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Trusts (1959-1967)

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9. On April 10, 1957, Herman Rush duly executed a will, the fourth paragraph of which read:

"I bequeath to George Atkins, as Trustee, the sum of $20,000 which he shall invest for the benefit of such person as I may name in a letter to be found at my death in my safe deposit box at United Bank and Trust Co. Income from the investments so made shall be paid over by the Trustee to the person named for a period of five years, and at the end of that time all such investments and accumulated and unpaid income thereon shall be delivered by the Trustee outright and free of trust to the person named in my letter."

Rush died on May 3, 1959, and shortly thereafter his Executor found in Rush's safe deposit box a short typewritten letter addressed to George Atkins and reading:

"November 10, 1958

Dear George:

I have decided that the person for whom you should hold in trust the $20,000 mentioned in paragraph four of my will is my cousin William Cooley. I request that you act accordingly.

(s) Herman Rush"

A controversy has arisen between the Executor of Rush's will and Cooley, the Executor contending that Atkins holds the $20,000 bequest on a resulting trust for the benefit of Rush's estate, and Cooley contending that Atkins holds the sum on an express trust for his benefit. Which should prevail?

(Trusts--Wills) Executor holds the sum on a resulting trust for the benefit of Rush's estate. The gift to Cooley is void as an instrument not in existence cannot be incorporated by reference into a will. See 187 Va. 511 on p. 1711 of Wills in these notes.

9. Both Rancid, a blueblood art collector down on his luck, and Lucre, a former hobo who had made his fortune in uranium, were delighted when Rancid's daughter, Venus, married Lucre's youngest son, Babbitt. Wishing to ingratiate himself with Lucre, and also to pave the way for an easier life for his daughter, Rancid delivered to Lucre his most valuable possession, an original Van Gogh, in consideration for the latter's promise to place $100,000 in trust for the children of Babbitt and Venus. Lucre, delighted with the bargain, declared himself, by written instrument, trustee of a $100,000 U.S. Treasury Bond numbered 19789X in favor of the yet to be born children of Babbitt and Venus. Shortly thereafter Rancid died, intestate, leaving as his only heir and next of kin his daughter, Venus. Six months after the death of Rancid, Babbitt was convicted of embezzlement and sentenced to two years in the State Penitentiary. Venus thereafter filed for and obtained a divorce. No children were born of their marriage. Lucre is incensed at the failure of his daughter-in-law to stand by her husband. He consults you wishing to know who is entitled to the treasury bond. How would you advise Lucre in this regard?

(Trusts) One answer: The trust is not yet terminated as Venus and Babbitt may yet become reconciled, remarry, and have children. An unborn child or children may be the cestui or cestuis(beneficiaries) of a trust. Hence Lucre is still trustee.

Another answer: The trust is at an end. The person who gives the consideration for the creation of a trust is the settlor, and if the trust fails the corpus then becomes the property of the settlor. Since Rancid is dead, Venus succeeds to his rights. It would not be just for Lucre to keep the valuable painting and still have the beneficial interest in the bond. See 54 Am.Jurisprudence, Trusts, Section 198; Restatement of Trusts #112, Illustration 6; also #425.
On November 10, 1948, Henry Camp, a resident of Washington, Virginia, made an agreement with the Commonwealth National Bank, whereby he caused to be delivered to the Bank, as Trustee, five policies of insurance on his life, aggregating $100,000. The Trustee agreed to hold in trust the policies and the proceeds therefrom and, upon the death of Camp, to pay the income therefrom to the wife of Camp during her lifetime and, upon her death, the corpus of the trust was to be divided among the living children of Camp. The trust agreement contained this provision:

"The right is reserved to Henry Camp, by written instrument delivered to the Trustee, to revoke and annul this agreement. On the written demand of Henry Camp, the Trustee shall deliver to him the policies held under the terms of this agreement."

On May 20, 1954, Camp executed his last will and testament, by the terms of which he sought to revoke the trust agreement. This will, in part, provided:

"I hereby revoke the insurance trust agreement dated November 10, 1948, here­tofore entered into between me and the Commonwealth National Bank. I direct that upon my death a copy of this will, revoking said trust agreement, be delivered to the Trustee as evidence of my written revocation of said agreement in its entirety."

Also, by his will Camp named his wife his Executor.

