

Restatement (Second) of Trusts § 226 (1959)

Restatement of the Law - Trusts

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Restatement (Second) of Trusts

Chapter 7. The Administration of the Trust

Topic 4. Remedies of the Beneficiary and Liabilities of the Trustee

§ 226 Liability for Payments or Conveyances Made to Persons Other Than the Beneficiary

[Comment:](#)

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If by the terms of the trust it is the duty of the trustee to pay or convey the trust property or any part thereof to a beneficiary, he is liable if he pays or conveys to a person who is neither the beneficiary nor one to whom the beneficiary or the court has authorized him to make such payment or conveyance.

See Reporter's Note.

Comment:

a. Scope of the rule. The rule stated in this Section is applicable to the payment of income as well as principal. It is applicable whether the payment or conveyance is made before the trust terminates or on its termination.

b. Mistake of law or fact. The trustee is liable although he makes the payment or conveyance under a reasonable mistake of law or of fact. If he is in doubt as to the proper person to whom a payment or conveyance should be made, he can apply to the court for instructions and will be protected by the order of the court against claims of all persons who were made parties to the proceeding.

The trustee is liable although he reasonably believes that the person to whom he pays or conveys is the beneficiary or that the payment or conveyance is authorized or directed by the beneficiary or by the terms of the trust.

Illustration:

Illustration:

1. A bequeaths \$100,000 to B in trust to pay the income to C and on C's death to pay the principal to D. E presents to B a forged order purporting to be signed by C directing B to pay E the income. B reasonably thinking that the order is genuine pays the income to E. B is liable to C.

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The rule stated in this Section is applicable where the trustee pays or conveys to a beneficiary for life as income money or other property which he should pay or convey to the beneficiary in remainder as principal, and where he pays or conveys to a beneficiary in remainder money or other property which he should pay or convey to the beneficiary for life.

As to the effect of a mistake of law or fact on the liability of a trustee for breach of trust, see § 201, Comments *b* and *c*.

c. Transfer of beneficiary's interest. If the beneficiary transfers his interest and the trustee having no notice of the transfer makes a payment or conveyance to the transferor-beneficiary in accordance with the terms of the trust, the trustee is not liable to the transferee.

If the beneficiary transfers his interest and the trustee makes a payment or conveyance to the transferor-beneficiary when the trustee has notice of the transfer, the trustee is liable to the transferee.

Illustration:

Illustration:

2. A bequeaths \$100,000 to B in trust to pay the income to C and on C's death to pay the principal to D. C transfers his interest under the trust to E. E writes a letter to B informing him of the transfer. B receives the letter but without further inquiry pays the income to C. B is liable to E.

As to the transferability of the beneficiary's interest, see § 132.

d. Successive conveyances of beneficiary's interest. If the beneficiary conveys his interest to one person and subsequently conveys it to another person and the trustee pays or conveys to the subsequent transferee without notice of the prior conveyance, he is not liable to the prior transferee.

If the beneficiary conveys his interest to one person and subsequently conveys it to another person and the trustee pays or conveys to the subsequent transferee with notice of the prior conveyance, he is liable to the prior transferee, if as between the two transferees the prior was entitled to the interest.

On the question which of two or more successive transferees of the beneficial interest is entitled to the interest, see § 163.

e. Creditors of beneficiary. If a creditor has acquired a lien upon the interest of the beneficiary by an appropriate proceeding to reach it (see § 147), the trustee is liable to the creditor if he pays or conveys to the beneficiary with notice of the lien.

If the trustee without the consent of the beneficiary pays a creditor of the beneficiary who has not acquired a lien upon the interest of the beneficiary, he is liable to the beneficiary, unless he is authorized by the terms of the trust to make such payment, for example where he is authorized to apply the trust property for the use of the beneficiary.

Illustrations:

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3. A bequeaths \$100,000 to B in trust to pay the income to C for life. C is indebted to D for \$1000. Without C's consent B pays \$1000 of the income to D. B is liable to C for the \$1000 so paid.

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4. A bequeaths \$100,000 to B in trust to apply the income to the use of C in such manner as B may in his discretion determine. C is indebted to D for \$1000. Without C's consent B pays \$1000 of the income to D. B is not liable to C for the \$1000 so paid.

f. Discretionary trust. Even though the trust is a discretionary trust (see § 155), the trustee is liable to a transferee of the interest of the beneficiary if he pays or conveys to the beneficiary with notice of the transfer.

