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## Future Interests--Transmissibility and Survivorship Characteristics of Remainders

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it could be said that for the specialist the locality rule has been abandoned. The principal case would appear to support this observation. Yet, the court was careful not to abrogate the locality rule entirely. Each case must be considered on its own facts. The court seemed to say that the locality rule applies to specialists and general practitioners, but the definition of locality for the specialist embraces more area.<sup>19</sup> The diminishing importance of the locality rule can be seen by one expressed view that the size and character of the community is just one factor to be taken into account in determining the applicable general professional standard.<sup>20</sup>

The general rule as to the standard of care established for a doctor in a medical malpractice action, imposing the requirements of the same or similar locality, still prevails. However, with improved communications and transportation, the area of inclusion within a "locality" has been enlarged. The West Virginia Supreme Court of Appeals seems fully warranted in holding that the locality to which the standard is applied for a specialist in a medical malpractice action in West Virginia is large enough to encompass the testimony of a specialist from New York.

*Richard Edwin Rowe*

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#### Future Interests—Transmissibility and Survivorship Characteristics of Reminders

*T* died in 1908, leaving a will which devised her property to *X* in trust for the benefit of *A* for life, and in case *A* should die leaving "child or children" surviving her *then* to such "child or children." If *A* should die without issue *then* to *T*'s brothers and sisters in equal shares, with the share of any brother or sister who died leaving children to those children. *T* had eight brothers and sisters, three of whom predeceased *T*, and the remaining five predeceased *A*, who died without issue in 1965. The trial court found that *T* intended her property to go to her brothers and sisters or their direct descendants per stirpes, without lapse, with the interests vesting at

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<sup>19</sup> This is not to say that the locality rule for the general practitioner has not been expanded, but only that the expansion for the specialist has been greater.

<sup>20</sup> *McGulpin v. Bessmer*, 241 Iowa 1119, 1131, 43 N.W.2d 121, 128 (1950); W. PROSSER, *THE LAW OF TORTS* § 32 (3d ed. 1964).

the death of *A. Held*, affirmed. *T* intended the interests in her property to vest in her brothers and sisters and all lineal descendants of such brothers and sisters upon the death of *A* without issue. *Security National Bank & Trust Co. v. Willim*, 158 S.E.2d 715 (W. Va. 1968).

The court determined the primary problem to be whether the estate of the brothers and sisters vested at the testatrix's death or the death of the life tenant; and, whether the word "children" included only children of the first degree or whether it could be broadened to include grandchildren.<sup>1</sup>

The appellants, fiduciaries of deceased persons who, had they survived the life tenant, would have been in the class of descendants of the testatrix's brothers and sisters, contended that the "plain language" of the will required a vesting of interests at the death of the testatrix, and included only children of the first degree as participants.<sup>2</sup>

The appellees, direct descendants of the testatrix's brothers and sisters, alleged that the will indicated the testatrix's intent that both the vesting of interests and the distribution of the estate be effected upon the death of the life tenant.<sup>3</sup> The appellees also contended that until the testatrix died without issue, the brothers and sisters or their children had "nothing but a contingency or expectancy."<sup>4</sup>

In construing the testatrix's intent as to the vesting of interests, the court agreed with the appellant's contention that the law favors an early vesting of interests.<sup>5</sup> However, the court stated that this rule should not be applied if the expressed intention of the testatrix by words in a will or by necessary implication indicates a later vesting.<sup>6</sup> The court considered the testatrix's use of the word "then" in relation to gifts to the life tenant's surviving children upon her death,<sup>7</sup> and in relation to the gift to the brothers and sisters or their children,<sup>8</sup> as determinative of her intent to delay the vesting of interests until the death of the life tenant.<sup>9</sup> In support of this

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<sup>1</sup> *Security Nat'l Bank & Trust Co. v. Willim*, 158 S.E.2d 715, 717, 720 (W. Va. 1968).

<sup>2</sup> *Id.* at 718.

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Id.* at 717.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.* at 719.

decision the court stated that the brothers and sisters could not alienate the property because legal title to the estate was in the trustee and could be in no one else at the same time;<sup>10</sup> that the remaindermen could not be ascertained until the death of the life tenant;<sup>11</sup> and, that the interests of the remaindermen were a "mere contingency" until the death of the life tenant.<sup>12</sup> Relying on the case of *Kanawha Valley Bank v. Hornbeck*,<sup>13</sup> the court concluded that the trustee had a fee simple defeasible or qualified fee which required the interests to vest at the termination of the trust upon the life tenant's death.

