Volume 57
Issue 3 *Dickinson Law Review - Volume 57, 1952-1953*

3-1-1953

Tort Liability of the Beneficiary of a Spendthrift Trust

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NOTES

TORT LIABILITY OF THE BENEFICIARY OF A SPENDTHRIFT TRUST

Although their validity is sometimes questioned, spendthrift trusts have been accepted in most of the United States either by court decision or by statute with only slight limitations placed thereon.

The purpose here is not to examine the arguments for and against the validity of spendthrift trusts. Rather those limitations and controls which have been, or should be placed upon such trusts, will be pointed out with special emphasis on the desirability of subjecting the beneficiary to liability for tort claims.

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It often has been said in the Pennsylvania courts that spendthrift trusts are supported, not out of regard for, nor with the desire to aid the beneficiary in escaping his just obligations, but solely to protect the donor's right of property. This is announced in unequivocal terms in *Morgan's Estate*[1] as follows:

> "The law rests its protection of what is known as a spendthrift trust fundamentally on the principle of *cujus est dare, ejus est disponere.* It allows the donor to condition his bounty as suits himself, so long as he violates no law in doing so. It is always to be remembered that consideration for the beneficiary does not even in the remotest way enter into the policy of the law. It has regards solely to the rights of the donor."

Such a strong statement as this immediately gives rise to broad implications and causes one to reflect as to whether the holder of property should not be burdened with the responsibilities necessarily appurtenant thereto. As Professor Griswold points out,[2] "trusts are the creature of equity, and they should be administered in a way that is consistent with true equity". As a result of this serious consideration there is a significant tendency in recent years to recognize the practical as well as the logical basis of spendthrift trusts. Both by statute and by decision the states have recognized the desirability of limiting spendthrift trusts where economic and social policies dictate.

Certain exceptions have been made which allow creditors having high equities to reach the interest of the beneficiary despite the spendthrift provisions of the particular instrument.

The exceptions, of course, take various forms in the different states according to the philosophy adopted with regard to spendthrift trusts generally. It is, however, possible to assert some pattern and this was done by the framers of the *Restatements.*[3]

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1 223 Pa. 228 (1909).
2 Griswold, Spendthrift Trusts, § 339 (2d Ed., 1947).
3 Restatement of Trusts, § 157.5.

"Although a trust is a spendthrift trust or a trust for support, the interest of the beneficiary can be reached in satisfaction of an enforceable claim against the beneficiary,

(a) by the wife or child of the beneficiary for support, or by the wife for alimony;

(b) for necessary services rendered to the beneficiary or necessary supplies furnished to him;

(c) for services rendered and materials furnished which preserve or benefit the interest of the beneficiary."

Thus, the exceptional hardship involved in denying to certain classes of claimants recourse to the interest involved has led many courts to allow the claimants to reach the previously sheltered *res*. That which is common to all of these instances is the factor of public policy, although some courts veil their decisions in terms of a fictional "presumed intent" of the settlor. The reason for allowing spendthrift trusts to stand in most states is that it is held not unreasonable for the settlor to protect the beneficiary against his own improvidence.[4]

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The law of spendthrift trusts developed to protect the beneficiary against ordinary contract-creditors. Accordingly it is extending the law unduly in the direction of an already-favored instrument to hold it unreachable for others. It is argued in behalf of the spendthrift trust that ordinary creditors have only themselves to blame if they extend credit before investigating as to the economic position of their debtor. It necessarily follows that with regard to those claimants not extending credit voluntarily this argument cannot stand. Many courts have recognized this and have created exceptions which allow claims of government for taxes and wife and children for support.

And what of the tort-creditor? The drafters of the Restatement in a *caveat*,[5] carefully point out that they do not intend to express any opinion on the question whether tort-creditors can reach the interest of a spendthrift trust.

Obviously the position of a tort-creditor differs widely from that of the ordinary contract-creditor. The person wronged tortiously by the beneficiary has no opportunity to avoid his injury by checking the tortfeasor's financial rating. As Mr. Scott points out there is something shocking in the notion that a man should be allowed to continue in enjoyment of property without satisfying claims of persons whom he has wronged.[6]

Considering the large number of spendthrift trusts in existence it seems strange that the question has never been decided directly by an appellate court of any state. In the Pennsylvania case of *Thackara v. Mentzer*,[7] the court said by way of *dictum*:

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[4] Scott, Trusts, § 157.5 (1939).
[5] Restatement of Trusts, § 157.
[6] Scott, Trusts, § 157.5 (1939).
[7] 100 Pa. 151, (1882).