Camp died on October 10, 1956, and his will was duly admitted to probate. He was survived by his widow, Mary, two sons, each over the age of twenty-one years, and one daughter, fifteen years of age. Shortly after the will was probated, an attested copy thereof was delivered by the Executrix to the Commonwealth National Bank. The Executrix of Camp's estate demanded the return of the insurance policies which were held by the Bank under the trust agreement so that she could demand and receive the proceeds thereof from the insurance company. The Bank, believing the trust still effective, refused to deliver the policies. Whereupon, Camp's Executrix filed a suit in the Circuit Court of Rappahannock County, Virginia, against the Commonwealth National Bank, as Trustee, to recover the policies. Who should prevail?

(BANK) The Bank should prevail. The trust agreement specified the method of revocation; it must be strictly followed. A will which does not take effect until testator's death at which time the policies could not be delivered to him is not the method of revocation agreed to. Hence the trust is still in effect unless all the beneficiaries are sui juris and have agreed to the substitute method of revocation. See 191 Va. 12 in Trust Cases on p.1610 of these notes.

Gloria Redd, while visiting a friend for the first time in the friend's apartment in Norfolk, was injured when the wooden stairway in the entrance hall, which was poorly lighted, collapsed under her weight. She instituted an action by motion for judgment against Moses Allen, individually, and as a trustee, seeking damages for her injuries. The pleading, after setting out the above facts, charge the following:

"3. Moses Allen was named trustee by written instrument dated June 12, 1959, made by Johnston Cory, whereby the apartment building numbered 100 Granby St., Norfolk, Va., was conveyed in trust, on the condition that said trustee manage, control, keep in repair, said building, and pay the proceeds therefrom to the beneficiaries named in said trust agreement.

"4. As a proximate result of Moses Allen's negligent failure to keep the premises in good repair, plaintiff was injured."

Moses Allen, both individually and as trustee under the deed of trust, demurred to the motion for judgment.

How should the court rule on the demurrer with respect to Moses Allen (a) individually, and (b) as trustee under the trust agreement? (TRUSTS) The demurrer should be overruled with respect to Moses Allen as an individual, and sustained with respect to him as trustee. The law is stated as follows in Massey v. Payne, 155 S.E. 658 (West Va. 1930), "By the weight of authority a trust estate cannot be held liable for torts committed by the trustee. Ordinarily he can be held liable only in his individual capacity, and he is personally liable to third persons for his torts either of misfeasance or of non-feasance in failing to keep the trust property in repair, irrespective of his right to reimbursement." Note: If the beneficiaries exercise control over the trustee, then the trust estate is also liable.
9. Bacon employed Coke, a lawyer, to examine the title to a house and lot which Bacon had contracted to purchase from Vendor at the price of $5,000. Coke, while examining the records in the Clerk's Office, found that the will under which Vendor claimed, devised the property, not to Vendor, but to his sister. Coke, while examining the records in the Clerk's Office, found that the will under which Vendor claimed, devised the property, not to Vendor, but to his sister. Coke thereupon paid $2,000 of his own money to the sister for a quitclaim deed from the sister to his (Coke's) wife, and informed Bacon that Vendor had no title to the property. Soon thereafter, Bacon learned the facts stated above and immediately consults you as to his right, if any, to acquire the property. How ought you to advise him? (TRUSTS) Coke stood in a fiduciary relation to Bacon. As a fiduciary he owed a duty of full disclosure. If Coke could get the land for $2,000 for his wife, he could have gotten it for Bacon at the same price. Coke's wife is not a bona fide purchaser for value and she holds the land as a constructive trustee for Bacon. See 186 Va. 518.

10. Davis, an assistant cashier of Merchants Bank, over a period of years used funds belonging to the Bank with which to pay premiums on a policy of life insurance on his own life in the amount of $50,000, payable to his wife, who knew nothing of his misconduct. An examination of the Bank finally uncovered these facts, and when confronted with them, Davis committed suicide. The sums taken by Davis from the Bank amounted to $12,500, all of which had been used by him in paying the insurance premiums. What are the respective rights of Merchants Bank and Mrs. Davis in the proceeds of this insurance? (TRUSTS) By the weight of authority (no Virginia case) the Bank can recover the whole $50,000. Since it is the proceeds of the stolen money, Mrs. Davis will be held as a constructive trustee. The minority view is that the Bank can only recover the surrender value of the insurance policy at the time of Davis' death since Davis could have allowed the policy to lapse by going to the penitentiary and failing to pay further premiums. See 2A ALR 2d p.672 et seq. for a discussion of the various views. Note: By statute in Virginia suicide is no defense unless the policy so provides, and even then the suicide, to be a defense, must occur within two years.

