

SETTLOR INTENT: THE CARDINAL RULE IS NO RED HERRING

**2025 DELAWARE TRUST CONFERENCE OUTLINE
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I. PROTECTING SETTLOR INTENT

Delaware recognizes the key role of settlor's intent throughout its body of trust law. Highlighted in this section are some of the primary statutory provisions that seek to reinforce, support and protect this cardinal construct.

A. Enforceability Statute (Section 3303).

Section 3303 of Title 12 of the Delaware Code provides broadly that any provision included in a trust instrument is enforceable as written so long as the provision does not by its terms, or in operation, have the effect of exculpating a fiduciary from liability for willful misconduct or preclude the removal of a fiduciary for willful misconduct. This statute helps assure trust settlors that they can effectuate their intent and create a trust in Delaware that includes any provisions they wish to include in the trust instrument, and it will be enforced as written, subject to the outer bounds of public policy. The statute expressly states: "The rule that statutes in derogation of the common law are to be strictly construed shall have no application to this section. It is the policy of this section to give maximum effect to the principle of freedom of disposition and to the enforceability of governing instruments."

B. Pre-Mortem Validation of Wills, Trusts and Exercises of Certain Powers of Appointment.

Delaware has authorized by statute the validation of certain wills, trusts, and exercise of testamentary powers of appointment prior to the death of the testator, settlor, or power exercisor.

1. Trusts (Section 3546).

Section 3546 of Title 12 of the Delaware Code ("Section 3546") provides that a judicial proceeding to contest the validity of a revocable trust, an amendment to a revocable trust or an irrevocable trust may not be initiated by a person later than the first to occur of: (i) 120 days after the date the trustee provides a statutorily prescribed notice to such person, (ii) 2 years after the death of the trustor, (iii) if the trust was revocable at the trustor's death and the trust was referred to in the trustor's will, the time in which a review of the will could be filed under Title 12 of the Delaware Code, and (iv) the date such person's right to contest was precluded by adjudication, consent or other limitation.

- a.** In Ravet v. The Northern Trust Company of Delaware and Barry C. Fitzpatrick, in Their Capacity as Co-Trustees, C.A. No. 7743-VCG, Order of the Delaware Supreme Court (Feb. 12, 2015), the Delaware Supreme Court upheld the lower court's order that held that notice was deemed to be given to a person under Subsection (a)(1) of

Section 3546 when received by the person and, absent contrary evidence, a notice mailed or delivered to the last known address of such person constitutes receipt by such person. Section 3546 codifies this concept of notice as upheld by the Delaware Supreme Court in Ravet.

- b. Further, Section 3546 provides that notice is deemed to be given to a person under Subsection (a)(1) of Section 3546 when sent to the person and, “absent evidence to the contrary, it shall be presumed that notice was received by the person 7 days after it was sent to such person” in accordance with Delaware’s notice statute, Section 3534 of Title 12 of the Delaware Code.

- 2. **Wills (Section 1311).** Section 1311 of Title 12 of the Delaware Code ("Section 1311") was enacted in 2015 and pertains to the pre-mortem validation of wills and certain exercises of powers of appointment. Section 1311 creates a procedure, known as “pre-mortem will validation”, to validate the will of a testator who was still living at the time of the will validation and who resided in Delaware at the time of his or her death, against challenges based on undue influence, mistake, incapacity or other grounds. If the procedure outlined in Section 1311 is satisfied, a person who receives notice is precluded from bringing certain actions to contest the validity of a will.

Subsection (b) of Section 1311, which outlines the procedure for validation, states that a testator may provide notice of a will to any person named in a will as a beneficiary, any person who would be entitled to inherit under the Delaware intestacy statute (Chapter 5 of Title 12) if the testator had died intestate on the date of the notice, and any other person the testator wishes to be bound as to the validity of the testator’s will. The written notice must contain a copy of the testator’s will and a statement that a person who wishes to contest the validity of the will must do so within 120 days of receipt of the notice. Subsection (b) of Section 1311 also provides that a person who receives a notice and wishes to challenge the will may file a proceeding with the Court of Chancery similar to a proceeding for caveat of a will under Section 1308 of Title 12 of the Delaware Code no later than 120 days after receiving such notice. Any person who was duly notified under Subsection (b) of Section 1311 who fails to bring such a proceeding within 120 days is precluded from bringing an action after the testator’s death under Section 1308 or 1309 of Title 12 of the Delaware Code, or from participating as a party in any similar action brought by another person. The limitations period does not apply if the testator dies during the 120 day period.

Under Subsection (g) of Section 1311, notice is “given” to a person when such person receives the notice and, absent evidence to the contrary, it is presumed that any notice mailed or delivered to the last known address

of a person constitutes receipt by such person. This is a codification of the same concept of giving notice upheld by the Chancery Court and Delaware Supreme Court in the Ravet case.

