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DURATION OF THE TRUSTEE'S INTEREST WHERE
THE TRUST PROPERTY IS PERSONALTY

By VICTOR H. LAWS, JR.*

When a trust is created, one of the outstanding results
is that the settlor's absolute estate in the trust property is
separated into legal and beneficial interests, held respec-
tively by the trustee and beneficiary. Such a separation
is permissible only because it creates an effective method
of carrying out the settlor’s intention; and it seems obvious
that it should be allowed to last only so long as the pur-
poses declared by him remain active and unperformed.
When these purposes have ceased, it is logical that the
separate interests should automatically reunite in an abso-
lute estate. This is precisely what happens when the trust
property is realty; the Statute of Uses¹ applies and vests
the trustee’s title by operation of law in the person entitled
to the last use. In this result, Maryland concurs with the
weight of American authority.² But where the trust prop-
erty is personalty, a different situation exists; the Court of
Appeals has failed to announce a corresponding definite
rule for determining the duration of the trustee’s estate,
although at the same time it has emphasized the impor-
tance of the problem.³

There can be little doubt that it is sufficiently important
to warrant a satisfactory and explicit solution, since it

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Maryland.
¹ 27 Hen. VIII, Ch. 10; 1 ALEXANDER, BRITISH STATUTES IN FORCE IN
MARYLAND (Cox’s Ed.) 381. See also the annotation beginning on page 387.
² Ware v. Richardson, 3 Md. 505, 56 Am. Dec. 762 (1853); Warner v.
Sprigg, 62 Md. 14 (1884); Long v. Long, 62 Md. 33 (1884); Brown v.
Reeder, 108 Md. 653, 71 A. 417 (1905); Potomac Lodge v. Miller, 118 Md.
405, 84 A. 554 (1912). This is a mere sampling of the decisions, and does
not purport to be a complete list; the cases affirming this rule are legion.
³ See Hagerstown Trust Co., Ex'r of Mealey, 119 Md. 224, 235, 86 A.
982, 989 (1913).
clearly could arise on the termination of any trust of personal property. Every such trust must end at some time by some means—and then the inquiry arises as to whether the termination has affected the status of the remaining parties to the trust agreement. The typical example is where A transfers personal property to B, in trust to invest and pay the income to C for life, remainder absolutely to D. A dies; later C dies. How does C's death affect the status of B and D? Obviously, the effect is either that the trust is completely terminated, with D taking the absolute interest in the fund, free and clear of any trust, or that the trust continues, with B having legal title to the fund, and D having the beneficial interest. If the latter situation ensues, then B continues to be “trustee” in the strict and proper sense of the term; but if the former, B is a mere custodian of the trust property, and has considerably lesser duties, rights, and liabilities.

An examination of the Maryland cases shows many situations where the answer to the problem has controlled the outcome of the litigation. It inevitably governs the nature and extent of the remedies and liabilities of the remaining parties to the trust agreement. Therefore, it may well be decisive in any suit concerning the management or payment of the trust fund or that part of it which is left at the death of the life tenant. For example, suppose after C's death, B in good faith pays the fund to D's next of kin, mistakenly believing D to have died intestate. D, still living, sues B to recover the money. Is B liable? The answer depends on whether B was a trustee (which is the same as saying, on whether B had title after C's death),

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*4 This is true whether the trust expires of its own limitation, or by the exercise of a power of complete or partial revocation. The problem has also arisen when there was an attempt to terminate the trust in advance of the time it would normally have ended.

*5 A similar situation arose in Prince de Bearn v. Winans, 111 Md. 434, 74 A. 626 (1909). There the trustees through a mistake of law paid the fund to the children of the remainderman.
for the reason that a trustee will not be excused for an honest mistake of fact, although a mere custodian will.\textsuperscript{6}

While there are only two possible solutions of the termination problem,\textsuperscript{7} there are at least five rules\textsuperscript{8} which could be used as guides in arriving at one solution or the other. The first three rules give the basic principles; the last two are hybrids, combining in various forms the doctrines of the first three. Stated in terms of duration of the trustee's interest, they are:

I. The trustee of personal property takes an interest of unlimited duration, and not an interest limited to the duration of the active purposes of the trust.

II. The trustee of personal property takes an interest of limited duration, and not an interest which can survive the termination of the active purposes of the trust.

III. The intention of the creator of the trust, as manifested in the trust instrument, controls the duration of the trustee's interest where the trust property is personalty.

IV. Unless a contrary\textsuperscript{9} intention is manifested, the trustee of personal property takes an interest of unlimited duration.

V. Unless a contrary intention is manifested, the trustee of personal property takes an interest of limited duration.

\textsuperscript{6}The case of Prince de Bearn v. Winans, \textit{supra}, n. 5, expressly gives effect to this principle. In addition, the following cases hold that a fiduciary will not be excused for an unauthorized payment: Green v. Putney, 1 Md. Ch. 262 (1848); Owings v. Rhodes, 65 Md. 408, 9 A. 903 (1886); Hagerstown Trust Co., Ex'r of Mealey, \textit{supra}, n. 3.

\textsuperscript{7}I. e., the trustee can be given either a limited or an unlimited title.

\textsuperscript{8}The word "rule" in its legal sense is defined by Webster as "a point of law settled by authority." If this be accepted as correct, the word is somewhat inaccurately applied to the five principles set out in the text. They have not been "settled by authority" in the sense that the last-quoted phrase implies judicial approval of a principle in the exact form in which it is stated. Their phraseology is not court-approved; on the contrary, it is the language of Sec. 88 of the \textit{A. L. I. Restatement of Trusts}, adapted by the writer to the substantive pronouncements of the Court of Appeals.

\textsuperscript{9}The word "contrary" is used in deference to the manner in which the Court of Appeals has stated the companion Rule V. The word "different" is substituted in the \textit{A. L. I. Restatement of Trusts}, Sec. 88, Sub-sec. 2.
From the standpoint of reason, Rule V is perhaps the most acceptable. Practical considerations point immediately to Rules I and II—and indubitably they would be easiest to use because they supply an automatic, unvarying answer in every case. This blessing, however, is at the same time a curse—it is conceivable that their very universality of application might work a hardship by torturing the trust instrument into a very different form than was intended. In other words, they lack the flexibility which is often indispensable if true justice is to be done in all situations. But flexibility can be carried too far; and this is the glaring defect of Rule III. Granted, it is broad enough to suit all purposes and fit all conditions, and consequently it is so vague and indefinite that it cannot readily be applied. Thus, it is apparent that from a practical viewpoint the ideal rule should be firm, but not immutably so. Rule V fills this requirement, by modifying the rigidity of Rule II with the flexibility of Rule III. It thereby gains some of the advantages of both its component parts without being subject to the disadvantages of either. It is sufficiently pliable to achieve a just result on any set of facts, and at the same time it is sufficiently stable to be feasible. However, practical reasons of a corresponding nature apply with equal force in favor of Rule IV; and therefore the choice of Rule V over Rule IV must rest on its superiority for theoretical reasons.