3. Henry Jones was a lawyer who had practiced in Patrick County, Va., for 53 years. He died on January 25, 1944, leaving a will dated Dec. 12, 1940, to which was attached a codicil dated Dec. 18, 1943. Both the will and codicil were in his own handwriting. In the body of the will, Jones expressly devised his residence property to his wife for life and at her death to his son, Rupart, in fee. By the codicil written some three years later he added the following:

"Recognizing the possibility that my son, Rupart Jones, may die without issue or lineal descendants surviving him, it is my wish that should such be the case, at his death that he, after providing a home for life for his widow, will my residence and lot on Main St., Stuart, Va., mentioned above to the Board of Trustees of the Highfellows Orphanage located at Bedford, Va., and their successors in office, for the support and maintenance of that institution".

At Henry Jones' death, he was survived by his wife and his married son, Rupart. Henry's widow died in March of 1960, and thereafter Rupart and his wife brought a suit to construe Henry's will. Counsel for Highfellows Orphanage contend that Rupart, on his mother's death, took the legal title to the residence property upon the express trust that upon his death without issue it would go to the Trustees of the Highfellows Orphanage, subject to the life estate of Rupart's widow. Counsel for Rupart and wife contend that Rupart took a fee simple estate in this property and that the words of the codicil did not create a trust. How should the Court rule? (TRUSTS) Counsel for Rupart is right. Testator gave the land in question to his son in fee, and then by a codicil indicated a mere desire that his son would act in a certain way should he die without issue. These precatory words are only a request to the person to whom they are addressed. They are not mandatory, and Rupart may or may not carry out his father's wishes, just as he chooses. They do not constitute a charge on the property of any sort. See 194 Va. 901 in the Trust Cases in these Notes.
James Adams, a resident of Arlington County, conveyed his extensive and valuable dairy farm to John Thomas by a deed dated May 2, 1961. The deed recited the consideration for the conveyance to be "Ten Dollars ($10.00) and other valuable considerations." At the time the conveyance was made, and pursuant to an understanding between Adams and Thomas, the two executed an agreement by the terms of which it was contracted that Thomas should hold title to the farm in trust for the benefit of Adams' son Horace for life and, on the death of Horace, the trust was to terminate and Thomas was to convey the property absolutely to Adams' daughter Sally. The deed of conveyance was promptly recorded upon its execution and delivery, but the agreement was not. On October 15th Thomas conveyed the farm to Oscar Smith, a wealthy resident of Washington, D. C., for a cash consideration of $125,000 which cash Thomas pocketed and then absconded to parts unknown. At the time of this conveyance, Smith had no knowledge of the agreement between Adams and Thomas. On November 5th Smith by a deed of gift conveyed the farm to his son Henry Smith who, at the time of the conveyance, had become informed of the misconduct of Thomas. Horace and Sally, the children of James Adams, have now brought a suit in equity against Henry Smith in the Circuit Court of Arlington County reciting the foregoing facts, and praying that a decree be entered declaring Henry Smith trustee of the farm for their benefit. How should the court rule?

TRUSTS) The Court should rule in favor of Henry Smith. When Oscar Smith bought the farm for value and in good faith and in ignorance of the trust, he acquired a good title free from any claim of the beneficiaries of the trust. "Where the equities are equal the one with the legal title prevails," and Oscar had obtained the legal title. Oscar can give his own property away if he wishes, and the donee stands in his shoes. This does not put the beneficiaries of the trust in any worse position since they had already lost their rights. The only exception to this rule is where the trustee or someone in collusion with him reacquires the title. Mere knowledge of a breach of trust does not make one a participant in such a breach any more than knowledge of a murder makes one a murderer. This is analogous to the "shelter" or "umbrella" doctrine in the law of negotiable instruments where a holder in due course acquires a note from a person guilty of fraud in the inducement and then gives the note to a third party who has notice of the fraud and who accepts the gift after maturity. See Restatement of Trusts § 316.

