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Trusts-Appportionment of Income Between Life Beneficiary and Remainderman

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INDIANA UNIVERSITY
Maurer School of Law
Bloomington

TRUSTS—APPORTIONMENT OF INCOME BETWEEN LIFE BENEFICIARY AND REMAINDERMAN.—The testator created nine separate trusts, one for each of eight relatives and the ninth to be known as the "Doctor E. G. Long Foundation." The net income of each of the separate trusts (other than the foundation) was to be paid to the respective beneficiaries for life¹ and on their deaths the principals were to be turned over to the foundation. On the death of one of the life beneficiaries a controversy arose as to who was entitled to the income accumulated, earned, and accrued, but undistributed at the date of the life beneficiary's death. The lower court held that all the income accumulated, earned, and accrued but undistributed should be apportioned as of the date of death and paid to her sole heir at law. On appeal, the judgment was affirmed. *St. Mary's Hospital of Evansville, Indiana v. Louis E. Long* (Ind. 1938), 17 N. E. (2d) 833.

On the death of a life beneficiary of a trust, a difficult problem as to the apportionment of income therefrom between the life beneficiary and the remainderman is presented. This is especially true when the trustee is in possession of rents, dividends, annuities, and interest monies which have accrued both before and after the termination of the life interest.

It is an elementary principle that the rights of the life tenant and the remainderman depend upon the intention of the testator which is to be gathered from the terms of the trust instrument taken as a whole and in the light of all the surrounding circumstances.² When such a rule of construction

¹³ See Burns' Ind. Stat. (1933), § 47-513; Baldwin's Ind. St. 1934, § 11166, which is substantially the same statute as the Michigan statute. See Mich. Comp. Laws 1929, Sec. 4696. Note that both the repealed Michigan statute and the Indiana statute referred to pedestrians on the traveled portion of the highway. See *Fishman v. Eads* (1929), 90 Ind. App. 137, 168 N. E. 495 allowing recovery to a pedestrian injured by the violation of this statute.

¹⁴ The statement is frequently found in Indiana decisions involving highway statutes that the statute is for "the protection of persons and property lawfully upon the public highways of this state." See the instant case, also *Koplovitz v. Jensen* (1925), 197 Ind. 475, 151 N. E. 390.

¹ In the present case the life beneficiaries were to receive the income immediately after receipt thereof by the trustee, but in order to make a uniform time for payment and accounting, the life beneficiaries agreed with the trustee to be paid quarterly. (See footnote 13 for further information on this point).

² *Eustace v. Dickey* (1921), 240 Mass. 55, 132 N. E. 852; Restatement, Trusts (1935), § 235, comment f. "By the terms of the trust it may be provided that income otherwise apportionable shall not be apportioned or that income otherwise not apportionable shall be apportioned."

is used and the testator has clearly manifested his intent as to the method of apportionment, the courts have had little difficulty, the only problems arising when the trust instrument is silent or indefinite upon the subject of apportionment.

In determining whether or not trust income is apportionable or non-apportionable when the trust instrument is silent as to the method of apportionment, the courts have been greatly influenced by the type of income involved. These determining factors have been classified as periodic income³ and income that accrues from day to day.⁴

Periodic income has been defined as that income which is payable at fixed times or periods,⁵ the most important kinds being rents,⁶ annuities,⁷ pensions,⁸ and dividends.⁹ In the absence of statutes or express directions in the trust instrument such income is not apportionable during the intervening periods,¹⁰ the reason being that it accrues in a lump sum when due and not gradually day by day.¹¹ However, if such income should become due and payable before the termination of the life interest it goes to the life beneficiary estate.¹²

On the other hand, the courts have consistently held that income accruing day by day is apportionable.¹³ In holding thus the courts have formulated

³ William L. Dexter v. John C. Phillips (1826), 121 Mass. 178, 23 Am. Rep. 261; Bogert, Handbook on Trusts, pp. 388-389.

⁴ Wilmington Trust Co. v. Chapman (1934), 20 Del. Ch. 67, 171 A. 222.

⁵ Bogert, Handbook on Trusts, pp. 388-389.

⁶ 65 C. J. 690, § 556; Dexter v. Phillips (1876), 121 Mass. 178, 23 Am. Rep. 261.

⁷ Chase v. Darby (1896), 110 Mich. 314, 68 N. W. 159. "The only exception to this rule is where the annuitant is a *feme covert*, or an infant and the annuity is intended for the daily maintenance of the annuitant."

