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Future Interests: Final Examination (Summer 1957)

William & Mary Law School

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I.

I BEQUEATHED A $100,000 FUND IN TRUST FOR HIS DAUGHTER, D, FOR LIFE, AND "AFTER HER DEATH AMONG THE CHILDREN OF D AS SHE SHOULD BY WILL APPOINT, AND IN DEFAULT OF APPOINTMENT TO THE CHILDREN OF D EQUALLY." 

(a) I died in 1900; D in 1905 without ever having any children. Is the gift over to the children of S valid, and assuming its validity, what is the nature of their interests, and the confines of the class membership who may take shares? In illustration of your answer as to the confines of the class membership, indicate by "yes" or "no" after each description below which of the following or their estates are entitled to share in the principal of the fund: (C1-6 are the six children of S)

- C1, born 1875, predeceased T
- C2, born 1876, survived T and predeceased D
- C3, born 1893, survived D and died 1915
- C4, born 1901, attained 21
- C5, born 1902, attained 21
- C6, born 1906, attained 21

(b) In what respects, if any, would your answer in (a) differ if the words "AND IN CASE OF HER DEATH WITHOUT A CHILD OR CHILDREN, FOR ALL ETC." should read instead "AND IN DEFAULT OF APPOINTMENT, FOR ALL ETC."

(c) Reading as given originally in (a), if D were to die leaving children surviving her but failing to exercise the power, who would share in the principal of the fund as between the heirs of T, the children of D, the children of S?

II.

Briefly explain the following statement: The rule in Shelley's Case has aspects of both a rule of construction and a rule of law.

III.

I BEQUEATHED A $100,000 FUND IN TRUST FOR HIS DAUGHTER, D, FOR LIFE, AND "AFTER HER DEATH AMONG THE CHILDREN OF D AS SHE SHOULD BY WILL APPOINT, AND IN DEFAULT OF APPOINTMENT TO THE CHILDREN OF D EQUALLY." 

D had three children, A, B, and C. Following T's death, A was in need of security to enter into a business venture and appealed to D for assistance. In recognition of A's care, attention and devotion to her and in the expectation that A would continue to be so solicitous of her welfare during the rest of her life, D agreed in writing with A's business associates that she would appoint $80,000 of the fund to A in her will to induce them to extend the necessary credit to A. Simultaneously she executed her will in which she "bequeathed" $80,000 to A "in accordance with my covenant" and devised and bequeathed "all the rest and residue of my property, real and personal, to my children B and C equally." At the time of the execution of her will and up to the date of her death, D's only property of the execution of her will and up to the date of her death, D's only property
in the probate proceeding and settlement of J's estate, 3 and C contend (1) that the power was exercised by the residuary clause under which the appointive property passes to 8 and C equally, (2) that if the power was not exercised by the residuary clause, neither was it by the specific bequest to J, and the fund passes to the three of them equally by default, (3) that if the power was exercised by bequest to J, it is (a) a fraudulent exercise benefiting 8, (b) and invalid since pursuant to covenanter, (c) ineffective as creating illusory shares. Discuss merits of these respective contentions in the circumstances.

IV.

Briefly, what is the "divide and pay" rule, and state the two most common exceptions to it.

V.

is J's only child. J draws his will creating a substantial trust fund and devise interests therein as follows: (1) Life interest for daughter, D; (2) "pool of 5 trustees to accumulate income and pay to my grandchildren who shall at the age of 12 or 20 to each, as the severally arrive at that age; (3) the residue of the trust fund, both income and capital, shall be held equally among each of my grandchildren as shall reach the age of 30 years; in case all of the children of my daughter shall die under the age of 30 years, if she has none, then the residue of the trust fund both income and capital shall die to X.

Are the gifts in any of the above cases invalid in whole or in part under following circumstances: (a) At J's death, only one grandchild is then living; (b) grandchild 0 is born thereafter, both of whom survive D, reach 25, and before 30; (b) same as in (a) but both 01 and 02 attain 30; (c) At J's death, the children of age and thereafter die without ever having had children.

VI. The devisees' rels. - J. 0, B, and D - believe, upon the death of B's wife, but if B should survive to reach all 20, then 0 and B are his heirs in what would subsequently die, to the lifetime of - without ever having had children, are any reasonable possibility (actual statute) of sustaining the validity of interest given to C and his heirs?