These two rules are alike in that both allow an expressed contrary intention to prevail, but they differ widely in their theories of the proper result where such an intention is not discernible. If such is the case, Rule V cuts off the trustee's title at the termination of the active purposes of the trust. This result is fully justified in theory, since normally there is no rational cause for keeping the "dry trust" alive after all its purposes have been fully accomplished. The trustee's title, if preserved, would be a bare legal title, and the remainderman in reality would have the entire interest in the property. On the other hand, Rule IV would extend the trustee's title. There are several
theoretical arguments against this result, in addition to the obvious one that it keeps a dry trust alive after all the purposes of the creator have been accomplished. For example, it necessitates a transfer of the fund by the trustee to the remainderman, even though the latter, for all practical purposes, already has the sole interest in the property;[^10] and it complicates the law by distinguishing between dry trusts of realty and dry trusts of personalty.[^11]

From the standpoint of Maryland authority, Rule V is probably the most acceptable, because it has more unmistakably-clear support than any of the others, and because all the Maryland cases could conceivably be harmonized with it.[^12] However, it must be borne in mind that the Court of Appeals has not conclusively adopted any one of the rules as the law of Maryland. This failure cannot be ascribed to lack of opportunity to pass on the question, for it has often been directly presented. Perhaps the fundamental difficulty is that the Statute of Uses, which makes possible the definite rule where realty is concerned, does

[^10]: Owens and Crow v. Crow and Hubbard, 62 Md. 491, 494, 497-8 (1884).

[^11]: The only justification for such a distinction is purely historical; the Statute of Uses happened to employ the word “seized”. At the time of its passage, the courts were notoriously jealous of the technicalities with which they had studded the law of property. One such rule was that there could be “seisin” only in real property; and they therefore felt compelled to hold that the broadly remedial Statute of Uses meant to exclude personalty when it used a word having only a real property connotation. The requirement of livery of seisin in deeds of realty is abolished by Md. Code (1939) Art. 21, Sec. 25, and the Court of Appeals has often been as reluctant as the Legislature to follow the historical and technical rule. A splendid example is Warner v. Sprigg, 62 Md. 14 (1884), where the Court used a decree in a prior case to overcome the obstacle of the Statute’s non-applicability to personal property. For a fuller discussion of this case see infra, circa notes 40-42.

An interesting comment on the attitude of the Court (in will cases) toward this and similar technical rules is contained in MILLE, CONSTRUCTION OF WILLS (1927) 64-65. He gives the following approximate divisions:

1. 1868-1894, Vols. 28 to 78 of the Maryland Reports; the Court tended to favor technical rules.
2. 1894-1907, Vols. 79 to 105 of the Maryland Reports; the Court tended to disregard the technical rules, and strove instead to find the real intention of the testator.

He did not attempt to expand this division by adding other periods, and he prudently qualified even these by labeling all his figures “approximate”; but he did observe that “At the present date (1927) there seems to be no marked change in the attitude of the Court toward technical rules from that of the previous period.”

[^12]: See infra, circa notes 93-95.
not apply to personalty. But even without this statutory help, the Court could have worked out a satisfactory solution by choosing one of the rules and adhering to it. Instead, many of the opinions are exceedingly ambiguous. The common fault lies in their unexplained use of conflicting language. Usually, a single opinion contains statements favorable to two or more rules, and nearly every opinion contains one or both of the following statements, which are here reproduced in their original form:

1. "When a trust has been created in personalty, and all the purposes of the trust have ceased or are at an end, the absolute estate is in the person entitled to the last use."

2. "The question as to the duration of the estate of the trustees can rarely arise when the subject is personal estate; for in that case the whole legal interest is in general vested in the trustees by a gift without any words of limitation, and will continue in them until divested by a legal transfer or assignment."

The mere repetition of these and similar inconsistent statements tends to produce confusion; but often in addition there is a complete lack of comment on them. Consistent affirmations of this rule are as numerous as those holding that the Statute does apply to real property. To cite a few: Waters v. Taze-well, 9 Md. 291 (1856); Denton v. Denton, 17 Md. 403 (1861); Long v. Long, supra, n. 2; Graham v. Whitridge, 99 Md. 248, 57 A. 609, 58 A. 36, 66 L. R. A. 408 (1904); Morgan v. Dietrick, 178 Md. 66, 12 A. (2d) 199 (1940).

A glaring example of this is Denton v. Denton, supra, n. 13, where a single paragraph contains language favorable to each of the first three rules. This treatment of the problem is by no means an isolated example; rather, it appears to be typical. The extent of the confusion engendered by this widespread practice is indicated by the frequency with which the opinions inaccurately cite earlier cases. For example, Baker v. Baker, 123 Md. 32, 43, 90 A. 776, 783 (1914) cites the Denton case as authority for the rule that the trustee's interest is limited absolutely to the duration of the active purposes of the trust; actually the Denton case could not conceivably be interpreted as so holding, although its language might give the impression it favored that rule. Precisely the same error is found in Mllholland v. Whalen, 89 Md. 212, 43 A. 43, 44 L. R. A. 405 (1899), and in Owens and Crow v. Crow and Hubbard, supra, n. 10.

Rice v. Burnett, 1 Spears' Eq. 579, 42 Am. Dec. 336, 340 (S. Car., 1844). This work was published in 1846, and has largely been superseded by later treatises on the subject. Nevertheless, the Court of Appeals has consistently used it, up to and including the most recent case, Morgan v. Dietrick, supra, n. 13, decided in 1940.
quently, it appears that all of them have been tacitly approved, and none of them selected as the rule of the case. The result of this inexcusably misleading approach is that every one of the five rules has some support in the Maryland cases, in their language at least, if not in their holdings.\(^\text{17}\) The uncertainty is evident from the fact that the question was earnestly debated before the Court in 1940 in the case of *Morgan v. Dietrick*,\(^\text{18}\) eighty-two years after it first came up for direct adjudication in *Hanson v. Worthington*.\(^\text{19}\)

In *Morgan v. Dietrick*, the facts show that the testatrix died July 30, 1937, leaving a will and two codicils, which were duly probated in Harford County. In these instruments, the plaintiffs were named executors, and were also made trustees of the residuary estate, which apparently consisted of stocks and other personal property. The testatrix’s son James was given a life estate in the trust; the remainder at his death was given to Archbishop Curley and others for purposes specified in the will and codicils. After the death of the testatrix, her bankers received a letter, dated three days before her death, and signed by her and two witnesses, directing them to transfer the sum of $40,000 from her account to that of her son, and authorizing them to sell securities to make the transfer. However, they transferred the securities to the plaintiffs (with the consent of James). Later, James executed an agreement with the plaintiffs, empowering them to disregard the letter, and settle the estate as if it had never been written. They did this, and, on August 30, 1938, transferred the residue of $35,000 to themselves as trustees. James subsequently died; and, on November 18, 1939, his administrator (the defendant) offered the letter for probate as a third codicil to the will of the testatrix. The plaintiffs filed a caveat; the defendant denied their right to do so,\(^\text{20}\) and the Orphans’ Court held for the defendant.

