Settlor Intent: The Cardinal Rule is No Red Herring
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Overview

- Delaware’s trust law and the centrality of settlor intent
- Statutory provisions reinforcing settlor intent
- Key Delaware cases tracing the "cardinal rule"

Section 3303 – Enforceability Statute

- Maximum effect to freedom of disposition and the enforceability of governing instruments
- Allows broad enforceability unless willful misconduct standard of care or public policy violated
- Settlor assurance that terms will be respected as written

Pre-Mortem Validation (Sections 3546, 1311, 1312)

- Trusts, Wills, and Powers of Appointment
- Allows early validation of trusts, wills, and powers of appointment
- 120-day limitation after providing statutory notice to contest
- Provisions for deemed sending, presumption of receipt, and virtual representation
- Codifies Ravet v. Northern Trust Co. and related notice principles

Section 3329 – No-Contest Clauses

- Enforceable in Delaware discouraging frivolous litigation
  - Limitations: actions by trustee or personal representative, prevailing beneficiaries, settlement of dispute, action to determine whether a proceeding constitutes a contest, or for action for construction or interpretation

Section 3303 – Charitable Trust Enforcement

- Allows settlor or designee to enforce charitable trust purpose
- Extends standing beyond Attorney General’s office
- Strengthens settlor oversight of charitable legacy

Purpose Trusts (Sections 3555 & 3556)

- Permits non-charitable purpose trusts for any purpose not impossible of attainment
- 2025 amendments define "enforcer" and its fiduciary status
- Ability to vest exclusive standing in the enforcer (other person)
- Enforcer placed on par with trustees and advisers under Title 12
- Clarification of distributions in furtherance of the purpose

Letters of Wishes (Sections 3301 & 3315)

- Codified in 2024; defines ‘letter of wishes’ as any separate, non-binding writing
- Trustee discretion whether to consider such letters under abuse of discretion standard
- Delivered to the trustee by trustor or on trustor’s behalf; reflects intent contemporaneous with trust creation; not inconsistent with the governing instrument

Case Law: The 'Cardinal Rule'

- "Settlor's intent controls" – cornerstone of Delaware trust law
- Originated from will cases (Bird v. Wilmington Soc. of Fine Arts, 1945)
- Adapted to trust interpretation through subsequent cases (Annan v. Wilmington Tr. Co., 1989)

Bishop v. McNeil, 1999 WL 743489 (1999)

- In exercising discretion, Trustees must carry out settlor's intent
- Post-hoc extrinsic evidence rejected when terms unambiguous
- Court adhered strictly to governing instrument and contemporaneous intent

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

- Court denied modification of a trust and establishes a new test for the judicial modification of trusts requiring consideration of settlor intent

- Beneficiaries cannot rewrite trust contrary to settlor intent

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

- Thorough discussion of will construction principals, holding all rules serve only to ascertain testator intent
- Intention expressed with words in the instrument read in light of circumstances at execution
- Extrinsic evidence cannot override an unambiguous instrument nor used to infer intent not discernible from the language and circumstances

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

- Reiterated "settlor’s intent controls" as the cardinal rule
- Intent determined by instrument language in its entirety and creation context
- All other rules of construction are subordinate aids to settlor intent

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).

- Explored settlor intent in choice-of-law and administrative situs changes
- Supreme Court overturns Delaware Chancery Court when analyzing settlor intent
- Trust instrument may implicitly authorize a change in the law governing the administration of the trust

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

- Party seeking to prove a trust must demonstrate intent to create a trust
- Extrinsic and intrinsic evidence are admissible to determine whether the requisite intent existed at trust creation, but not to interpret unambiguous terms
- 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

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

- Affirmed the general rule that settlor intent controls interpretation
- Used extrinsic evidence only when ambiguity existed
- Settlor’s intention for a particular law to govern through a choice of law provision will be respected

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

- Reiterated that settlor's intent at the time the trust is established governs interpretation
- Extrinsic evidence excluded when language is unambiguous
- Power of appointment subject to specified formalities, those formalities substitute for inquiry into intent
- Post creation intent or extrinsic evidence not considered when formalities unfulfilled

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

- Court considered whether certain testamentary powers of appointment were general in nature
- Intent of the donor is the controlling factor
- Based upon an unambiguous trust instrument, Court found that the powers of appointment were general

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- Works with national, international and local clients on the creation, migration, modification and administration of Delaware trusts.
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- Todd Flubacher represents Delaware trustees, beneficiaries, law firms and individuals throughout the country on all matters involving Delaware trusts and estates. His practice primarily emphasizes the unique advantages of Delaware trust law, including dynasty trusts, directed trusts, asset protection trusts, trust modifications, and tax planning. Todd also represents trustees, executors, and beneficiaries in all types of trusts and estates litigation and has served as an expert witness in litigation involving Delaware trusts.
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