Notably, under Subsection (h) of Section 1311, a person is deemed to have been given any notice that has been given to another person who may represent and bind such person under Section 3547 of Title 12 of the Delaware Code. Consequently, the pre-mortem will validation statute may be useful for testators who wish to avoid challenges from minor, unborn, unascertainable, or contingent remainder beneficiaries that may be bound under Delaware's virtual representation statute by others who actually receive the written notice.

Subsection (c) of Section 1311 provides a similar validation procedure and 120 day time period for a testator who exercises a power of appointment in his or her will that the testator may use in addition to the procedure in Subsection (b) of Section 1311. In such case, the testator may provide the written notice to any person named in the exercise of the power of appointment as a beneficiary, any person who would be entitled to receive property over which the testator exercises the power of appointment if the testator failed to validly exercise the power of appointment, the trustees of a trust holding property subject to the power of appointment, and any other person the testator wishes to be bound as to the validity of the exercise of the power of appointment under the testator's will.

Section 1311 also contains several presumptions and protections for testators and notice recipients when the statute is used or not used. Subsection (d) of Section 1311 provides that the failure of a testator to utilize Section 1311 shall not be construed as evidence that a will is not valid. Subsection (e) of Section 1311 provides that a person who utilizes Section 1311 is not prohibited from executing a codicil to his or her will or executing a later will, but the prior notice given under the statute shall not determine the validity of the later codicil or will. Subsection (f) of Section 1311 provides that Section 1311 shall not be construed as abrogating the right of a surviving spouse to bring an elective share petition or the right of an heir of a decedent to claim an intestate share of the decedent's estate if the decedent's will results in complete or partial intestacy.

3. **Certain Exercises of Powers of Appointment (Section 1312).** In 2015, Section 1312 of Title 12 of the Delaware Code ("Section 1312") was added to the Code to permit pre-mortem validation of the exercise of certain powers of appointment by a person (an "exercisor"). Section 1312 provides a similar validation statute for the donee of a power of appointment who exercises such power by any written instrument other than a will that appoints property only as of the death of the person exercising the power. Under Subsection (a) of Section 1312, a judicial proceeding to challenge the exercise of such a power of appointment generally may not be initiated

later than the first to occur of (i) 120 days after the exercisor notifies such person in writing of the exercise of the power and certain other information specified in the statute (but only if the basis of the proceeding to contest such exercise is failure to comply with formalities for execution of the power or undue influence over, or lack of capacity of, the exercisor), (ii) two years after the death of the exercisor, or (iii) the date the person's right to contest was precluded by adjudication, consent or other limitation. Under Subsection (b) of Section 1312, a person is deemed to have been given any notice that has been given to another person who may represent and bind such person under Section 3547 of Title 12 of the Delaware Code.

- C. **Enforceability of No-Contest Clauses (Section 3329).** Some trustors desire to include provisions in their governing instruments that will serve to discourage beneficiaries from challenging the trust's provisions, usually by providing that a beneficiary's interest shall be reduced or eliminated if such beneficiary contests the terms of the trust. The enforceability of these provisions, which are generally referred to as "no-contest", "in terrorem" or "forfeiture" clauses, vary widely by jurisdiction. Consistent with Delaware's strong policy in favor of enforcing the terms of a governing instrument as written, Delaware enacted Section 3329 of Title 12 of the Delaware Code ("Section 3329"), Subsection (a) of which provides that a provision of a will or trust that if given effect would reduce or eliminate the interest of any beneficiary of such will or trust who initiates or participates in an action to contest the validity of such will or trust or to set aside or vary the terms of such will or trust shall be enforceable. Notably, the enforceability of these provisions, even in Delaware, are not without limitations. Subsection (b) of Section 3329 provides that the general rule under Subsection (a) of Section 3329 shall have no application to any action brought by the trustee of a trust or the personal representative under a will, any action in which the beneficiary is determined by the Court to have prevailed substantially, any agreement among beneficiaries of the will or trust in settlement of a dispute relating to such will or trust, any action to determine whether a proposed or pending motion, petition, or other proceeding constitutes a contest within the meaning of a no-contest provision described in Subsection (a) of Section 3329, or any action brought by a beneficiary under a will or trust instrument for a construction or interpretation of such will or trust instrument. Consequently, Section 3329 expressly recognizes the general enforceability of no-contest provisions to prevent frivolous yet costly disputes, but also carves out certain matters to enable beneficiaries to protect their interests and to provide flexibility for a trust's or estate's interested persons to obtain judicial or nonjudicial relief when necessary.
- D. **Enforcement of Charitable Trusts (Section 3303).** In addition to the role Section 3303 plays in generally facilitating settlor's intent under Subsection (a) thereof, Section 3303 also enables a settlor of a charitable trust, or one or more designees of the settlor, to enforce the purpose of the charitable trust. The settlor may designate individuals, or create a mechanism for selecting individuals, who may enforce the charitable trust even after the settlor is no longer living. In the absence of a statute like Section 3303, only the Attorney General's Office has standing to

enforce a charitable trust. Section 3303 provides trust settlors with a greater voice in their own charitable legacy. Often, a deviation from a charitable trust's purpose is not brought to the attention of the Attorney General's Office and no interested person is aware of a deviation from a charitable trust's purpose or is inclined to seek to enforce the trust's purpose. This provision of Delaware trust law provides settlors with a useful mechanism for enforcing charitable trusts in situations where a trustee or even an Attorney General's Office attempts to deviate from the trust's purpose or where the trust's purpose is unclear.