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\(^\text{17}\) A detailed break-down of cases appears *infra, circa*, notes 29-90.

\(^\text{18}\) 178 Md. 66, 12 A. (2d) 199 (1940).

\(^\text{19}\) 12 Md. 418 (1858).

\(^\text{20}\) On the ground that their interest under the will was insufficient to allow them to maintain a caveat.
On appeal, this ruling was reversed; the Court of Appeals held that the plaintiffs, in their capacity as trustees, had a sufficient interest under the will to contest the probate of the alleged codicil, since they still held title to the trust fund notwithstanding the termination of the active purposes of the trust by reason of the life tenant's death.\(^{21}\)

This decision unfortunately did not clear up the confusion existing in the Maryland cases; rather, it added to it. The opinion in many respects is the most unsatisfactory in the whole line of cases—it ignores entirely the relative merits of the rules, and in fact seems completely unaware of the existence of possibilities other than Rules I and II. It begins by stating the trustees' contention that they were entitled to file a caveat because of the decision in *Johnston v. Willis*,\(^{22}\) and proceeds to the appellee's reply contention that that case was not binding authority because there the life tenant had not died, and the trustees therefore admittedly held title to the fund. Then, the Court stated the trustees' rebuttal contention that they continued to hold title notwithstanding the death of the life tenant because "they had further active duties to perform in the distribution" of the trust property. The opinion does not disclose the exact nature of these alleged duties, nor does it discuss whether this was, or amounted to, a contention that the instrument indicated an intention to make the trustees' title unlimited in duration. Next the Court quoted without comment, from the case of *Chapman v. Baltimore Trust*

\(^{21}\) It was also held: (1) that the plaintiffs in their capacity as executors had no such interest as would allow them to contest probate of the letter, and (2) that a point not raised below would not be discussed on appeal, by reason of Md. Code (1939) Art. 5, Sec. 10. These rulings, which affirm well-established law, are not relevant to the present discussion.

\(^{22}\) 147 Md. 237, 127 A. 862 (1925). Here the trustee under a prior will sought to caveat a codicil which disposed of the trust fund. The Court stated that the test was whether the caveator had an interest in the property in the event the codicil was annulled, and that an interest within the meaning of this rule could arise from relationship, or from the fact that the caveator had an interest under the prior will. It was held that the trustee had an interest of the latter class, since the will gave him wide discretionary powers in respect to the property. The fact that the life tenant was not dead, and that therefore the trustee must have been a titleholder under the prior will, was not mentioned; but the appellee in the Morgan case was undoubtedly correct in his contention that the Johnston case was authority only where the life tenant had not died.
Co., the familiar passage from Hill on Trustees. Immediately thereafter it cited two cases which both quote the passage. Actually, both are intention cases; but nowhere in the opinion is “intention” explicitly referred to. Finally, without bothering to explain why those particular cases were cited at that particular point, the Court simply said, “We therefore hold . . .” that the trustees still have title to the fund; and as titleholders were entitled to caveat the alleged codicil by the decision in Johnston v. Willis.

Obviously, any attempt to state flatly which of the rules was followed in the Morgan case would be pure guesswork. However, four things emerge with certainty from the opinion’s ambiguity: (1) The Court did not allude to “intention”, which is a necessary element of Rules III, IV, and V, although it cited intention cases; (2) The Court seems to have been aware that Rules I and II existed; (3) The Court quoted with apparent approval language favorable to Rule I; (4) The result of the case could have been reached by using Rule I, but not by using Rule II. By the process of elimination, therefore, it would seem that Rule I was probably followed.

Because of the vagueness of this most recent opinion, it becomes imperative to examine the earlier cases in order to see whether they point to a definite conclusion. For reasons of convenience and lucidity, the five rules will be taken in order, and the sustaining Maryland authorities will be grouped under each.

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24 See supra, circa n. 16.
25 The cases referred to are Prince de Bearn v. Winans, supra, n. 5, and Hagerstown Trust Co., Ex'r of Mealey, supra, n. 3. See infra, circa notes 61 and 75-80, where they are respectively discussed in more detail.
26 The Hagerstown Trust Co. case is a “positive intention” case—see infra, circa notes 56, 61. The Prince de Bearn case is a “contrary” or “negative intention” case—see infra, circa notes 75-80.
27 Supra, n. 22.
28 The main disadvantage of this grouping is that it requires an intensive analysis of each case, with the object of fitting it under a single rule, and hence tends to overemphasize individual cases, and minimize their collective effect.

A collateral disadvantage is the perplexing problem of selecting the proper category for each case. This dilemma of “where to put it” arises in nearly every instance, and is almost never capable of unqualified solution. Often it is essentially a question of one's individual opinion as to where the cases are best inserted.
This rule states dogmatically that a trustee's title is unlimited where the trust property is personalty.

It is supported in language by Hanson v. Worthington, Price v. Price, Hall v. Bryan, and by all the other cases which, like the Morgan case, quote Hill on Trustees without comment and therefore with apparent approval. It is supported by no unequivocal holdings—the most favorable cases in this respect being the Morgan case and Hanson v. Worthington. The ambiguity of the former has already been demonstrated; the latter is almost equally indefinite, and could be as logically interpreted as authority for Rule III.

The Hanson case involved a bequest of $10,000 to W, in trust to invest and pay the income to the testator's wife for her life. The testator provided that this should be in lieu of her dower, and that upon her death the fund should be equally divided among the children of his daughter. The widow renounced the trust, and took her dower rights instead. W, believing that this completely wiped out the trust, distributed the trust fund to the residuary legatees. Several years later, certain of the remaindermen of the trust, who were infants at the time of W's distribution, filed a bill against him as trustee seeking an accounting. One of his grounds of defense was that after the widow's death the trust ceased, thereby ending his obligation as trustee under the will. The Court of Appeals, however, held

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29 12 Md. 418 (1858).
30 162 Md. 656, 662-3, 161 A. 2, 5 (1932).
31 50 Md. 194 (1878).
32 The statement in its original form is reproduced supra, circa n. 16. Not all the cases quote it verbatim, but in paraphrasing it they consistently stick very close to the original.
33 Supra, n. 29.
34 See infra, n. 37.
35 The trustee's defense was presented in this form: "... the only purpose of this trust was to create a trust for the life of the widow; the moment she died the trust ceased. The language of the devise clearly shows this to have been the sole object and purpose of the testator. After the widow's death the money was to be handed over by the executors to the legatees in remainder, ... without the intervention of a trustee." 12 Md. 418, 425 (1858). The legatees contended that "... the trust clearly extended to them, and the trustee had duties to perform towards them; the subject of the trust was personal property, which he was bound to pay over to the parties entitled, upon the death of the widow." 12 Md. 418, 421 (1858).
that the trust extended to the remainder interest, and that consequently W was liable as trustee to the plaintiffs-beneficiaries. The relevant part of the opinion is as follows:

"Looking at the several clauses of the will which we have cited, we are of opinion that the trust ... was not limited to the life of [the life-tenant], but was a continuing, subsisting trust for the parties in remainder after her death, and the trustee could only be discharged from his obligation by the payment of the fund to the cestuis que trust. The legal interest was vested in him by the will; he was charged with the performance of certain duties with reference to the fund; had the power of investing, selling, and reinvesting; and to enable him to discharge those duties, and to carry out the purposes of the trust, his estate extended beyond the life of [the life-tenant]. Such, we think, was the intention of the testator, as gathered from the will. Whatever might be the construction of the will as to the extent of the estate vested in the trustee, if the property devised were realty—and on this question the authorities seem to be somewhat conflicting—here the devise is of personality, and we entertain no doubt that the fee was vested in the trustee, and could not be divested, except by a transfer by him."36

The first part of this paragraph seems clearly to follow the "intention" rule (III); the latter part just as clearly seems to emphasize Rule I.37

Another case of doubtful strength is Byrne v. Gunning,38 where the settlor sought to revoke his deed of trust on the ground of mistake in its execution. The Court held that the adduced evidence of mistake was insufficient, and refused to set it aside. The Court exhaustively discussed

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36 12 Md. 418, 439 (1858).
37 The result of the case could have been reached under either rule, but two facts might indicate that Rule III was actually followed, rather than Rule I: (1) The opinion was written by Judge Bartol, whose opinion in the Denton case, supra, note 13, written only three years later, seems clearly to have adopted Rule III; (2) the Hanso case has been repeatedly cited as authority for Rule III. The Hagerstown Trust Co. case, supra, n. 25, unmistakably so interpreted it, and applied its reasoning to very similar facts.
38 75 Md. 30, 23 A. 1 (1891). G's deed conveyed real and personal property to trustees to hold for G's own use for his life, and upon his death to divide the property among his children and grandchildren. No active duties were imposed on the trustee.
the effect of the deed, stating that under it the settlor had a legal life estate in the realty, the passive trust being executed by the Statute of Uses; but only an equitable life estate in the personalty, legal title to which remained in the trustees, because "the Statute of Uses does not affect the personalty". However, the personalty problem was disposed of in a single sentence, and the special difficulties involved in it were completely ignored by the Court.

Somewhat similar in this respect is Warner v. Sprigg, where the problem again was dismissed with the brief comment that title to the personalty remained in the trustee because the Statute of Uses did not apply to it. However, the cases are different in that the Court in the Warner case found a way around this obstacle. In a prior proceeding instituted by the acting trustee against the beneficiaries, the trial court had held that title to all the property, both real and personal, was in the beneficiaries. The Court of Appeals seized on this antecedent decree, and held that it invested them with the legal title to the personalty "without the unnecessary formality of a deed". This result, seemingly at variance with their earlier exposition of the law, was explained by the statement that even though "... we have said that they held the equitable interest ... they had the right at any time to call for a conveyance of the legal title".

**Rule II**

This rule states dogmatically that the trustee's title is of limited duration, ending with the active purposes of every trust of personalty.

It is supported in language by all the cases which cite or quote the ubiquitous statement from Rice v. Burnett, to

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39 75 Md. 30, 36, 22 A. 1, 4 (1891).
40 62 Md. 14 (1884). The question was whether X, a beneficiary of the dry trust, had such title to his share of the trust property as would enable him to convey it to a trustee, and thereby set up another trust of his own devising.
41 62 Md. 14, 22 (1884).
42 Ibid. As indicated in supra, n. 11, this exemplifies the effort made by the Court to evade the bar which the statute sets up against limiting the trustee's interest.
43 As indicated in supra, n. 32, some of the quotations are "secondhand"—i.e., from other cases which in turn contain a direct or indirect quotation.
the extent that they do not comment adversely on or repudiate the statement. In addition, there are certain other cases which are not clearly applicable to the problems raised by trusts of personal property, but which seem to be in harmony with the limited estate theory of Rule II.

There are two cases which apply this rule in direct holdings. The first is Milholland v. Whalen. Unquestionably, this case held that the surviving beneficiary of

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4 The cases referred to are: Abell v. Abell, 75 Md. 44, 23 A. 71, 25 A. 389 (1891); Numsen v. Lyon, 87 Md. 31, 39 A. 533 (1898); Graham v. Whitridge, 99 Md. 248, 47 A. 609 (1904); and Strite v. Furst, 112 Md. 101, 76 A. 498 (1910). They are particularly hard to classify and evaluate, and do not seem to fit under any of the five categories, although they are probably in better harmony with Rule II than any other. Perhaps they should be entirely excluded from this discussion on the ground that they relate only to the problems of realty trusts. Miller, in his book on Construction of Wills (1927), took this position and treated them in Sec. 179, apart from his section on the termination of personal property trusts. It is plain that they dealt with the question as though realty only was involved, and that they did not differentiate the problems presented by trusts of realty and trusts of personality, or even intimate that any difference existed. In fact, they nowhere indicate the exact nature of the trust property, being content with general statements that it was all or a fractional part of the settlor's property. On the other hand, they definitely are concerned with the problem of duration of the trustee's interest, and it seems likely that the trust in each case included some personal property, since in the Abell, Graham and Strite cases the trust fund was composed of a fractional part of the residuum (5/8, 2/14, and 1/2, respectively); and in the Numsen case, of all the grantor's property.

In each case, the trustee had no active duties to perform after the death of the named life tenant or life tenants. In each case, the Court held that the remaindermen took absolutely, free and clear of the trust, as of the date of the life tenant's death. (In the Abell case, the Court postponed the absolute vesting until the death of the survivor of the five named life tenants, on the ground that the testator intended the fund to be held in trust as a unit. Judge McSherry dissented, taking the view that the trust was divisible into five parts, one for each life tenant, and that each part was intended to vest absolutely in the remaindermen at the death of its particular life tenant. Both the majority and minority opinions, however, upheld the rule that the trustee's title ended on the death of the life tenant; they merely disagreed as to which life tenant.)

In the Abell and Graham cases, the Court talked of the automatic application of the Statute of Uses after the active purposes had ceased; in the Numsen case, the emphasis was more on intention than on the Statute; and in the Strite case, the Court merely adopted without comment the trial court's ruling that the trust ceased upon the death of the life tenant, and concentrated on the proper custodian of the fund for the infant remainderman.

