

DECEDENT'S ESTATES OUTLINE

CHAPTER 1: FREEDOM OF DISPOSITION

I. FREEDOM OF DISPOSITION

p. 1-39

Freedom of disposition: freedom to dispose of one's own property of death (mainly an American concept)

Limits: unreasonable restraints, creditors rights, spousal rights, marriage, promotion of separation or divorce, impermissible racial or categorical restrictions, encouraging illegal activity, RAP

Shapiro v. Union Natl. Bank: condition that a devisee marry a woman of a certain faith does not violate public policy or the constitution

Test: Restraint is reasonable if:

(1) **definite**

(2) **has the ability to be satisfied:**

meaning that in some circumstances T could require dev. To marry a Jew (i.e. location, travel, etc.) but not in some circumstances

*today we usually see these as incentive trusts to encourage children to go to college and not live frivolous lifestyles

Restraints:

Restraints on a first marriage: unenforceable

Remarriage: enforceable if:

(1) placed by the spouse of the survivor & does NOT have to be reasonable

(2) or the spouse's parent (only remarriage)

*not valid if placed by third party

*homosexual/racial restraints are valid but troubling

Restraints on cohabitation: technically permitted, but impossible to be enforced; would require the trustee to check up on the devisee and confirm this is not occurring

EX: woman inherited a home but HOA required her to be 55+, had her elderly mother move in to satisfy the condition; did not violate a cohabitation clause because this was not the desired effect

Divorce / Separation: cannot make a provision that encourages separation or divorce → void against public policy

Division: cannot make a provision that the dev. Only inherits if she never speaks to her mother again

Religion: permitted, but hard to enforce; can require adoption or abandonment of religion

Cannot say "become a believer" → has to be satisfied in fairly clear terms

i.e. 90% yearly attendance at temple

Can generally force someone to believe, but not to stop believing

Periodic drug testing: generally enforceable

Incentive trusts: generally enforceable (i.e. if child graduates law school they get X% increase)

Restatement (third) of Trusts: courts should balance the donor's freedom of disposition against other social values and the effects of dead-hand control on subsequent conduct of personal freedoms of others. If a provision is unnecessarily punitive or unreasonably intrusive into significant personal decisions or interests the provision may be invalid

Are the following provisions valid?

- "\$25,000 to my son E if he quits smoking" → yes
- "\$25,000 to my son J, if he graduates from law school" → yes
- "\$10,000 to my friend B if she attends my church's weekly services" → yes (but should add a time period)

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CH Cherryholmes



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