

FIDUCIARY ADMINISTRATION--DIVIDEND APPORTIONMENT  
AND RELATED STOCK RIGHTS

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DIVIDEND APPORTIONMENT  
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The questions relevant to apportionment of dividends are some of the most technical in the field of fiduciary administration. The origins of the theories are ancient, and the problem has been compounded by the fact that there is no consensus as to proper treatment. As the life interests benefited by a trust are necessarily in direct conflict with the remainder interests, the area is at best a pitfall to all trustees, whether careful or indifferent. At the outset the following may be instructive, for it represents a common judicial attitude:

"This case is merely an evidence of the interminable struggle between life tenants and remaindermen, intact value and income, the primary objects of the testators' bounty and those of remoter interests. Judicial opinion may cause struggle to hesitate, but as long as trusts continue, these quarrels will not end. The legal mind striking at an expression here and there in judicial decisions will find some new phase to perplex and disturb. We thought that In re Waterhouse's Estate . . . would put an end to our difficulties; but such a result was more expectation than realization. . . ." Kephart, Justice, writing for the majority; In re Operman's Estate, 179 A. 729.

The need for dividend apportionment arises when successive interests are provided for under the terms of the same trust. Ordinarily, this takes the form of a trust with an income life beneficiary, with provisions for remaindermen, though a trust with

successive life beneficiaries can raise apportionment problems. It should be noted that not every dividend is apportionable. The time of the declaration of the dividend in relation to the time the trustee receives the corpus,<sup>1</sup> or the time of the declaration in relation to an event terminating a prior interest<sup>2</sup> gives rise, in some instances to apportionment problems. Additionally, the type of dividend received gives rise to apportionment duties at times,<sup>3</sup> but it should be kept in mind, that as a general rule, dividends received in the usual course of trust administration are non apportionable income items.<sup>4</sup>

#### THEORY OF DIVIDEND TREATMENT

As rents, interest, and annuity payments are apportionable generally,<sup>5</sup> the treatment of dividends as pure income and therefore non apportionable is the subject of volumes of litigation, statutory enactments, and critical commentary. The foundation for this treatment, as with interest, rents, and annuities is said to rest in:

"(1) The established legal theories regarding different types of income, and (2) the presumed or probable intent of the settlor as to the destination of the disputed item, in light of accrual theories." <sup>6</sup>

Whereas interest, rents, and annuities accrue on a day to day basis,<sup>7</sup> dividends accrue only by action of the directors of the corporation. It is on this basis that the courts have distinguished dividends from income items like rent and interest, and have held

generally that dividend payments are to be credited to the income beneficiary.<sup>8</sup>

Another factor cited in favor of the general rule is that a stockholder, whether a trustee or otherwise, has no power to compel a distribution of corporate profits.<sup>9</sup> Bond, note, or rent payments accrue because of contractual obligations, on a day to day basis and are referable to a fixed interval. Upon default, the trustee can force payment or seek other appropriate legal redress. But a corporation failing to pay a dividend, of course, receives different treatment. The stockholder has no contract he may turn to to compel payment. This fundamental difference in equity and debt assets lends support to the non-apportionment rule, and is cited along with the accrual theory generally.

This rule is subject to statutory exceptions in a limited number of states. For example, the North Carolina General Statutes provide:

"In all cases where rents, rent charges, annuities pensions, dividends, or any other payments of any description, are made payable at fixed periods to successive owners under any instrument. . . the payment. . . shall be apportioned among successive owners according to the parts of such periods elapsing. . . ."10 (emphasis added)

The important words in the statute concern the dividends being made payable in reference to a "fixed period." Though an obvious attempt to ascribe to dividend payments the same treatment

as other income items, i.e. rent, interest, the courts have viewed the provisions generally as a mere restatement of existing law, refusing to move from their position that dividends do not accrue on a day to day basis. Zell vs. Safe Deposit and Trust Company of Baltimore<sup>11</sup> decided a dividend apportionment problem under Maryland's apportionment statute, which concededly changed the common law rule and read as follows:

"All rents, annuities, dividends and periodical payments in the nature of income, payable under the provisions of any will, deed, or other instrument. . . shall, like interest on money lent, be considered as accruing day to day, and shall be apportioned in respect of time accordingly, unless otherwise expressly stated by the instrument under which they are payable. . . ." <sup>12</sup> (emphasis added)

Refusing to treat the dividend in question as apportionable, the court made extensive review of common law precedents and similar statutes, resting its decision on the fact that the dividends in question were not declared at regular intervals, and could not, therefore be said to accrue on a day to day basis despite the provisions of the act. Notwithstanding the language of the act it was held to apply only ". . . to such dividends as are regularly declared at uniform intervals and have been paid for years on that basis."<sup>13</sup>

Perhaps the leading case in point is In Re Nirdlinger's Estate,<sup>14</sup> where the court reached a similar result under an almost identical statute, saying:

"When it has been shown that a corporation has pursued a uniform dividend policy over a period of time, making regular and periodic payments so that the time and amount of future dividends may be forecast with a strong likelihood of accuracy, an ordinary dividend declared in pursuance of its policy must be apportioned in accordance with the legislative mandate contained in section 22 of the Fiduciaries Act. In such cases only is it justifiable to treat dividends like interest on money lent and consider that they were earned on a per diem basis." (citing cases) <sup>15</sup>

The Uniform Principal and Income Act, subject to certain exceptions to be noted hereinafter, takes the traditional approach with regard to dividends, declaring:

". . . all dividends. . . shall be deemed income." <sup>16</sup>

The Texas version of the Uniform Act expressly excluded dividends from general apportionment treatment, <sup>17</sup> and makes ordinary dividends conclusively income items unless the corporation designates them otherwise, with the following language:

". . . all dividends, . . . unless the declaring corporation designates the source thereof as capital assets of the declaring corporation shall be deemed income." <sup>18</sup>

It is seen, then, from the Texas Trust Act that at times the source of the dividend payments (earned surplus or capitalization accounts) are considered a relevant factor in determining whether or not a dividend is subject to apportionment. Scott points out that this "source basis" of dividend treatment has been advanced for a different rule of apportionment than generally prevails. <sup>19</sup> In this

respect, it is readily apparent that dividends actually paid come in most instances from income or surplus of the corporation referable to some period other than that intervening between declaration date and the date of the last payment, or from an account representing something other than earnings. Scott says that an apportionment method is more logical on this "source" basis than upon the artificial day to day accrual theory, but that its cumbersomeness in administration has been the argument against its adoption.<sup>20</sup> This basis was once used in New Jersey, but has since been discarded.<sup>21</sup>

Though strong equitable arguments can be advanced for apportionment of dividends generally on some basis, the foregoing indicates the unwillingness of the courts to give them that treatment, except as reflected in the remainder of this paper. It should be kept in mind that a settlor is generally free to make a different provision regarding dividends,<sup>22</sup> and if the prospective trustee has any control over the drafting of the trust instrument, substantial administrative burdens and disputes can be eased by a clear declaration of purpose and directions for disposition.

#### NECESSITY FOR APPORTIONMENT OF DIVIDENDS

As noted earlier,<sup>23</sup> at times there is a necessity for apportionment of dividends. As in other areas of this topic, there is no uniform treatment in the areas demanding apportionment. The following

is an overview of when the apportionment is necessary, and it is to be kept in mind that a meticulous examination of the law of the particular state should be conducted in all situations calling for a decision as to apportionment.