The weight to be given these cases in the present analysis of the Maryland law depends largely on one's personal reaction to the fact that these cases contain language applicable to the problem yet do not in any way recognize the existence of the problem.

a savings bank trust for joint lives was entitled absolutely to the money left on deposit at the death of the joint life tenant. The facts and result of the case, examined in conjunction, make its authority even clearer. The case held that the deceased life tenant had also been trustee, but it did not speak of appointing a new trustee to take title to the property, nor of having the trustee's personal representative transfer title to the surviving beneficiary. Since one or the other of these courses would have been necessary if the Court had extended the trustee's title, the only conclusion is that on the death of the life tenant the fund passed absolutely to the surviving beneficiary. The result of this case might be explained by the special treatment given to savings bank trusts and as such a recognition of the intention Rules III, IV, and V.

The second strong authority for this rule is the recent case of Chapman v. Baltimore Trust Company, where the settlor completely terminated the trust by exercising the power of revocation she had reserved. The trustee thereupon sought to have an equity court take jurisdiction of its final distribution accounts; the settlor objected on the ground that the court had no right to do so, since the trust had completely ended. The Court of Appeals held for the settlor, rendering an opinion which concisely yet thoroughly reviewed the previous Maryland authorities. The Court's comment, on completion of this resumé, was as follows:

"While the uncertainty resulting from these conflicting statements of the law cannot be wholly removed, this much at least appears, that, upon the

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46 The form of the trust was: "X, in trust for herself and Y, joint owners, subject to the order of either; the balance at the death of either to belong to the survivor." Probably the majority of Maryland savings bank trusts are now set up in this or a very similar form; hence this case would be strong authority today. See Katzenstein, supra, n. 45.

47 This result has apparently been followed without question in later savings bank trust cases; an affirming opinion is Baker v. Baker, 123 Md. 32, 90 A. 776 (1914). See Katzenstein, supra, n. 45.

48 168 Md. 254, 177 A. 285 (1935). This case resembles the Morgan case in that both dealt with an attempt by the trustee to settle some question pertaining to the trust by legal proceedings. In the Morgan case, the trustees sought to caveat a probated codicil which (if upheld) would have disposed of the entire trust fund; in the Chapman case, the trustee sought judicial approval of its final accounts.
termination of a trust affecting personal property, any power or authority, granted to the trustee by the trust instrument or declaration, . . . is at an end, that the title to such property immediately becomes vested in the person entitled to the last use, and that thereafter the only duty resting upon the trustee with respect to trust property in his hands is that of physically transferring it to the donor or usee.\textsuperscript{49}

This statement seems to afford distinct and explicit support to Rule II, and would have been even more authoritative had the Court been content with it, and said no more. However, the Court chose to add several paragraphs of explanation and justification, and emphasized the fact that a contrary holding would have put the settlor to the expense of obtaining judicial approval of the trustee's final accounts. The resulting impression is that the Court did not intend to express a broad approval of the limited estate rule, but sought instead to confine its decision to the particular facts it was facing.\textsuperscript{50}

A strong dictum sustaining this rule may be found in Owens and Crow v. Crow and Hubbard,\textsuperscript{51} where it was said that the trustee of a dry trust in personal property was neither a necessary nor proper party to the beneficiary's suit.

**Rule III**

*Thus rule makes intention the sole measuring element.* It therefore gives the intention a positive controlling force, whereas Rules IV and V give the intention a negative effect by allowing it to override the positive principles which they set up. But to the extent that the latter two rules


\textsuperscript{50} The Court in the Morgan case (supra, n. 18) might very easily have followed this approach and disposed of the bill, either on the ground that it would thereby save expenses, or that it was unnecessary, since Archbishop Curley was a beneficiary under the will and therefore admittedly had the right to caveat the codicil.

\textsuperscript{51} 62 Md. 491 (1884). Since the trustee was joined as a nominal party plaintiff, it was unnecessary to decide whether the beneficiary had such title to the property as would enable her alone to maintain the suit.
allow an expressed intention to prevail, the authorities supporting them also support Rule III.\(^52\)

Certain of the cases seem to limit their holdings strictly to Rule III itself, without adopting the refinement of Rules IV and V. In other words, they take the attitude that the settlor's intention prevails; they do not indicate what their holding would be if no intention could be ascertained. The explanation is probably historical. Two of the three leading examples, *Denton's Guardians v. Denton's Executors\(^53\)* (usually referred to as *Denton v. Denton*), and *Hanson v. Worthington*,\(^54\) are the two earliest cases to face the problem, and it is likely that the refinements embodied in Rules IV and V simply were not envisioned at that time. The first case\(^55\) to state Rule V was decided in 1884, twenty-three years after the *Denton* case, and twenty-six years after the *Hanson* case. This explanation is not affected by the fact that the third example, *Hagerstown Trust Company, Ex'r of Mealey*,\(^56\) is fairly recent, because that case frankly follows the *Hanson* case.

As demonstrated above,\(^57\) the *Hanson* case is questionable authority for Rule III, since it might also support Rule I. Therefore, the other two cases must bear the main burden of sustaining the intention rule. Both cases, in effect, say that a construction of the whole instrument disclosed the settlor's intention to keep the trust and trustee's title alive after the death of the life tenant had terminated.

\(^{52}\) In fact, most of the cases supporting Rules IV and V seem at first glance to support Rule III, by following the settlor's intention without regard to whether it was "contrary" or not. It is this fact which may give rise to an impression that the cases as a group support the rule that an expressed intention is controlling. This impression does arise when all the cases are read together—and a general statement that such is the law of Maryland on this point would be valid to a certain extent. However, it would be a dangerously broad generalization, and would read into the opinions much that does not actually appear in them. In addition, it would often break down under a thorough analysis and examination of the individual cases, unless it were assumed by the analyst that the Court in deciding each one was silently following the intention principle.

For example, on a close reading of the cases which support Rule V, it becomes apparent that they are based on a finding (or lack of finding) a contrary intention, thereby giving the intention a negative effect. Rule III, as observed in the text, gives it a positive effect.

\(^{53}\) 17 Md. 403 (1861).
\(^{54}\) 12 Md. 418 (1858).
\(^{55}\) Long v. Long, 62 Md. 33 (1884).
\(^{56}\) 119 Md. 224, 86 A. 982 (1913).
\(^{57}\) See supra, circa n. 37.
the trust. Unfortunately, some doubt is cast on these statements, which otherwise would clearly support the rule. The Hagerstown Trust Co. case is suspect because it follows the questionable Hanson case; and the Denton case is a victim of its own very confusing language.

