

A Cold Head Is Not Just for Beer Anymore

Author : Gerry W. Beyer

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Thomas E. Simmons, *A Trust for Ted's Head*, 88 **Miss. L. J.** 20 (2019).

Over the past twenty years, a new type of bodily disposition for the deceased has come into vogue. It called cryonics: where the decedent's body (hereinafter called the "frozen person") is preserved at low temperature for an indefinite period until medical technology has hopefully advanced enough to revive the frozen person and give him or her renewed life. The chances of revival are estimated to be extremely slim. Nonetheless, there are approximately 250 people currently in cryonic preservation and about a thousand people who have arrangements for cryonic preservation upon their deaths. Four companies currently provide cryonic preservation, and these future frozen people must enter into contracts with these companies to preserve their bodies for an indefinite period of time (well beyond our lifetimes) and to attempt revival when medical technology has sufficiently evolved. But there are serious problems with these contracts.

After explaining the fascinating facts surrounding how the famous baseball player [Ted Williams'](#) head was placed into cryonic suspension, Professor [Thomas Simmons](#) points out that breach of a cryonics contract is likely (i.e., mishandling the body, incorrect preservation procedures, mismanagement of the cryonics company, early defrosting, etc.) and that enforcement is problematic. Who would enforce it? The frozen person's surviving family members (or their descendants)? The frozen person's estate? Imagine if the cryonics company preserving the body went bankrupt hundreds of years later. Also, Professor Simmons points out that timing is extremely sensitive after death for someone who wants to be cryonically preserved. He explains that a directive in a will for moving the body into cryonic preservation could take many days or even longer to be followed while the body needs to be preserved as quickly as possible. Considering these issues, Professor Simmons proposes that a person planning to be preserved establish a non-charitable purpose trust (a "cryo-trust") which would be a party to the cryonic contract, have standing to sue on behalf of the frozen person, have financial resources to monitor and enforce the contract, determine when medical technology has advanced sufficiently to attempt resuscitation, possess title to the body, and finally provide financial assistance to the formerly frozen person if resuscitation proves successful.

However, several trust law principles may stand in the way of a cryo-trust. Professor Simmons claims that the [Rule Against Perpetuities](#) (RAP), Purpose Trust Rule Against Perpetuities (P-TRAP), and the Beneficiary Principle present challenges to the legal validity of a cryo-trust. Ultimately, Professor Simmons addresses the legal concerns these concepts present (and a way around some of them) and discusses the necessary choice of law and situs selection for a cryo-trust.

But before Professor Simmons lays out his solution to the trust law problems, he briefly describes the interesting history behind human remains directives and how they would be grossly inadequate for this situation. While there are many laws regulating the safety aspects of corpse disposal, the law is quite unclear on how much someone can control the disposition of his or her body after death. In fact, the law is unclear if a corpse is property or "quasi-property." At [Canon Law](#), a corpse had some traditional burial rights, and courts were reluctant to afford expansive rights beyond that. Even today, the law is unclear about the reach of post-mortem burial directives. However, Professor Simmons proposes that a non-charitable purpose trust is the best way to care for and look after the preserved body, but initially, he must overcome some trust law problems.

First, Professor Simmons discusses how RAP may stand in the way of this proposed cryo-trust. RAP is a centuries-old rule that prohibits the remote vesting of contingent future interests. Essentially, if it is *possible* that an interest could

vest more than twenty-one years past the lifetimes of everyone alive at the time of the interest's creation, then the interest is void. Certainly, RAP problems could arise from cryo-trust.

Professor Simmons brings up a scenario where the trust would oversee the care for the frozen person and determine when medical technology has advanced enough to attempt resuscitation. If resuscitation failed, the trustee would distribute the remaining trust property in the manner the frozen person provided in the trust terms. However, it is uncertain whether the interest in the frozen person's beneficiaries would vest at the creation of the trust and thus it would be void under RAP because there is no way to be certain that the attempted resuscitation would occur within the time limit. However, Professor Simmons proposes to structure the trust so that the remaining money goes back to the estate of the frozen person if resuscitation fails. That way, the trust is already vested in the lifetime of the frozen person, thereby avoiding the RAP challenge. Of course, Professor Simmons thinks it would be better to simply select one of the many jurisdictions that have abolished RAP.

Second, Professor Simmons discusses how P-TRAP may present another challenge to a cryo-trust. This rule is concerned about remote trust termination and not remote vesting, which RAP prohibits. Specifically, the non-charitable purpose trust must terminate within the RAP perpetuities period. Clearly, a cryo-trust would last longer than the perpetuities period. The only real solution Professor Simmons gives is to select a jurisdiction that has abolished this rule.

Finally, Professor Simmons analyses the Beneficiary Principle considering cryo-trusts. The Beneficiary Principle requires that a trust have an ascertainable beneficiary because these beneficiaries have standing to correct the trustee if the trustee deviates from the standards of care and loyalty. Because the beneficiary of a cryo-trust is not ascertainable (a frozen person considered as being dead), it would violate the Beneficiary Principle. Professor Simmons proposes that a cryo-trust appoint an "enforcer" to keep the trustee accountable. The enforcer would be a fiduciary to make certain that the trustee carries out all fiduciary duties. However, the trust's jurisdiction must allow this enforcer role, which is why Professor Simmons believes that situs selection is the most important element for a cryo-trust.

Professor Simmons claims that situs selection is essential because two of the three trust law challenges to cryo-trusts are resolved by situs rules alone. Equally as important are the situs choice of law rules. Choice of law rules must be considered to see if rules favorable to a cryo-trust apply. The location of property owned by a trust is key in choice of law rules—the state where the body is located is likely to dictate the applicable trust laws.

Ultimately, Professor Simmons asserts that a favorable jurisdiction to a cryo-trust would have RAP abolished, have P-TRAP abolished, have the Beneficiary Principle abolished, and allow a purpose trust to hold title to property. Professor Simmons concluded that the [Cayman Islands](#) and [South Dakota](#) are the best jurisdictions for a cryo-trust as they have already fulfilled the above conditions and give favorable tax treatment to trusts as an added bonus.

I commend Prof. Simmons for identifying this fascinating issue and for his scholarly and practical analysis. His article is an entertaining read and provides considerable (frozen) food for thought.

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