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Trusts and Estates: Final Examination (May 1973)

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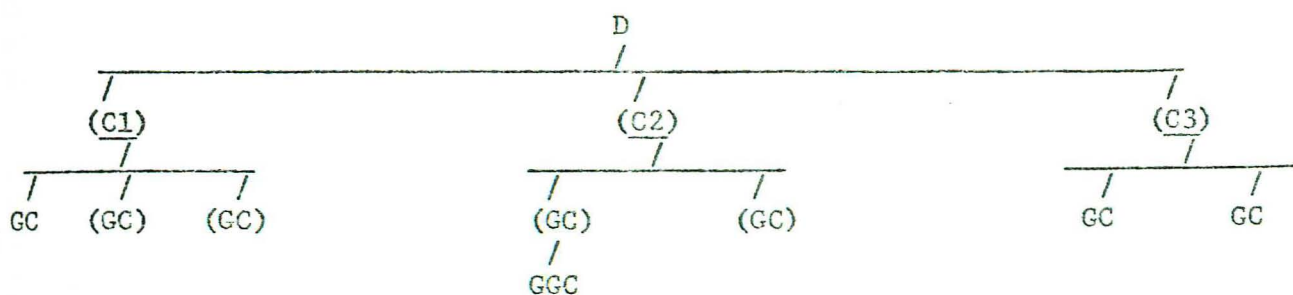
Final Examination

I - 10 Points

S by instrument dated January 1, 1960, which was not executed with the formalities of a will, transfers securities to T in trust for L for life and upon L's death, to be given to R. S reserved the power to alter or amend or revoke trust in any respect. In 1962 S duly executed a will bequeathing additional securities to T to be held in trust upon the terms set forth in the 1960 trust instrument as amended from time to time. In 1964 S, by a writing signed by himself and the trustee, amended the trust terms so as to substitute B as life beneficiary in place of L. S dies in 1967. What disposition should be made of the securities bequeathed to T, giving your reasons?

II - 14 Points

Decedent D died intestate predeceased by his three children, C1, C2 and C3. C1 left three children, one of whom survived D. C2 had had two children, both of whom also predeceased D, but one of C2's children left a child of his living at D's death, GGC. C3 left two children of his surviving D. Brackets identify those who predeceased D.



A statute of the state provides: "If the decedent leaves no surviving spouse, but leaves issue, the whole estate goes to such issue; and if all of the descendants are in the same degree of kindred to the decedent they share equally, otherwise they take by right of representation. Inheritance or succession by right of representation takes place when the descendants of a deceased person take the same share or right in the estate of another that such deceased person would have taken as an heir if living."

GGC claims that he should receive one-third of D's property. Discuss and decide the rationale and merit of GGC's claim, including in your discussion the following:

- If his claim prevails, to whom does the rest of the property go?
- If his claim is not sustained, how should all the property be distributed?

III - 40 Points

George Spurlink was a wealthy, elderly, eccentric bachelor. He had been brought up by a couple of bachelor uncles, and had from an early age feared, despised and avoided all women.

He had heard nothing from relatives for many years, but knowing that his days were numbered he became very much interested in finding male family members to whom he might leave his fortune if he thought them deserving. After pursuing this quest all over the country he finally found a nephew, Philo Vancelot, in Topeka, Kansas. Philo seemed worthy in every respect; George had a will drawn by his attorney, Peter Planner, dated July 1, 1970, leaving everything to Philo. This will was validly signed and witnessed (hereinafter called will #1).

George's travels continued; in the bar of the Holiday Inn at Spokane, Washington he fell into conversation with Charles Conman who expressed fascinated interest in George's mission; Charles suddenly "remembered" he knew of an Arthur Spurlink living in a nearby town and agreed to bring the two together. In actuality Charles was a professional swindler; there was no Arthur Spurlink but he could visualize a road to riches by creating one through a confederate. Sam Shill, another sharper, assumed the role of Arthur, under the tutelage of Charles. Thanks to the earful that George had given Charles about the history of the Spurlink tribe, Sam was soon able to fake appropriate background material to sustain his new identity as Cousin Arthur.

George was delighted at this new find; he hastened back to have will #1 changed to give Arthur a share; unfortunately Lawyer Planner was just leaving on a European trip; he advised George as a temporary expedient to methodically draw a continuous line going through every word of will #1 and to write across the present signature on it "This will is cancelled today 6/4/72 G.S." This George did and retained the document in his files. By careful scrutiny the words of the will could still be made out. The state statute provided that revocation of a will could be accomplished "(1) by burning, tearing, cancelling or obliterating the same with intent to revoke, or (2) by some other will in writing."

After Planner got back a new instrument was drawn up; in summary, it declared this to be George's last will and testament; the first three clauses contained minor bequests to friends; the remaining clauses were: "Fourth: No person of the female sex shall inherit or take by representation or otherwise receive any property of mine.

"Fifth: All of the rest and residue of my property not disposed of by this will is hereby devised and bequeathed absolutely, one-third to Arthur Spurlink and two-thirds to Philo Vancelot, as tenants in common."

