

1957

Future Interests: Final Examination (Summer 1957)

William & Mary Law School

Repository Citation

William & Mary Law School, "Future Interests: Final Examination (Summer 1957)" (1957). *Faculty Exams: 1944-1973*. 409.
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FUTURE INTERESTS

Final Examination

Summer Session, 1957

spec test + PA

I.

T 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 CASE OF HER DEATH WITHOUT A CHILD OR CHILDREN, FOR ALL AND EVERY THE CHILDREN OF MY SON, S, TO BE EQUALLY DIVIDED BETWEEN THEM. THE SHARES TO BE PAID WHEN EACH OF THEM SEVERALLY ATTAIN THE AGE OF TWENTY-ONE".

D's daughter, eldest 21, white bar later

(a) T 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 1895, predeceased T

C2, born 1898, survived T and predeceased D *1900 T died*

C3, born 1903, survived D and died 1915

C4, born 1904, attained 21 *1925 D died - no children*

C5, born 1921, attained 21

C6, born 1926, 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."? *Wanted as to doubt*

(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.

T 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 \$50,000 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" \$50,000 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 in addition to the life interest in the trust fund consisted of realty worth \$50,000.

K 6 9/20

part of note

Re A upon

bequeathing

Personality

take

In the probate proceeding and settlement of B's estate, B and C contend (1) that the power was exercised by the residuary clause under which the appointive property passes to B and C equally, (2) that if the power was not exercised by the residuary clause, neither was it by the specific bequest to A, and the fund passes to the three of them equally by default, (3) that if the power was exercised by the bequest to A, it is (a) a fraudulent exercise benefiting I, (b) and invalid since pursuant to covenant, (c) ineffective as creating illusory shares. Discuss the 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.

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V.

D is T's only child. T draws his will creating a substantial trust fund and divides interests therein as follows: (1) life interest for daughter, D; (2) Upon death of D trustees to accumulate income and pay to my grandchildren who shall attain the age of 25 years the sum of \$2,500 to each as he or she severally arrive that age; (3) the residue of the trust fund, both income and capital, shall be divided equally among such of my grandchildren as shall reach the age of 30 years; In case all of the children of my daughter D shall die under the age of 30 years, and she has none, then the residue of the trust fund both income and capital shall be paid to X.

Are the gifts in any of the above cases invalid in whole or in part under following circumstances: (a) At T's death, one grandchild G1 is then living, one grandchild G2 is born thereafter, both of whom survive D, reach 25, and before 30; (b) same as in (a) but both G1 and G2 attain 30; (c) At T's death, G1 is 60 years of age and thereafter dies without ever having had children.

VI. From the C's of B in Foo Bar II

T devises real estate to D for life, for a 25 year period of D in fee, but if D should survive to reach age 25, then to C and his heirs in fee. If D should subsequently die in the lifetime of T without ever having had children, is there any reasonable possibility (absent statute) of sustaining the validity of the interest given to C and his heirs?