⁸ Bogert, Handbook on Trusts, p. 389. Wilson's Appeal (1885), 108 Pa. 344, 56 Am. Rep. 214.

⁹ Greene v. Huntington (1900), 73 Conn. 106, 46 A. 883. In the case of dividends a more difficult question is presented, since the dividends may be in stock or cash. In this regard the courts have applied three principles which are commonly termed the Kentucky, the Massachusetts, and the Pennsylvania rules. The Pennsylvania rule, which is the one adhered to by the majority of the states, is that the dividends of earnings made after the settlor's death are income and are payable to the life beneficiary no matter whether the dividends be in cash, script, or stock. Bogert, Handbook on Trusts, pp. 379-384.

¹⁰ Dexter v. Phillips (1876), 121 Mass. 178, 23 Am. Rep. 261. However, many states have remedied this situation by passing statutes allowing such apportionment. Practically all states have passed laws allowing rents to be apportioned, 1933 Burns' Ind. Stat. § 3-1630, and several states have passed similar statutes concerning annuities, Rev. Laws Mass. (1902), c. 141, Sec. 25; and dividends, Code Civ. Proc. N. Y. sec. 2674.

¹¹ Bogert, Handbook on Trusts, pp. 388-389.

¹² Hayword v. Blake (1924), 247 Mass. 430, 142 N. E. 52; Rhode Island Hasp. Co. v. Pecham (1919), 42 R. I. 365, 107 A. 209; Bogert, Handbook on Trusts, p. 380.

¹³ Restatement, Trusts (1935), § 235; Bogert, Handbook on Trusts, pp. 389-392. This includes the following types of interest: on coupon bonds, Bridgeport Trust Co. v. Marsh (1913), 87 Conn. 304, 87 A. 865; on mortgages, Hayword v. Blake (1924), 247 Mass. 430, 142 N. E. 52; on promissory notes of individuals or companies, Dexter v. Phillips (1876), 121 Mass. 178. And the fact that the income is payable quarterly or at some other period

certain principles, the first being that if the income has accrued and been collected before the termination of the life interest, it clearly belongs to the life beneficiary's estate.¹⁴ Secondly, if the income accrues both prior to and after the death of the life beneficiary, equity will apportion that accruing prior to the life beneficiary's death to his estate and that accruing thereafter to the remainderman.¹⁵ Third, if the income has accrued prior to the life beneficiary's death but is uncollected, the income belongs to the estate of the life tenant.¹⁶ And finally, if the income accrues after the termination of the life interest the courts have uniformly held that the income thus accumulated goes to the remainderman.

In the present case nothing was mentioned as to the type of income involved, but it was intimated that it was interest. If true, then according to the rules enunciated above all that income which had been accumulated, earned, and accrued, but undistributed before the death of the life beneficiary belonged to his estate and all which accrued after his death to the remainderman. However, the dictum in the case to the effect that the character of the investment would have no controlling effect on the disposition of the income is at odds with many decisions of the courts. This is proved by the fact that the courts in determining whether or not income is apportionable or non-apportionable have considered as the controlling factor the character of the investment made. The actual holding, however, accords with the established principles and the clear weight of authority.

F. L. M.

will not deprive the life beneficiary's estate of the accrued income if he dies within the quarter or other period since the normal intention of the testator is that he should have the income as fast as it is accumulated and as long as he lives. *Leverett v. Barnwell* (1913), 214 Mass. 105, 101 N. E. 75; *Stone v. Bradle* (1903), 183 Mass. 165, 66 N. E. 708. However, the settlor may make the survival until the payment date a condition precedent to the acquisition of any rights by the life tenant. *Lynder v. Heffner* (1929), 33 Ohio A. 379, 169 N. E. 460.

¹⁴ Restatement, Trusts (1935), § 235; *Stone v. Bradle* (1903), 183 Mass. 165, 66 N. E. 708.

¹⁵ *Commercial Trust Co. of New Jersey v. Spiegelberg* (1934), 117 N. J. Eq. 171, 175 A. 164.

¹⁶ Restatement, Trusts (1935), § 235; *Union Safe Deposit & Trust Co. v. Dudley* (1908), 104 Me. 297, 72 A. 166.

¹⁷ *In re Watson's Will* (1933), 262 N. Y. 284, 186 N. E. 787; *Barbour et al, Trustees v. Gallagher* (1913), 2 Ohio A. 205.

¹⁸ The phrase "character of investment" is used here to designate the type of income producing property in which the trust funds are invested, for example, bonds, stocks, etc.