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JLB – Cases Involving Donor Intent
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I. Robertson v. Princeton.

Background:

The Gift:

- Marie Robertson heir to A&P fortune
- \$35 million in 1961
- To support Graduate Program at Woodrow Wilson School at Princeton
- Created Robertson Foundation by agreement of Robertson family and Princeton to hold the gifted assets
- Goal: Generally to hire new faculty and expand graduate programs through scholarships for training for careers in government service, international relations
- Seven directors: four Princeton members, three family members
 - Princeton control Board, so completed gift (tax results good), family retains some say in use of funds
- Foundation was Type 1 supporting organization of Princeton University

Lawsuit:

- In 2002, by members of the Robertson family, including 3 family trustees
- Alleged Princeton had failed to follow mission of Robertson Foundation, sought to remove Princeton control, substitute another university for Princeton, and require Princeton to repay to the Foundation amounts improperly paid by the Foundation
- Princeton denied allegations, asserted it had been true to donor's intent

Outcome:

- After six years of litigation, case settled

- Robertson Foundation dissolved
- Assets transferred to Princeton to be held by Princeton as the Robertson Foundation. Princeton will administer fund to further the objects and purpose of Foundation's certificate of incorporation, as understood and interpreted solely by Princeton. Princeton to pay \$50 million from Robertson Foundation or other sources to New Foundation, Robertson Foundation for Government Inc., a private foundation created by Robertson family. Purpose and objectives of New Foundation to be same as Robertson Foundation, as interpreted solely by plaintiffs.
- Princeton to pay \$40 million to plaintiffs for legal fees

Dispute Over Donor Intent:

- Key language in Certificate of Incorporation: To support "careers in government service with particular emphasis of the education of such persons for careers in those areas of the Federal Government that are concerned with international relations and affairs."
- Written in 1961, height of Cold War, best and brightest were going into government service which meant government jobs
- Nature of the world changes over time; nature of public services jobs changed over time
 - Woodrow Wilson school continued to be a leader in training
 - Public service seen more broadly. NGO's, disaffection with government during and post-Vietnam
 - Government began outsourcing policy studies, more think-tanks emerged
- Other issues appear to have been afoot. For example....
- Primary plaintiff, William Robertson, had been member of investment committee for Foundation, hired managers
 - Foundation grew and other investment committee member recommended hire PRINCO, investment company created by Princeton to manage all endowed funds.
- Lawsuit filed after vote on PRINCO.

Flexibility in Document:

- Was it too flexible or did it reasonably accomplish goal of donor?
 - Restrictions seem to reflect intent of donor at time, negotiated with Princeton
 - Real proof is whether Woodrow Wilson School was successful, not whether avoided litigation with family 40 years later.

- If family kept control, Princeton would not have invested in expansion of school

II. The Barnes Foundation.

Background:

- Created in 1922 to train students in Dr. Albert Barnes' theories of art and art appreciation
- Organizing documents require his art to be displayed in the building he had built to house it, hung exactly as he displayed them
- Art could not be moved, sold or loaned to other museums
- Gallery open only on limited basis, no fees
- Located in suburb in Merion, PA
- 5 trustees to be appointed by Lincoln University, a small historically black college, control

Problem:

- Traffic problems in Merion, lawsuits
- Financial difficulties, could not cover operating expenses with restrictions on operations

Answer:

- Trustees sought and received modification of trust through court proceedings to make modest changes
- Increased hours that museum open to public, able to hold fundraising events in gallery, able to take part of art collection on world tour to raise money
- Kept financially viable, but only for a time
- By this time, Barnes Art Collection valued at ± \$6.BB

Lawsuit:

- A consortium of Philadelphia charities agreed to bail out but only if trustees obtained wholesale reform of trust
 - Move gallery to downtown Philadelphia
 - Lift restrictions on public access and fundraising events at gallery

- Enlarge board to 15 trustees, meaning that Lincoln University gives up control
- Litigation over many years, multiple decisions

Outcome:

- All requests granted
- Philadelphia Museum set to open May 19, 2012
- Last ditch effort by Friends of Barnes Museum; court denied their request for injunction by Order October 6, 2011, no standing
- Court bases decision on deviation vs. cy pres
- Traditional rule is that deviation is limited to modification of subordinate terms which make it impractical or impossible or where strict compliance would impair purposes of the trust. Cy pres goes to the heart of the purpose of the trust, applies where it would be impractical or impossible to carry out the particular purpose designated by the donor. So, fund for curing Bad X disease, but Bad X disease is cured, might seek cy pres to apply fund to cure Bad Y
- Query whether restrictions in Barnes case were subordinate terms or not?

