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Future Interests: Final Examination (Summer 1965)

William & Mary Law School

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In each of the following dispositions by T, what is the nature at time of creation of the interests referred to in parenthesis following each. For example, A for life, then to B and his heirs, but if B should ever divorce, then to C and his heirs. (B?) (C?). 

1. To A for life, then to B and his heirs, but if B should ever divorce, then to C and his heirs. (B?) (C?). Answer: B has a vested remainder in fee subject to an executory limitation over if he should divorce. C has an executory interest in fee.

2. I give to each child of my brother, B, then to D for life, or until she remarries, and then to my grandchild, GC.

3. To A for life, then to B in fee at age 21, or to C in fee if B should fail to attain that age. (B?) (C?)

4. To A for life and then to his children in fee, but if liquor should ever be sold upon the premises, then in fee to the WCTU. (A's children?)

5. To the College so long as the premises are used for educational purposes, and if they should ever cease to be so used, then in fee to my then living heirs. (College?) (T's heirs?)

T devised Blackacre to trustees to hold for A for life, and then to hold for B for life, and then to convey in fee to A's heirs then living, and if none, to convey-in-fee to B's heirs. A sold all of his right, title and interest in Blackacre to claimant, AC, and then died leaving AH, his sole heir. S then sold all of his right, title and interest in Blackacre to claimant, BC, and then died leaving BH, his sole heir. At B's death, AC, AH, BC and BH each claim the right to Blackacre and the trustees petition the court for instructions. What decree should be made and why?

T devised Blackacre "to my daughter, D, for life, and then in fee for such of her children as either before or after her death attain age 21, and if no child of D should attain that age, then in fee to my nephew, N, and his heirs." D's daughter, D1, predeceased her at age 22. D's second daughter, D2, was 18 years old at D's death. At D's death, T's executor, D1's administrator, D2 and N each claim the entire fee in Blackacre. D2 reaches 21 before the litigation is terminated. What disposition should the court make and why?

In each of the following cases, state the latest point in time that the class of brother, B's children will be closed to exclude afterborns. In each instance, of course, B is still living, and is physically able to have more children.

1. To A for life and then in fee to all and every the children of my brother, B. B has children living at A's death.
2. I give to each child of my brother, B, whenever born, the sum of $1,000 and all of the rest and residue of my property I bequeath absolutely to my son, S. B has children living at T's death.
3. To my wife, W, for life, and then for the children of my brother, B, for their lives. B has children living at W's death.
4. I devise Blackacre to my sister, S, for her life, and all of the rest and residue of my property I devise and bequeath absolutely and in fee to the children of my brother, B. B has children living at the deaths of both T and S. Answer with respect to Blackacre.
5. In trust to pay the income to sister, S, for her life, and then to share the income among the children of brother, B, and as each child of B should attain age 21, to pay to such child his or her share of the principal. S died in 1960. B has had four children; D1 who died in 1968 at age 17; D2, living and 15 years old.
IV. (cont'd)

S's death in 1960; B3 born in 1961; and B4, born in 1965.

V. (10)

T bequeathed a portion of his estate in trust, to pay the income to his wife, W, for her life, and remainder as she should by will appoint, and in default of appointment, to their children share and share alike. T was survived by W and two children. W was somewhat incapacitated and she agreed with one of her children, C1, that if and his family would live with and look after her, she would make no appointment that would give C1 less than $25,000 of the trust principal, and upon C1 agreeing to this, W duly executed an instrument so stating. Subsequently, W duly executed a simple will which read "All property which I own or over which I have any power of appointment I leave to my son, C1." C1 predeceased W and then W died without having changed her will. At her death the trust principal was $50,000 and she left debts totalling $25,000 with only a nominal amount of her owned property to satisfy them. What disposition should be made of the $50,000 appositive funds as among T's estate, C1, C2, and W's creditors?

VI. (10)

T's will read:

"I give and devise the use of my estate known as Blackacre to my brother, B, for life, and he may if he wishes will the same at his death to his children in fee.

"I give $90,000 to trustees to hold in trust for my sister, S, she to receive the trust income during her life, and at her death to her children in such amounts and in such manner as she should by will appoint.

"All of the rest and residue of my property, of whatever kind and wherever situate, I give, devise and bequeath to my daughter, D."

(a) Following T's death, B, intending that his children should have the absolute fee in Blackacre, executed a deed giving to them all of his right, title and interest in Blackacre. Thereafter B died intestate leaving children of his surviving. What disposition should be made of Blackacre and why? (5)

(b) Following T's death S made a will in which she bequeathed $30,000 to each of her three children, C1, C2 and C3. Subsequently C1 died leaving children of his surviving. Having no property of her own and wishing to provide for C1's children, S told C2 she was changing her will in order to appoint $65,000 of the trust fund to him but expected him to give C1's children $30,000 of it. Thereupon she duly executed a new will revoking her former will and providing "I give and bequeath $65,000 to my son, C2, and $25,000 to my son, C3, and all of my own property I give to the children of my deceased son, C1." Assuming that all parties press their respective claims, what disposition should be made of the $90,000 trust fund as between D, C1's estate, C2, C3 and C1's children? (5)

VII (10)

Discuss the validity of the bequests of the principal in each of the following:

1. "to my sister, S, for life and then in fee to such of her grandchildren as should reach the age of 21." T is survived by S, aged 70, and one grandchild of S whose parent, S's only child, predeceased T.

2. "to my sister, S, for life, and then in fee for her grandchildren, each to receive his or her share of the principal at age 21." T is survived by S, aged 70, and one grandchild of S whose parent, S's only child, predeceased T.

3. "to my brother, B, for life, remainder to whomever he should by deed or will appoint, and in default of appointment by him, to B's children for life and in fee for each of his grandchildren per capita as attain age 21." T is survived by B.
VIII. (10)

Discuss the validity of the bequest of the principal in the following circumstances:

T bequeathed a fund to be held in trust "for my brother, B, for life, and principal at his death to whomever he should by will appoint." T was survived by widower B, aged 55, two children of B, and one grandchild of B.

B remarried and a child was later born to him and his second wife. B was survived by the three children and several grandchildren. His will appointed the principal "in trust for my children for their lives and upon the death of each child, that child's equal share of the principal to be paid absolutely to the child's surviving issue per stirpes, and if a child should die without leaving issue living at his death, then such child's share of the principal to be paid to such child's next of kin."

IX. (10)

Discuss the validity of the following bequest in the circumstances:

T bequeathed a fund to trustees to hold "in trust for my sister, S, for her life, and then for S's grandchildren for their lives, and upon the death of the last surviving grandchild of S, the principal to be paid absolutely to S's issue then living per stirpes. During the lifetime of my sister, S, my trustees shall have the absolute discretion to distribute the principal to or for the benefit of S as they may deem appropriate." T is survived by S, aged 70, and one grandchild of S whose parent, S's only child, predeceased T. S is survived by the grandchild with the principal intact.