Chapter 5: Trusts and Estates

Emil Slizewski

Follow this and additional works at: http://lawdigitalcommons.bc.edu/asml
Part of the Estates and Trusts Commons

Recommended Citation
CHAPTER 5

Trusts and Estates

EMIL SLIZEWSKI

§5.1. Administration of estates: Priority of claims. General Laws, c. 198, §1, sets forth an order of preference of claims against insolvent decedents' estates. Under the wording of the first and last sentences of this section, administrative charges, funeral expenses and those of last illness are given highest priority. Such expenses are to be abated ratably if assets of the estate are insufficient to satisfy them in full. Despite the specific language of the statute, there have been expressions of opinion that administrative expenses should take precedence over all other claims.

This point of view received judicial approval in Lally v. Peter Bent Brigham Hospital: “... [administration] expenses may be allowed at proper intervals as the administration proceeds, since otherwise the orderly handling of estates would be impeded if not prevented altogether.” The Court also pointed out that priority could be independently authorized under other statutes providing for the allowance of fiduciaries' and attorneys' fees.

The specific issue before the Court in the Lally case, however, was whether there was any preference between funeral expenses and ex-

EMIL SLIZEWSKI is Professor of Law at Boston College Law School and a member of the Massachusetts Bar.

§5.1. 1 "If the estate of a person deceased is insufficient to pay all his debts, it shall, after discharging the necessary expenses of his funeral and last sickness and the charges of administration, be applied to the payment of his debts, which shall include equitable liabilities, in the following order:

"First, Debts entitled to a preference under the laws of the United States.

"Second, Public rates, taxes and excise duties.

"Third, Wages or compensation, to an amount not exceeding one hundred dollars ....

"Fourth, Debts, to an amount not exceeding one hundred dollars, for necessaries ....

"Fifth, Debts due to all other persons.

"If there is not enough to pay all the debts of any class, the creditors of that class shall be paid ratably upon their respective debts; and no payment shall be made to creditors of any class until all those of the preceeding class or classes, of whose claim the executor or administrator has notice, have been fully paid.”


4 Id. at 477, 257 N.E.2d at 449.
5 G.L., c. 206, §16; G.L., c. 215, §39A.
The Court decided that it could not prefer one to the other without "doing violence" to the specific wording of the first and last sentences of G.L., c. 198, §1. The degree of violence might have been mitigated had the Court analyzed the nature of funeral expenses in the same manner as it dealt with charges of administration. The same argument of necessity obtains; that is, there must be a disposal of the corpse. Moreover, there is the presumption that funeral expenses are incurred on the credit of the estate. Medical and hospital services impose upon the decedent's estate obligations which were debts of the decedent in his lifetime. Such a debt, arising from a voluntary act of the decedent, must yield priority to a charge against his estate, arising from a duty imposed by law upon the administrators, as is indeed the duty of providing the decedent with a decent burial.

§5.2. Charitable trust: Deviation from terms, cy pres. The doctrine of cy pres in its orthodox form sanctions the application of trust property held for a particular charitable purpose to other similar charitable purposes if the donor has also manifested a more general charitable objective. The courts have been inclined to infer a general charitable intent in addition to the particular purpose expressed, especially if the trust has been in existence for a long time. The settlor may be expected to anticipate changed circumstances in the future, which may render the fulfillment of his specific charitable desires impossible or impracticable. And, if he has not expressly provided for a termination of the trust with a reverter or a gift over, it would appear that he would ordinarily prefer that the property continue to benefit the community in some altered manner, rather than have it revert to his heirs who may be remote, unknown and numerous. Nor should the needs of the community be totally irrelevant.

A cy pres alteration will not be allowed where the terms of the trust unequivocally provide for a termination and a gift over if a specified charitable purpose fails. Although the concern for general public benefit may be one of the reasons why the doctrine of cy pres is applicable


§5.2. 1 Restatement of Trusts Second §399 (1959); 4 Scott, Trusts §399 (3d ed. 1967).
to charitable but not private trusts, the donor’s express direction of the form of the benefit cannot be completely ignored.5

In *Trustees of Dartmouth College v. City of Quincy*6 a testator, who died in 1869, left property to the city of Quincy to found and maintain a school

... for the education of females ... who are native born, born I wish it to be understood, in ... Quincy, and none other than these, to be allowed to attend this Institute which I wish to be as perfect and as well conducted as any other in the state.7

The will further provided,

... If ... Quincy refuses to accept the above property upon the terms herein specified, or [shall] fail to comply with the words and intent of this will, as determined by good judges, or should surrender the property or use it for any other purpose than contemplated in this will, then I bequeath the said property to the Trustees of Dartmouth College to be used by them, in the manner they may think best, for the promotion of science and literature. [Court’s emphasis.]8

Quincy accepted the trust, and the school’s first building was constructed in 1894. The income of the trust, once sufficient to cover the operating costs of the school, had recently fallen far short of the amount required to run a quality school. Because of its financial difficulties, the school had lost its accreditation. In recent years its enrollment has been less than 75 percent of capacity, but if it were able to operate at capacity, tuition income could be increased materially and accreditation would probably be restored.