E. Letters of Wishes.

Generally, a letter of wishes is a writing made by a trustor as a means of assisting fiduciaries to understand the trustor's intent with regard to the discretionary terms of the trust's governing instrument, to articulate the trustor's intent with regard to the interpretation of a governing instrument's terms, or to assist fiduciaries in exercising distribution discretion. Letters of wishes are sometimes delivered to the trustee or to the beneficiaries of a trust and might be delivered at the time of creation of the trust or anytime thereafter. The trust's governing instrument might expressly contemplate that letters of wishes may be delivered to the trustee or beneficiaries and that the trustee should consider them, or sometimes letters of wishes are delivered to trustees or beneficiaries without being contemplated by the governing instrument.

In 2024, Delaware amended several statutes highlighted below to codify the concept of a letter of wishes into Delaware law and to address whether and to what extent a trustee or other fiduciary may consider a letter of wishes and the standard of review applicable to a trustee or other fiduciary for exercising its discretion to consider, or not consider, such writings.. These new provisions are intended to be consistent with, and not to override, existing Delaware case law addressing such matters, including, without limitation, Bishop v. McNeil, 1999 Del. Ch. LEXIS 186, 1999 WL 743489 (Del. Ch. 1999), in which the Court declined to take into account a letter from the trustor to the beneficiaries to construe the provisions of an unambiguous governing instrument for a trust because the letter was extrinsic evidence of the trustor's intent.

Section 3301 of Title 12 of the Delaware Code includes a definition for the term "letter of wishes," which is defined in Subsection (g) of such provision to mean "any separate writing created by a trustor that makes specific reference to a governing instrument of a trustor and contains statements regarding the trustor's intent regarding the governing instrument, but is not itself a governing instrument." It is notable that the definition is broad, and includes "any separate writing by a trustor," without limitation or qualification based on who it is delivered to, or when, and regardless of whether it is based on the trustor's intent at the time of the creation of a governing instrument.

Section 3315 of Title 12 of the Delaware Code ("Section 3315"), under Subsection (c) thereof, grants a fiduciary discretion with respect to whether or not

it should consider a letter of wishes in connection with the exercise of a discretionary power conferred on the trustee or other fiduciary in the trust's governing instrument. A trustee's or other fiduciary's determination as to whether or not it should consider a letter of wishes will be subject to the same abuse of discretion standard that applies to a fiduciary's exercise of discretion in other areas, as described in Subsection (a) of Section 3315. The abuse of discretion standard applied under Subsection (a) of Section 3315 adheres to the Restatement (Second) of Trusts § 187, rather than the Restatement (Third) §§ 50 and 60, meaning that when a governing instrument does not limit the exercise of a trustee's discretion, a court should only interfere if the trustee has acted dishonestly or from an improper motive as opposed to evaluating the reasonableness of the trustee's exercise of discretion. Consequently, in routine circumstances, a court should be unlikely to interfere with a fiduciary's determination as to whether or not to consider a letter of wishes.

Subsection (c)(1) of Section 3315 provides that a trustee may consider one or more letters of wishes, whenever created, and whether or not the governing instrument is ambiguous, but only if the following conditions are met:

1. The letter of wishes must have been delivered to a trustee of the trust by or on behalf of the trustor. This requirement attempts to ensure that the trustor actually wanted the contents of the letter of wishes to be delivered to the trustee by the trustor himself or herself or by someone else as the trustor's proxy or agent (such as the trustor's attorney or someone instructed or authorized to deliver it to the trustee) in order for the trustee to consider it. It would generally not include, for example, a letter that the trustor gave to beneficiaries for their edification, but was never intended to be delivered to the trustee by or on behalf of the trustor for consideration. Also, this requirement does not limit when the letter of wishes can be delivered to the trustee, thus permitting letters of wishes to be considered regardless of when they are delivered to the trustee, whether that be at the time of the creation of the trust or any time thereafter.
2. A trustee or other fiduciary may only consider a letter of wishes that reflects the trustor's intent contemporaneous with the date of execution of the governing instrument. This intent may be reflected in facts and circumstances known to the trustor, as well as those not known to or anticipated by the trustor, as of the time the governing instrument was executed. This concept, that the trustee may only consider a letter of wishes that reflects the trustor's intent contemporaneous with the date of execution of the governing instrument, is consistent with the well-established rule that it is the trustor's intent at the time of the creation of the trust that matters, not subsequent changes in intent. Thus, a letter of wishes can be delivered to the trustee after the trust is created, but it can only be considered if it reflects intent that is or was contemporaneous with the date of the execution of the governing instrument. Trustors cannot alter their original intent with subsequent letters. Additionally, this requirement acknowledges that there