A. DIVIDENDS DECLARED AND PAID AT OR NEAR THE START OF THE TRUST

Generally, a dividend declared but unpaid on stock at the time the trustee receives it is credited, when paid, entirely to the corpus of the trust.<sup>24</sup> This rule also obtains as to rent, interest, and annuities, or reversions accrued but uncollected at the time of the settlor's death or other event starting the trust.<sup>25</sup> Upon declaration of a dividend to record shareholders, although not yet paid, a debtor-creditor relationship between the stockholder and the corporation is established.<sup>26</sup> Thus, as to the declared dividends, as opposed to the shares, debt, instead of equity assets are held.<sup>27</sup> When a shareholder conveys to the trustee, stocks upon which a dividend has been declared, he is conveying a chose in action, as enforceable rents or interest payments due. Though this is not an accrual situation, the payment is not income and goes to corpus.

1. Dividends Declared Prior To Trust Inception: Made Payable Thereafter

To illustrate the operation of the above theories, suppose that the settlor of a testamentary trust owns one thousand shares of X corporation. By the terms of his will, the settlor devises the shares to a trustee, with a provision for income from the shares to

be paid to his wife for life, and the remainder to be paid to his son upon the death of settlor's wife. On January 1st, the directors of X corporation declare a dividend of one dollar per share, to be paid to shareholders of record as of the declaration date, payable out of earned surplus on March 1st. The settlor dies on February 1st and the trustee takes the stock. When the dividend is received, it is credited in its entirety to the corpus, in favor of the remainder beneficiary. (see Appendix A)

But suppose that under the same facts, X corporation's directors declare a dividend to be paid to the record stockholders as of the date of dividend payment, March 1st. At the date of the settlor's death there is no debtor-creditor relationship between X corporation and the settlor, as the record owner is undetermined, and therefore the underlying rule does not apply. In this case, the dividends are pure income.<sup>28</sup> This second situation is not a common occurrence, as the corporate administrative burden would be substantially increased by its repeated use, and as the market readily takes declared stock dividends into consideration.

These general examples are borne out by provisions of the Uniform Principal and Income Act,<sup>29</sup> which provides:

"In applying this section the date when a dividend accrues to the person who is entitled to it shall be held to be the date specified by the corporation as the one on which the stockholders entitled thereto are determined, or in default thereof the date of declaration of the dividend."

The Texas adoption of the act achieves the same result with similar wording, to wit:

"In applying this section the person who is entitled to a dividend shall be the tenant at the time specified by the corporation as the date on which the stockholders entitled thereto are determined, or if no such time is specified then the tenant at the date of declaration of the dividend, shall be entitled thereto." <sup>30</sup>

Note that these statutes are general in nature, in that they extend not only to the situation of a trustee receiving shares with declared dividends, but also are determinative of dividend treatment when one of a series of successive beneficial interests terminates, or when the remainderman receives the proceeds.<sup>31</sup> The Restatement adopts an apportionment rule to accrued income in general,<sup>32</sup> in regard to successive interests, but as regards dividends, different treatment is given and in accord with the general rule, it is provided therein that:

". . .if shares of stock of a corporation are held in trust to pay the income to a beneficiary for a designated period and thereafter to pay the principal to another beneficiary. . . dividends . . . if payable to shareholders of record on a designated date which is within the period; or, if no such date is designated, if declared at a date within the period."<sup>33</sup>

These rules may be altered by provision in the trust instrument,<sup>34</sup> except insofar as they violate an accumulation statute by freezing assets too long. This is another area where a prudent

trustee, if the opportunity presents itself, can avoid administrative problems. This is not a cure all, however, because a stock split, for example, is not effected by a clause making all dividends income.<sup>35</sup>

