Future Interests: Final Examination (January 8, 1973)

William & Mary Law School

Repository Citation

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Instructions: Assume all questions are in a jurisdiction which has the following statutes:

**Anti Lapse Statute**
"If a devise or legacy is made to a descendant of the testator who dies before the testator, such issue shall take the same estate which the person whose issue they would have taken if he had survived the testator."

**Lapse Statute**
"Unless a contrary intent shall appear by the will, such real or personal property or interest therein as shall be comprised in any devise or bequest, except a residuary bequest, which shall fail or be void or otherwise incapable of taking effect, shall be included in the residuary devise or bequest, if any contained in such will. Any residuary devise or bequest which fails or is void shall pass by intestacy."

**Exercise of Power of Appointment**
"Any residuary clause, unless a contrary intent is expressed shall operate as an execution of any general power of appointment held by the testator as donee."
"Every will validly executed shall be a valid execution of a power of appointment, notwithstanding the instrument creating the powers expressly require that a will in execution of the power shall be executed with some additional formality."

You may assume that the law of the majority of states, the minority of States or Virginia is in effect for purposes of this exam, as long as you inform me which law you are using for purposes of the answer.

**Question 1. (60 minutes)**

Paul Heart, a law school graduate and a trust officer at Full Service Bank, sent directions to your law office concerning the preparation of a trust for Same Settlor age 53. The directions read as follows:

"Irrevocable inter vivos trust to be prepared containing the following provisions:

**Para. A.** Income to be paid to Art, the 21 year old unmarried son of Bart, the brother of Settlor, for life then to Bart for life.

**Para. B.** At the termination of both life estates the principal shall be paid to Settlor, if then living, otherwise to the issue of Art.

**Para. C.** If Art dies without issue the principal shall be retained in trust with income payable to Settlor's children for life in such shares as trustee in his complete discretion shall determine. At the death of the survivor of Settlor's children, then the principal shall be paid to Settlor's grandchildren, then living, to be paid when he or she attains age 21.

**Para. D.** If Settlor has no grandchildren then living then to the Settlor's heirs."

Carl Clerk, a law student clerking in your office prepared the following dispositive provisions in response to Heart's request:

"The Assets listed on the attached sheets shall be held in trust by Full Service Bank as trustee upon the following trust:

**Para. A.** The income shall be paid in annual installments to Art, the son of Settlor's brother Bart, for life. On his death the income shall be paid to Bart for life.

**Para. B.** On the death of the survivor of Bart and Art the principal shall be distributed to the issue of Art, then living per stirpes.
Para. C. In the event there is no issue of Art then living the principal shall be retained upon the following trust:

1. The income shall be paid in such shares and at such time as the trustee in his complete discretion shall determine to those children of Settlor who were living at the creation of this trust.

2. On the death of the survivor of the children the corpus shall be distributed to Settlor's grandchildren then living, who attain age 21. The issue, then living, of deceased grandchildren [irrespective of whether that grandchild attains age 21] to take the share such grandchild would have taken had he attained age 21. The division between such issue to be made on a per stirpes basis.

Para. D. If there are no grandchildren or issue of deceased grandchildren living at the time fixed for distribution then the principal shall be distributed to those persons who under the Intestate Act of Virginia in effect at the time fixed for distribution would be entitled to the personal property of Settlor if the Settlor died at the time fixed for distribution.

Para. E. No principal or income payable under any provision of this trust shall be subject to anticipation or assignment by any beneficiary thereof or to attachment by or to the interference or control of any creditor of any beneficiary or to be taken or reached by any legal or equitable process in satisfaction of any debt or liability of such beneficiaries prior to its actual receipt by the beneficiary.

The draft was sent to Paul Heart who wrote to your office demanding an explanation about what he refers to as the meaningless changes that were made to the dispositive provisions he prepared. He pointed out that although he never took a course in future interest he is an expert in estate tax and has a great deal of experience in the preparation of trusts instruments. He is particularly interested in an explanation of the provisions underlined [he referred to them as mere boilerplate] and some explanation for what he refers to as the apparent inadvertent failure to provide for a reversion in the grantor in accordance with the specific instructions of Paragraph B.