may be facts and circumstances that develop after the creation of the trust that were not known to, or were not anticipated by, the trustor as of the date of the execution of the governing instrument. For example, perhaps the trustor never considered the possibility of a descendant having a drug or alcohol abuse problem which subsequently develops and presents issues for the trust administration. A trustor's letter of wishes that reflects the trustor's intent contemporaneous with the date of execution of the governing instrument, relating to facts and circumstances not known to or anticipated by the trustor, as of the time the governing instrument was executed, can be considered.

3. The letter of wishes cannot be inconsistent with any provision of the governing instrument.

Subsection (c)(2) of Section 3315 provides that a trustee's or other fiduciary's decision not to consider a letter of wishes with respect to an unambiguous provision of a governing instrument is not an abuse of discretion. Subsection (c)(3) of Section 3315 provides that a trustee's or other fiduciary's decision not to consider a letter of wishes that does not meet the requirements of Subsection (c)(1) of Section 3315 is not an abuse of discretion. Subsection (c)(4) of Section 3315 provides that a trustee's or other fiduciary's decision to consider a letter of wishes meeting the requirements of Subsection (c)(1) of Section 3315 with respect to an ambiguous provision of a governing instrument is not an abuse of discretion. Subsection (c)(5) of Section 3315 makes it clear that letters of wishes are not binding on a trustee or other fiduciary. Specifically, "the fact that a trustee or other fiduciary does or does not exercise a discretionary power in accordance with the letter of wishes does not create an inference that the trustee or other fiduciary improperly exercised the power or abused the trustee's or other fiduciary's discretion" under Subsection (a) of Section 3315. Lastly, Subsection (c)(5) of Section 3315 provides a trustee or other fiduciary will only be required to provide a beneficiary with a copy of a letter of wishes if the governing instrument or a court order so provides.

F. Non-Charitable Purpose Trusts (Sections 3555 and 3556).

Delaware has enacted statutes designed to allow for the creation of so-called "purpose trusts". At common law, trusts generally may be created only for the benefit of living persons and charity. Therefore, at common law, it is not clear whether one may create a trust for a non-charitable purpose in cases where the trust has no identifiable living (or unborn) beneficiaries. Section 3556 of Title 12 of the Delaware Code ("Section 3556") broadly permits the creation of trusts for any purpose not impossible of attainment. As a result, Delaware has been widely viewed as the leading jurisdiction in the area of purpose trust law and, in recent years, purpose trusts have become more popular, particularly as structures to maintain the stewardship of a business. Other popular uses of purpose trusts include the structuring and formation of family offices, maintaining a collection, such as automobiles, guns, manuscripts or memorabilia, maintaining a piece of real

estate in perpetuity, maintaining a cryogenically preserved person or animal, or promoting a cause that is not charitable.

In 2025, Subsection (c) of Section 3556 was amended to, among other additions, define the term “enforcer”. In addition, such subsection further specified that a purpose trust’s governing instrument may provide that the enforcer or some other person has “exclusive standing” to enforce the terms of such trust. An enforcer is a person appointed for the purpose of enforcing the purpose trust. Subsection (e) of Section 3556 provides that an enforcer will serve in a fiduciary capacity by default, unless the terms of the governing instrument provide that the enforcer shall serve in a nonfiduciary capacity.

As a result of 2025 amendments to Section 3556, the role of enforcer is in parity with the roles of direction advisers and trust protectors under Section 3313(a) of Title 12 of the Delaware Code, and designated representatives under Section 3339(d) of Title 12 of the Delaware Code. Related provisions such as Subsection (d) of Section 3301, were also amended to include enforcers that are acting in a fiduciary capacity to the definition of “fiduciary” and added enforcers that are not acting in a fiduciary capacity to the definition of “nonfiduciary”. Inclusion of enforcers in the definition of “fiduciary” under Section 3301 means that any reference to “fiduciary” in Chapters 33, 35, 39 and 45 of Title 12 of the Delaware Code will include enforcers acting in a fiduciary capacity (in addition to other fiduciaries included in the definition, such as trustees, personal representatives, guardians and custodians, advisers and designated representatives). Section 3580 of Title 12 of the Delaware Code was also amended in 2025 to include enforcers within the definition of “trustee” for purposes of Subchapter VII of Chapter 35 of Title 12 of the Delaware Code. The terms “fiduciary”, “trustee”, and “officeholder” found in other parts of Title 12 of the Delaware Code include the defined role of “enforcer”, thus including enforcers within the scope of numerous other provisions of Title 12 of the Delaware Code that apply to such roles. All of these provisions place an enforcer on the same plane as other trust fiduciaries.