In determining the intention of the testatrix as to the participants in the estate, the court construed the word "children" as including within its meaning the children of the brothers and sisters and "all lineal descendants of such brothers and sisters".<sup>14</sup> The court stated that technical words are presumed as being used technically and should be given their strict meaning unless it appears from the will that another meaning was intended by the testatrix.<sup>15</sup> "Children" primarily means children in the first degree; however, its meaning may be "broadened" to include the grandchildren if it appears to be the intention of the testatrix.<sup>16</sup> The court reasoned that the distribution of the testatrix's estate to her brothers and sisters in equal shares and her reference to "the share of any of them"<sup>17</sup> when speaking of the gift to a dead brother or as going to their children, indicated a per stirpes distribution and included the children of her brothers and sisters, and "all lineal descendants of such brothers and sisters."<sup>18</sup> In support of this determination the court said that the testatrix's circumstances and her intended beneficiaries at the time of the execution of the will must be considered.<sup>19</sup> The primary beneficiary was the life tenant, an infant at the execution of the will. The court stated that it would be unlikely that the testatrix believed any of her brothers and sisters would survive the life tenant and that several brothers and sisters had children.<sup>20</sup> The court also gave

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<sup>10</sup> *Id.* at 720.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> 151 S.E. 2d 694 (W.Va. 1966).

<sup>14</sup> *Security Nat'l Bank & Trust Co. v. Willim*, 158 S.E.2d 715, 721 (W. Va. 1968).

<sup>15</sup> *Id.* at 720.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.* at 717.

<sup>18</sup> *Id.* at 721.

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

weight, in regard to broadening the meaning of the word "children", to the fact that the testatrix specifically stated in her will that the life tenant's father was to have no control over the funds.<sup>21</sup>

In determining the interests created by the will, it would seem that a construction other than the one given by the court is possible. That the legal title was in the trustee is unquestioned;<sup>22</sup> however, a determination that the trustee's interest was a fee simple determinable (or fee simple defeasible as referred to by the court) seems to leave room for disagreement. A fee simple determinable is not a fee simple absolute.<sup>23</sup> Rather, it is a fee terminated by operation of law upon the occurrence of a condition or event set forth by the testatrix.<sup>24</sup> It is usually accompanied by such language as "until," "as long as," or "during."<sup>25</sup> Since the language used did not indicate what is normally considered a fee simple determinable, it would seem that another construction would be possible. The legal title in the trustee was to exist only until the termination of the trust at the death of the life tenant; therefore, the trustee's interest might be construed as legal title in trust for the life of the life tenant; or, an estate *pur autre vie* in trust.<sup>27</sup>

The interest of the life tenant's children would seem to be a contingent remainder. A contingent remainder has been defined as a remainder limited to an uncertain person, or an uncertain event; or, so limited to a certain person and event as not to possess the present capacity to take effect in possession.<sup>26</sup> In the principal case, the children of the life tenant were unborn at the creation of the interest,<sup>29</sup> and had to survive the life tenant to take a vested interest;<sup>30</sup> thus, the

<sup>21</sup> *Id.*

<sup>22</sup> *Wilson v. Kennedy*, 63 W. Va. 1, 7, 59 S.E. 736, 739 (1907).

<sup>23</sup> *Talbot v. City of Norfolk*, 152 Va. 851, 148 S.E. 865, 868 (1929).

<sup>24</sup> *Id.*

<sup>25</sup> *Trice v. Powell*, 168 Va. 397, 191 S.E. 758, 762 (1937).

<sup>26</sup> *Security Nat'l Bank & Trust Co. v. Willim*, 158 S.E.2d 717 (W. Va. 1968); see *Prichard v. Prichard*, 91 W. Va. 398, 411, 113 S.E. 256, 261 (1922). The court stated that when the purpose for which a trust was created no longer exists, title to the property goes to those who come next in succession.

<sup>27</sup> See *State v. Matthews*, 68 W. Va. 89, 94, 69 S.E. 644 (1910); IN BLACK'S LAW DICTIONARY 1074 (4th ed. 1951) a life estate *per autre vie* was defined as an estate held for the duration of the life of another. See RESTATEMENT OF PROPERTY, Explanatory Notes §§ 14, 16, 18 (1936).

<sup>28</sup> *Bland v. Davisson*, 77 W. Va. 557, 560, 88 S.E. 1021 (1916).