The Denton case dealt with a transfer of slaves to a trustee to hold for the use of the grantor and her husband during their joint lives, and upon the death of either, as the grantor should by deed or will appoint, or in default of appointment to the grantor's heirs. Her husband and an infant daughter survived the grantor, who died in 1846 without exercising the power of appointment. The husband kept the slaves for his own use until his death in 1856, when the daughter's guardians sued in her name to recover from the husband's estate the value of the slaves' services over the ten year period. The defense was that the trustee still had title to the slaves, and that failure to join him as titleholder was a defect fatal to the action at law. This contention was sustained by the Court of Appeals, which held that title to the property was still in the trustee, notwithstanding the life tenant's death. The Court recognized the settlor's intention as controlling, but in the same paragraph with the intention language, it quoted and seemed to approve both Hill's doctrine and Rice v. Burnett. The resulting confusion makes the case rather shaky authority, and is probably the reason for its frequent miscitation as authority for Rule II.

In the Hagerstown Trust Co. case, the testator bequeathed property in trust for the use of his wife for life, with remainder to certain named persons. The Trust Company was both trustee and executor. The wife died before the estate was settled, and consequently before the Trust Company had been able to pay the trust fund to itself as trustee. The question was whether it should make the

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58 See supra, circa n. 16.
59 See supra, circa n. 15.
60 Ironically, the only rule unmistakably announced by the Denton case has been unmistakably repudiated. The Denton case said that where the remaindermen were infants, the trustee's title would be preserved at least until they became sui juris. The later case of Hooper v. Feltner, 80 Md. 262, 272, 30 A. 911, 913 (1894), is directly contra.
payment in this manner, or whether it should pay the fund, as executor, directly to the remaindermen. It was directed by the Orphans' Court to make payment directly to the remaindermen, but the Court of Appeals held that the other method was proper. The decision was based on the finding that the testator had intended the fund to be paid to the trustee.\textsuperscript{61} The similarity of the Hanson case was stressed by the Court, and there is no doubt that its reasoning was employed.

The case of Allen v. Safe Deposit and Trust Co.\textsuperscript{62} likewise supports this rule to some extent. There the settlor (who was also the life-tenant) sought to revoke half of the trust on the ground that she was sole beneficiary of that part. The deed of trust provided that that half should be held in trust after her death for her testamentary appointees, or in default, "then in further trust" for her next of kin. The Court of Appeals held that the trust extended to the remainders for the next of kin, and that consequently they were beneficiaries who had not consented to the termination of the trust. The Court stressed the words above quoted, and seems to have based its holding on a finding that the settlor intended to create beneficial interests in the remaindermen.\textsuperscript{63}

\textsuperscript{61} I. e., he intended the Trust Company, as executor, to pay the fund to itself as trustee, and later as trustee to pay the fund to the remainderman after the death of the life tenant. The Court of Appeals was obviously correct in holding that the untimely death of the life tenant could not be allowed to change his expressed intention, even though it unquestionably was not foreseen by the testator.

\textsuperscript{62} 177 Md. 26, 7 A. (2d) 180 (1939). There are many other Maryland cases dealing with the same or a very similar problem. Some of the more recent cases are: Colwell v. Rogers, 127 Md. 291, 96 A. 433 (1915); Peter v. Peter, 136 Md. 157, 110 A. 211 (1920); Price v. Price, 162 Md. 656, 161 A. 2 (1932); Pope v. Safe Deposit & T. Co., 163 Md. 239, 161 A. 404 (1932); Mercantile Trust Co. v. Bergdorf & Goodman Co., 167 Md. 158, 173 A. 31 (1934); In re Holton Trust, 169 Md. 640, 182 A. 425 (1935); Kiser v. Lucas, 170 Md. 486, 185 A. 441 (1936). These cases in general affirm the principles laid down in the Allen case, but their language is not as applicable to the present discussion, and a detailed examination of them would consequently be of doubtful value. However, they are interesting in that they show the frequency with which attempts to terminate trusts reach the Court of Appeals, and the frequency with which the latter's decisions of such cases have largely overlooked the particular problem of this discussion. It would seem that an attorney confronted by an attempt to terminate a trust could develop a strong argument that would be in accord both with the Maryland authorities on the particular point and with the chain of reasoning developed in the following note.

\textsuperscript{63} The chain of reasoning proceeds from the rule that a trust will not be terminated, even if the outstanding purposes are performed, unless all
In *Harrison v. Denny*, the testator devised real and personal property in trust for his daughter for life, with remainder (in the event of her death without children or descendants) "in further trust" for such other descendants of the testator as she should by will appoint. She died unmarried and without issue, but exercised the power of appointment, leaving shares of varying amounts and kinds of property to certain persons within the class of possible remaindermen. The trustees then filed a bill for partition and sale of the trust property, in order to make distribution to the appointees. The latter objected, on the ground that all the duties of the trustees ceased upon the death of the life tenant. The Court of Appeals held that the trustees had the further duty of making distribution, but their implied powers were sufficient to do this, and therefore their bill was unnecessary. In reaching this decision, the Court stressed intention, but did not indicate what its holding would have been had it found either no intention or an adverse intention. The case therefore is similar to the *Denton* and *Hagerstown* cases, and would rank with them as a leading precedent for Rule III, except for the fact that it contains no express recognition of the problem of duration of the trustee's interest in personal property trusts.

*Schmidt v. Hinkley* contains language strongly favorable to the rule that intention controls the duration of a trust. However, the property involved was realty, although the trust fund consisted of both real and personal property. The cases of *Buchanan v. Lloyd*, and *Brannan v. Ely* embody similar, although somewhat weaker, statements.

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113 Md. 509, 77 A. 837 (1910).
115 Md. 330, 80 A. 971 (1911).
The suit was brought by the trustees to enforce their contract to sell trust realty to the defendant.
64 Md. 306, 1 A. 845 (1885).
157 Md. 100, 145 A. 361 (1929).
Rule IV

This rule announces that the trustee will be given an unlimited estate unless a contrary intention is manifested. It has the approval of the American Law Institute, but its support in the Maryland cases is at best nebulous. It has never been expressly stated by the Court of Appeals as a possible rule, although the companion Rule V has been so stated several times. Furthermore, it has never been expressly adopted as the controlling principle of any particular case.

On the other hand, it has never been distinctly repudiated. Its status is therefore uncertain, especially in view of the ambiguous language usually found in the cases.

The lack of both distinct approval and disapproval, coupled with the confusing language, suggests the possibility that the cases as a whole support this rule, and that the Court of Appeals has not expressed its approval simply because it felt the rule was settled beyond the need of such expression. There is some slight support for such a view, to the effect that the Court has consistently (though silently) tended to follow the theory of this rule in reaching the unlimited estate result where there is no discernible contrary intention. This rule is broad enough to cover the results of all the cases; and certain of the cases include language which might be interpreted as favoring it. These facts seem impressive, until it is realized that Rules III and

69 A. L. I. Restatement of the Law of Trusts, Sec. 88, Subsec. 2. See also Comment "f" and Maryland Annotations thereto.
70 See the discussion of Rule V, infra, and the cases there cited and discussed.
71 The Court has not felt a corresponding reluctance to express its approval of the other rules, however. The view expressed in the text is necessarily based on a finding or opinion that the trend of the Court, as shown by a grouping of all its decisions, is to follow Rule IV. A trend, to be valid, must be supported by valid single authorities, and it is impossible to show any incontestable authority for such a trend, for the reason that this rule has never been expressly stated or followed in any case. Any authority for it must consequently be founded on one's personal interpretation of the Court's language, or perhaps on one's impression that the Court was thinking in terms of Rule IV when it decided the case. It scarcely need be said that this is a rather precarious foundation, since it depends on implications rather than explicit statements.
72 I. e., the trustee can be given either a limited or an unlimited estate, depending on whether or not a contrary intention is expressed.
V are also sufficiently broad to cover the results of all the cases, and that they have been expressly stated and expressly followed by the Court in several cases. It is likewise true that the language which could support Rule IV could in every instance be taken as authority for another rule.