Although a purpose trust does not have identifiable beneficiaries, settlors of purpose trusts can provide for distributions to persons in furtherance of the purpose of the trust. With the 2025 amendments, Subsection (b) of Section 3556 provides that the person or persons receiving distributions are not entitled to the same rights as a beneficiary of a trust solely because such person or persons received distributions. Thus, settlors of purpose trusts can provide for distributions without bestowing upon recipients the rights of a beneficiary, like rights to demand an accounting or having stood to interfere with the purpose of the trust. Additionally, making such person’s non-beneficiary status clear may have income tax consequences, including state income taxation consequences in Delaware or other states.

Section 3555 of Title 12 of the Delaware Code permits the creation of trusts for the care of animals. This statute permits the settlor to identify one or more persons having stood to enforce the trust.

II. CASE LAW: HISTORY OF THE "CARDINAL RULE" AND A SURVEY OF CASES

The language “[t]he cardinal rule of law in a trust case is that the intent of the settlor controls the interpretation of the instrument” was first used in *Chavin v. PNC Bank*, Delaware, No. CIV.A. 18366, 2002 WL 385543, at *2 (Del. Ch. Mar. 4, 2002), rev'd sub nom. *Chavin v. PNC Bank*, 816 A.2d 781 (Del. 2003). This is by far the most common citation used when referencing the role of settlor’s intent. Chavin attributes the phrase to *Annan v. Wilmington Tr. Co.*, 559 A.2d 1289 (Del. 1989), which states “we will begin our analysis with the seminal rule of construction in trust cases: that the settlor’s intent controls the interpretation of the instrument.” (emphasis added). This quote was first cited from the case *Fiduciary Tr. Co. of New York v. Fiduciary Tr. Co. of New York*, 445 A.2d 927 (Del. 1982), which states “The cardinal rule of law in this Will contest is that the intent of the testator controls.” (emphasis added). This case attributed that phrase to *Delaware Tr. Co. v. McCune*, 269 A.2d 256 (Del. Ch. 1970), which states “The cardinal rule of will construction is to ascertain and give effect to the intent of the testator which is to be determined from the language of the entire will when read in the light of the surrounding circumstances.” The ultimate origin of the phrase in Delaware cases comes from *Bird v. Wilmington Soc. of Fine Arts*, 43 A.2d 476 (Del. 1945), which states “It is a familiar expression that all rules of construction of wills have for their object the ascertainment of the intent of the testator.” This appears to be the earliest version of that phrase, which was then adapted to saying “cardinal rule” and then adapted from will cases to trust cases by *Annan v. Wilmington Tr. Co.*

As seen in the following survey of cases, this concept is used often by Delaware courts in will and trust related cases.

A. **Bodley v. Jones, 27 Del.Ch. 273 (1943).**

The Court stated that for trusts, the intention of the owner of property to change position from owner to trustee must be outwardly manifested by words or conduct. To create an express trust, intent must be evidenced by definite, explicit, and unequivocal words or by circumstances compellingly manifesting the intention with reasonable certainty. No trust is created if the transaction is as consistent with another form of undertaking as with that of a trust. The Court looked at both language and surrounding circumstances to discern intent. It held that continued personal use of the property and lack of demand for interest indicated no intent to create a present trust in favor of the alleged beneficiary. Thus, intent is measured by both the instrument and extrinsic context at the time of the transaction.

B. **Bird v. Wilmington Soc. of Fine Arts, 28 Del.Ch. 449 (1945).**

In this case, the Court thoroughly discussed will construction principles, holding that all rules serve only to ascertain testator (or settlor) intent. The intention sought is what the testator attempted to express with the words used in the instrument, read in light of circumstances at execution—not what someone in his position “should” have intended. While extrinsic evidence can help clarify ambiguities or intent, it cannot override unambiguous instrument language, nor can it be used to infer an intent not discernible from the language and circumstances.

The Court applied this approach rigorously, overturning the trial court and finding that the testator intended to bequeath all of his stock in Bancroft Company, whether owned directly or indirectly, to his nephew based on extrinsic facts and circumstances.

C. Delaware Trust Co. Davis, 39 Del.Ch. 322 (1960).

The Court stated that the intent of the settlor is determined by what he intended by what he said, not by what he might have said. “Intent is determined by considering the language of the trust instrument, read as an entirety, in light of the circumstances surrounding its creation.” In resolving ambiguities or gaps, courts look first to the expressed purposes outlined in the instrument to effectuate the settlor’s scheme. In this matter, the Court refused to allow technical arguments to frustrate the settlor’s clearly stated purposes when interpreting transfer and distribution clauses.