<sup>29</sup> *Security Nat'l Bank & Trust Co. v. Willim*, 153 S.E.2d 114 (W. Va. 1967).

<sup>30</sup> *Security Nat'l Bank & Trust Co. v. Willim*, 158 S.E.2d 715, 717 (W. Va. 1968). *T* specifically referred to the children of *A* as "surviving children."

children's interest falls within the definition of a contingent remainder in that the children were unascertainable and their interest limited to a certain event.

The life tenant's interest, being beneficial for life,<sup>31</sup> was an equitable life estate. The interests of the brothers and sisters of the testatrix were contingent upon the life tenant's death without issue, and would have vested upon the occurrence of that event had there been no additional provision concerning the children of the brothers and sisters.<sup>32</sup> Absent the provision just mentioned, there would be no problem in finding a life estate *pur autre vie* in trust for the trustee, an equitable life estate in the life tenant, alternate contingent remainders<sup>33</sup> in the surviving children of the life tenant and the brothers and sisters of the testatrix. However, the added provision that the share of any brother or sister dying with issue ("children" in will) was to go to such issue<sup>34</sup> created another problem—the nature of the interest of such issue ("children" in will) and its effect upon the interests of the brothers and sisters.

Since the brothers and sisters were to take a vested interest upon the life tenant's death without issue,<sup>35</sup> it would seem that the testatrix was referring to the gift to the surviving issue ("children") of a brother or sister who died, as only capable of occurring should the brother or sister die leaving issue before the death of the life tenant.<sup>36</sup> The contingent remainder of the brothers and sisters would therefore be capable of defeat by his or her death, with issue surviving, prior to

<sup>31</sup> See *Rowley v. American Trust Co.*, 144 Va. 375, 132 S.E. 346, 347 (1926).

<sup>32</sup> *In re Conley*, 122 W. Va. 559, 563, 12 S.E.2d 49 (1940). The court stated that all texts hold that a conveyance or devise to A for life, and if he die without children, then to B, makes B's estate contingent and does not allow it to vest until the happening of the condition precedent—A's death without issue.

<sup>33</sup> *Commonwealth v. Wellford*, 114 Va. 372, 76 S.E. 917, 918 (1913); *Loddington v. Kime*, 1 Salk. 224 (1695); *Young v. Lewis*, 138 W. Va. 425, 76 S.E.2d 276 (1953). The court in this case placed a completely different construction upon a similar devise than the court in the principal case. In a devise to A for life, remainder in fee to M's children; if he leaves none, remainder to T's heirs; the court construed the interests as: Qualified fee in the heirs after A's life estate; remainder in fee to vest in A's children if any.

<sup>34</sup> *Security Nat'l Bank & Trust Co. v. Willim*, 158 S.E.2d 715, 717 (W. Va. 1968).

<sup>35</sup> *In re Conley*, 122 W. Va. 559, 563, 12 S.E.2d 49, 51 (1940).

<sup>36</sup> L. SIMES AND SMITH, *THE LAW OF FUTURE INTERESTS* ch. 19, § 583, 25 (1956). The authors stated that in a gift to A for life, remainder to A's children, the descendants of any deceased child to take the parents' share, if any; if A's children die before the life tenant, survived by descendants, the interest of that child will be defeated and his descendants take his share.

the death of the life tenant.<sup>37</sup> Therefore, for the interest of the brothers and sisters to vest indefeasably in them or their representatives at the life tenant's death without issue, they would have to die without issue prior to the life tenant or have survived her. This seems particularly clear when it is considered that had the testatrix not included the additional provision concerning the children of dead brothers and sisters, the brothers and sisters would not have had to survive the life tenant for their contingent remainders to have vested upon the life tenant's death without issue.<sup>38</sup> Also, a child taking the share of a dead brother or sister of the testatrix would not have to survive the life tenant, since the contingencies upon which such child would take the share is only that the brother or sister die before the life tenant and that the child be alive at such time.<sup>39</sup> The majority of courts will not imply conditions of survivorship.<sup>40</sup>

Since three of the brothers and sisters in the principal case died before the life tenant with or without issue,<sup>41</sup> the disposition of their contingent remainders becomes very important. The construction of the interests created in the principal case made in the previous paragraphs is based upon a determination or assumption that the brothers and sisters had contingent remainders at their creation. The validity of this determination is placed in a somewhat confusing state by the reference to such interests as "nothing but a contingency or expectancy" in the appellee's argument;<sup>42</sup> and, by the reference to them as a "mere contingency" in the opinion of the West Virginia Supreme Court of Appeals.<sup>43</sup>

An expectancy has been defined as:

"Expectancy" as applied to property, is contingency as to

<sup>37</sup> *Id.*

<sup>38</sup> L. SIMES AND SMITH, *THE LAW OF FUTURE INTERESTS* ch. 19, § 583, 28 (1956).

