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LIFE ESTATES IN PERSONAL PROPERTY

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No longer is a man's wealth measured by the breadth of his real estate holdings. This is due to the fact that the taxing power of the respective governmental subdivisions has been unscrupluously exercised, and real estate seems to be bearing the burden of taxation. As a result real estate is becoming more burdensome, and stocks and bonds and other forms of personalty are more attractive to the modern investor. Personalty besides having a free carriage on the market also has the benefit of lower and less effective taxation.

Even though the modern investor inclines more favorably in the direction of holdings in personalty, he will nevertheless be concerned as to the distribution of his accumulated wealth in much the same fashion as if his holdings consisted of real estate.

Although future interests in personal property have been infrequently established, the present day trend of investments may in the near future make this type of estate very desirable. Life estates in personal property date back to the seventeenth century, and it seems that they have not been subject to the same technical interpretation as like estates in realty. It is now generally accepted in this country that future interests in personal property may be created by grant inter vivios or by devise.[1] The only jurisdiction which seems to be opposed to this form of estate in personal property is North Carolina. In that State such estates were permitted by statute when the subject matter of such future estates consisted of slaves.

Under the old common law future interests in personalty were looked upon with disfavor by the courts of England, as it was thought that such an estate with remainder over would tend to obstruct commerce. This contention was based upon the theory that personalty consisting of transitory things should enjoy full freedom of circulation. This theory was abandoned, and as early as 1659 life estates in personal property were recognized,

1 38 Ala. 21 78 Am. Dec. 79

bject to the restriction "that if an estate tail in things personal
a durable nature is given to the first or any subsequent possessor, it vests in him the total property and no remainder over would be permitted on such a limitation." (2 Blackstone Comm. p. 398). Even this seemingly positive restriction on the creation of estates tail in personal properties may be avoided "by establishing an estate tail through the medium of a devise or deed of trust, and the property will thus be rendered inalienable to the same extent as if it were absolutely entailable subject to the rule against perpetuities." (supra). The reason for prohibiting estates tail in personal property is not the result of technical interpretation, but is due to the fact that there is no method of barring the entail and if such an estate were permissible we would be confronted with a burdensome perpetuity. But for all practical purposes we shall have little concern as to the matter of creating estates tail in personalty, since by statute practically all states have made it impossible to create such an estate even in realty. The courts of the present day are inclined to construe the devise or conveyance according to the intent of the maker unless it is expressly shown that an estate tail was intended. This, of course, applies only in those states in which an estate tail is recognized. It is also interesting to note that the rule in Shelley's Case has no application to future interests in personal property.[2] It has long been decided that the rule in that famous case is a rule of law and not a rule of construction, and applies only to real estate.[3]

Where one attempts to create a life estate in personal property, it is necessary that he clearly show by the words used in the grant or devise that the property granted or devised is to be used in specie or that it is to be converted into some prudent investment.[4] If it is not clearly shown in what way or manner the property is to be enjoyed, the wishes of the grantor or devisor may be contravened by the peculiar nature of the property. Where the intent of the grantor or devisor is not clearly shown, the construction of the grant or devise will be governed by the fact as to whether or not the legacy is general or specific. A distinction is made between a specific and

2 Notes 4 L. R. A. (N. S.) 470 16 L. R. A. (N. S.) 734 69 Atl. 785 62 Ill. 86.
3 240 Ill. 492.
4 70 N. E. 593 (Ill).

a general or residuary grant or devise in that the property which is given in the form of a specific bequest or grant may give an absolute title to the life tenant, whereas if the gift or grant is in the form of a general or residuary bequest, and the property given is of such a nature that part of it is consumable and part durable, the life tenant is not permitted to acquire an absolute title, but the consumable portion may be ordered to be sold and the principal secured for the remainderman.[5] If the grant or devise is of property of a perishable nature and is specifically given, it must, of necessity, be enjoyed in whole by the first taker, life tenant, but some courts construe such a gift to the first taker with a limitation over of what remains after his death to the remainderman.[6]

Aside from these two rules which have been laid down by the courts in the absence of the express intent of the devisor or grantor, it is intimated by these same courts that the nature of the property given should be a controlling factor in ascertaining what the grantor or devisor intended to give to the life tenant and remainderman respectively.