## 2. Dividend Declared Prior to Trust-No Payment Date Stated

Occasionally, a corporation declares a dividend without making any provision for payment to record shareholders of any particular date. If the action by the corporation declaring the dividend is prior to the date of the trust, and the trustee receives the property before the corporation acts to determine the date upon which record ownership is determinative of who receives the payment, all the dividend is credited to corpus.<sup>36</sup> This rule prevailed at common law. In Lock vs. Venables,<sup>37</sup> the testatrix had provided for life beneficiaries as to income, charging a specified number of shares to the life tenants benefit. During the testatrix's life, a dividend was declared payable ". . . on or after the 10th day of June then next." The testatrix died before the payment, and the English court, on argument that the dividend was separated from the stock when declared, and therefore passed to the estate instead of to the income beneficiaries, held the dividend attributable to corpus in its entirety. As was pointed out above, the courts have not generally looked to the "source" of the dividend in relation to when funds were earned to determine apportionment,<sup>38</sup> but in this case it seemed to be important to the court that the money was earned by the corporation prior to the

testatrix's death.

This situation is specifically covered by statute in New Jersey, where it is provided:

"If a dividend . . . is declared by a corporation . . . and such corporation designates no record date on or as of which the stockholders of such corporation entitled to such dividend are to be determined, such dividend shall be income to the person who is tenant on the date such dividend is declared. . . ."40

The above statute specifically retains the common law rule, and the Uniform Principal and Income Act and the Texas provisions cited and quoted in the foregoing section are of the same tenor.

(See Appendix A)

#### B. DIVIDENDS DECLARED DURING THE PERIOD OF THE TRUST

Ordinarily dividends do not require apportionment, as has been pointed out, but after the trustee has received the property and has solved the problems relating to the start of administration situations may arise where the question is presented. Illustrations follow, indicating that the situation arises ordinarily at the end of the life tenancy, or at the end of one of a number of successive life interests.

##### 1. No Date Specified For Determination of Record Shareholders

Suppose that a trust is being administered providing for an income life beneficiary, with the corpus to be paid over at the death of the life tenant. X corporation, whose common shares form the trust res, declares a dividend on January 1st, without stating

a date upon which record owners are to be determined. The income beneficiary dies on February 1st, and March 1st the dividend is paid. In such case, the life tenant's estate is entitled to the dividend as income.<sup>41</sup> This follows the general theory as developed in prior sections, and a reading of previously cited statutes shows that the rule obtains generally under the statutes. (see Appendix A)

2. Dividends Declared Prior to Trust Creation to Shareholders of Record on a Date Prior to Trust, Payable After Creation

Under statutes<sup>42</sup> and case law,<sup>43</sup> a dividend declared prior to the trust, to be paid to record stockholders of a date prior to the trust, is credited to corpus regardless of the fact that it is received after the trust. This is an extension of the general theory and no exceptions are readily apparent. (See Appendix A)

3. Dividends Declared During the Trust Period-Payable to Shareholders of Record on a Date Prior to Termination of the Trust

In accordance with the rule cited in Section 1 above, a dividend is income when declared prior to trust termination, but payable thereafter. The estate of the life beneficiary, or the prior beneficiary if successive life interests are provided for, is the proper recipient of the income.<sup>44</sup> (See Appendix A)

4. Dividends Declared During the Trust Period-To Shareholders of Record Date after Termination

Again, the general rule applies. If on January 1st a dividend is declared during the trust period, to record owners as of March 1st,

and the life tenant dies on February 1st, the payment is corpus, and not income.<sup>45</sup> (See Appendix A)

The law in the areas described above is at present relatively the same, primarily because of statutory enactments in the field.<sup>46</sup> It should be kept in mind that if a settlor wishes a different disposition most statutes applicable,<sup>47</sup> and the Restatement,<sup>48</sup> are couched in language allowing a different disposition by the terms of the trust instrument. In a later section,<sup>49</sup> the question of how much latitude is allowable will be considered.

#### C. NECESSITY FOR APPORTIONMENT BECAUSE OF THE TYPE OF DIVIDEND

In the foregoing sections, the assumption has been that the dividends payable have been what the law terms "ordinary" dividends. "Ordinary" dividends are to be contrasted with "extra ordinary" dividends, and both are distinguishable from such corporate adjustments and distributions as splits, warrants, rights, and liquidating dividends.