Make a paragraph by paragraph explanation with respect to the changes that were made by Clerk to Heart's draft.

Question 2. (80 minutes)

Tom Testator died on October 15, 1965. By his will dated June 12, 1948 he created two testamentary trusts. Trust A provided that his wife Bessie was to receive all the income for life and a testamentary power to appoint the corpus to anyone including herself, her creditors, the creditors of her estate or her estate. The trustee was also given the power to invade corpus for Bessie. Trust B provided that the wife was to receive the income for life, the power to withdraw principal each year up to 5% or $5,000 whichever is greater and a testamentary power to appoint the principal among the issue of her and testator. The B trust also permitted the trustee to invade corpus in his sole discretion for the benefit of Tom's wife but not until such time as the A trust corpus was exhausted.

Tom Testator's will also provided that the exercise of the powers was to be effected by a will executed by Bessie in the office of Smith, Dale, and Case a New York Law Firm. Bessie's will which contained three clauses was executed in June 1972 in Columbus Ohio and provided that:

clause 1 - I appoint all the property in trust A to my grandchildren.

clause 2 - I appoint all property in trust B to my grandchildren for life. On the death of the survivor the corpus shall be paid to those beneficiaries set forth in my residuary clause.

clause 3 - All the rest residue and remainder of my estate I give to my great grandchildren.
Bessie died in 1973 she was survived by her three children C1, C2, C3. C1-a child of C1 died in 1964. C2-a child of C2 died in 1971. G3 and G4 the children of C3 survived Bessie. C1 had had two children who survived Bessie. G2 had three children who survived Bessie. G3 had one child who survived Bessie. G4 was unmarried and had no children.

Questions:

(1) What are the Estate Tax Consequences to Bessie’s Estate as a result of her interest in Trust A and Trust B?

(2) Why did Tom’s will prohibit the trustee from invading Trust B corpus until such time as Trust A corpus was used?

(3) Who receives the property in Trust A as a result of the appointment?

(4) In the event that during the life estate of the grandchildren, GG1a dies without issue and GG3b is born, how will the remainder interest of trust B be distributed at the termination of the life estate?

Question 3. (20 minutes)

George Smith had the following provisions in his will:

Clause 1

I give Blackacre to Art for life then to Bart in fee. In the event Bart dies without issue then to Carl.

Clause 2

All the rest residue and remainder of my estate I give to Robert and Tom, the children of my friend Paul Jones.

George died survived by Tom Jones, Art and Bart all unrelated, and his wayward son Richard who was his sole heir. Carl and Robert died before the testator. Bart died shortly after the testator without ever having had a child. Who owns what interest in Blackacre?
Question 4. (30 minutes)

Widower Silas Serum died in 1930 leaving a will containing the following clauses:

"(1) I give my farm in State X to my brother Andy for life, remainder to whomever my son Andy shall appoint."

"(2) I give $100,000 to the Fidelity Trust Company to be added to and to become a part of a trust fund held by it established by an instrument dated August 7, 1934."

"(3) I give the rest and residue of my estate to my son, Rex."

The trust instrument referred to in the will provided that Fidelity was to hold the fund in trust for Andy for life and at his death to turn over the fund to whomever Andy should appoint by will "from among his children." In 1961, in exchange for $50,000, Andy promised to give the remainder interest in one-third of the farm and trust fund to his son, Blair. Andy died in 1963 being survived by three children, Blair, Clo and Dab (25, 16 and 7 years old respectively).

(1) What would be the rights, if any, of Andy's creditors in relation to the farm and trust fund if Andy's will merely provided: I give all of my property to my children?"

(2) What rights, if any, would Blair have if Andy, by will, gave the farm and trust fund to Clo and Dab?

(3) What would be the rights of the parties if:

(a) Andy died intestate?

(b) Andy left a will giving the farm and trust fund to "my children if and when they reach 25," and "the residue of my estate to my friend, Phil Porter?"

Question 5. (10 minutes)

The R & R Railroad Co. desires to purchase Frank Farmer's Farm. Frank and his family are in the meat process business. He insists that the title to the smoke house and the immediate surrounding ground be retained until such time as the smoke house is not used in the meat process business; at which time it shall pass to the R & R Railroad.

How would you handle this transaction?