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Future Interests (January 11, 1971)

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January 11, 1971

Professor Llewellyn

QUESTION 1 - 50 minutes

Clark Criter died in 1950. He was survived by his wife, Thelma, and two sons, Tom, age 22 and Bill, age 20, and Paul, a grandson, age 2. Clark's will read as follows:

Trust A "One half of my adjusted gross estate I bequeath to T Trust Company to hold for the life of my wife, Thelma, and pay her the income therefrom. At the death of my wife, Thelma, distribute the corpus as she directs by her will. If my wife fails to make an appointment then to my issue."

Trust B "The rest residue and remainder of my estate I bequeath to T Trust Company to hold for the life of my wife, Thelma, and pay her the income therefrom. In addition the trustee in its sole discretion may pay any amount of principal which it deems necessary to supplement the income payments in order to keep my wife at the standard of living to which she has become accustomed. On the death of my wife pay the principal as she appoints by her will among my grandchildren."

Thelma Criter died on January 1, 1971. She was survived by her son, Tom, three grandchildren and one great grandchild. Two of the grandchildren, Pete, age 12 and George age 10 were the sons of her deceased child Bill. The other grandchild was Paul, age 23, the son of Tom. Paul had a son Paul Jr. age 2. Thelma's will read as follows:

"The assets of Trust A over which I have a power of appointment I appoint to T Trust Company upon the following trust: Pay the income to my three grandchildren Pete, George and Paul for their respective lives. On the death of any the income shall go to the survivors or survivor of them. On the death of the survivor of the three said grandchildren, distribute the principal to my great grandchildren, then living, per capita.

"The assets of Trust B over which I have a power of appointment, I appoint to my grandson Pete to be paid to him when he reaches 21."

"All the rest and residue of my estate I bequeath to my son, Tom."

The executor of Thelma's estate has called you to represent him. Thelma's assets at death totaled \$20,000. Her liabilities totaled \$40,000. The value of Trust A was \$200,000. and the value of Trust B was \$200,000. Advise the executor with respect to the assets which must be included in her gross estate for federal estate tax purposes, the rights of the creditors and the way the assets shall be distributed.

QUESTION 2 - 1 hour

Ted Testator died in 1961 leaving a will (executed in 1958) containing the following provisions:

- (1) I bequeath my Thunderbird automobile and my 100 shares of Standard Grocery Stock to my son, Filbert, for life, remainder to Filbert's children, Jenny and Cleo.
- (2) I devise Blackacre to my sister Liz Little, for life, remainder to my son Filbert if he survives her.
- (3) I give Whiteacre to my brother, Thad Testator, and his children.
- (4) All property over which I have a general power of appointment, I appoint to Paul Plump.
- (5) I devise Blueacre to my friend George, for life, remainder to Paul Plump, if then living, otherwise to my son Filbert.

- (6) I devise Greenacre to the Methodist Church, so long as it is used for church purposes. Whenever it ceases to be used for church purposes it shall be turned over to my grandchildren.
- (7) \$20,000. to Althea at her age 21 to be paid to her then with interest.
- (8) I give the rest of my estate to my grandchildren.

At Ted's death the following conditions existed:

- (a) Ted owned all of the property specifically referred to in his will plus a large number of additional assets. He also had a general power of appointment (Created in 1955).
- (b) He was a widower.
- (c) He was survived by Liz Little, his sister, his son Filbert, Filbert's sons Cleo and Adam (Jenny died in 1959 at the age of 12) (Adam was born in 1959), Thad, (Thad had no children at Ted's death), Althea age 12, and George. (His friend Paul Plump died in 1959).

The administrator of Ted's estate was prepared to make distribution in 1963. Between Ted's death and the date of distribution, Althea died, Filbert had another child, Mary Jane, born in 1963, and Liz Little renounced her life interest in Blackacre.

How should Ted's estate be distributed? In your discussion classify all interests created by Ted's will.

QUESTION 3 - 40 minutes

Olaf Olson died in 1956 leaving a will which created two trusts. Trust A provided as follows: "The income from the trust shall be paid to my wife Viv, for her natural life and upon her death the corpus shall be given to my first cousin Chris Olson, and the children of my uncle, Ed Olson, payable when they reach 25." Trust B provided as follows: "The income from the trust shall be paid to the children of my brother Tom, until the youngest child reaches age 25. The income may be sprayed among said children at the complete discretion of the trustee. When the youngest child reaches age 25, then pay the principal to such of Tom's children who have attained age 25."

At Olaf's death Chris was 27, Ed was alive and had two children, 20 year old Sol and 14 year old Nancy. Ed and his youngest child Nancy predeceased Viv, who died in 1964. Nancy's will gave her property to her husband Rollo.

- (a) How and when should the corpus of trust "A" have been distributed?

At Olaf's death his brother Tom, a widower, was alive and had two children, Bart age 32 and Carl age 20. Tom died in 1964 without having remarried.

- (b) How and when should the corpus of Trust "B" have been distributed?

QUESTION 4 - 30 minutes

Bill Bachelor, a wealthy single man, has come to your senior partner and instructed him to draw a trust agreement for the benefit of Bill's friends. The senior partner has drawn up the agreement in accordance with the general desires of Bill. The dispositive provisions read as follows:

- (A) "All the property on the schedule attached hereto I transfer to the T Trust Company upon the following trust: Distribute the income to my very good friend Betty Bust for her life. On her death distribute the corpus to settlor, if then living, otherwise divide the fund into as many equal shares as the number among settlor's nephew Paul,

settlor's cousin Jack and settlor's friend George's son Charles are then living. Distribute one such share to each member among them who is then living and reached the age of 25 years. If any of the three is then living but has not attained age 25, distribute one such share to him when he has attained age 25. In the event any of the three survives both Bill Bachelor and Betty Bust but dies prior to the attaining age 25, the share he would have taken had he attained age 25 shall be held in trust and distributed as follows:

"1st If any of these three who survives Bill Bachelor and Betty Bust is then living and has attained his 25th birthday, the trustee shall pay him a fraction of this share of which the numerator is one and the denominator is the number of the three who are then living."

"2nd If any of the said three are then living but have not attained age 25 years, the trustee shall distribute to him a fraction of the amount of the share remaining after distribution as provided in sub-paragraph 1st of which the numerator is 1 and the denominator is the number of these three who are then living and under the age of 25 years, when he reaches age 25."

"3rd In the event that at the time fixed for distribution none of the named persons are eligible to take, distribute that property to the settlor's heirs."

QUESTIONS: 1. Is there any possibility of a reversion in Bill Bachelor other than the reversion expressly provided? ("On her death distribute the corpus to settlor, if then living,...")

2. The two federal estate tax problems which result from the existence of a reversion are inclusion in the gross estate under sections 2033 and 2037, the applicable provisions of which are set forth below. Have these problems been eliminated by the provisions of this trust?

2033-The value of the gross estate shall include the value of all property to the extent of the interest therein of the decedent at the time of his death.

2037-(a) GENERAL RULE.-The value of the gross estate shall include the value of all property to the extent of any interest therein of which the decedent has at any time after September 7, 1916, made a transfer (except in case of a bona fide sale for an adequate and full consideration in money or money's worth), by trust or otherwise, if-

(1) possession or enjoyment of the property can, through ownership of such interest, be obtained only by surviving the decedent, and

(2) the decedent has retained a reversionary interest in the property (but in the case of a transfer made before October 8, 1949, only if such reversionary interest arose by the express terms or the instrument of transfer), and the value of such reversionary interest immediately before the death of the decedent exceeds 5 percent of the value of such property.