1973

Trusts and Estates (B): Final Examination (May 1973)

William & Mary Law School
1. Jeremiah Testator died on December 1, 1973, survived by the following relatives: his wife, Ruth; three grandchildren, Carrie, Susan, and Alice; one brother, Bob; and three nephews, Sam, Steve, and Shannon. Carrie and Susan were the daughters of Testator's deceased son, Clarence, who died in 1967. Alice was the daughter of Testator's deceased son, Chubby, who died in 1972. Sam, Steve, and Shannon were the sons of a deceased sister of Testator. Testator also left a will which he had executed in 1966. It appears that this will had been prepared by Testator's lawyer, Whiplash Willy, and that Testator had gone to Willy's office on September 21, 1966, for the purpose of executing the will. When Testator arrived in Willy's office, he was led into Willy's library where Willy greeted him and introduced him to two of his secretaries, Jane and Marilyn, who, Willy said, would serve as witnesses to the will along with Willy. Testator indicated his approval and signed his name at the end of the will. Just as Testator finished his signature, the telephone in the reception area rang and Jane left the library to answer the phone. While Jane was gone, Willy and Marilyn signed their names to the will as witnesses, whereupon Marilyn left the library for the powder room. Jane then returned to the library and signed her name as witness to the will. The will read as follows:

I, Jeremiah Testator, do hereby make, publish and declare this to be my last will and testament, hereby revoking all wills and codicils previously made by me.

I.

I give and devise my residence, 101 Oak Road, and my farm in Gloucester to my wife, Ruth.

II.

I give and devise my farm near Apponsetton to my son, Clarence, except for twenty shares of I.T. & T. which I hereby give my personal friend and attorney, Whiplash Willy.

IV.

I nominate Whiplash Willy to serve as my executor without bond or surety and I direct him to set aside $5,000 in trust to support my favorite house.

In 1967, Testator grew tiresome of Ruth and transferred title to the residence on Oak Road and the farm in Gloucester to Whiplash Willy, "as trustee, to hold the same in trust for the term of my (Testator's) life for my use and enjoyment, and at my death to convey the two properties to my son, Clarence, free of this trust." This trust deed was promptly recorded in the appropriate courthouses.

In 1970 Testator decided to change his will and thus he struck out the words, "by son, Clarence," in paragraphs II and III of the will with a pen and by interlineation substituted the words, "my granddaughters, Carrie and Susan."

In 1971, Testator was advised by many of his old buddies that Carrie knew about her expectancy under his will and had discussed with several persons various methods of murdering him in hopes of realizing that expectancy. Although this information was false, Testator believed it and that night took out his will and wrote at the bottom of it in his own hand:

I hereby disinherit my granddaughter, Carrie, from any share of my property.

/s/ Jeremiah Testator.
Mr. Curtis

In 197/ Testator gave Chubby cash in the amount of $500,000 and said, "Go seek your fortune," In 1973, the inventory of Testator's estate listed the following assets:

110 Acres farmland in Houston County, Texas, value of $550,000.
150 shares of General Motors common stock, value of $6,000.
Savings account in Virginia State Bank, balance of $450,000.
100 acre farm near Appomattox, Virginia, value of $300,000.


2. In 1960 Sam Settlor was concerned that his daughter, who was soon to be married, would come under the economic domination of her future husband. Accordingly, Sam wrote the following on a sheet of paper and placed the paper in his desk:

"I, Sam Settlor, do hereby make myself trustee for my daughter, Diane, of my shares of I.B.H. stock. Given under my hand this 10th day of June, 1960.

/s/ Sam Settlor"

At the daughter's wedding reception the next day, Sam told his daughter that he had given her 100 shares of I.B.H. "in case things don't work out." In 1973, Sam, finding that his groceries were costing more, decided that he had to sell some of his securities and on May 3, 1973, he sold 50 shares of the I.B.H. stock and invested the proceeds of the sale in a yacht. At no time during his life did Sam own any I.B.H. other than 100 shares owned on June 10, 1960.

Also, in 1960 Sam wrote the following letter to the Prudential Life Ins. Co.:

"Gentlemen,

I am writing with regard to my policy, no. 111678, to state that although my wife, Sarah, is now named beneficiary of such policy, I now wish to change the beneficiary to my daughter, Diane. Also, I want you to hold the proceeds of the policy for ten years after my death and during that time to pay Diane only the income. After ten years, you can give her the whole thing.

Sincerely,

/s/ Sam Settlor"

Prudential replied by advising Sam that it had made Diane the sole beneficiary under the policy and that it would abide by Sam's directions.

In 1970, Sam wanted to buy a farm in Albermarle County, Virginia, but the owner of the farm for personal reasons refused to sell it to him. The owner, however, was willing to sell the farm to Tom Jones. Accordingly, Sam approached Tom and asked him to buy the farm on his behalf without disclosing the fact that he represented Sam. Tom agreed, and Sam gave Tom $150,000, the purchase price. Tom gave the money to the owner of the farm who delivered a deed to the farm in proper form which named Tom as grantee. Tom quickly recorded this deed in the Albermarle courthouse on May 10, 1970. On May 11, 1971, a creditor of Tom got a judgment for $10,000 against him and had the judgment docketed in the Albermarle courthouse. Assume that the statutory law of Virginia provides that a judgment from docketing constitutes a lien on real estate of the judgment debtor in the county of docketing. On May 12, 1970 Tam asks Tom to convey the farm to him by deed of gift, tax return.
On December 1, 1974, Sam entered into the following agreement with a Virginia State Bank whereby the bank became trustee of $200 which Sam had then delivered to the Bank; inter alia the bank agreed:

1. to serve as trustee over the said $200.00 and any other funds that may hereafter added thereto by the said Sam Settlor by inter vivos conveyance or by will.
2. to hold the same for the benefit of Miss Elsa Nistress for the term of her life and thereafter to the benefit of Diane Settlor.
3. to receive and add to said res any other funds added thereto by the said Sam Settlor."

On December 2, 1974, Sam executed the following validly executed will:

"I, Sam Settlor, do hereby make, publish, and declare this to be my last will and testament, hereby revoking of previous wills and codicils made by me.

I give one-third of my estate to the Virginia State Bank as trustee to hold the same in accord with provisions of a trust agreement entered into between myself and said trustee yesterday.

II.

I give one-third of my estate to the Hanaeous Trust Company as trustee for my daughter, Diane, to pay all the income therefrom to my said daughter during her life for her health, welfare, and maintenance in such amounts as the said trustee in its sole and absolute discretion deems fit and at the death of my said daughter to transfer to the Protestant Episcopal Diocese of Virginia the corpus and accumulated earnings, if any, free of the trust.

III.

I give one-third of my estate to the York State Bank as trustee to pay the income therefrom to my daughter, Diane, annually during her life, and thereafter to pay the income to such children of my said daughter as shall survive her; I hereby deny to my said daughter or her said children any right to assign said income and corpus.

On June 1, 1975, Sam delivered $400.00 to the Virginia State Bank to be added to the trust fund created in 1974 and further directed that the provision for Elsa Nistress be deleted from the trust instrument. The Bank agreed with the change and the trust instrument was so amended. The power of amendment had been reserved by Sam in the inter vivos trust instrument.

Upon Sam's death in 1976, Diane seeks your advice as to her rights in her late father's estate. She indicates that she is anxious to obtain as much property "free and clear" as possible. What should you advise her?