III. Isabella Stewart Gardner Museum.

- Also a deviation case
- Isabella Stewart Gardner famously gave her mansion in the Fenway and all art contained therein to be held in trust “for the education and enjoyment of the public forever”
- Decreed in her will that if the Trustees change the “general disposition or arrangement of any articles placed in the museum at my death,” then gift would fail and all land, museum, artwork would go to Harvard College
- Change of circumstances
- The Museum’s attraction today contrasts sharply with the state of affairs when Mrs. Gardner established the Museum 100 years ago. At that time, the Museum had a staff of 20 and approximately 1,000 annual visitors. Now, the Museum has a staff of more than 100 and welcomes up to 200,000 visitors each year. Ten thousand people a year attend concerts and other programs in the Museum Tapestry Room alone.
- Due to the increasing visitors to the Museum, its education and community programs are largely confined to a small basement meeting room and administrative offices are placed in former hallways and closets.
- Solution: The plaintiff merely requests authorization to (1) remove the carriage house, (2) create a new entrance through the East Cloister, including relocation of a sarcophagus and surrounding art objects, (3) construct a new building for administrative offices, a museum gift shop, a cafe, a visitor reception area, and facilities for shipping, receiving, and storage, and (4) construct a glass-enclosed pathway between buildings.
- Holding: Single justice of SJC found that these purposes are subordinate to the primary purpose: “I conclude that the plaintiff’s proposed project is a reasonable deviation from subordinate terms of the charitable gift in the Will of Isabella Stewart Gardner. It is driven by the primary purpose of the charitable gift. It is entirely consistent with the primary purpose. It is in the public interest because it will extend the life of the building, it will reduce the risk of harm to the art objects from the increased number of visitors to the museum, and it will make a visit to the museum more meaningful for viewing art by reducing congestion.”

- Expansion, new building wonderful new exhibit and community spaces, administrative offices to keep museum functioning as vibrant part of city and arts community

IV. Mass UPMIFA (2009)/Replaced UMIFA.

1. With the written consent of the donor, the governing board may release, in whole or in part, a restriction imposed by the applicable gift instrument on the use or investment of an institutional fund
2. New provision (done through SJC rulemaking and standards adopted by AG) that allows charities to apply deviation and cy pres on its own after notice to AG without going to court
 - a. Fund must be more than 20 years old and less than \$75,000
 - b. Modify a restriction contained in a gift instrument on the management, investment, or duration of the institutional fund (*administrative equitable deviation*); or
 - c. Modify the purpose of the institutional fund or the restriction on the use of the fund in a manner consistent with the charitable purposes expressed in the gift instrument if a particular charitable purpose or a restriction contained in a gift instrument on the use of an institutional fund has become unlawful, impracticable, impossible to achieve or wasteful (*administrative cy pres*).
3. Also allows court approval of lifting of restrictions under theories of deviation and cy pres

V. Yale v. Blumenthal Case.

Issue:

- Bequest of a fund to Yale School of Medicine to build wing for treatment of the sick poor. Will written in 1928, income for life to wife, remainder for fund

Problem:

- Wife lived until age 106; remainder gift funded with \$300,000
- Not enough to build a wing; Yale Medical School does not want to have separate wing for “sick poor”
- Complaint under CUMIFA, gift, obsolete, inappropriate and impractical.

Question:

- Is this an “institutional fund” such that UMIFA applies?
- It is because no person other than Yale has an interest and it is for exclusive benefit of Yale
- Back to trial court, settled with AG
- Interesting question pointed out in dissent
 - If use UMIFA, do not need to get court approval for new use. Request from Yale for decree that would lift the restrictions and allow fund to be used “in whatever manner it may choose”
 - No other reported cases we could find. So, open question whether difference between UMIFA/UPMIFA and traditional cy pres in certain New England jurisdictions?

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