Personal property is so destructible and transitory that the right of enjoyment given in a life estate of that form of property necessarily carries with it privileges which do not belong to a life estate in realty.[7] If the property given is perishable and the enjoyment of the same consists in its consumption, it is generally held that the life tenant receives an absolute gift.[8] If the propgiven may depreciate by using, but will not necessarily be consumed or worn out, a full title is not given to the life tenant, but he is allowed to retain possesion and use of the same during his life.[9]

Corporate stocks and bonds probably comprise the greater portion of life estates in personal property. When life estates in corporate stocks are given, it is important to determine as to how the dividends are to be distributed. In the early English and American cases the determining factor seemed to be that any distribution of the earnings of a corporation, whether in

5 53 Ill. 325 94 Ill. 191 209 Ill. 350.

6 6 Am. S. R. 200 80 Maine, 297.
7 162 Ala. 553.
8 136 Am. St. Rep. 61 notes - 16 L. R. A. New Ses 483.
9 80 Me. 297 - 6 Am. St. Rep. 61.

stocks or otherwise, should be regarded as a division of profit and go to the life tenant.[10] A distinction is made between a cash dividend and a stock dividend. If the dividend declared is in the form of a cash dividend and accrued from the earnings of a corporation after the creation of the estate, such dividend would pass to the life tenant. If the corporation declared a dividend in the form of stock, the life tenant would receive only the interest therefrom and the stock itself would inure to the benefit of the remainderman. An important factor in determining the apportionment of earnings is whether or not the earning accrued before the estate established. If the dividends which are declared accrue before the life tenancy begins, they should become a part of the corpus of the estate. Mr. Cooke in his work on the **Principles of Corporation Law** says that there are three well defined rules which are known as, the American or Pennsylvaniania, the Massachusetts, and the English rules. Mr. Cooke says: "The American or Pennsylvania rule proceeds on the theory that the court, in disposing of stock or property or unusual cash dividends, as between the life tenant and remainderman, may properly inquire as to the time when the fund out of which the extraordinary dividend to be paid was earned or accumulated, and also as to the method of accumulation. If it is found to have accrued or been earned before the life estate arose, it may be held to be principal and, without reference to the time when it is declared or made payable, to belong to the corpus of the estate, and not to go to the life tenant. But when it is found that the fund, out of which the extra dividend is paid, accrued, or was earned, not before but after the life estate arose, then it may be held that the dividend is income, and belongs to the tenant for life."[11] Mr. Cooke says further: "The Massachusetts rule, which prevails also in Illinois, Rhode Island, Georgia, and Ohio, regards cash dividends whether large or small as income, and stock dividends, whenever earned and however declared, as capital, and the rule accordingly is a simple one. Cash dividends belong for the tenant for life and stock dividends to the corpus."[12] In regard to the English rule Mr. Cooke states, "The rule is that an ordinary,

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10 30 Barb. 637 (N. Y.) notes 118 Am. S. R. 167.
11 Sec. 554 - Cook in Corporations 28 Pa. St. 368 108 Minn. 248.
12 Sec. 555 - Cook on corporations 205 Ill. 309 99 Mass. 101 108 S. E. (Ga.) 522.

regular, usual cash or stock or property dividend belongs to the life tenant, while an extraordinary cash or stock or property dividend belongs to the corpus of the trust." In construing the latter rule Mr. Cooke says, "Accumulated dividends on preferred stock declared during the life tenancy belong to the life tenant and are not apportionable." Where the corpus of the estate consists of corporate stock, some courts construe the respective rights of the life tenant and remainderman according to the type of dividend that is given or issued.[13]

It seems to be the general rule that where a life tenancy in a fund of money is created, the life tenant is entitled only to the interest which accrues from such fund during his life, and not to the principal itself.[14]

When a life estate is created in live stock, the increase of such stock during the life tenancy belongs to the life tenant, but the original stock granted or devised is reserved for the remainderman.[15]

Personal property is so movable and destructible in its nature that the question often arises as to whether or not the remainderman can compel the life tenant to give security to preserve the corpus of the estate. Although it might be deemed necessary, for the protection of the rights of the remainderman, that the life tenant be required to give security, yet if it appears from a proper construction of the grant or devise that it was the intention of the grantor or devisor that the property should be placed in the possession of the life tenant without security, then such intention will be carried out. However, if in such a case it appears that the life tenant is committing waste on the corpus of the estate, a court will compel the life tenant to give security for the preservation of the property, regardless of the intent of the grantor or devisor. The interest which a remainderman has in moneys or securities is so destructible because of the very nature of the property given, and so in such a case the courts have been very cautious in guarding the respective interests of the parties.

13 Notes - 118 Am. S. R. 167 79 Conn. 634.
14 28 Am. Dec. (Mass.) 288.
15 78 Ky. 123 notes 1915 C - L. R. A. - 849. 133 - N. W. (Ia.) 1068.