

Title

Trust Law's *Material Purpose Doctrine*, the Traditional Protector of Settlor-Intent is Under Attack: The TEDRA Factor

Summary

In recent years, reformers of trust law have been hard at work defanging the plain meaning rule, primarily by liberalizing the doctrines of reformation and deviation. The rule is discussed generally in §8.15.6 of *Loring and Rounds: A Trustee's Handbook*, the doctrines generally in §8.15.22. We also have the decanting statutes and decanting court decisions, which are covered in §3.5.3.2(a) of the handbook. That having said, the reformers have generally been quick to caution that these liberalizations are intended to buttress settlor-intent, not subvert it. At minimum, lip service is being paid to settlor-intent. There is one notable exception: Professor Langbein's "intent-defeating" (his words) benefit-the-beneficiaries rule, which has been incorporated into the Uniform Trust Code. This is a topic that is taken up in §6.1.2 of the handbook. This radical intent-defeating policy reform embedded in the UTC has met with considerable push-back. Both the Massachusetts and the New Hampshire legislatures, for example, have said "no thanks." Even some denizens of the ivory tower have declined to fall in line. See generally §6.1.2 of the handbook.

Now, while all this has been going on, in the State of Washington the material purpose doctrine, the traditional doctrinal protector of settlor-intent, may well have been effectively defanged by an obscure piece of legislation, namely the Trust and Estate Dispute Resolution Act or TEDRA. See Chap. 11.96A.220 RCW. The legislation in part provides that a trust may be reformed non-judicially by agreement of the trustee and beneficiaries without regard to the trust's material purposes, at least that is what its drafters intended. The agreement is final and binding on all parties. Idaho is, so far at least, the only other TEDRA state. These developments, isolated though they may be, have national implications. Here is why: There have already been decantings from other states into trusts sited in the State of Washington to facilitate subversion of their material purposes. Assuming this practice takes on a head of steam, which is likely, the trust instrument scrivener should consider advising his/her settlor-client that the material purpose doctrine may well be TEDRA-vulnerable, unless effective countermeasures can be taken at the drafting stage to defang TEDRA, or forestall a decanting to a TEDRA state. In theory, a decanting from a non-TEDRA state to a TEDRA state in order to subvert a trust's material purposes would be subject to equitable reversal by the courts of the non-TEDRA state. As a practical matter, however, the pursuit by a beneficiary (presumably someone who had not been a party to the TEDRA agreement) of such an equitable multi-jurisdictional action would not be a realistic option, absent special facts, if only because of the numerous and substantial personal expenditures of time and treasure that likely would be required to maintain the action. The material purpose doctrine is covered generally in §8.15.7 of *Loring and Rounds: A Trustee's Handbook*. The section is reproduced in its entirety below.

The Text

§8.15.7 *The Claflin Doctrine (Material Purpose Doctrine)* [See *Loring and Rounds: A Trustee's Handbook*, pages 1133 to 1136 of the 2015 Edition].

In the recent decision of Buschau v. Rogers Communications, Inc. (No. 2) [2002], the Supreme Court of British Columbia revisited, in the context of a pension dispute, the application of the rule in Saunders v. Vautier [1841]. The principle of Saunders..., an English case, ...allows a...[settlor's]...intentions to be frustrated completely unexpectedly. It applies in circumstances where a gift is

*made to a person who is not to receive it until they [sic] attain an age greater than that of majority and, where there is no gift over, the person may call for the gift on reaching the age of majority.*²⁰³

*The American cases espouse the view that the owner of property can do with it as he or she pleases, as long as the resulting disposition does not run afoul of any rule of law or principle of public policy. The American cases also state that it is the duty of the court to carry out the settlor's directions. Of course, the English courts can also claim refuge in maxims.*²⁰⁴

The English are not in accord. Let us take the following type of trust: A (settlor) to B (trustee) for ten years, then to C outright and free of trust; but if C dies during the ten-year period, the trust property shall be distributed to C's estate.²⁰⁵ There is no spendthrift clause. It is not a support trust.²⁰⁶ Actually, B has no discretion whatsoever to invade principal.²⁰⁷ C is the sole beneficiary.²⁰⁸ In other words, during the lifetime of the trust, C possesses unconditionally a fully vested equitable interest.²⁰⁹ Were the corpus a parcel of real estate, the beneficiary might even be said to possess an equitable fee simple.²¹⁰ In England, C may compel termination of the trust in his or her favor before the term of years has expired, even though to do so would contravene the wishes of the settlor.²¹¹ This is an application of the so-called rule

²⁰³Ian M. Hull, A Fresh Look at *Saunders*, Trusts and Estates, A Legalese Special Report (2003) at 23 (in association with STEP). For more commentary on *Saunders v. Vautier*, 4 Beav. 115, 49 E.R. 282 (1841), see 5 Scott & Ascher §34.1.3 (Postponement of Enjoyment).