Before this instrument could be signed George had a stroke. Thereafter he had his ups and downs - sometimes he was rational, sometimes not. Finally the document (herein called will #2) was signed and witnessed on August 30, 1972 in compliance with statutory rules as to signing and witnessing.

~~Samuel~~ ^{George} dies in November. Almost immediately there appears Penelope Spurlink Vancelot, long-lost sister of George and mother of Philo, who claims as an heir. It seems that back in 1936, to break away from the dull routine of existence, she had accepted a dare to go over Niagara Falls in a barrel; failing to be rediscovered in a reasonable time, she was assumed to have perished. Actually she had clambered out undamaged a few miles below on the Canadian side and had taken up a new life.

Meanwhile the more fragile Mr. Planner has departed this life due to the rigors of his law practice and you as his recent new associate are called upon to advise Ben Banker, named as executor in both wills #1 and #2. You must take for granted that all the factual matters herein stated can be convincingly proven beyond doubt; also that the only true Spurlinks left alive are Penelope and Philo.

This matter is set for hearing in the Probate Court on Wednesday morning. The Court has announced that, to narrow the issues, it will first hear and decide the question of George's mental competency to execute will #2 on August 30, 1972. Right now you want to go over all basic issues with your client the executor, as you both want to assist the Court in arriving at a proper decision.

So Please analyze the prospects of the three claimants on the basis of the two opposing assumptions, viz:

Assumption A. Suppose the Court decides on the basis of overwhelming medical and other evidence that George was mentally incompetent for will-making purposes on August 30, 1972.

Now state under the names of each of the three claimants any plausible contentions he can make which will give him an interest in the estate; then under "Opinion" decide the winner or winners, how much they get, and show why. Contentions should be listed briefly and need not be in narrative form. Use this outline:

Assumption A

Contentions of Philo
Contentions of Penelope
Contentions of "Arthur"
Your Opinion

Now turn to:

Assumption B. Assume the Court decides, on the basis of overwhelming medical and other evidence that George was mentally competent for will-making purposes on August 30, 1972.

Outline the contentions of the three and your opinion in the same manner as in Assumption A.

IV - 12 Points

Upon the death of Thomas Testator of Alexandria, Virginia, on November 8, 1972 there was found among his papers what appeared to be a carbon copy of a letter, initialed by Testator, dated March 10, 1972 and addressed to his nephew Henry Smithson of Farmington, New Jersey (where Testator had formerly lived) reading as follows:

"Dear Hank:

I am leaving to you in my will an apartment building but you are requested to hold it in trust for my good friend Miss Phoebe Twiningvine and pay her the income during her lifetime. Keep this matter to yourself. Upon her death the property is yours outright.

Please sign and return the extra copy of this letter to evidence your agreement to the above."

No copy signed by Henry has been found. Henry testifies that he never saw the letter and that the first he knew of the matter was after his uncle's death when he saw a copy of the will, which was dated April 15, 1972 and provided (in addition to other dispositions) "I leave the apartment building on Elephant Street, in Farmington, to my nephew Henry Smithson." It appears that Testator owned only one property in Farmington - an apartment building on Oliphant Street. There is no other evidence in the case apart from the proof of will.

1. If we assume that the property description is adequate, who gets the property and why?
2. Explain why the property description is or is not adequate.

V - 12 Points

Discuss and decide the validity of each of these two trusts:

(1) I leave \$100,000 to Faithful Trust Company in perpetual trust to pay the income on each January 30 annually to such church in the City of Williamsburg as the trustee believes has contributed the most toward advancement of the Christian religion during the calendar year just ended.

(2) A entered into an instrument denominated "Trust Agreement" on January 10 with Faithful Trust Co. as trustee, providing (1) a life interest for A, (2) approval of A to be obtained by the Trustee for any purchase or sale of securities, (3) reservation by A of the power to terminate, add property to, or amend the trust (4) after A's death the corpus to go to the then living children of X. The agreement listed certain securities as the subject-matter of the trust but they were not deposited on January 10; on April 20 A mailed them to the trustee who acknowledged receipt "as trustee under January 10 agreement." No children have yet been born to X.

VI - 12 Points

S was settlor of an irrevocable inter vivos trust, consisting of \$200,000 in negotiable bonds, with B Bank as trustee. It was provided that during S's lifetime the income should be distributable on the 15th of June and December in each year, one half to S and one half to his son D; after the death of one, the survivor would get all income; but every distribution to S or D was to be made, or withheld and accumulated, solely in the uncontrolled discretion of B Bank. After the deaths of S and D, the trust was to terminate by distribution to the children of D.

S and D thereafter signed a note for \$20,000 on which a joint and several judgment was taken against them by C. B decided it would make no payments to S or D during the current year. When the distribution date of December 15 arrived, B had on hand \$7,000 of undistributed income, and at the opening of business on that day it was served with writ of attachment based on the judgment. What, if any, assets in the trustee's hands can C reach at the time stated, and why?