The seemingly inevitable conclusion is that Rule IV has no authoritative support in Maryland, either in single cases or in the cases as a group.

Rule V

This rule states that the trustee will be given a limited estate unless a contrary intention is manifested. The difference from Rule IV is in the principles announced by the two rules—Rule V gives the trustee a limited title while Rule IV is exactly opposed. Both allow a discernible intention to the contrary to control.

Rule V has the solid backing of an excellent, well-reasoned opinion in Prince de Bearn v. Winans. This unambiguous (and therefore unusual) case dealt with a deed of trust executed in France by a grantor domiciled in Maryland. It conveyed personal property to the defendants in trust to hold and pay the income therefrom to B during her life, and on her death, “upon the further trust . . . to dispose of the capital of the fund” as she should by a valid will appoint. B died in 1907 in Russia, leaving her husband and two infant children. Her will bequeathed all of her property to her husband, but the defendants, who administered her estate in Maryland, distributed the trust

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73 See the discussions of these rules, and the cases there cited and discussed.

74 The cases referred to as containing language which could be construed as favorable to Rule IV are: Morgan v. Dietrick, 178 Md. 66, 12 A. (2d) 199 (1940); Denton v. Denton, 17 Md. 403 (1861); Hooper v. Felgner, 80 Md. 262, 30 A. 911 (1894); and Hooper v. Smith, 57 Md. 577, 41 A. 1085 (1898). None of these contain any clearcut indication that their language was meant to favor this rule, and in each the language is susceptible of other interpretations. For these reasons, it was thought best to classify them under the other rules, which have at least some definite support in Maryland.

75 111 Md. 434, 74 A. 626 (1909). This case is sometimes referred to as Galard v. Winans, Galard being the surname of the Prince de Bearn.

76 The deed was executed in contemplation of the marriage of the grantor’s daughter to the plaintiff, a French nobleman.
fund in equal shares to the husband and the two infants. In so doing, they acted under the innocent and mistaken belief that the French law governed, and that under the French law the children were entitled. The husband brought suit in Maryland to recover the two-thirds paid his children; the Court of Appeals held that he was entitled to the whole fund as appointee of his wife under the governing law (Maryland's). Having thus established that the defendants had improperly distributed a third to each of the children, the next question was whether they were liable for their innocent mistake in so paying it. The answer to this in turn depended on whether the trust was still existing, since if they were trustees they would occupy toward the plaintiff-remainderman a fiduciary relation, and the innocence of their mistake would be no excuse. The Court held that the trust still existed, notwithstanding the life tenant's death; and it naturally followed that the trustees were liable as such to the plaintiff.7 The language of the Court on this point is as follows:

"It has repeatedly been held by this Court to be the firmly settled law that where an estate is given to trustees in trust to pay the income to a person for life and at his or her decease merely to hold the same for the use of other named persons, the trust ceases upon the death of the life tenant, because its purposes have been accomplished. In such case where the trust property consists of realty, the Statute of Uses executes the use and vests the legal title in the party to whom the estate was limited at the expiration of the life estate, and a somewhat similar result occurs when the estate consists of personalty, unless there be an apparent intention to the contrary, although the Statute of Uses is, strictly speaking, not applicable to personal property."78

Following this clear recognition of Rule V as the controlling principle, the Court went on to find that a contrary intention within the meaning of the rule was in fact ex-
pressed. The words of the instrument, "and upon the further trust . . . to dispose of the capital of the fund", were italicized by the Court,\textsuperscript{79} which in the following paragraph said:

"A fair construction of that instrument, according to its general tenor and the ordinary meaning of the language used in it, requires us to hold that the grantor did not intend the active duties of the trustees to cease upon the death of his daughter but intended also to impose upon them the further active duty of disposing of the capital of the trust fund, upon her death, to such persons and in such manner as she might by her will appoint."\textsuperscript{80}

This case was expressly approved and followed in the later case of \textit{Colburn v. Union Infirmary},\textsuperscript{81} where there was a trust of personalty for C for life, with remainder in trust for certain charitable institutions. However, the income only of the property was included in the remainder, and the trust was for that reason attacked as a perpetuity. The Court sustained the trust, by holding that the institutions took absolutely, both as to income and corpus, on the death of the life tenant.

In \textit{Lyon v. Safe Deposit & Trust Company},\textsuperscript{82} the testator bequeathed to his sisters all the income which his executor, the Trust Company, should derive from its investment of certain securities and money described in the will. The Court held that this created a trust in favor of the sisters, but did not give them the absolute interests in the property, and that the trusts thus created were not void as being of indefinite duration, although the testator did not expressly limit them. On the duration point, the Court said:

". . . there is nothing in the will from which it can be said that he intended what we have spoken of as a trust to be continued beyond the lives of his respective sisters—there being no gift over after their death, or anything to indicate that the trustee should hold the

\textsuperscript{79} 111 Md. 434, 476, 76 A. 626, 642 (1909).
\textsuperscript{80} Ibid.
\textsuperscript{81} 114 Md. 94, 78 A. 817 (1910).
\textsuperscript{82} 120 Md. 514, 87 A. 1089 (1913).
property beyond that time. . . . Upon the death of either of the three sisters, the trust as to the fourth of the property out of which the income payable to her is derived will terminate and be payable to the person or persons entitled to it, and so on with each of the others. 83

This language seems to indicate that the Court was applying Rule V, and that it cut off the trustee's title in the absence of a contrary intention.

A similar case is Hooper v. Felgner, 84 which at first glance seems flatly to apply Rule II. On a closer examination, it becomes apparent that Rule II was applied in the absence of a contrary intention—in other words, the exact requirements of Rule V are met. At one point in the opinion, the Court said, "We find nothing from which it can be inferred that the testator meant the trust to continue after the death of his daughter, the life tenant." 85

The case of Hooper v. Smith 86 is related to the Hooper v. Felgner case, in that it construed another clause of the same will. In point of time, it is the later by four years, but it is the harder of the two to classify. There is no question that it held that the trustee's title ceased on the death of the life tenants, and that the remainderman then took free and clear of the trusts. However, it is impossible to say definitely which rule the case applies, since in the same paragraph, 87 the Court used language which could be construed as favoring either Rule II, III or V. In view of the fact that it cited the earlier Hooper case in this same paragraph, and that it reached the same result as that case, it is probably best classified as a companion authority for Rule V.