Illustration:

Illustration:

5. A bequeaths \$100,000 to B in trust to pay so much of the income to C as B in his uncontrolled discretion may think fit and on C's death to pay the principal and accumulated income to D. C transfers his interest under the trust to E. With knowledge of the transfer B pays \$1000 of the income to C. B is liable for \$1000 to E.

g. Spendthrift trust. As to the liability of the trustee for payments made on the order of the beneficiary of a spendthrift trust, see § 152, Comment *i*. See also § 342, Comment *f*.

Reporter's Notes

Where a trustee under a mistake of law makes payment to a person not entitled as beneficiary, he is liable to the beneficiary. *Prince De Bearn v. Winans*, 111 Md. 434, 74 A. 626 (1909); *Old Colony Trust Co. v. Wood*, 321 Mass. 519, 74 N.E.2d 141 (1947) (citing *Restatement of Trusts*, § 226); *Fidelity Trust Co. v. Norris*, 17 Phila. 258 (Pa.1884); *Day Trust Co. v. Ayer*, 6 D. & C.2d 142 (Pa.1955); *Hilliard v. Fulford*, 4 Ch.D. 389 (1876); *National Trust Co. v. General Finance Co.*, [1905] A.C. 373.

The same result has been reached where the payment was made under a mistake of fact. *Kendall v. De Forest*, 101 F. 167 (2d Cir.1900); *Ellis v. Kelsey*, 241 N.Y. 374, 150 N.E. 148 (1925); *Matter of Sniffin*, 36 N.Y.S.2d 527 (1942), reversed 265 App.Div. 1014, 39 N.Y.S.2d 1017 (1943) (citing *Restatement of Trusts*, § 226); *Moyer v. Norristown-Penn Trust Co.*, 296 Pa. 26, 145 A. 682 (1929); *Heaney v. Riddle*, 343 Pa. 453, 23 A.2d 456 (1942); *Eaves v. Hickson*, 30 Beav. 136 (1861); *Re Bennison*, 60 L.T. 859 (1889).

The trustee is not liable if he makes payment to the beneficiary without notice that the beneficiary has assigned his interest. *Seger v. Farmers' Loan & Trust Co.*, 176 N.Y. 589, 68 N.E. 1124 (1903). See Application of *Spitzmuller*, 279 App.Div. 233, 109 N.Y.S.2d 1 (1951), affirmed mem. 304 N.Y. 608, 107 N.E.2d 91 (1952) (citing *Restatement of Trusts*, § 226).

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C.A.9

C.A.9, 1995. Cit. in headnote and ftn. A widow whose deceased husband had waived her right to retirement benefits without obtaining her consent by falsely informing a plan's administrator that he was single appealed the pension plan's denial of benefits. California federal district court granted the plan summary judgment. This court reversed, holding that ERISA discharged the plan from liability to the extent it had made payments under the plan, but the plan was liable to the widow to the extent its debt to her exceeded its overpayments to decedent. The court noted that, absent the ERISA section that added strict spousal consent requirements for waiver of spousal benefits and that shielded the trust fund from the risk of dual liability, the fund would likely have been liable to widow for the full amount of her annuity. [Hearn v. Western Conf. of Teamsters Pension Fund](#), 68 F.3d 301, 302, 305.

C.A.D.C.

C.A.D.C. 1975. Cit. in ftn. in sup. and dist. Plaintiffs, retired coal miners, brought two class actions challenging the validity of a "signatory last employment" provision limiting eligibility for the flat retirement pension provided by the union pension fund. The classes consisted of miners whose applications for retirement benefits were denied. In district court proceedings, plaintiffs obtained summary judgments. On appeal, the judgments were affirmed, except for awards of interest on retroactive payments and amounts awarded to attorneys for the consolidated plaintiff class. A rehearing en banc was granted. The court affirmed in part and remanded in part. The initial issue for determination was whether the fund trustee's position of a five-year contributory service provision to replace the invalidated signatory last employment requirement was arbitrary or unreasonable. The conclusion was that the requirement that a miner must have worked for a coal operator, who was a signatory party to the pension trust agreement, for a period of five years during the twenty years preceding retirement in order to be eligible for a flat lifetime pension was reasonable and in line with the purpose of the fund. Thus, the refusal to grant benefits to those with only one year's service was not arbitrary or capricious. In making this decision, the court was careful to consider the public policy interest in devoting the fund to miners who had made a substantial contribution to their employers. The court went on to find that those applicants who qualified for retroactive benefits were entitled to interest on accrued pension payments. The lower court's action as to the award of attorneys' fees was proper. It was not unreasonable to discount the hours logged by the attorneys for unrelated time spent, time spent on the attorney fee question, and discrepancies as to time spent. The award of attorneys' fees was justified because of the attendant benefits to the public from the class litigation, and the element of risk involved in securing a favorable verdict and adequate compensation. As to the amounts of the contingent fee contracts, however, these were excessive in light of the lack of sophistication of one class, the actual services necessary to succeed, and the fact that the agreement was solicited by counsel without court approval and after the entry of summary judgment. An award for prospective work by the attorneys was not proper. Finally, liability for the fees was properly shifted to the trustees because general fiduciary abuse was prevented, and the functioning of the fund as a whole was improved. [Pete v. United Mine Workers Welfare & Retirement Fund of 1950](#), 171 App.D.C. 1, 517 F.2d 1275, 1286. See also [Kiser v. Huger](#), 170 App.D.C. 407, 517 F.2d 1237 (C.A.D.C.1974), which is briefed above.