Louis Fink, a resident of the City of Norfolk, on September 6, 1956, entered into a typewritten agreement with John Randall which read as follows: "Louis Fink hereby transfers to John Randall all tangible personal property which Fink may own at the date of his death, and John Randall hereby agrees to hold such property as Trustee for the benefit of Susie Fink, the daughter of Louis Fink, until she shall become twenty-five years of age at which time John Randall shall deliver to Susie Fink such property absolutely and free of trust; provided, however, as compensation for his services as Trustee, John Randall shall be entitled to retain on the termination of the trust personal property having a value of $1,000.

\[\text{(s)} \text{Louis Fink}\]

\[\text{(s)} \text{John Randall}\]

Louis Fink died intestate on November 5, 1961, at which time his daughter Susie was twenty-three years of age. A controversy has arisen between Susie and her brothers Albert and Sam as to the extent of her rights in Louis Fink's personal property. Susie, Albert and Sam are the sole heirs and distributees of Louis Fink. Susie now consults you and inquires (a) whether a trust of the personal property was created for her benefit at the time of the execution of the agreement in 1956, and (b) whether a trust in such property arose for her benefit at the time of the death of her father Louis Fink. What should you advise her?

TRUSTS) No, as to both (a) and (b). Randall was not meant to have any interest in any property until Fink died. This was meant to be a testamentary trust, but since the testament fails because it was not executed in accordance with the law of wills, the trust created by it, if any, also fails. The trust also fails as a trust in praesenti because there is no ascertainable or ascertainable trust res. See §§ 56 and 76 of the Restatement of Trusts.
10. Shortly before his death in 1943, John Ames conveyed Blackacre in Hanover County to Robert Thomas as Trustee for his adult children, Charles and Betty Ames, who lived in another part of the State. The deed creating the trust was duly recorded in the Clerk's Office of the Circuit Court of Hanover County and, among its other provisions, it directed Thomas to manage the farm and pay the income therefrom to Charles and Betty during their lives. The deed contained no provisions authorizing a sale of the farm. The farm was generally spoken of in the community as "The Thomas Place.

William White, a newcomer in the area, bought part of this farm from Robert Thomas by a deed dated Jan. 2, 1946, purporting to convey the land to White. White promptly recorded his deed, entered at once into possession of the land and has lived on it ever since claiming it as his own. How ought you to advise? (TRUSTS) I would advise them that White has title by adverse possession and that their rights are only in possession against the trustee who is accountable to them for the proceeds received or for the value of the land conveyed. Statutes of limitations are statutes of repose and there is no reason why an adult equitable owner should be in any better position than an adult legal owner. It was held in 130 Va. 123 that an adverse possession sufficient to bar the legal estate of the trustee also bars the equitable estate of the cestui que trust.

4. Valley Trust Co. of Harrisonburg qualified a executor under the will of Peter Monohan, which will provided generously for his four children, with a clause which bequeathed the residue to Valley Technical Institute as Trustee for the purpose of advancing vocational education in the area. At the time Monohan executed his will, Valley Technical Institute was operated as a non-profit vocational training school in Harrisonburg. On Monohan's death in 1962, however, the Institute had ceased to exist. However, a similar non-profit corporation in an adjoining county, known as Augusta County Training School, operated a vocational school.

When the four children asserted a lapse of the residuary estate in their favor, the Executor instituted the proper proceeding in a court of competent jurisdiction praying guidance and direction in the distribution of the residue of the estate. Augusta County Training School intervened as a party defendant.

Assume the above facts proven, how ought the Court rule, and what direction should it give to the Executor? (TRUSTS) The Court should rule in favor of the Augusta County Training School and direct that the residue of Monohan's estate be given to it as substitute trustee. This was a charitable trust. The testator's main purpose as to the residue was educational in that area. A court of equity will not allow a trust to fail for want of a trustee. 197 Va. 685 and Va.#55-26, 55-27 and 55-29. The case is on p.1612 of the Trust Cases in these Notes.

5. John T. Coe, an attorney of good repute, and Bertha Roe were co-executors and co-trustees under the will of Richard Roe, deceased. Bertha Roe, the frail and distraught widow of Richard, during the winter following her husband's death, took her three children on a four-week vacation to Florida. The management of the estate and trust in the meanwhile was left in the hands of John T. Coe. However, upon Bertha's return, she discovered that Coe had embezzled $20,000 from the estate's trust fund, and that he could not now be found. Since the trust fund was for the benefit of the children, Bertha consults you and inquires as to her personal liability as co-trustee. How ought you advise? (TRUSTS) In the absence of negligence, concealment, participation in a breach, or failure to take proper steps against the defaulting trustee one co-trustee is not liable to the beneficiaries of the trust for the default of another trustee. Since Bertha had no reason to suppose that Coe would violate his trust she was not negligent in delegating her duties to him under the circumstances. Restatement Trusts #22h. See also 170 Va.496.
Harry Agnew died in the City of Richmond in 1958 leaving a will which, among other things, bequeathed $50,000 to John Colt in trust for Ben Agnew, the infant son of Harry, until Ben should become 30 years of age. The will was duly probated, and its Executor paid the $50,000 to Colt which he accepted as Trustee. A provision of the will concerning the trust recited:

"The $50,000 hereby bequeathed in trust to John Colt shall be promptly invested by him either in securities issued by the United States Government or securities issued by the City of Richmond. He shall not invest the trust fund, or any part thereof, in securities other than those mentioned without the consent of my son Ben Agnew."