In order to obtain additional income to meet the increased costs, the school’s trustees formulated a plan to admit qualified girls who were not Quincy-born, only to fill the space not being used by Quincy-born girls. The proposal would require the non-Quincy-born girls to pay tuition equal to the cost of their education, so that the income of the trust might be used to reduce the tuition of only native-born girls.

The Supreme Judicial Court reversed a decree of the probate court enjoining the admission of girls not born in Quincy, concluding that the enrollment of these girls would not conflict with the “dominant intent” of the testator. Dartmouth contended that permitting a deviation from the terms of the trust by allowing non-Quincy-born girls to attend the school would be a cy pres application of the trust, and that

---

7 Id. at 810, 258 N.E.2d at 747.
8 Id. at 810-811, 258 N.E.2d at 748.
the doctrine of cy pres could not be utilized because of the testator's gift over to Dartmouth if the school for only Quincy-born girls failed. In rejecting this argument the Court observed that the case did not call for the traditional application of cy pres principles, since the gift had neither failed entirely nor become impossible of execution according to the provisions of the will.

The Court reasoned that the donor's dominant intent was to establish a quality school for native-born girls, and that the exclusion of non-Quincy-born girls was subordinate to that major purpose. Changed circumstances over the 75-year period during which the school was in actual operation have made necessary or desirable the abandonment of certain details of the original plan. Allowing girls not born in Quincy to take up the space not filled by the native-born could not harm the primary charitable objective. The additional tuition thus obtained would make possible the continued achievement of the objective of a good preparatory school education for girls born in Quincy.

In support of its conclusion, the Court pointed out that there was a general reluctance on the part of a court of equity to enforce a forfeiture of a charitable trust, especially if it had been in operation for many years and had become a community asset. The Court observed that:

The justification for allowing a charitable gift to continue indefinitely, without regard to the Rule against Perpetuities or related rules, is the public benefit from achievement of important charitable objectives. The same justification does not necessarily apply to subordinate details of such a charitable gift, particularly those which tend unduly to restrict adapting use of the gift to changing conditions. In some cases, indeed, subordinate provisions, originally may have been imposed, not to facilitate the achievement of a general charitable purpose, but for the personal gratification of the donor in respects wholly irrelevant to any effective execution of a public purpose. There is strong ground for disregarding such subordinate details if changed circumstances render them obstructive of, or inappropriate to, the accomplishment of the principal charitable purpose.9

§5.3. New legislation: Appraisals. Prior to the 1970 Survey year, it was required by law that one or more disinterested persons be appointed to appraise the items included in the inventory of the estate of a decedent.1 Typically, the appraiser designated by the probate court was the person suggested by the attorney representing the estate. This person was not bound to have, and generally did not have,


§5.3. 1 G.L., c. 195, §6.
any special skill to make property appraisals. He, often perfunctorily, swore to the values of inventory items previously ascertained by the estate's lawyer. The appraiser was entitled to be compensated for his services out of estate assets.

The appraised values of items in the inventory are binding on no one, the inventory's primary function being the basis for future probate accountings. Recognizing that independent appraisals, with concomitant increases in probate expenses, usually performed no useful function in probate proceedings, the legislature has changed this practice. Under Acts of 1970, c. 317, §1, the fiduciary filing an inventory in the probate court shall himself ascertain the actual market values of the property comprised therein, and shall receive no compensation for such appraisal. The act, however, authorizes the probate court, upon motion by the fiduciary or any interested person, to appoint one or more special appraisers of any or all inventory items, if it shall find such appointment to be in the best interests of the estate.

§5.4. Other new legislation. Acts of 1970, c. 637, §1, amends paragraph (1) of G.L., c. 190, §1, by increasing the intestate share of the surviving spouse from “twenty-five thousand dollars,” wherever it appeared in the paragraph, to “fifty thousand dollars.” The elective share of the surviving spouse remains unaffected.

Acts of 1970, c. 119, §1, amends G.L., c. 188, §1, by increasing the value of a homestead estate from four thousand dollars to ten thousand dollars.

Chapter 111 of the Acts of 1970 amends G.L., c. 195, §16, by authorizing the niece, nephew, aunt or uncle of a decedent to become a voluntary administrator of a small estate.

Acts of 1970, c. 120, §1, amends G.L., c. 204, §3, by affording greater flexibility in a local fiduciary's dealings with a foreign fiduciary. It authorizes a Massachusetts fiduciary, who has in his hands personal property to which a fiduciary appointed in another state is entitled, to transfer the property to the foreign fiduciary upon such terms as the probate court may decree upon petition filed therefor.

Chapter 338 of the Acts of 1970 amends G.L., c. 65, §22, by eliminating the penalty for failure to file within the designated period an inventory of all property subject to the inheritance tax.


4 Regulations concerning valuations for inheritance and estate tax purposes may require appraisals by specialists if the property in question does not have a readily ascertainable market value.