²⁰⁴5 Scott & Ascher §34.1.3. The origins of the American material purpose doctrine can be traced to the landmark case, *Claflin v. Claflin*, 149 Mass. 19, 20 N.E. 454 (Mass. 1889), which rejected the English position that to deny the sole beneficiary of a trust the right to terminate it is to impose an impermissible restraint on the beneficiary's right to alienate his or her property, even in a case where the property is an equitable interest under a trust.

²⁰⁵If, instead, all the trust property were to pass to the probate estate of C should C die before attaining a certain age, C would still be the sole beneficiary. See 5 Scott & Ascher §34.1.3 (Postponement of Enjoyment)

²⁰⁶5 Scott & Ascher §34.1.4 (the applicability of the *Claflin* or material purpose doctrine to support and discretionary trusts).

²⁰⁷5 Scott & Ascher §34.1.4.

²⁰⁸See 3 Scott & Ascher §13.2.2 (defining sole beneficiary as follows: "If the terms of a trust require the payment to one person of both the income for a period of time, and, thereafter, the principal, that person is the trust's sole beneficiary, unless there is a contingent gift to another or a resulting trust upon the designated person's failure to survive the stated period"). A sole beneficiary possesses the entire equitable or beneficial interest if the underlying trust property passes to the beneficiary's probate estate in lieu of the imposition of a resulting trust. See also 4 Scott & Ascher §24.1.2 (Multiple Beneficiaries) (defining sole beneficiary); 5 Scott & Ascher §§34.1.3 (Postponement of Enjoyment) (defining sole beneficiary), 34.1.1 (Successive Beneficiaries and the *Claflin* or Material Purpose Doctrine).

²⁰⁹See generally §5.4.1.7 of this handbook (right to conveyance).

²¹⁰See 3 Scott & Ascher §13.2.1 (noting also that words of inheritance such as "to X and his heirs" are no longer required to create by deed an equitable fee simple in land).

²¹¹See generally 5 Scott & Ascher §34.1.3; 4 Scott on Trusts §337.3; Lewin on Trusts ¶¶24-06 through ¶¶24-07 (England). *Saunders v. Vautier*, 49 Eng. Rep. 282, 4 Beav. 115 (1841) (England), allows for termination of a trust if all its beneficiaries consent and are of full age and legal capacity. See generally Ian M. Hull, A Fresh Look at *Saunders*, Trusts and Estates, A Legalese Special Report 2003 at 23 (in association with STEP) (concluding that "[w]hile the rule in *Saunders* has been around...[in Canada and England]...for many years and its application in the context of wills and trusts has been firmly established, the basic concepts have, again, been revisited in Canada, [see *Buschau v. Rogers*

in *Saunders v. Vautier*, which is covered in Section 8.15.92 of this handbook.²¹²

The material purpose doctrine is the brainchild of Massachusetts equity. In the United States, most courts will look to the 1889 Massachusetts case of *Claflin v. Claflin*²¹³ and hold that *C* must wait out the term specified: “It cannot be said that these restrictions upon [*C*’s] possession and control of the property are altogether useless, for there is not the same danger that he will spend the property while it is in the hands of the trustees as there would be if it were in his own.”²¹⁴ On the other hand, if the trustee does transfer the underlying trust property to the beneficiary before the end of the ten-year period, “the trust ends and the trustee is under no liability to the beneficiary for making the transfer.”²¹⁵

The Restatement (Third) of Trusts generally recognizes the *Claflin* doctrine.²¹⁶ Again, the *Claflin* doctrine would not be invoked with respect to a trust that had no purpose whatsoever.²¹⁷ Thus, it is sometimes referred to as the “material purpose doctrine.”²¹⁸ The doctrine does not apply just to trusts for a term of years. It would apply, as well, to the single-beneficiary trust whose sole purpose is to manage the underlying property while the beneficiary is under a legal, physical, or mental incapacity.²¹⁹ In this case, the trust would be terminable in favor of the beneficiary upon the beneficiary’s attaining or regaining capacity, absent special additional facts.²²⁰

The *Claflin* or material purpose doctrine generally allows for severability. By that we mean that “[w]hen continuance of the trust, as to the entire trust property, is not necessary to carry out a material

Communications, Inc. (1998) 54 BCLR (3d) 125; *Buschau v. Rogers Communications, Inc.* (2002). BCJ No. 865; and *Buschau v. Rogers Communications, Inc.* (2003) BCJ No. 1025] and its use in the context of . . . pension law has added another twist for the courts to consider when reviewing this important rule and its application”).