<sup>39</sup> L. SIMES AND SMITH, *THE LAW OF FUTURE INTERESTS* ch. 19, 583, 27 (1956). A devise to X for life, with a remainder to his then living brothers and sisters and the issue of any brothers and sisters who may have died leaving issue places no requirement of survival, other than survival of the ancestor, upon the issue. The facts being: X is survived by one brother; another brother dies before X leaving three children, one of whom dies before X. The authors stated that the interests of the issue are vested immediately upon the death of their ancestor.

<sup>40</sup> See *In re Ferry's Estate*, 55 Cal. 2d 776, 787, 361 P.2d 900, 903 (1961); *Black v. Todd*, 121 S.C. 243, 113 S.E. 793 (1922).

<sup>41</sup> *Security Nat'l Bank & Trust Co. v. Willim*, 158 S.E.2d 715, 717 (W. Va. 1968).

<sup>42</sup> *Id.* at 718.

<sup>43</sup> *Id.* at 720.

possession, that which is expected or hoped for. At most it is a mere hope or expectation, contingent upon the will and pleasure of the landowner, and hardly reaches the height of a property right, much less a vested right, because where there is no obligation there is no right. It is a possibility for which a party may under certain circumstances properly hope.<sup>44</sup>

That the testatrix intended the devisees to have more than an expectancy, is seemingly indicated since she specifically referred to their interests as being shares.<sup>45</sup> It does not seem logical that she would desire them to have equal shares of a mere hope.<sup>46</sup> Assuming that the testatrix intended the brothers and sisters to have *real* contingent remainders, the nature of contingent remainders in West Virginia may be in question. Such a question could arise from the court's reference to the interests of the brothers and sisters as inalienable and mere contingencies.<sup>47</sup>

At common law, a contingent remainder could not be alienated in a normal manner.<sup>48</sup> However, by statute and by case law,<sup>49</sup> in West Virginia any interest in property is alienable if it is capable of becoming a fee simple;<sup>50</sup> and, by case law in West Virginia a contingent remainder is a real, alienable,<sup>51</sup> devisable,<sup>52</sup> descendible,<sup>53</sup>

<sup>44</sup> *Robinson v. Eagle-Pitcher Lead Co.*, 132 Kan. 860, 863, 297 P. 697, 698 (1931).

<sup>45</sup> *Security Nat'l Bank & Trust Co. v. Willim*, 158 S.E.2d 715, 717 (1968).

<sup>46</sup> *In re Conley*, 122 W. Va. 559, 563, 12 S.E.2d 49 (1940). In this case the court interpreted the words "his share" as intending a remainder after a life estate. The court said that it seemed likely that, having named persons, the testatrix intended that they take nothing.

<sup>47</sup> *Security Nat'l Bank & Trust Co. v. Willim*, 158 S.E.2d 715, 719, 720 (W. Va. 1968).

<sup>48</sup> *Rouss v. Rouss*, 90 W. Va. 640, 651, 111 S.E. 586, 588 (1922). The court said that at common law contingent remainders could not be alienated; however, this was due to reasons other than the person having the contingent remainder having no right or interest.

<sup>49</sup> *Miller v. Miller*, 127 W. Va. 140, 145, 31 S.E.2d 844 (1944). W. VA. CODE ch. 36, art. 1, § 9 (Michie 1966) provides:

Any interest in or claim to real estate or personal property may be lawfully conveyed or devised. Any estate in such property may be made to commence in futuro, by conveyance *intervivos*, in like manner by will, and any estate which would be good as an executory devise or bequest, shall be good if created by conveyance *intervivos*.

<sup>50</sup> L. SIMES, *FUTURE INTERESTS* 20 (2d ed. 1966).