##### 1. Ordinary Dividends

Dividends received in the course of trust administration are ordinarily non-apportionable, if they are "ordinary."<sup>50</sup> Just what constitutes an ordinary dividend is not clear, and in as much as the question usually arises after the fact, this is a highly perilous area for the fiduciary, though legislatures do not hesitate to draft in terms of "ordinary" and "extraordinary" dividends.

The Restatement, without attempting an all-encompassing definition, takes the position that whether dividends are "ordinary" in the legal sense depends on the "circumstances of the case." 51

Circumstances said to be relevant are:

- "(1) whether similar dividends have been declared with regularity in the past;
- (2) whether such dividends are regularly paid out of current earnings;
- (3) the frequency with which such dividends are declared;
- (4) the size of the dividend in relation to the market value of the shares at the time of the creation of the trust;
- (5) the designation, if any, placed upon it by the directors of the corporation;
- (6) the source of earnings from which the distribution is made." 52

There is little comment in the cases as to the make up of an ordinary dividend. 53 The leading cases discuss and cite the Restatement criteria 54 in part. Some of the criteria in the Restatement are not found in the cases, but the cases do suggest that the source, size, and regularity of the dividends is important. As the cases generally refer to the Restatement, this might suggest the Restatement has overstepped its mission and formulated, rather than reflected, the law.

Notwithstanding the criteria, great care must be taken before a decision is made to the nature of the dividend. For example, in Matter of Postley, 55 the trustee held shares that had received regular quarterly dividends of \$2.50 per share. These dividends were referred to by the corporation as "quarterly" dividends. In

addition, for part of the disputed period, a payment ranging from \$2.50 to \$5.50 per share was paid along with the "quarterly" dividend. These were termed "extras" by the corporation. At a time when "extras" were not paid along with the "quarterly" dividend, the corporation paid what it denominated "specials" in the amount of \$15.00 per share. Though it was undisputed that the dividends were paid in part from surplus accumulated prior to the creation of the trust, all payments were declared "ordinary" and thus non-apportionable.

This case truly suggests that the nature of the payment is determined on an ad hoc basis, so a trustee acts at his peril unless there is a case squarely in point in the jurisdiction in which he acts. The problem is simplified where a statute is applicable, and to an extent, the older distinctions have lost their importance. The Texas Trust Act, for example, fails to recognize the distinction with the following wording:

" . . .all dividends . . .including ordinary and extraordinary cash dividends. . .shall be deemed income." 56

The Uniform Principal and Income Act has the same wording.<sup>57</sup> Where such provisions are in effect, the burden of administration is considerably eased, and the problems presented in the next section, for the most part, are not presented.

## 2. Extraordinary Dividends

As to extraordinary dividends, either cash or stock, apportionment is handled in several ways, depending upon what view a state takes.<sup>58</sup> Some states divide the payment between income and principal, while others credit the receipt either to income or to principal.<sup>59</sup> To further confuse the issue, there are essentially three different kinds of extraordinary dividends which will be considered in the next sections. However, a statement on methods of apportionment is included before consideration of the different dividends.

Though adopted or rejected by statute in many jurisdictions, the major methods of apportionment can be classed as the Pennsylvania rule, the Massachusetts rule, or some combination of the two.<sup>60</sup> Under the Massachusetts rule, cash dividends are treated as income, and stock dividends are treated as principal.<sup>61</sup> This is the view adopted by the Texas Trust Act with the following language:

"All dividends on shares of a corporation. . . forming a part of the principal which are payable in its own shares shall be deemed principal . . . all dividends payable otherwise. . . including ordinary and extraordinary cash. . . shall be deemed income."<sup>62</sup>

This retains the view of the Uniform Principal and Income Act,<sup>63</sup> and is in accord with the present Restatement.<sup>64</sup> There has been a shift of authority in recent years,<sup>65</sup> and the Texas view prevails. However, at the time of the original Restatement, the

Pennsylvania rule obtained as to a majority of the jurisdictions, requiring apportionment of extraordinary cash or stock dividends.