"Whether judgment be for a breach of contract or for a tort matters not. The testator recognized no such distinction. He impressed on the fund exemption from all kinds of legal process for all liabilities whatever."

Some years later in the case of *Wright's Estate*[8] a lower court said:

"And it is immaterial that the judgment is founded in tort. It is a debt due by the defendant, precisely as if arising *ex contractu*."

Little consolation was it when the court further stated:

"No doubt it is a hardship that the well-settled rule must be applied."

In accord with the above mentioned cases was the opinion in *Davis v. Harrison*[9] which, after reiterating the principle of *cujus est dare, ejus est disponere,* (the bestower of a gift has a right to regulate its disposal), said:

"Conceding that an unliquidated liability for a tort is not technically a debt, nevertheless, a debt arises when the liability becomes liquidated and is reduced to judgment."

The court was straining to the breaking point when it found a difference between the situation where the claim is for tort directly and an instance where the claim was reduced to judgment. To say that in the latter case, the claimant is a mere debtor, because his tort claim has been merged in his judgment would be a triumph of form over reality having no place in modern law.[10] The Pennsylvania courts subsequently recognized this enigma and have held that a wife suing on a judgment for alimony does not lose her claim against the trust by reason of the fact that she has obtained a judgment.[11]

The Pennsylvania courts while recognizing the hardship imposed on tort-creditors and other claimants having high equities, nevertheless, cling tenaciously to the policy of giving the donor the right to condition his gift. This is illustrated by the court's consistent fabrication of a "presumed intent" which allows the wife to recover for support.

This position should lead to an appraisal of the basic premise upon which the courts rely.

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The Latin phrase, *cujus est dare, ejus est disponere,* must be examined in the light of modern jurisprudence. Statutes and decisions have erased the application of this principle in many facets of the law. In Pennsylvania[12] a testator may not make a devise for charitable purpose except by a will executed a specified time before his death. Similarly the power of an owner is often limited by statutory interests in lieu of dower or curtesy. The rule against perpetuities represents an-

8 12 Pa. Dist. Rep. 321 (1903).
9 3 D. & C. 481 (1923).
10 N. 4, supra, at § 365.
11 Stewart's Estate, 344 Pa. 356, 25 A.2d 330 (1939).
12 Act of May 16, 1939, P.L. 141, § 1, 20 P.S. 195.

other limitation on the property owner's right to dispose of his interest in whatever manner he chooses.

These and many more illustrations of restraints imposed on the owner's ability to dispose of his property as he sees fit serve to materially weaken, if not destroy, the court's announced basis for previous decisions regarding spendthrift trusts. As a result it seems that such protective trusts must be validated, if at all, upon policy considerations. To give the enjoyment of wealth without its responsibilities or, by artificial means, to keep wealth in the hands of the incompetent, seems to oppose the principle of sound economy and sociology.

Conflicting philosophies may be reconciled by legislation which authorizes spendthrift trusts for moderate amounts while allowing ordinary creditors to satisfy their claims from the excess and allowing tort-claimants and other creditors having high equities to reach that part of the income necessary to fully satisfy their claims.

Statutes have been enacted in Alabama, Louisiana, New York, New Jersey, Oklahoma and Virginia which go far in this direction. There is much room for improvement in all the states and especially in those jurisdictions where the members of the courts remain so duty bound to the obsolescent concept that the settlor has absolute power of disposition. Professor Griswold has drafted a model statute[13] which has served to guide several of the states, notably Louisiana and Oklahoma, in the promulgation of legislation designed to remedy the many inequitable features of the spendthrift trust. It is suggested that many states would do well to follow this example and to pause and re-evaluate the spendthrift trust with special notice to harsh effects it has on tort-claimants and other deserving creditors.

The short-form statute proposed by Professor Griswold[14] illustrates a sensible and progressive attempt to solve the problem presented. It could serve as an adequate basis for all legislatures which desire a more detailed limitation on spendthrift trusts. The proposal is as follows:

> "Where the alienation of the interest of the beneficiary of a trust is restrained by the terms of the trust, or by statute, the court may, on application of a creditor of a beneficiary, order the beneficiary to pay to the creditor such portion of the income of the trust, in installments, or otherwise, as the court may deem proper, after due regard for the reasonable requirements of the beneficiary and his family, if dependent upon him, and *taking into account the nature of the claim against the beneficiary.*" (Italics supplied.)

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[13] N. 4, supra, at § 565 (App. A).
[14] N. 4, supra, at § 566 (App. A).