Shortly after receiving from the Executor the $50,000, Colt used the money to purchase bonds issued by Foreign Aircraft Corporation. That corporation met with severe financial losses as a result of which Colt sold its bonds in Sept. of 1960 for $30,000. This $30,000 he promptly reinvested in U.S. Government bonds. In December of 1963, Colt sold these Government bonds for $30,000 and reinvested the proceeds in the common stock of Ajax Cement Corporation. That corporation experienced marked business success and in May of 1965, Colt sold such common stock for $65,000, and invested the proceeds in bonds issued by the City of Richmond. Ben Agnew, who has reached his majority, but who was not advised of any of these transactions, has now learned of them and seeks your advice on the extent, if any, Colt is accountable to the trust. What should your advice be?

(TRUSTS) Colt owes the trust the original $50,000 plus the $35,000 profit plus interest and dividends received. He cannot balance losses and gains from improper investments. The way to discourage such investments is to have the law provide that one improperly invests at his peril—the losses are his, and the gains belong to the beneficiary.

Herbert Hart, an old bachelor residing in the City of Fredericksburg, told his friend Kenneth Gray in the presence of Susie Moore that he wished to devise his residence to Gray in trust for Susie for her lifetime, but that he did not wish to mention her name in his will. Gray assured Hart that if such a devise were made, he would accept title subject to the trust. A few days later in reliance on Gray's assurances, Hart executed his will which provided that the residence was devised to Gray in fee simple, no mention of a trust being made. Approximately one year later, Hart died and his will was duly admitted to probate. Shortly thereafter, Gray moved into the residence of Hart and claimed it as his own. Susie Moore, on becoming informed of Gray's conduct, brought suit against him in the Circuit Court of the City of Fredericksburg praying that a trust be established for her benefit in the residence occupied by Gray. On the trial of the case ore tenus, Gray, after admitting the foregoing facts, proved through a number of witnesses that, shortly before his death, Hart informed Gray that he had been engaged in a bitter controversy with Susie Moore, that he then informed Gray that he was relieved of his agreement to hold the residence in trust for Susie, and that he wished Gray to have it absolutely. Susie Moore produced no contradictory evidence and rested. Thereupon Gray moved that the Court rule (a) that the oral agreement between Gray and Hart could not, in any event, have served as the basis for a trust in the residence and (b) that, even assuming that a trust could have resulted from the agreement, it was defeated by Hart's asserted rescission prior to his death.

How should the Court rule on each of these contentions?

(TRUSTS) (a) This contention is wrong as express parol trusts of realty are allowed in Virginia as we have not adopted that portion of the English Statute of Frauds dealing with parol trusts of realty. Hence, if testator had died without revoking the trust Susie Moore would have been entitled to the residence. (b) This contention is correct. While one cannot revoke an express trust unless he has reserved that right, in this case the express trust was inchoate, as it would not take effect until testator died. In reality testator does not revoke the trust—he prevents it from ever coming into effect. Equity will not perfect a voluntary imperfect trust.
10. Sara Mansfield died a resident of Virginia on October 28, 1963. Her will was duly admitted to probate, and the disposing portion thereof was in the following language:

"Ten: I give and bequeath all of my personal estate, consisting of stocks, bonds, and money in bank, to Valley Exchange Bank to be held by it as trustee for the life of my daughter, Hannah, remainder to the children of my said daughter living at her death. The trustee is directed to manage the trust to the utmost advantage for the support and maintenance of Hannah and her children during her lifetime."

After the trust had been established Hannah became indebted and judgments were recovered against her. Her judgment creditors sought to subject her interest in the trust to the payment of the debts. The trustee consults you and inquires whether all or any portion of the trust estate may be subjected to the payment of Hannah's judgment creditors, telling you that the income from the trust is barely sufficient to support Hannah and her children. What should you advise?

(TRUSTS) I would advise the trustee that the creditors cannot reach any portion of the trust property. No member of the family group has any specific part. This is an irrevocable trust for the benefit of the family as a unit and its purpose would be defeated if the mother is made destitute. See §282(3) of the first Edition of Harrison on Wills and Administration or 10 Gratt. (51 Va.) 336.