Under the Pennsylvania rule, "... such dividends are treated as income insofar as they do not impair the intact value of the trust."<sup>67</sup> In simpler terms, this means that if the earnings from which the dividend is declared accrued prior to the trust, it is treated as principal.<sup>68</sup> Concomitantly, if the earnings from which the dividend is paid accrued after the trust, it is considered income.<sup>69</sup> As pointed out earlier,<sup>70</sup> any method of reference to underlying source of funds is difficult to manage, and is cited to be a reason the rule has fallen into disfavor generally.

To illustrate the Pennsylvania rule, suppose that a trustee receives as assets on January 1st, at the start of the trust, 1,000 shares of X corporation. On February 1st, X corporation declares an extraordinary dividend of \$4.00 per share for each outstanding share. The trustee must now determine when the earnings accrued to the corporation out of which the \$4.00 will be paid. If a determination is made that the surplus accrued prior to January 1st, the payment is corpus; if accrued thereafter, it is income.

In Rhode Island, a combination of the two rules is followed,<sup>71</sup> making extraordinary cash dividends apportionable and stock dividends corpus. It should be noted that the above examples do not exhaust the possible treatments. In New York, and Kentucky, other variations

exist.<sup>72</sup> Suffice it so say that the relative merits of the rules have received voluminous criticism and discussion,<sup>73</sup> which is beyond the scope of this paper.

### 3. Dividends of Property

Occasionally, a corporation declares dividends payable in property. In this case, the rules applicable to extraordinary cash dividends are used.<sup>74</sup> Whereas a stock dividend merely maintains the proportionate interest of a stockholder, when the distribution is in the form of property, it is like a distribution of cash.<sup>75</sup>

In accordance with rules relating to extraordinary dividends generally, the dividend is apportioned in jurisdictions following the Pennsylvania rule,<sup>76</sup> and the same rule applies in England.<sup>77</sup> The Massachusetts rule jurisdictions allot the dividend wholly to income.<sup>78</sup> Though some of the cases concern the apportionment of property manufactured by the corporation, the usual situation is the declaration of a dividend in the form of securities of another corporation. The Revised Uniform Principal and Income Act specifically provides for this common occurrence with the following language:

" . . . all corporate distributions are income, including . . . distributions of . . . shares or securities or obligations of corporations other than the distributing corporation, and the proceeds of the . . . property distributions."<sup>79</sup>

Texas accords the same treatment (also followed in the original

Uniform Principal and Income Act)<sup>80</sup> with the following statutory provision:

" . . . all dividends payable otherwise than in shares of the corporation, company or association itself, including . . . dividends payable in shares or other securities or obligations of corporations other than the declaring corporation, unless the declaring corporation designates the source thereof as capital, assets of the declaring corporation shall be deemed income." <sup>81</sup>

In accordance with the rule embodied in the Texas statute, if the distribution comes from capital, the entire amount is credited to corpus, even under the Massachusetts rule. <sup>82</sup>

A somewhat hybrid situation arises when a corporation, under order of a regulatory commission, is ordered to dispose of shares it holds in another firm. In at least one instance, such an order has caused legislative action in a number of states because of the size of the distribution. The problem arose when the du Pont company was ordered to dispose of its holdings in General Motors. Colorado's legislature, with the specific block of stock in mind, amended that state's version of the Uniform Principal and Income Act as follows:

"Any distribution of shares or other securities or obligations of a corporation other than the distributing corporation, or the proceeds of sale or other disposition thereof, made as a result of a court decree or final administrative order by a government agency ordering the distribution corporation to divest. . . shall be deemed principal unless the distributing corporation designates that the distribution is wholly or partly in lieu of an ordinary cash dividend in which case the distribution to the extent that it is in lieu of the

ordinary cash dividend shall be deemed income."<sup>83</sup>

At least nine other states have responded legislatively to the problem of forced distributions.<sup>84</sup> Absent a statute, such distributions have been held in some cases to amount to a partial liquidation and allocable to principal.<sup>85</sup> This is not true of every such case, as in Old Colony Trust Company vs. Aymar,<sup>86</sup> where the Securities Exchange Commission had ordered Standard Oil of New Jersey to dispose of its stock in Consolidated Natural Gas Company. The court found there that no impairment of capital resulted, and treated the distribution as income. The doubt as to the proper treatment under the Uniform act has prompted the statutory response.<sup>87</sup> The Revised Uniform Principal and Income Act treats the distribution as principal in this case.<sup>88</sup>

#### CONCLUSION

As the foregoing sections illustrate, the field of dividend administration is highly complex. As the problem arises frequently the trustee should have little trouble resolving the question if he is diligent and thorough, for there is no end to the cases dealing with the subject.

It should be remembered that this area is plagued by the competing interests to be served, perhaps more than other areas of administration. The general tone of the cases suggest that the dissatisfied beneficiary will not hesitate to have his estate declared the recipient of the payments. The peril to the trustee

lies in the fact that the courts have at times substituted legalisms for logic, penalizing the unwary and creating mass confusion in the law.

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APPENDIX A

RELATIONSHIP OF DECLARATION DATE TO DATE OF PAYMENT

In each instance, assume that the date of declaration of the dividend by the corporation is January 1st; that the date the trustee assumes control of the assets is February 1st, and that the date of dividend payment is March 1st.

SITUATION	DIVIDEND TREATMENT
1. If declared in favor of record owners as of the date of the declaration--	Corpus
2. If declared in favor of record owners as of the date of payment--	Income
3. If no date is designated for the determination of record owners--	Corpus
4. If received during the course of administration--no date designated as to determination of record owners--	Income
5. If declared prior to trust date, payable to record owners of a date after the trust comes into being, even though received during the actual course of administration--	Corpus
6. If declared during the course of administration but payable to record shareholders as of a date after the termination of the life beneficiaries' interest--	Income
7. If declared during the course of administration, to stockholders of record as of a date subsequent to the termination of the trust--	Corpus

## REFERENCES

1. See infra, p. 7.
2. Id.
3. See infra, p. 13
4. Scott, Sec 236  
Bogert, Sec. 818  
Restatement of Trusts 2d, Sec. 236
5. Id.
6. Bogert, Sec. 818
7. Id.
8. Id.
9. Id.
10. North Carolina Gen. Stats., Sec. 42-6 (1958).
11. 173 Md. 578, 196 A. 298 (1938).
12. Md. Code of Public Gen. Laws, Art. 93 Sec. 305C (1929).
13. Ibid., at p. 302.
14. 327 Pa. 160, 193 A. 33.
15. Id., at p. 38.
16. Uniform Principal and Income Act, Sec. 5(1).
17. Tex. Rev. Civ. Stat. Ann. art. 7425b-28.
18. Tex. Rev. Civ. Stat. Ann. art. 7425b-29A.
19. Scott, Sec. 236.
20. Id.
21. Id.
22. Galloway v. Julier, 16 So. 2d 434 (1944).
23. See p. 2, supra.