²¹²*Saunders v. Vautier*, [1841] EWHC Ch J82 (1841) Cr & Ph 240, (1841) 4 Beav. 115 8; 41 ER 482 (England) (in the High Court of Chancery).

²¹³149 Mass. 19, 23, 20 N.E. 454 (1889). *See generally* 5 Scott & Ascher §34.1.3 (Postponement of Enjoyment).

²¹⁴149 Mass. 19, 23, 20 N.E. 454 (1889). *See also* Restatement (Second) of Trusts §337; §5.4.1.7 of this handbook (right to conveyance); 5 Scott & Ascher §34.1.3 (Postponement of Enjoyment); John Chipman Gray, *The Rule Against Perpetuities* §121.2 (4th ed. 1942). *But see* *Johnson v. First Nat’l Bank of Jackson*, 386 So. 2d 1112 (Miss. 1980) (allowing for termination of a trust even in the face of a spendthrift clause if the settlor as well as all the beneficiaries consent).

²¹⁵5 Scott & Ascher §32.1. So also “if a claim against a third person is held in trust and the third person pays the amount of the claim to the sole beneficiary, who is under no incapacity, the third person is discharged, even if, under the terms of the trust, the beneficiary is not yet entitled to terminate the trust.” 5 Scott & Ascher §32.1. In other words, the third person need not pay twice. 5 Scott & Ascher §32.1.

²¹⁶Restatement (Third) of Trusts §65(2). *See generally* 5 Scott & Ascher §§34.1 (Consent of Beneficiaries), 34.1.3 (Postponement of Enjoyment).

²¹⁷5 Scott & Ascher §§34.1(Consent of Beneficiaries), 34.1.3 (Postponement of Enjoyment).

²¹⁸As to those purposes that would be deemed sufficiently material to satisfy the *Claflin* doctrine, *see* Bogert, *Trusts and Trustees* §§1007–1008; 4 Scott on Trusts §§337–337.8. *See also* Uniform Trust Code §402(a)(4) (available on the Internet at <<http://www.uniformlaws.org/Act.aspx?title=Trust%20Code>>) (reciting standard doctrine that a trust is created only if the trustee had duties to perform). *See also* 5 Scott & Ascher §34.1 (noting that “if all of the beneficiaries wish to terminate a trust, it will not be continued merely to enable the trustee to earn additional compensation”).

²¹⁹*See generally* 5 Scott & Ascher §34.1.5 (When Beneficiary Is Under Disability That Subsequently Ceases).

²²⁰5 Scott & Ascher §34.1.5.

purpose, and all of the beneficiaries agree, they can compel a partial termination of the trust.”²²¹

The *Claflin* doctrine applies notwithstanding the absence of a spendthrift clause: “It is true that [C’s] interest is alienable by him, and can be taken by his creditors to pay his debts, but it does not follow that, because [the settlor] has not imposed all possible restrictions, the restrictions which he has imposed should not be carried into effect.”²²² It also applies even though the beneficiary may consent to or ratify *the trustee’s* acts of self-dealing, a situation that is not without its irony.²²³ This, of course, assumes that the beneficiary is of full age and legal capacity and that any consents are informed.²²⁴ Thus, it is said that the English approach the matter from the perspective of the beneficiary, while the American approach, as embodied in the *Claflin* doctrine, is from the perspective of the settlor.²²⁵

It should be noted that the Uniform Trust Code negates any presumption that the presence of a spendthrift clause evidences a material purpose that would bar the judicial termination or modification of a trust that has only one beneficiary.²²⁶ The Restatement (Third) of Trusts is in accord.²²⁷ There is much case law, however, that is not.²²⁸ Under the Restatement, authority in the trustee to invade principal for the beneficiary’s support, or otherwise for the beneficiary’s benefit, does raise a strong material purpose presumption, but only a presumption.²²⁹ The case law is less equivocal.²³⁰ “In England, in contrast, the sole beneficiary of the trust can terminate the trust at any time, even if the trust is for the beneficiary’s support or the trustee has discretion over distributions or when to terminate the trust.”²³¹

Under the Uniform Trust Code, a noncharitable irrevocable trust may be modified or terminated upon consent of the settlor and all beneficiaries, even if the modification or termination is inconsistent with a

²²¹5 Scott & Ascher §34.1.7.