D. Delaware Trust Co. v. McCune, 269 A.2d 256 (1970).

The Court emphasized that the cardinal rule of will construction is to ascertain and give effect to the testator’s intent, which is determined from the language of the entire will when read in light of the surrounding circumstances. The Court stated the general rule that terms like “heirs” or “next of kin” are ordinarily ascertained at the time of the testator’s death unless a clear and unambiguous intention to the contrary appears. After examining the pattern of bequests and the conditional nature of interests in the will, the Court found it “manifest from the will” that the testatrix intended to confine the benefits of the trust and its corpus upon termination to “living persons within her blood line or related to testatrix by marriage.” The Court departed from the general rule to effectuate this intent because applying the rule would have thwarted the testatrix’s obvious intent. The Court examined both the language used in the will and the surrounding circumstances, including patterns of bequests and specific survivorship conditions, as evidence of settlor intent. Ultimately, the Court ruled that the distribution should be limited to living persons in the testatrix’s bloodline at trust termination, consistent with her intent.

E. Dutra de Amorim v. Norment, 460 A.2d 511 (1983).

The Court affirmed that the cardinal rule in trust construction is that the settlor's intent controls, which intent is to be determined by considering language of the instrument, read as an entirety, in light of circumstances surrounding its creation, and only if that manner of analysis fails to disclose settlor’s intent may the Court resort to rules of construction. In this case, the Court found the settlor’s intent (regarding the meaning of “issue”) was ascertainable solely from the trust instrument and the facts known at trust creation.. The Court reviewed both intrinsic (instrument language) and extrinsic (circumstances at execution, knowledge of family members) evidence and found the settlor intended to exclude unacknowledged illegitimates unless acknowledged by affirmative act by the

beneficiary. Thus, no resort to default rules was necessary. The Court applied this finding by distributing only to descendants matching the settlor's intended class.

F. Levin v. Smith, 513 A.2d 1292 (1986).

The Court held that Delaware recognizes and will impress oral trusts in land if the intention to create a trust is established, but the required burden is high unless evidence rebuts the presumption of a formal deed's validity. The intent to create a trust can be shown by explicit words or circumstances so compelling as to manifest the intention with all reasonable certainty. The Court found, after considering both intrinsic (words) and extrinsic (parties' conduct) evidence, that the decedent intended to create an oral trust for the equal benefit of two children. The Court emphasized that the intent must be measured at the time of formation and, when found, is controlling.

G. Annan v. Wilmington Trust Co., 559 A.2d 1289 (1989).

The Court affirmed the general rule: "settlor's intent controls interpretation of trust instrument; such intent must be determined by considering the language of the trust instrument, read as an entirety, in light of the circumstances surrounding its creation, and if this analysis fails to resolve conflict, rules of construction must be used." In this case, the instrument was ambiguous as to whether "issue" included illegitimates issue, so the Court examined surrounding circumstances but found them equivocal and then resorted to rules of construction. The Court also noted that where the instrument has a choice of law provision, settlor's intention for a particular law to govern will be respected.

H. Dickinson v. Wilmington Trust Co., 734 A.2d 605 (1999).

In reviewing the question of whether certain testamentary powers of appointment contained in certain spendthrift trusts that were in issue were general in nature, the Court stated that the intent of the donor is the controlling factor in determining the scope of a power of appointment. Finding that the language of the trust instrument was unambiguous, from such language, the Court found that the settlor intended to provide the beneficiary with a general power.

I. In re Couch Trust, 723 A.2d 376.

The Court stated that, when there are matters of trust construction, its analysis is to begin with the seminal rule that the settlor's intent controls the interpretation of the instrument, with the settlor's intent being determined by "considering the language of the Trust instrument, read as an entirety, in light of the circumstances surrounding its creation", citing to Dutra De Amorim v. Norment, Del. Supr., 460 A.2d 511, 514 (1983). The Court noted that words used in the instrument are generally given their ordinary meaning, it will not consider extrinsic evidence to vary or contradict express provisions of a trust instrument that are clear, unambiguous and susceptible of only one interpretation, and only in the circumstance where this analysis fails will the Court resort to the rules of

construction. The Court, in applying such principles to the meaning of the phrases “or other need of [petitioner]” and “income and resources of [petitioner]” found in the trust instrument at issue, determined that the trust instrument did not authorize the payment of educational expenses of the children of the sole current beneficiary.

J. Bishop v. McNeil, WL 743489 (1999).

The Court stated that, in exercising discretion, trustees must carry out the settlor’s intent as reflected in the language of the trust instrument, “read as an entirety, in light of the circumstances surrounding its creation” and a trustee may be found to have abused its discretion if they fail to carry out the settlor’s intent. The Court further stated that it adheres to the unambiguous terms of the trust and does not consider post-hoc or extrinsic evidence unless ambiguity exists. The Court found that reliance upon post-hoc, extrinsic evidence of a settlor’s wishes, such as documents and statements made well after the trust instrument, was not appropriate since the terms of the trust instrument were unambiguous. Ultimately, in resolving competing claims among beneficiaries and trustee discretion, the Court sought to effectuate the settlor’s overall objectives, balancing present and future beneficiary interests as intended in the original trust scheme.