24. Bogert, Sec. 818.
25. *Id.*, at p. 337.
26. In Re Operman's Estate, 179 A. 729(Penn.-1935).
27. Bogert, Sec. 818.
28. *Ibid.*, at p. 823.
29. Sec. 5(5).
30. Tex. Rev. Civ. Stat. Ann. art. 7425b-29
31. See also, statute cited in note 10, supra.
32. Restatement of Trusts, 2d, Sec. 235A.
33. *Id.*, sec. 236.
34. *Id.*, Sec. 236, comment b.
35. *Id.*
36. Scott, Sec. 236.2, at p. 1972.
37. 27 Beav. 598, 54 Eng. Reports 239 (Rolls Ct. 1859).  
See Also: De Gendie v. Kent, L.R. 4 Eq. 285 (1867).
38. See p. 6, supra.
39. 54 Eng. Reports 239,
40. New Jersey Stat. Ann. Title 3A: 14A-8A.(1952).
41. Scott, Sec. 236.2 at pages 1973, 1974.
42. Tex. Rev. Civ. Stat. Ann. art. 7425b-29  
Uniform Principal and Income Act, Sec 5.
43. In Re Winden's Will Trust, Ch. 916 (1951).
44. Scott, Sec. 236.2
45. *Id.*
46. See Note 42, supra.
47. *Id.*

48. Restatement of Trusts 2d, Sec. 236.
49. See supra, note 22.
50. Scott, Sec. 236  
Bogert, Sec. 818  
Restatement of Trusts 2d, Sec. 236
51. Restatement of Trusts 2d, comment to clause a, Sec. 236
52. Id.
53. Scott, Sec. 236.1, at p. 1969.
54. See Estate of Boyle, 235 Wisc. 591, 294 N.W. 29; Central Hanover Bank and Trust Co. v. Burns, 16 N.J. Super. 199, 84 A.2d 475(1951).
55. 251 App. Div. 469, 296 N.Y. Supp. 627 (1937).
56. Tex. Rev. Civ. Stat. Ann. art. 7425b-29A.
57. Uniform Principal and Income Act, Sec. 5.
58. Scott, Sec. 236.3.
59. Id.
60. Id.
61. Id., at p. 1975, 1976.
62. Tex Rev. Civ. Stat. Ann. art 7425b-29
63. Uniform Principala and Income Act, Sec. 5.
64. Restatement of Trusts 2d, Sec. 236.
65. Scott, Sec. 236.3, at p. 1976.
66. Restatement of Trusts 2d Sec. 236;  
Scott, Sec. 236.
67. Scott, Sec. 236.3.
68. Id.
69. Id.
70. See p. 3, supra.

71. Rhode Island Hospital Trust Co. v. Tucker, 51 R.I. 507, 155 A. 661, 52 R.I. 277, 160 A. 465 (1932).
72. Scott, Sec. 236.3
73. See: Isaacs, Principal-Quantum or Res? 46 Harv. L. Rev. 776(1933); Nemmers, Key Problems in the Apportionment of Increase Between Successive Interests in Personalty, 41 Mich. L.Rev. 815(1943); Cohan and Dean, Legal, Tax and Accounting Aspects of Fiduciary Apportionment of Stock Proceeds: the Non-Statutory Pennsylvania Rules, 106 U. Pa. L. Rev. 153 (1957).
74. Scott, Sec. 236.5 at p. 1987.  
Tex. Rev. Civ. Stat. Ann., art. 7425b-28.  
Uniform Principal and Income Act, Sec. 5
75. Scott, Sec. 236.5.
76. Application of Hottinger, 115 N.Y.S. 2d 79 (1952)
77. In re Kleinwort's Settlement, Ch. 860 (1951).
78. Old Colony Trust Co. v. Jameson, 256 Mass. 179, 152 N.E. 52 (1926).
79. Uniform Principal and Income Act(Revised), Sec. 6(d).
80. Uniform Principal and Income Act, Sec. 5.
81. Tex. Rev. Civ. Stat. Ann. art. 7425b-28
82. Scott, Sec. 236.5, at p. 1991.
83. Colorado Rev. Stat. Ann., 57-4-5(7) (1963).
84. Scott, Sec. 236.6
85. Fulweiler v. Spurance, 222 A.2d 555 (1966)
86. 317 Mass. 66, 56 N.E. 2d 889 (1944).
87. Scott, 236.6 at p. 1992.
88. Revised Uniform Principal and Income Act, Sec. 6(b).