In Lee v. O'Donnell 88 the testator bequeathed his residuary estate to trustees, and directed them to hold 1/20th

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83 120 Md. 514, 532, 87 A. 1089, 1096 (1913).
84 80 Md. 262, 30 A. 911 (1894).
85 80 Md. 262, 273, 30 A. 911, 913 (1894). It is perhaps significant that the trustee's brief strongly urged the Court to take the view that his title was divested because the testator had expressed no intention to extend it.
86 88 Md. 577, 41 A. 1095 (1898).
87 86 Md. 577, 583, par. 2, 41 A. 1095, 1096, par. 2 (1898).
88 85 Md. 558, 52 A. 979 (1902).
of it in trust for his grandson Oliver during his life, and after his decease, "in trust that the said 1/20th . . . shall go to and become the property of the child or children of my said grandson . . .", or if he have no children, then "in trust" for three other named grandchildren. Oliver died unmarried and without issue, and the question was whether the trust ceased absolutely on his death. The Court held that it did; stating that the solution depended upon the application of "certain well-settled principles of law" and the expressed intention of the testator. The Court proceeded to state the principle as follows:

"The rule of law is well settled that where no intention of the contrary appears, the language used in creating the trust estate will be limited and restrained to the purposes of its creation, and when they are satisfied, the estate of the trustee ceases to exist, and his title becomes extinct." 89

The Court found that the testator did not intend the trusts to last forever, even though he placed no express limit to their duration, and thus eliminated the possibility of a "contrary intention". In view of the facts, language, and result of the case, it appears that Rule V was followed. The Court was doubtless influenced to cut off the trustee's title by the fact that a contrary result would have made the trusts void by reason of the rule against perpetuities. 90

Long v. Long, 91 the first case to state Rule V, contains a very distinct expression of approval which is unfortunately dictum, since the trust property in that case was realty.

It is obvious from the foregoing that the law on this point is considerably confused. It is impossible to state a single rule and label it "the law of Maryland", although a leading text on trusts 92 gives the impression that the law is thus crystallized. However, the break-down of cases into five more-or-less distinct groups is valuable because two general conclusions can be drawn therefrom. They are:

89 95 Md. 538, 545, 52 A. 979, 981 (1902).
90 The precept is well settled that where there are two possible constructions, one of which will sustain and the other of which will defeat, the sustaining construction will be preferred.
91 62 Md. 33, 65-66 (1884).
92 1 Bogert, TRUSTS AND TRUSTEES (1935) 601, n. 40.
1. **The Court apparently prefers to let a stated intention control.** With a single leading exception,⁹³ the Court has refused to bind itself by decisively adopting either of the two absolute rules (I and II).

2. **The Court apparently prefers the “limited duration” theory.** Rule II makes this theory mandatory, and Rule V favors it; both have strong support. On the other hand, the Court has especially avoided a definite commitment to the “unlimited duration” theory. Neither Rule I, which makes the “unlimited duration” theory mandatory, nor Rule IV which favors it, has the support of a single authoritative decision.

When the mass of conflicting statements is reduced to these simple generalizations, it is easy to see why Rule V is superior from the standpoint of Maryland authority. It alone is in harmony with both the above-stated trends, since it alone combines the limited estate rule with the intention rule. Likewise, it is in better harmony with the individual cases which make up the general trends. This is clear when some of those decisions, seemingly at variance with Rule V, are examined as to their result and the reasoning which brought it about. For example, three cases have been cited as authority for Rule III. In all three cases,⁹⁴ the trustee's title was preserved, notwithstanding the life tenant's death. In all three cases, this was done on the expressed ground that the facts showed an intention to that effect. Such an intention is manifestly "contrary" within the meaning of Rule V, and by the terms of that rule would produce the same result—namely, extension of the trustee's title. Hence, it could plausibly be argued that these cases are in accord with Rule V, in that

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⁹³ Probably the savings bank trust cases, discussed supra, circa n. 45, are too strongly intrenched to be upset by a mere "intention" trend, and must be considered as constituting an exception to it. In fact, the savings bank trust device seems to have received specialized treatment in all its aspects. For a full exposition of the rules peculiar to it, see Katzenstein, supra, n. 45.

⁹⁴ The cases referred to are Hanson v. Worthington, supra, n. 54; Denton v. Denton, supra, n. 53; and Hagerstown Trust Co., Ex'r of Mealey, supra, n. 56.
each gave the trustee an unlimited estate because of the creator's "contrary" intention to that effect. It is noteworthy that an identical procedure was expressly followed in Prince de Bearn v. Winans,\textsuperscript{95} the leading case which supports Rule V.

A similar process of reasoning could conceivably be used in order to fit the savings bank trust cases under Rule V. These cases cut off the trustee's title, and thereby reach the result favored by the rule. It could be argued that this was done because the facts did not show a "contrary intention", which would be necessary in order to reach an opposite result. It is true that the trust agreement in such cases\textsuperscript{96} rarely would furnish grounds for finding a "contrary intent". It is also true that this argument would be shaky, in view of the strength of the precedent-setting case.\textsuperscript{97} But it is a possible argument; and it shows that both types of cases might be harmonized under Rule V.

**Conclusion**

It is not the purpose of this discussion to argue that any of the rules is now the settled law of Maryland. Such a statement would be foolhardy. Rather, the purpose is to point out the nature and importance of the problem, the lack of a clear solution, and the existence of several possible answers. The merits of each have been discussed above,\textsuperscript{98} and it was there pointed out that the disadvantages of the first three rules seem to make them unworthy of selection as the "Maryland Rule". On the other hand, it is clear that the Court of Appeals could creditably adopt either the Restatement-approved Rule IV or the related Rule V. The latter has strong support in the Maryland cases and is consistent with the rules applied to trusts of real property. However, even though it appears broad enough to allow a just result in all cases, it may be open to objection (especially, it would seem, where the trustee

\textsuperscript{95} Supra, n. 75.
\textsuperscript{96} Supra, n. 46.
\textsuperscript{97} See supra, circa notes 45-47, where it is indicated that the case is a strong and leading authority.
\textsuperscript{98} See supra, circa notes 9-11 and 92-97.
is a corporation) on the ground that it reaches a result socially undesirable, in that it gives the beneficiary a less potent remedy against the trustee and thereby tends to encourage all trustees to be less careful with trust monies. The former, Rule IV, extends a powerful remedy to the beneficiary and has the support of the American Law Institute, but seems to have no authoritative support in the Maryland cases.

In view of the existing conflict and uncertainty, it is to be hoped that the Court at its next opportunity will conclusively accept a single rule, by an opinion clearly written with an awareness of the existence and relative worth of the several possible solutions.