10. Eric, executor of the estate of Young, consults Lawyer and advises Lawyer as follows: that five years ago Lucy Lee contracted to buy Adler Farm, a nursery; that Young's records show that during this five-year period prior to his death, Young made payments from one of his several checking accounts to Lucy Lee, a former secretary of Young's, and the stubs showed an entry on each of "49% on Lucy Lee, Adler Farm"; that the entire farm was paid for during this five-year period, with the total amount of Young's checks being exactly 49% of the total purchase price; that Young helped Lucy Lee in contacting certain commercial outlets for her nursery plants and was often at the farm; that title to Adler Farm was in Lucy Lee only; that Young's records reflected no payments to Young from Lucy Lee or Adler Farm; that Young's will, executed one year before his death, made certain provisions for his family and left $10,000 cash to Lucy Lee; that Young on several occasions remarked that Lucy Lee had been loyal to him and a great help morally and financially in time of need.

Eric asked Lawyer if, on this evidence, there is any way to obtain a 49% interest in Adler Farm for the benefit of Young's estate. How should Lawyer advise Eric? (TRUSTS) Lawyer should advise Eric that he has no rights. Excerpts from headnotes to 196 Va. 247 read as follows: "When land is conveyed to one person but the consideration is paid by another, the title holder is presumed to hold the title on resulting trust for the purchaser; but this presumption does not apply when the consideration is paid as a loan or gift to the title-holder, One claiming a resulting trust must prove it by clear and convincing evidence, and where evidence has been offered that the purchase price was paid as a gift or loan to the grantee, bears the ultimate burden of proof that it was the payor's intention to secure to himself the benefits of the payment. The intention of the payor is the controlling factor. In the instant case the evidence showed that complainant's testator, Crabbs paid 49% of the purchase price of the property, title to which was taken by defendant. But there was much evidence to show that he intended these payments as settlement of debts due by him and as a return for past services and help. Since the administrator did not produce convincing evidence of Crabbs' intent to acquire a personal interest in the property, the court erred in decreeing a resulting trust in favor of the estate."
10. Collins was trustee for Indolent under the will of his father. Indolent, a middle-aged doctor, took no part in the management of the trust fund, contenting himself with receiving the income paid him by the trustee. Among the assets of the trust were 100 shares of A.B.C. Corporation and 100 shares of the X.Y.Z. Corporation. About two years before the termination of the trust Collins, at a fair price and after full explanation to Indolent, bought from him his interest in the A.B.C. stock. At the same time, but without saying anything to Indolent, he sold to himself the X.Y.Z. stock at a price in excess of its then market value. At the termination of the trust both stocks had advanced in price well beyond the prices paid by Collins, and Indolent demanded that Collins either account for this advance in price of both stocks, or replace the stocks. What are Indolent’s rights?

(TRUST) Indolent is clearly entitled to the relief asked so far as the X.Y.Z stock is concerned. Collins violated his duty as trustee when he bought that stock without Indolent’s knowledge or consent. Indolent had the right to at least consider the matter and thereafter to give or withhold his consent.

As to the A.B.C Stock there are two equally good answers: (1) Indolent may recover. The transaction was void. The trustee did not suggest that Indolent get independent advise. He has no business even to suggest to the beneficiary that he (the trustee) would like to buy the trust property because of the obvious conflict of interest, or (2) Since Indolent is sui juris and Collins made full disclosure and paid full value and no other persons are involved this transaction stands and Indolent cannot successfully attack it now.

9. Anna Jones, aged 22 and unmarried, entered into a trust agreement with the National Bank of Stanleytown, Va., whereby $100,000 in securities, which she had inherited, were transferred to the Bank, as trustee, to be held under the trust created by her. The trustee was given broad powers concerning investments and it was directed to pay the net income to Anna during her life. The agreement expressly provided: “This agreement shall be irrevocable by the trustor.” The agreement also provided that upon Anna’s death, the corpus and accumulated income were to pass as she might direct by her will, and, if she should die intestate, the residue of the trust was to go to the parties who would take from her under the Virginia intestacy law.

Three years after entering this agreement, Anna married James Smith. She now desires to revoke the trust and has asked you if this can be done.

How ought you to advise her?

(TRUST) Anna may revoke the trust as she is the sole beneficiary, no interests having been created in others by her direction that the property should pass as by intestacy in the event that she died intestate. 170 Va. 221; 191 Va. 12; 1 Restatement of Trusts, #127, illustration 2.