K. Chavin v. PNC Bank, 816 A.2d 781 (2003).

The Court reiterated that the cardinal rule is that the intent of the settlor controls the interpretation of a trust instrument. This intent is determined by considering the language of the trust instrument, read as an entirety, in light of the circumstances surrounding its creation; all other rules of construction must be subordinate to determining the settlor’s intent, their value being as aids in ascertaining that intent as precisely as possible. All other construction rules are subordinate to ascertaining settlor intent, used only as aids if intent cannot otherwise be determined. In an ambiguity over the phrase “if he shall then be living,” the Court looked at the trust’s dispositive scheme, the attorney’s testimony about the testator’s wishes, and the testator’s pattern of favoring immediate family. It used the combination of instrument language and evidence regarding the settlor’s distributive values, determining that the settlor intended for her immediate family to benefit, and resolved the ambiguity accordingly, reversing the lower court.

L. Otto v. Gore, 45 A.3d 120 (2012).

The Court emphasized that a party seeking to prove a trust must demonstrate intent to create a trust. The intent to create a trust is judged by considering both the language and surrounding circumstances at the time of formation. Both extrinsic and intrinsic evidence are admissible to determine whether the requisite intent existed at trust creation, but not to interpret unambiguous terms. The Court found that the settlors did not intend to finalize a prior instrument as a trust (despite their signatures) based on lack of follow-through and their consistent formal practices for actual trusts. In applying this, the Court

determined which of two instruments governed the valid trust based on the intention evidenced at the time of each instrument.

M. In re Peierls Family Inter Vivos Trusts, 59 A.3d 471 (2012) and In re Peierls Family Inter Vivos Trusts, 77 A.3d 249 (2013).

The Delaware Court of Chancery stated that the cornerstone of Delaware trust law is that the settlor's intent, as set out in the instrument and as evident from the context of creation, is controlling. The Delaware Court of Chancery methodically examined instrument language to determine if the settlor had made an express or implicit choice of law and enforced that intent. The Delaware Court of Chancery explained that a change in situs or appointment of a new trustee does not change the law governing the trust unless intended by the settlor, as evidenced by the instrument. Thus, the application of settlor intent was critical in determining both administrative rules and powers of reformation under the trust. The Delaware Court of Chancery analyzed Delaware's long-standing case law concerning the application of Delaware law to trusts and found that where the settlor chooses a governing law, that choice is dispositive and the settlor need not deploy "talismanic language" or specify a litany of trust issues to be governed by the chosen law in order to prevent the law governing administration from changing when the place of administration changes to Delaware. The Delaware Court of Chancery explained that the settlor's intent to choose a particular law may be implied from the trust document as a whole and when a settlor has selected a governing law, the power to appoint a successor trustee in and of itself is insufficient to override this intent, unless the trust document expressly provides for such a change. The Delaware Court of Chancery held that the appointment of a successor trustee combined with a change in situs will change the law governing administration only if the trust document so provides or can be construed to contemplate such a change.

Those decisions were overturned by the Delaware Supreme Court. The Delaware Supreme Court restated the "seminal rule" that "the settlor's intent controls the interpretation of the instrument," which is determined by considering the language, read as a whole and in light of creation circumstances. If intention is clear, it is controlling; other rules of construction are subordinate aids. The Delaware Supreme Court applied this principle in resolving complex choice-of-law issues regarding trust administration, looking to both the explicit language and the structure of the trust to find the settlor's intent as to whether a change in situs would also change the law governing administration. The Delaware Supreme Court agreed with the Vice Chancellor's conclusion that, in the absence of a choice of law provision, the settlor implicitly intended to allow a change in the law governing administration by allowing the appointment of a successor trustee in another jurisdiction. However, the Supreme Court disagreed with the Vice Chancellor's conclusion that the law governing administration can only be changed in those limited circumstances. The Court stated: "Without evidence that the settlor intended for the law governing administration of the trust at its inception to always govern the trust, a settlor's initial choice of law is not absolute and unchangeable." The crux of the Court's holding was that a trust instrument may implicitly authorize

a change in the law governing the administration of the trust “such as when the trust instrument contains a power to appoint a trustee in another named state.” The Delaware Supreme Court also disagreed with the Vice Chancellor’s conclusion that a choice of law provision governing a trust’s administration reflects a settlor’s intent that a particular state’s law will always govern a trust’s administration, irrespective of whether the beneficiaries validly exercise a power to appoint an out-of-state trustee. The Court concluded: “when a settlor does not intend his choice of governing law to be permanent and the trust instrument includes a power to appoint a successor trustee, the law governing the administration of the trust may be changed”.

