Title

Echoes of the Doctrine of Worthier Title in current trust law

Text

In §5.2 of *Loring and Rounds: A Trustee's Handbook* (2022) we consider those trusts whose remaindermen are to be determined by reference to formulas set forth in intestacy statutes, provisions such as "upon the death of the life beneficiary, the property passes to those who *would be* the settlor's heirs," or words to that effect. But what if the term "heirs" in a given situation were actually intended as the *probate estate* of the settlor? Here, the Doctrine of Worthier Title may come into play. The Doctrine of Worthier Title, a remnant of Anglo-Norman feudal law, may apply to the following type of trust: *A* (settlor) to *B* (trustee) for *A* for life, then to the "heirs of *A*." If the "heirs of *A*" were actually intended as the probate estate of *A* then the only beneficiary of the trust is *A*. Upon the death of *A*, the property reverts to the probate estate of *A* upon a resulting trust. *A*'s presumptive heirs *do not* take title from *B*, the trustee, as "purchasers." If they take at all, they take as beneficiaries of *A*'s probate estate, "by descent" as it were. But they may in fact not take at all because *A*, having possessed a vested reversionary interest, could have transferred out that interest to a third party before he died, or by will.

Today, the Doctrine of Worthier Title has evolved into a rule of construction. In other words, what did the settlor intend? Does the term "heirs" mean his probate estate or is it an abbreviated formula for ascertaining remaindermen along the lines of Professor Casner's more elaborate formula set forth in §5.2 of the Handbook? Some states have addressed the issue by creating statutory presumptions. Massachusetts has abolished the doctrine both as a rule of law and a rule of construction.

What is the practical concern for today's trustee? Simply this: If the Doctrine of Worthier Title is applicable in a given situation, *A* is the sole beneficiary. There are no other interests to be accommodated. Thus, *A may* be able to revoke the trust, his creditors *may* be able to reach the principal, and *A* will be able to defeat the interests of his presumptive heirs at law by transferring the reversionary interest inter vivos or by will. If *A* is also the sole trustee, then there is no trust at all because all interests are "merged" in *A*. It should be noted that §2-710 of the UPC would abolish the doctrine altogether, both as a rule of law and as a rule of construction. The Restatement (Third) of Trusts recognizes no such rule of construction.

The Doctrine of Worthier Title's trust application is about the heirs of the settlor. The Rule in Shelley's Case's trust application, another remnant of Anglo-Norman late feudal law, is about the heirs of someone other than the settlor. The Rule in Shelley's Case's trust application is the subject of §8.15.3 of *Loring and Rounds: A Trustee's Handbook* (2022), which section is reproduced in the appendix below. The Handbook is available for purchase at https://law-store.wolterskluwer.com/s/product/loring-rounds-a-trustees-handbook-2022e-misb/01t4R00000OVWE4QAP.

Appendix

§8.15.3 *Rule in Shelley*'s *Case* [from *Loring and Rounds: A Trustee's Handbook* (2022), available for purchase at https://law-store.wolterskluwer.com/s/product/loring-rounds-a-trustees-handbook-2022e-misb/01t4R00000OVWE4QAP].

> *In the Harleian mss. (530) is an account of Peter Bales, a clerk of the Court of Chancery about 1590, who wrote a bible so small that he enclosed it in a walnut shell of English growth*.[76]

[76]Ivor H. Evans, Brewer's Dictionary of Phrase and Fable 788 (14th ed.). For the Lord Chancellor in office at the time, *see* Chap. 1 of this handbook.

> *But it is one thing to put a case like Shelley's in a nutshell and another thing to keep it there*.[77]
>
> *No such rules of law or construction are recognized by this Restatement*.[78]

The doctrine of worthier title is about the heirs of the settlor. The *Rule in Shelley's Case*,[79] another remnant of Anglo-Norman late feudal law,[80] is about the *heirs of someone other than the settlor*[81] and has been limited for the most part to legal and equitable interests in real property.[82] To the extent it has been applied to entrusted personalty, it has been applied only "indirectly."[83]

Let us take the following trust: *A* (settlor) to *B* (trustee) for the benefit of *C* for life; and, upon the death of *C*, *B* shall convey the trust property to *C*'s "heirs." If the Rule is applicable, *C* takes a fully vested equitable interest that is referred to in some places as an "equitable fee simple."[84] There are no other beneficiaries.[85] (If *C* were the sole trustee, there would be a merger.[86]) The "heirs" of *C* are cut out regardless of the intentions of the settlor,[87] that is *C* may gift inter vivos or devise postmortem the underlying property to persons other than the "heirs." For the Rule to apply, however, "the life estate in the ancestor and the remainder to the heirs or heirs of the body must both be legal or both equitable."[88] Also, "heirs of *C*" must essentially mean the actual probate estate of C, not those who might be entitled to it, which is the approach the Uniform Probate Code takes for dispositions of both realty and personalty. The Code provides that the property would pass "to those persons, including the state, and in such shares as would succeed to…[*C*'s]…intestate estate under the intestate succession law of…[*C*'s]…domicile if…[*C*]…died when the disposition is to take effect in possession or enjoyment."[89]

In a number of states, the Rule has been abolished by statute.[90] "Where the rule has been abolished or

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[77]Van Grutten v. Foxwell [1897] A.C. 658, 671 (Eng.).

[78]Restatement (Third) of Trusts §49 cmt. a(1) (referring in part to the Rule in Shelley's Case).

[79]1 Co. Rep. 93b (1581).

[80]*See generally* Lewin ¶6-43 & ¶6-44.

[81]2 Scott & Ascher §12.14.2.

[82]Moynihan at 191–200; 2 Scott on Trusts §127.2.

[83]*See* Note, Application of the Rule in Shelley's Case to Gifts of Personal Property, 23 Harv. L. Rev. 51 (1909).

[84]2 Scott on Trusts §127.2; 2 Scott & Ascher §12.14.2.

[85]2 Scott on Trusts §127.2; 2 Scott & Ascher §12.14.2.

[86]Moynihan at 194.

[87]2 Scott on Trusts §127.2.

[88]Sheldon F. Kurtz, Moynihan's Introduction to the Law of Real Property 195 (5th ed. 2002). *See generally* §2.1 of this handbook (the trust's property requirement).

[89]UPC §2-711.

[90]2 Scott on Trusts §127.2. Massachusetts abolished the Rule in Shelley's Case in 1791. *See* M.G.L.A. c. 184 §5.

where it is not applicable because the trust property is personalty, the inference is that the settlor intends to give the first taker only a life estate, and there is a contingent interest limited to the persons who may be his heirs or next of kin at his death."[91] Even in those states where the Rule has been abolished, however, it may well be that the spendthrift clause of a trust under which the underlying trust property is to be paid to the actual *probate estate* of *C* upon the death of *C* is ineffective.[92] In other words, trust principal, notwithstanding the express restraint on its future involuntary alienation, would be currently accessible to *C*'s creditors during *C*'s lifetime.[93]

[91]2 Scott on Trusts §127.2. *See generally* Restatement (Second) of Property (Wills and Other Donative Transfers) §30.1 (including comments and illustrations).

[92]*See generally* 3 Scott & Ascher §15.2.7.

[93]*See generally* 3 Scott & Ascher §15.2.7. *See also* §5.3.3.3(c) of this handbook (non–self-settled spendthrift trusts).