8. Thomas Trout is the record owner of 200 shares of the common stock of Petersburg Sales Corporation. This is fifty percent of all the Corporation’s outstanding stock. Sam Stone is in the investment business, and is a friend of Trout. During a conversation between the two, Stone told Trout that he was of the opinion that Trout could avoid personal liability for corporate obligations if Trout created a trust in his shares, naming the other stockholder, Ben Brown, the brother-in-law of Trout, as beneficiary, but reserving to himself the authority to vote the shares until he, Trout, retired from the business. Relying on the opinion expressed to him by Stone, and without benefit of the advice of his lawyer, Trout typed out and signed in duplicate the following paper:

Subject only to the reservation hereinafter recited, I hereby state that I am Trustee of my 200 shares of the common stock of Petersburg Sales Corporation for the benefit of my brother-in-law, Ben Brown, The one reservation is that I retain the right to vote all my stock until I retire from
On the same day Trout delivered one of the executed drafts to Brown, who expressed both his surprise and his gratitude.

Shortly thereafter Trout learned from his lawyer that the opinion expressed to him by Stone was wholly erroneous. Thereupon Trout brought a suit against Brown in the Circuit Court of the City of Petersburg seeking a rescission of the instrument of October 15, 1966. In his bill, Trout alleged as his grounds for rescission:

(a) The paper could not be held effective as a trust because not supported by consideration.
(b) The paper could not be held effective as a trust because Trout had never surrendered possession of the shares of stock; and
(c) Even if effective as a trust, Trout could revoke it because the paper did not provide that it was irrevocable.

Assuming that Brown cannot show that he has changed his position in reliance on the paper following its receipt by him, how should the court rule on each of the three grounds asserted in Trout's bill?

(a) All the grounds for rescission should be overruled. It is settled law that the owner of personal property, whether it be tangible or intangible, may effectively declare himself trustee of the property for another person. Furthermore, consideration is not necessary for the establishment of such a trust. The rule was first expressed in Ex Parte Pye. See Scott on Trusts, Section 28.
(b) It is completely consistent for the settler to retain possession of the res where he declares himself trustee. To require him to transfer possession through a straw man back to himself would be a meaningless ceremony.
(c) Even where a settler has declared himself trustee for another, he may not revoke the trust in the absence of an express reservation of the power to revoke.

9. John Scott was the only child of Kate Scott, a widow, who was the life beneficiary under a trust created by the will of her father Carl Adams who died in 1948. The trust res consisted entirely of corporate securities, and the trust provided that Kate Scott had the power to appoint by her will a beneficiary who would receive the res absolutely and free of the terms of the trust. John Scott, being charitable in nature, in 1960 executed and delivered to Virginia Anti-Poverty Society, a non-profit corporation whose purpose was to aid the indigent, a trust instrument naming Richmond Trust Company as trustee and reciting that the trustee should be entitled to receive the entire res of the trust created by his grandfather's will on the death of his mother Kate Scott, and that the Trustee should administer the trust for the benefit of the Society for a term of twenty years. The instrument further recited that the trust thereby created was irrevocable. Kate Scott died in October of 1966 leaving a will by which she appointed her son John Scott as the beneficiary entitled to receive the res of the trust of her father. John Scott has called upon you and stated that he is thirty-five years of age, that he has recently become married to Thelma, and that he wishes to avoid the effect of the trust agreement of 1960, so that the res of that trust might be used for the benefit of Thelma rather than that of Virginia Anti-Poverty Society. He asks you by what means, if any, this might be accomplished over objection to the Society. What should your advice be?

There is a . . . res to which a trust can attach. The mere expec-
tance of an heir will not serve as a sufficient res for the establish-
ment of a trust. If there is consideration, a purported assignment· may
be upheld as a contract, though the courts are reluctant to enforce such
an agreement. Where there is no consideration, as here, neither a
purported assignment nor a trust will be upheld.