N. In re Trust Under Will of Flint for the Benefit of Shadek, 118 A.3d 182 (2015).

In this case, the Court considered and denied the request for a modification of the trust’s terms to incorporate an adviser within the meaning of Section 3313 of Title 12 of the Delaware Code and established a new test for the judicial modification of trusts that requires the Court to consider the settlor’s intent in connection with the modification. The Court analyzed the instrument, the structure chosen, and the nature of the bequests to determine intent, and refused to grant modifications because doing so would directly contradict the settlor’s clear purpose as written. The Court stated that in trust (and will) matters, “the settlor’s intent controls.” Such intent is found in the language the settlor used, read in context and in light of circumstances at creation. The Court emphasized that beneficiaries may not rewrite a trust to suit current preferences if such modification conflicts with the apparent intent of the settlor.

O. Raymond L. Hammond Irrevocable Trust Agreement, 2016 WL 359088 (2016).

In this matter, in connection with the interpretation of a power of appointment, the Court reiterated that the intent of the settlor controls the interpretation of the trust and that such intent is drawn from the language of the instrument, read as a whole, and in light of creation circumstances. Where language is not ambiguous, extrinsic evidence is not considered by the Court. The intent must be ascertained only at the time the trust is established; later-developed intent is irrelevant. The Court further stated that when a power of appointment is subject to specified formalities, those formalities substitute for inquiry into intent. Thus, the Court will not look to post-creation intent or extrinsic evidence when formalities are unfulfilled.

P. Matters of Estate and Trust of Kalil, 2018 WL 793718 (2018).

In connection with its consideration of a request to reform the titling on certain assets of a decedent, the Court stated that the settlor of an inter vivos trust may revoke or modify the trust only as the instrument allows, and that the key is the settlor’s intent at the time of making the new instrument that purportedly revoked or modified the other instrument. In examining such issue, the Court stated

that it is to consider both explicit words and surrounding circumstances at execution to determine that intent, but will not use assumption or post hoc rationalization. Further, the Court held that reformation is available only when a mistake in expression, inclusion or omission of specific terms is shown by clear and convincing evidence, and that reformation is not available for mistakes about title or external acts not reflected in trust language as was the case in this matter. Thus, settlor intent as expressed at the relevant time remains paramount to such analysis. Where a provision of the trust agreement is clear and unambiguous, the Court noted that it will not consider extrinsic evidence to vary or contradict the ordinary meaning of the provision. The Court further noted that this rule has particular significance in the context of testamentary documents, where the author is deceased and cannot provide further insight into his intention.

Q. Matter of Esther W. Price Trust, 2020 WL 10965358 (2020).

The Court reaffirmed that “the settlor’s intent controls” trust interpretation, and the purpose of this doctrine is to prevent beneficiaries from rewriting the trust contrary to the settlor’s wishes after their death. The settlor’s intent is ascertained from the trust instrument and, in context, typographical or scrivener’s errors will not defeat the effectuation of that intent. The Court, on the record, looked to the documents and amendments, and focused on what the settlor was attempting to achieve, giving effect to the actual scheme and disregarding minor drafting errors that did not alter intent.

R. Hurd v. Hurd, 2020 WL 504980 (2020).

The Court explained that its foundational task is to give effect to settlor’s intent, as expressed in the instrument and supported by the factual pattern at trust creation. However, where unforeseen and “compelling” circumstances make following literal instructions derelict to the settlor’s main purpose, the Court will privilege primary intent over secondary or procedural expressions. Thus, the Court declined to appoint the next-named successor trustee due to a conflict that would frustrate the settlor’s broader intent (provision for the widow), finding this a rare case where overriding the literal successor clause best advanced the settlor’s purpose.

S. Matter of Jeannette T. McDowell Trust U/A 5/1/1996, 2021 WL 857104 (2021).

The Court held that appointment of a trustee (or in other circumstances, modification) must begin with the intent of the settlor as stated in the trust document. The express intent “should not be disregarded in the absence of compelling circumstances,” but if “express intent runs up against circumstances that it is obvious the settlor never foresaw,” the Court may depart in a manner best furthering the purpose of the trust. In this case, the Court found the settlor’s intent from the document itself and followed it in refusing to terminate the trust and in appointing an alternate trustee consistent with the purpose.

T. Hillblom v. Wilmington Trust Company, 2022 WL 17428978 (2022).

In examining the nature of duties that were owed by a trustee, the Court recognized the “seminal rule of construction” in trust cases: the settlor’s intent controls and is determined from the specific language of the trust, read as a whole and in light of the circumstances surrounding its creation. Where the language is unambiguous, extrinsic evidence is not considered. The Court further cited the principle that common law default duties remain unless expressly varied by the instrument, as this was consistent with standard evidence of settlor intent. With this backdrop, the Court conducted its analysis looking to the language of the trust itself to infer the intentions of the settlor regarding trustee powers and duties. Ultimately, the Court’s application of settlor intent aimed to ensure the trust operated in accord with the settlor’s distributional and administrative choices.