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Hailey Dobin Reichel

Cardozo Journal of Equal Rights and Social Justice, hailey.reichel@law.cardozo.yu.edu

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Hailey Dobin Reichel ✍ 5 hours ago 4 min read

Spendthrift Trusts: The Tension Between Testamentary Freedom and Public Policy Concerns

In 1875, Supreme Court Justice Samuel Miller delivered the opinion of the court in a case pertaining to the construction of a woman's trust created for her children.[1] The matter focused on a provision in the testamentary trust that stated that the trust would terminate with respect to a son's interest if he were to go bankrupt or insolvent, and that the resulting funds were to be collected by the trustees.[2] Despite arguments presented to the court about how this inclusion acted as an attempt to evade notions of bankruptcy law, Justice Miller upheld the provision of the trust.[3]

[T]he doctrine, that the owner of property, in the free exercise of his will in disposing of it, cannot so dispose of it, but that the object of his bounty, who parts with nothing in return, must hold it subject to the debts due his creditors, though that may soon deprive him of all the benefits sought to be conferred by the testator's affection or generosity, is one which we are not prepared to announce as the doctrine of this Court. [4]

Justice Miller's words permanently altered the trust landscape and provided legitimacy to the spendthrift trust concept.[5] Consequently, extensive case law has followed that continues to evaluate the spendthrift trust idea and its potential application.[6]

As it is recognized today, a spendthrift provision is the most common mechanism for keeping trusts away from a beneficiary's creditors.[7] Its concept as a trust instrument is outlined in Uniform Trust Code ("UTC") 502. [8] It is a clause that indicates the settlor's intent to protect the assets of the trust from a beneficiary's creditors by placing a restraint on voluntary and involuntary transfers of the beneficiary's interest from the trust.[9] Most states have followed UTC 502 and incorporated some variation of a spendthrift clause into their own state trust code.[10]

At a general level, the debate surrounding spendthrift trusts inherently exists in tension.[11] This is primarily due to how it attempts to reconcile testamentary freedom, a core doctrine of trusts and estates law, alongside public policy concerns, a principle to which all areas of law attempt to consider.[12] Opponents argue that spendthrift provisions are unsound as a matter of public policy because they insulate individuals from being held liable for financial irresponsibility.[13] Alternatively, proponents stress how they are societally beneficial because they protect grantors' intentions.[14] With respect to UTC 502, which allows testators to create a trust without worrying about their beneficiaries' creditors garnishing the funds, the importance of holding debtors liable to

creditors appears outweighed by the prioritization of testamentary autonomy.[15] The creation of Uniform Trust Code (“UTC”) 503, as an exception to the application of UTC 502, adds an additional dimension to this tension.

[16]

Courts have carved out some public policy exceptions for certain types of creditors to pierce through a spendthrift provision.[17] UTC 503(b) details three exceptions to spendthrift trusts.[18]

A spendthrift provision is unenforceable against: (1) a beneficiary's child, spouse, or former spouse who has a judgment or court order against the beneficiary for support or maintenance; (2) a judgment creditor who has provided services for the protection of a beneficiary's interest in the trust; and (3) a claim of this state or the United States to the extent a statute of this state or federal law so provides.[19]

Critics of UTC 503 contend that the statutory exception that allows certain types of creditors to reach a spendthrift trust violates foundational notions of the settlor’s intent and negates the overall objective of a trust. [20] Proponents of incorporating limitations argue that while safekeeping spendthrift trusts is critical, protecting the ability of certain creditors of a beneficiary to be able to reach it supersedes in importance.[21] Most experts support variations of UTC 503 because of its emphasis on morality.[22] Specifically, prolific scholarship stresses how individuals who do not support their own dependents should not be able to reap the benefits of rights to trust assets.[23]

The tensions that exist surrounding spendthrift trusts showcase the value that trust creations place on balancing testamentary autonomy and public policy considerations. This reconciliation rests at the epicenter of trusts and estates law at large and acts as a microcosm of the standards to which the practice area strives to reach in all facets of estate planning.

[1] Nichols v. Eaton, 91 U.S. 716 (1875).

[2] *Id.*

[3] *Id.*

[4] *Id.*

[5] *Id.*; Timothy J. Vitollo, *Uniform Trust Code Section 503: Applying Hamilton Orders To Spendthrift Interests*, 43 real prop. tr. & est. l.j. 169 (2008); J. Gordon Hylton, *The U.S Supreme Court’s Most Important Decision Affecting the Law of Trusts & Estates Was Decided a Very Long Time Ago* (2010)

<https://law.marquette.edu/facultyblog/2010/10/the-u-s-supreme-courts-most-important-decision-affecting-the-law-of-trusts-estates-was-decided-a-very-long-time-ago/>.

[6] Vitollo, *supra* note 5.

[7] Vitollo, *supra* note 5; Wex Definitions Team, *Spendthrift Clause*, Cornell Law School (Aug. 2021),

https://www.law.cornell.edu/wex/spendthrift_clause#:~:text=A%20spendthrift%20clause%20refers%20to,the%

beneficiary or their creditors (last updated 2021).

[8] Uniform Trust Code § 502; Stewart E. Sterk & Melanie B. Leslie, *Estates and Trusts* (6th ed. 2019); Restatement (Third) of Trusts § 58 (2003).

[9] § 502; Sterk & Leslie, *supra* note 8; Restatement (Third) of Trusts § 58 (2003).

[10] Vitollo, *supra* note 5.

[11] *Id.*

[12] Sterk & Leslie, *supra* note 8.

[13] *Id.*

[14] *Id.*

[15] § 502.

[16] Uniform Trust Code § 503.

[17] § 503; Sterk & Leslie, *supra* note 8.

[18] § 503.

[19] § 503.

[20] Sterk & Leslie, *supra* note 8; Rudolph Limon, *Trusts: Right to Reach Spendthrift Trusts for Support of Minor Child*, 7 *Hastings L.J.* 220 (1956); Vitollo, *supra* note 5.

[21] Limon, *supra* note 17.

[22] Adam J. Hirsch, *Spendthrift Trusts and Public Policy: Economic and Cognitive Perspectives*, 73 *Wash U. L. Q.* 1 (1995).

[23] Vitollo, *supra* note 5; *Shelley v. Shelley*, 354 P.2d 282, 288 (Or. 1960).