<sup>51</sup> *Miller v. Miller*, 127 W. Va. 140, 145, 31 S.E.2d 844, 847 (1944). The court said that a contingent right or interest, which would ripen into total ownership upon the occurrence of an event possible to happen, is property and is alienable under W. VA. CODE ch. 36, art. 1, § 9 (Michie 1966); *National Bank of Commerce of Charleston v. Wehrle*, 124 W. Va. 268, 273, 20 S.E.2d 112, 115 (1942). The court said that regardless whether an interest was an executory interest or contingent remainder, title passed on execution and delivery of the deed; and, under W. VA. CODE ch. 36, art. 1,

attachable,<sup>54</sup> and substantial<sup>55</sup> interest in property. This is true whether the interest be legal or equitable.<sup>56</sup> Therefore, assuming that the contingent remainder of any brother or sister dying without issue prior to the life tenant's death without issue is alienable, devisible, descendible, attachable, and substantial; it could be held by grantees, devisees, heirs, or creditors. The interest which these persons would hold would be subject only to those conditions present when the interests were in the hands of the brothers and sisters. The surviving children of any brother or sister dying before the life tenant would have a contingent remainder dependent only upon the life tenant's death without issue—<sup>57</sup> the condition of the death of a brother and sister not leaving issue having failed to occur.

In determining the interests in the principal case, the court invoked the cardinal rule concerning the construction of wills; the intent of the testator controls, unless it contravenes some positive rule of

§ 9 (Michie 1966), he could dispose of that interest by will; *Kidwell v. Rogers*, 103 W. Va. 272, 275, 137 S. E. 5, 6 (1927). In quoting from another case, the court said that contingent remainders and executory interests stood in the same position regarding transmissibility.

<sup>52</sup> *Miller v. Miller*, 127 W. Va. 140, 145, 31 S.E.2d 844, 848 (1944). The court referred to a contingent remainder as capable of transfer by deed or will; *Kidwell v. Rogers*, 103 W. Va. 272, 276, 137 S.E. 5, 6 (1927); see *McKown v. McKown*, 93 W. Va. 689, 117 S.E. 557 (1923); *Rust v. Commercial Coal & Coke Co.*, 92 W. Va. 457, 471, 115 S.E. 406, 411 (1923); *Rouss v. Rouss*, 90 W. Va. 646, 651, 111 S.E. 586, 588 (1922).

<sup>53</sup> *National Bank of Commerce of Charleston v. Wehrle*, 124 W. Va. 268, 273, 20 S.E.2d 112, 115 (1942).

<sup>54</sup> *Miller v. Miller*, 127 W. Va. 140, 145, 31 S.E.2d 844, 848 (1944).

<sup>55</sup> *Id.* at 145, 847. The court held that a contingent remainder was not an expectancy or possibility, but was property. In *Kidwell v. Rogers*, 103 W. Va. 272, 275, 137 S.E. 5, 6 (1927) the court stated that executory interests were not mere possibilities, but substantial interests which descend by inheritance before the happening of the contingency upon which they depend. The court also quoted another case as holding that executory interests and contingent remainders stand on the same ground regarding their transmissibility. In *Rouss v. Rouss*, 90 W. Va. 640, 652, 111 S.E. 586, 588 (1922) the court stated that even though the interest is not vested, it is a right in land. The right does not await the happening of the contingency which will vest the remainder and give a right of possession. It comes from the will at the death of the testator.

<sup>56</sup> *Miller v. Miller*, 127 W. Va. 140, 145, 31 S.E.2d 844, 847 (1944). T's will created a trust for three sons and provided that the interest in income of one dying without issue should pass to the survivors of them. T also provided for forfeiture upon the occurrence of certain events, among which was bankruptcy. One son died with children; one son died without issue; and, one son was adjudicated bankrupt. The court said that the son who was adjudicated bankrupt had a contingent (equitable) right or interest which upon the occurrence of an event possible to happen would ripen into complete ownership. This interest was considered alienable by deed or will, and capable of being reached by creditors.

<sup>57</sup> *Security Nat'l Bank & Trust Co. v. Willim*, 158 S.E.2d 715, 719 (W. Va. 1968).

law.<sup>58</sup> In applying this rule, the court felt that a primary indication of the testatrix's intent to have the interests of the devisees vest at the death of the life tenant was her use of the word "then" in relation to gifts to the life tenant's surviving children, and in relation to the gift to the brothers and sisters or their children.<sup>59</sup> This construction is apparently in conflict with prior West Virginia decisions. In the case of *Bland v. Davisson*,<sup>60</sup> the court considered the phrase "then let the estate be divided" as relating to the time of enjoyment and not the time of vesting,<sup>61</sup> using the following quotation concerning the significance of the word "then":