Section 3, June 1967

1. Happy Hooligan was legally adjudged insane and his friend, Horace Makeshift, was
appointed his Committee. Makeshift immediately took possession of all of Hooligan's
assets. By taking proper action, Makeshift sold all of Hooligan's real estate,
stocks and bonds and deposited the proceeds of sale, amounting to $70,000, in a
checking account in the Rocksburg National Bank and Trust Co. This account was
opened in the name of Horace Makeshift, Committee for Happy Hooligan. At the time
the deposit was made the officers and directors of the Bank knew that the Bank was
insolvent and anticipated that it would be closed within ten days. Makeshift was not
aware of these facts at the time he made the deposit and he was surprised to learn
that the Bank was closed one day after he made the deposit. In a chancery cause
commenced by the receiver of the Bank, Horace Makeshift, as Committee for Happy
Hooligan, filed a petition seeking to recover the entire deposit made by him as
Committee for Hooligan. The assets of the Bank were sufficient to pay only ten per
cent of its obligations, and the receiver claimed that Makeshift, as Committee for
Hooligan, would have to share ratably in its assets with all other depositors.

Who should prevail?

(TRUSTS) The Committee should prevail. "When the officers of an insolvent Bank, with
knowledge of the insolvency, receive from one of its customers a deposit, they are
guilty of fraud and the Bank becomes a constructive trustee of the deposit." (175
Va. 359). The depositor may recover from the receiver the deposit, if it can be identi-
fied, or its equivalent, if it cannot be identified, when the customer's money has
been mingled with the Bank's funds, which, to an amount equal to the deposit, has
gone into the hands of the receiver. (114 Va. 674). Therefore, the Committee is en-
titled to repayment of money deposited by him, in priority to the claims of the

2. William White, a resident of Tazewell, Virginia, owned a tract of land containing
150 acres in Prince William County, Va. Thomas Brown, without the knowledge of
William White, had been profitably occupying that tract of land for a period of
three years. Upon learning of Brown's occupancy of the land, White wrote him a
letter instructing him to vacate the property. Brown did not vacate the property but
instead employed Silas Green to negotiate, in his behalf, with White for the con-
veyance of the property to Brown. By an oral agreement between Brown and Green,
Green agreed to go to Tazewell to try to persuade White to convey the property to
Brown for the sum of $150,000. Brown agreed to pay Green $1,500 for his services.
Pursuant to this agreement Green went to Tazewell, and after three days of negotia-
tions with White, Green procured from White a deed conveying the property to Green.
Green paid the purchase price to White. Upon learning that Green had procured the
conveyance of the property to himself, and that he would not convey it to him,
Brown commenced a suit in equity in the Circuit Court of Prince William County
against Green for the purpose of requiring the conveyance of the property to him,
tendering into the court the payment of the purchase price. The Bill of Complaint
contained averments of the foregoing facts and concluded with a prayer that Green
be required to convey the property to Brown. Green demurred to the Bill of Complaint,
assigning as the ground therefor that the agreement between himself and Brown was
oral, and as it related to the sale of land it could not be enforced.

How should the Court rule on the demurrer?
TRUSTS) The court should overrule the demurrer. When one person sustains a fiduciary relation to another he can not acquire an interest in the subject matter of the relationship adverse to such other party. If he does so equity will regard him as a constructive trustee and compel him to convey to his principal the proper interest in the property. An agreement which is the basis of such a constructive trust may be proven by parol testimony and does not involve the statute of frauds. An agent is a fiduciary with respect to the matters within the scope of his agency. The agent or employee is bound to the exercise of the utmost good faith and loyalty toward his principal. Therefore, where an agent is authorized to purchase property for his principal, and yet purchases the same in his own name and takes a conveyance to himself, he will be deemed, in equity to hold title thereto as a constructive trustee for such principal. (167 Va.234) The question as to whether the contract is within the statute of frauds is determined if whether the contract in its essence and effect was one of agency, or was it one for the purchase of real estate. If the former, it creates a trust relation, and not within the statute of frauds, and can be established by parol; if its latter, the parties are to that extent dealing with each other as principals and the contract is within the statute and can only be established by such a writing as will meet the requirements of the statute of frauds (121 Va.506)

Dobbins owes Selden $5,000 on open account. By agreement with Thompson, Selden executed a paper conveying this claim to Thompson to be used if and when collected for the benefit of Selden's son, Sam.

Selden has invented and patented a formula which has had amazing results in curing baldness. Pursuant to a written contract, Thompson has agreed to manufacture and sell the same for one-half of the profits, with the remaining one-half of the profits to be held and expended for the benefit of Selden's son, Sam.

Does Sam have any legal or equitable interest in either (a) the claim against Dobbins or (b) the patented formula?

TRUSTS) Sam has an equitable interest in both. (1) A creditor's interest in a debt or a contract right, if transferable, can be held in trust.

(2) A patent or copyright can be held in trust if a the party impressing the trust, had an equitable right, title, or interest in the patent and if he by express declaration impressed the property with the trust. See 159 Va.535.