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C.A.D.C.1974. Quot. in diss. op. in sup. Plaintiff appellees instituted a class action to determine their rights to pensions from a trust fund created by a coal wage agreement. Plaintiffs had been denied pensions due to their failure to meet a requirement that their last employer in the coal industry be a signatory to the National Bituminous Coal Wage Agreement and that their employment had lasted for at least one year. From judgment for plaintiffs, appeal was taken. The court affirmed, reversed, and remanded in part. At the time plaintiffs filed their applications, they met all eligibility requirements then in effect except the signatory last employment requirement, which had been declared invalid by prior decision. The court, therefore, reasoned that their pension rights vested at the time they applied and could not be undercut by the subsequent establishment of new eligibility criteria. The pension benefits of members of the plaintiff class began accruing on the dates when their applications should have been approved by the trustees. The court went on to affirm the district court's decision to require at least one year of signatory service as a condition to obtaining relief noting that "the impact of the one-year signatory service requirement approved here will be strictly limited and entirely retrospective." Furthermore, a five-year service requirement was found by the court to be inequitable. As to attorneys' fees, it was determined that in most respects, the district court properly exercised its discretion in making an award to plaintiffs' counsel. With regards to the fee agreements however, special concern is warranted where a contract benefit to the attorney is executed long after the attorney client relationship had commenced. The plaintiff class lacked the sophistication to deal with the attorneys at arms length, and the amount of the contracted fees were excessive in light of the legal services necessary. These considerations, coupled with the fact that the agreements were solicited without court approval and after the summary judgment had been entered, led the court to find that it was proper not to give effect to these agreements. An award of \$3000 to plaintiffs' attorneys for work subsequent to the district court's order was vacated, and the issue remanded for a determination of the value of services rendered. In conclusion, it was correct to shift liability for the attorneys' fees to defendants to discourage discriminatory conduct and breach of fiduciary duty. The entire fund benefited from the suit. [Kiser v. Huge](#), 170 App.D.C. 407, 517 F.2d 1237, 1264. See also [Pete v. United Mine Workers Welfare & Retirement Fund of 1950](#), 171 App.D.C. 1, 517 F.2d 1275 (C.A.D.C.1975), which is briefed below.

D.Mass.Bkrcty.Ct.

D.Mass.Bkrcty.Ct.2005. Cit. in disc., quot. in case quot. in sup., cit. in ftn. (erron. cit. as § 266), quot. in ftn. com. (b) quot. in ftn. Chapter 7 trustee sued state-court receiver attorney and his law firm for negligence in their conduct of a receivership of debtor prior to the filing of an involuntary petition against debtor. The court held, inter alia, that attorney was personally liable as receiver for damage to debtor's creditors and the bankruptcy estate, since trial evidence unequivocally established that he was grossly negligent and breached his fiduciary duties by, among other things, failing to take possession of debtor's assets in a timely manner, failing to secure debtor's premises, and failing to proceed with causes of action, which, if pursued, more likely than not would have resulted in full payment of debtor's trade creditors. [In re American Bridge Products, Inc.](#), 328 B.R. 274, 337.

Ariz.

Ariz.1985. Cit. in sup. The plaintiffs claimed a prior contingent fee interest in the defendant's trust held by the petitioner. The plaintiff sought assignment of their part interest, and the trial court entered a minute summary judgment for the plaintiff. The petitioner disbursed the trust to the defendant on demand before entry of final judgment. The intermediate appellate court reversed. This court affirmed in part, reversed in part, and remanded. It held that the petitioner, as a constructive trustee with notice of a conflicting claim, was not liable. The court noted that the petitioner did not become a wrongdoer when it complied with its trust agreement, since there was no assignment by operation of law from the trial court's minute entry. [Burch & Cracchiolo, P.A. v. Pugliani](#), 144 Ariz. 281, 697 P.2d 674, 680.

