidence at 1 or 2, if believed by the court, will be given effect in making the distribution of the residue and explain your decision.

B. Uncle U, whose sole heir is his son, S, died intestate one week after T's death. S demands the red sofa, or its value of $6,000. Is all of the evidence at 3 admissible? What will S get, if anything? Why?

C. Another relative files objection to the consideration by the probate court of the questions in issue at A, on the ground that such questions should be decided by a court of general jurisdiction. Discuss and decide.

D. Those of T's surviving relatives who would take under the statute of descent if T were intestate, point out that neither the witnesses to the will nor T's attorney, nor anyone else was able to state whether or not T had read or had any understanding of the paper which he signed as his will. Discuss this contention.

(12 points)

IV. X makes out a deed to a residence property to Y, his brother, and after himself recording the deed, he formally delivers it to Y, telling him orally that he is to hold the property in trust, pay the rental income to X, but turn over the title to X's son, S, when S's marriage occurs. Y agrees orally.

The statute of frauds says that oral trusts of real estate, whether by transfer or declaration, are invalid, except for constructive or resulting trusts.

There is no evidence that Y did not mean what he said: in fact, there is evidence that Y (who has since died) had orally instructed Z, his son and heir, that this property was for S on the terms stated in his original conversation with X.

Now, S gets married. Z, intending to honor the trust, executes and delivers a deed of the property to S. However, it is ineffective under the Conveyances Act to pass title as not acknowledged before a Notary Public by Z, and the Recorder of Deeds will not accept it for recordation. S irritates Z by insistence on an immediate new deed. Z says "Sue me—I'll keep the house myself."

Discuss the issues and decide the case of S v. Z.
V. T's will, executed January 1, 1970, provided after specific legacies that all the residue of his estate should be paid over to Friendly Bank, "as Trustee under agreement creating the T Family Trust."

On December 20, 1969, T had entered into an instrument denominated a trust agreement with Friendly Bank, entitled the "T Family Trust." Income from the trust was to go to T for life; after his death, income was payable to his widow for her life, with principal to his children upon her death. The trust was to hold "such assets as T may from time to time hereafter convey to the Trustee."

On February 25, 1970 T assigned to Friendly Bank for the trust, by written instrument "all my right, title and interest to income or principal under the will of G." G, who died twenty years prior, had left his property in a trust under his will which gave H a life interest with outright distribution of the principal to T absolutely on the death of H.

On May 20, 1970 T, by written instrument assigned to the T Family Trust a personal debt owed by X to T in the amount of $20,000 which was past due.

On September 5, 1970 T died. Five days later, H died.

a. Discuss whether the T Family Trust is valid and when it became valid.

b. Discuss whether the T Family Trust will receive any of (1) the remainder under G's trust, (2) the payments by X on his debt, and (3) the residue under T's will.

VI. F, father of H, wanted to help H and his wife, W, a newly married couple, acquire a new home. F advanced $4,000 of the purchase price (the court below finding this to be a loan by F without specific terms of repayment) and H and W borrowed the rest from a loan company on a mortgage. Title was taken in H and W jointly.

Now W sues for divorce, and asks that H's one-half interest be set over in her favor; H does not defend; F intervenes and asks the court to declare some equitable interest or lien in his favor to the extent of $4000. The court below awards H's interest to W, with a constructive trust in favor of F to the extent of $4,000. W appeals. Discuss and decide. (This is a recent reported case.)