²²²*Claflin v. Claflin*, 149 Mass. 19, 23, 20 N.E. 454 (1889).

²²³4 Scott & Ascher §24.21.2 (Several Beneficiaries).

²²⁴*See generally* §7.1.2 of this handbook (defenses to allegations that the trustee breached the duty of loyalty); 5 Scott & Ascher §§34.1 (Consent of Beneficiaries), 34.1.1 (Successive Beneficiaries).

²²⁵4 Scott on Trusts §337.3; 5 Scott & Ascher §34.1.3.

²²⁶Uniform Trust Code §411(c) (available on the Internet at <<http://www.uniformlaws.org/Act.aspx?title=Trust%20Code>>). *See, e.g.*, *In re the Pike Family Trusts*, 38 A.3d 329, 331, 2012 Me. 8 (2012) (confirming that after enactment of its version of the Uniform Trust Code, Maine no longer recognized the common law presumption “that a spendthrift clause, simply by virtue of its presence, was a material purpose of...[a]...trust.”). The version of UTC §411 that Massachusetts has adopted does not repudiate the common law presumption. This was intentional, as per the section’s accompanying commentary: “The Committee changed the Uniform Code section to retain current Massachusetts law that a spendthrift provision is a material purpose of a trust.” *See generally* §8.15.7 of this handbook (the *Claflin* doctrine (material purpose doctrine)); 5 Scott & Ascher §§34.1.2 (Spendthrift Trusts), 34.1.4 (Support Trusts and Discretionary Trusts).

²²⁷Restatement (Third) of Trusts §65 cmt. e. *See generally* 5 Scott & Ascher §34.1.2 (Spendthrift Trusts). Likewise, a discretionary provision may or may not evidence a material purpose that would bar termination or modification. Restatement (Third) of Trusts §65 cmt. e.

²²⁸5 Scott & Ascher §34.1.2 n.1.

²²⁹Restatement (Third) of Trusts §65 cmt. e. *See generally* §8.15.7 of this handbook (the *Claflin* doctrine (material purpose doctrine)); 5 Scott & Ascher §34.1.4 (Support Trusts and Discretionary Trusts); §3.5.3.2(a) of this handbook (the discretionary trust, including the support invasion standard).

²³⁰5 Scott & Ascher §34.1.4 n.1.

²³¹5 Scott & Ascher §34.1.4. *See generally* §3.5.3.2(a) of this handbook (the discretionary trust, including the support invasion standard).

material purpose of the trust.²³² This merely reflects what has been the state of the case law.²³³ On the other hand, after the settlor's death, the settlor's personal representative or heirs may not step into the shoes of the settlor and, along with all the beneficiaries, effect a termination of the trust, at least to the extent that that it continues to have a material purpose.²³⁴ This is because “the settlor's ability to consent to the termination of the trust is personal to the settlor.”²³⁵

Merely tracking what has been the case law, primarily *Clafin* and its progeny, the Code expressly provides that a noncharitable irrevocable trust may be terminated upon consent of all of the beneficiaries if the court concludes that continuance of the trust is not necessary to achieve any material purpose of the trust.²³⁶ There is nothing new here.²³⁷ The Code further provides that a noncharitable irrevocable trust may be modified upon consent of all of the beneficiaries if the court concludes that modification is not inconsistent with a material purpose of the trust.²³⁸ Again, the Restatement (Third) of Trusts is generally in accord.²³⁹

²³²Uniform Trust Code §411(a) (available on the Internet at <<http://www.uniformlaws.org/Act.aspx?title=Trust%20Code>>). *See generally* 5 Scott & Ascher §34.1.3 (Postponement of Enjoyment).

²³³5 Scott & Ascher §34.2 n.4.

²³⁴5 Scott & Ascher §34.2 (Consent of Beneficiaries and Settlor).

²³⁵5 Scott & Ascher §34.2.

²³⁶Uniform Trust Code §411(b) (available on the Internet at <<http://www.uniformlaws.org/Act.aspx?title=Trust%20Code>>).

²³⁷*See generally* 5 Scott & Ascher §34.1 (Consent of Beneficiaries).

²³⁸Uniform Trust Code §411(b) (available on the Internet at <<http://www.uniformlaws.org/Act.aspx?title=Trust%20Code>>).

²³⁹Restatement (Third) of Trusts §65.