Adverbs of time in a devise of a remainder, are construed to relate merely to the time of the enjoyment of the estate, and not to the time of the vesting in interest.<sup>62</sup>

In *Disney v. Wilson*,<sup>63</sup> a Virginia case, the court in referring to the use of the word "then" in devises, said that it refers to the time of possession and enjoyment and not vesting of the right of enjoyment.<sup>64</sup>

A discussion of the court's consideration of the inalienability of the interests of the brothers and sisters as an indication of the testatrix's intent to delay the vesting of such interests<sup>65</sup> becomes moot upon acceptance of the validity of the previous statements concerning statutory and case law in West Virginia in regard to contingent remainders.

The court's statement concerning the broadening of the word "children" to include "grandchildren" has support in prior case law.<sup>66</sup> However, in relation to such construction, the significance of the testatrix specifically denying her son-in-law any control of the funds—other than reflecting a normal tendency of a mother-in-law to have a less than trusting attitude toward her son-in-law is one of an elusive character.

<sup>58</sup> *Id.*

<sup>59</sup> *Security Nat'l Bank & Trust Co. v. Willim*, 158 S.E.2d 715, 719 (W. Va. 1968).

<sup>60</sup> 77 W. Va. 557, 559, 88 S.E. 1021, 1023 (1916).

<sup>61</sup> *Id.* at 561.

<sup>62</sup> *Id.*

<sup>63</sup> 190 Va. 445, 57 S.E.2d 144 (1950).

<sup>64</sup> *Id.* at 149.

<sup>65</sup> *Security Nat'l Bank & Trust Co. v. Willim*, 158 S.E.2d 715, 719 (W. Va. 1968).

<sup>66</sup> *Davis Trust Co. v. Elkins*, 114 W. Va. 742, 747, 157 S.E. 611, 614 (1934).

The significance of the principal case in regard to West Virginia property law is not one of minor potentialities. Interpretations by the lawyers and courts of our state concerning the ramifications of this case could have a profound effect upon the nature of future interests, and particularly contingent remainders. Upon a consideration of such interpretative possibilities, one tends to search for a concurring or dissenting opinion which is conspicuously absent.

*F. Richard Hall*

### Income Tax—The Deductibility of Meals as Traveling Expenses

The United States Supreme Court in the recent case of *United States v. Correll*<sup>1</sup> ostensibly settled the long standing confusion as to the permissible scope of section 162 of the Internal Revenue Code. That section provides that a taxpayer may deduct the ordinary and necessary traveling expenses he incurred during the taxable year in carrying on his trade or business. Included in this deduction is the entire amount spent for meals and lodging while away from home.<sup>2</sup>

The Court elected to examine, in the light of the existing conflicts among the United States Courts of Appeals,<sup>3</sup> the Commissioner's interpretation of section 162. Specifically, the question presented was whether the Commissioner's position on that part of section 162 which provides for the deductibility of meals "while away from home" was justified. Originally the Commissioner ruled that a taxpayer could not deduct expenses for meals under section 162 unless such expenses were incident to travel away from home "overnight."<sup>4</sup> Subsequently this overnight requirement was modified by the Commissioner's acquiescence<sup>5</sup> to the decision of the Fifth Circuit in *Williams v. Patterson*.<sup>6</sup> In that case the taxpayer did not stay away from home overnight but rather rented a hotel room where he simply rested prior to returning to work. As a result of the *Williams* decision

<sup>1</sup> 20 Am. Fed. Tax R. 2d Para. 675845 (1967).

<sup>2</sup> INT. REV. CODE of 1954, § 162 (a)2.

<sup>3</sup> The First Circuit in *Comm'r v. Bagley*, 374 F.2d 204 (1st Cir. 1967), upheld the Commissioner's interpretation that the taxpayer's meals were not deductible under section 162 unless his business travel was such that he was required to stop for rest or sleep. *Contra*, *Hanson v. Comm'r*, 298 F.2d 391 (8th Cir. 1962).

<sup>4</sup> *Kenneth Waters*, 12 T.C. 414 (1949); *Allan L. Hanson*, 35 T.C. 413, *rev'd*, *Hanson v. Comm'r*, 298 F.2d 391 (8th Cir. 1962).

<sup>5</sup> Rev. Rul. 221, 1961-2 CUM. BULL. 34.

<sup>6</sup> 286 F.2d 333 (5th Cir. 1961).