Ark.

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Ark.1997. Quot. in diss. op., com. (b) quot. in diss. op. After a majority of the coexecutors of a decedent's estate filed a petition for partial distribution of the estate, a coexecutor challenged the petition. The probate court held that the dissenting coexecutor lacked standing to oppose the action of the majority of the executors and the majority's interpretation or construction of decedent's will, and this court affirmed. Contending that the construction of the will by the majority of the executors resulted in an improper diversion of assets, the dissent argued that construction of disputed terms of a will fell within the jurisdiction of the courts, not within the powers of a majority of the executors, and that a majority vote of the executors could not preclude one of their number from asking the court to assume that jurisdiction. [Dunklin v. Ramsay](#), 328 Ark. 263, 944 S.W.2d 76, 82.

Colo.

Colo.1998. Com. (b) cit. in disc. and headnote. A trustee bank filed a petition for instruction and advice after the beneficiary's brother sought revocation of the trust. The probate court appointed the bank as special fiduciary and ordered it to use the assets to make payments for the beneficiary's benefit. The appellate court reversed, holding that the power of attorney authorized the brother to remove the bank as trustee; however, it also held that the bank was not liable for expenditures made in good faith after receiving the revocation letter. This court affirmed, holding, inter alia, that where the trustee acts in good faith to seek direction from a court concerning its responsibilities in relation to a trust it oversees, the trustee is entitled to indemnification for any associated legal expenses. Here, the bank acted in good faith because it had reason to suspect that the beneficiary might be incompetent and hence lack the capacity to execute a valid power of attorney. [Matter of Trust of Franzen](#), 955 P.2d 1018, 1019, 1022.

Ill.

Ill.1977. Cit. in sup. in disc. This was an appeal involving a dispute between a corporate co-trustee and two individual co-trustees as to the disposition of a large charitable testamentary trust fund where the individual co-trustees, testator's sisters, and the corporate co-trustee, a bank, were unable to agree on a plan of distribution. The trial court adopted the plan submitted by the bank as opposed to that of the individuals, and the judgment was affirmed on appeal, numerous charitable organizations having been permitted to intervene. The Supreme Court of Illinois affirmed in part and reversed in part holding, inter alia, that the bank had breached its duty by unilaterally distributing a sum to an organization not qualified to take under the will, and the bank was required to return that sum to the estate, but was not disqualified from acting as trustee in the absence of self-dealing. The court further held, in construing the will, that a majority of the trustees could take effective action only if the bank were one of that majority and that where the testator had left a considerable sum for charitable purposes without specifying a plan of distribution and the trustees were deadlocked, the courts below had acted properly in applying cy pres procedures. The court remanded with directions as to the rights of the charitable organizations which had intervened and for return to the estate of sums distributed by the bank in violation of its trust duties. [Stuart v. Continental Ill. Nat. Bank & Trust](#), 68 Ill.2d 502, 12 Ill.Dec. 248, 369 N.E.2d 1262, 1272, certiorari denied 444 U.S. 844, 100 S.Ct. 86, 62 L.Ed.2d 56 (1979).

Kan.App.

Kan.App.1978. Quot. in sup., com. (b) cit. in sup. Plaintiffs, a plan committee and corporate trustee of a qualified employee benefit plan, sought court instructions for the distribution of trust funds upon termination of the plan incident to the dissolution of the corporate employer. The trial court set aside approval of final instructions of the plan committee that did not provide for a beneficiary's lump sum severance payment, and surcharged the trustee for improperly returning to the company a contribution made to the fund by an alleged agent of the company. This court reversed in part and affirmed in part. First, the court held that the trial court erred in adjudging the beneficiary entitled to a lump sum benefit to be paid from the trust fund. Secondly as to the trial court's holding surcharging the trustee, plaintiffs contended that no valid contribution was ever made and therefore

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the trustee violated no duty in returning the amount to the company on the ground that the settlor of a trust may rescind a trust created by him as a result of a material mistake. The court held that it is only where the creation of the trust is gratuitous that the settlor's unilateral mistake is sufficient ground for rescission, and here the rule was inapplicable because the settlor received consideration for making the transfer of property in trust. Finally, the court held that where the alleged agent of the corporation had implied authority to make the contribution in the amount already set aside in a reserve, the trustee was liable when the contribution was incorrectly returned to the company, even though it acted in good faith in doing so. [Moore v. Adkins](#), 2 Kan.App.2d 139, 576 P.2d 245, 254, 255.

Md.

Md.1972. Quot. in sup. and quot. com. b in sup. This was an action by the receiver for the creditor against the receiver for the debtor for the improper distribution of debtor's assets. Plaintiff claimed that he had a priority obligation and that defendant failed to pay all of the obligation before releasing the assets to the general creditors. After knowing of plaintiff's claim, but without joining plaintiff as a party of interest, defendant went to court and, based on incorrect information submitted by defendant, received an order permitting the distribution of the assets. The court held that defendant was personally liable for the debts to plaintiff, notwithstanding the court order since it was obtained ex parte on negligently made representations and since defendant knew, or should have known, of debtor's continuing obligation to plaintiff as a preferred creditor. [Prescott v. Coppage](#), 266 Md. 562, 296 A.2d 150, 153.

Mass.

Mass.2001. Com. (c) cit. and quot. in sup. Applicant filed suit appealing denial of Medicaid benefits by division of medical assistance on ground that applicant held sufficient, available resources as beneficiary of principal of a self-settled trust. Trial court reversed division's decision. This court affirmed, holding that trust principal could not be used in calculating applicant's assets to determine Medicaid eligibility, because applicant's irrevocable waiver of her interest in the principal in favor of remaining trust beneficiaries deprived trustee of discretion to pay applicant any part of the trust principal. [Guerriero v. Commissioner of the Div. of Medical Assistance](#), 433 Mass. 628, 631, 745 N.E.2d 324, 328.

Minn.

Minn.1976. Quot. in sup., com. (b) cit. in sup. The executors of the estate of an owner of stock brought this action against the trustee of the stock to recover for breach of fiduciary duties and conversion. The lower court found for the plaintiffs. On appeal, the court affirmed in part and remanded, holding that the trustee had breached his duties to the stockholder to remain loyal and to keep control of the property when he purchased 6000 of the decedent's 7000 shares from the decedent and then resold them to others without informing the beneficiary. The court also held that the trustee had an obligation to verify the beneficiary's intent before transferring the remaining 1000 shares to a third party upon the beneficiary's endorsement in blank upon a transfer of the trust agreement governing the remaining stock. [Schug v. Michael](#), 245 N.W.2d 587, 592.

Ohio App.

Ohio App.1982. Cit. in disc. A vendor of real estate brought an action against the purchaser and his attorney, seeking recovery of the portion of the purchase price owed her. The purchaser's attorney moved for summary judgment on his cross-claim against the purchaser, in support of which he submitted an affidavit attesting that he had accepted the purchaser's payment for deposit in his firm's trust account, delivered the plaintiff's deed to the purchaser and disbursed the sale proceeds in accordance with the parties' agreement, except that he had mistakenly delivered to the purchaser the proceeds owed the plaintiff. The trial court granted the

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plaintiff's motion for summary judgment against the defendant attorney, and the attorney's motion for summary judgment against the purchaser. The attorney appealed, contending that the existence of genuine issues of fact precluded summary judgment as a matter of law. This court affirmed, holding that liability could be established without determining whether the defendant was a trustee whose unauthorized payment constituted a breach of fiduciary duties. Rather, the court asserted, the attorney's liability was established as a matter of law on the facts contained in the defendant's affidavit under principles applicable to a common law action for money received. [Eaton v. Calig, 4 Ohio App.3d 22, 446 N.E.2d 218, 220.](#)

Or.App.

Or.App.1979. Com. (b) quot. in part in sup. Trustee brought a suit for declaratory relief, seeking an interpretation of a trust instrument and a declaration of the rights and liabilities of the trustee and the defendant beneficiaries (mother and daughter). The trial court denied the daughter's claim that both the mother and the trustee were liable to her for one-half of the trust income and principal which the trustee had paid to the mother. On appeal, the majority affirmed finding that the wife was to be the sole direct beneficiary for her life or until she married after the daughter reached the age of 21. The dissent criticized the majority's construction of the trust agreement and their substitution of the word "or" for the word "and." The dissent would hold the trustee liable to the daughter for one-half of the trust income, noting that the daughter's claim was not barred by laches since the trustee was under an affirmative duty to provide the daughter with a copy of the trust agreement. The dissent would also hold the mother liable to the daughter unless the mother had so changed her position that it would be inequitable to compel payment. The dissent noted that the trustee could not recover from the mother if it were held liable to the daughter and that they would not award the trustee attorney fees. [U.S. Nat. Bank of Oregon v. Duling, 39 Or.App. 329, 592 P.2d 257, 263.](#)