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## Federal Estate Taxation--Conditional Bequests to Charity--No Deduction

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serve to restrain the transfer or encumbrance by the husband of his realty. *United States v. Spangler*, 94 F. Supp. 301 (W. Va. 1950). Under the present law of West Virginia there seems to be no way to discharge the lien. *United States v. Spangler, supra*. This is true though the husband has never defaulted in payment, is solvent and apparently will remain solvent. Since the position of our court is well settled, it would seem that the problem is a proper one for legislation. A procedure should be provided whereby, in a proper case, the lien could be discharged. For example, the legislature could provide for a lump sum payment of the future installments to become due based on the life expectancy of the wife.

Public policy should not support a rule of law which operates as a major restraint upon alienation of realty.

L. H. H.

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FEDERAL ESTATE TAXATION—CONDITIONAL BEQUESTS TO CHARITY—NO DEDUCTION.—S established a testamentary trust for the joint lives of his wife and daughter, and the life of the survivor, with remainder to the living descendants of the daughter, or in their absence, one-half to collateral relatives and one-half to a charity, or if no named collaterals then survived, all to the charity. At S's death his daughter was twenty-seven years old, divorced, and childless. The executor deducted in the estate tax return the actuarially computed present value of the conditional bequest of one-half of the residue, without deduction for the half subject to the more remote contingency. The deduction was disallowed by the commissioner but sustained by the tax court in *Estate of Sternberger v. Comm'r*, 18 T.C. 836 (1952), *aff'd*, 207 F.2d 600 (2d Cir. 1953). *Held*, reversed. No deduction is allowable unless the possibility that charity will not take is so remote as to be negligible. *Comm'r v. Estate of Sternberger*, 75 Sup. Ct. 229 (1955) (6-2 decision.)

The statute allows deduction from the gross estate of transfers for public, charitable, or religious uses in determining the taxable estate. INT. REV. CODE § 812(d). These provisions remain unchanged in the 1954 code. *Id.* at §§ 2051, 2055.

*Humes v. United States*, 276 U.S. 487 (1927), established the doctrine that this does not authorize deduction for a contingent gift to a charity where the bequest is incapable of evaluation in a

case where the charitable gift was to be defeated if a fifteen-year-old unmarried girl should live to be forty or should die leaving issue. The doctrine has been applied in a variety of situations. *United States v. Fourth National Bank in Wichita*, 83 F.2d 85 (10th Cir. 1936) (bequest failed unless others should contribute an equal amount to the charitable cause); *Helvering v. Union Trust Co.*, 125 F.2d 401 (4th Cir. 1942) (periodic payments to the charity were dependent on continued use of a country home left to the charity for defined purposes); *Norris v. Comm'r*, 134 F.2d 796 (7th Cir. 1943) (payments were purely at the trustees' option); *First Trust Co. of St. Paul v. Reynolds*, 137 F.2d 518 (8th Cir. 1943) (bequest was contingent upon the consent of the testator's spouse). But where surgery had made it impossible for the daughter to have children, the charity was assured of taking and deduction was allowed. *United States v. Provident Trust Co.*, 291 U.S. 272 (1934).

Whether actuarial susceptibility of evaluation was sufficient as well as a necessary condition for deductibility gave rise to conflict among the circuits. In *Meierhof v. Higgins*, 129 F.2d 1002 (2d Cir. 1942), where a conditional bequest to charity, after life estates to two beneficiaries, aged seventy-four and seventy-nine, was defeasible if the widow, aged seventy-one survived them, the gift was held deductible to the extent of its actuarially computed value against objections as to its speculative character. There followed a treasury regulation that "if as of the date of decedent's death the transfer to charity is dependent upon the performance of some act or the happening of a precedent event in order that it might become effective, no deduction is allowable unless the possibility that charity will not take is so remote as to be negligible." U.S. Treas. Reg. 105, § 81.46 (1942). Relying on this regulation *Newton Trust Co. v. Comm'r*, 160 F.2d 175 (1st Cir. 1947), held that no deduction was allowable where a life interest to testator's widow was followed by a remainder to his brother if he survived her, otherwise to charity, and the brother's and the widow's actuarial life expectancy was the same. The possibility that charity would not take was not so remote as to be negligible.

Adherence by the second circuit to its doctrine in the present case, 207 F.2d 600, led to a grant of certiorari to resolve the conflict. *Comm'r v. Estate of Sternberger*, 347 U.S. 932 (1954). The court adheres to the *Humes* doctrine and amplifies it, holding that along with actuarial computability, the chance charity will not take must be so remote as to be negligible. The dissent takes

substantially the position of the *Meierhof* case to which it refers.

The opposition of the treasury regulation and the *Meierhof* doctrine had been commented on. PAUL, FEDERAL ESTATE AND GIFT TAXATION § 12.24 (Supp. 1946). To sustain either was to discard the other. The Court has expressed its election in the instant case with the result that contingent charitable gifts must now satisfy a double test to get estate tax deduction. It must be capable of evaluation, unless as in the *Provident Trust* case, the charity is assured of taking; and even though it may be actuarially computable, the possibility of the charity's not taking must be so remote as to be negligible.

J. L. McC.

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JUVENILE COURTS—CONSTITUTIONAL RIGHTS AND RULES OF EVIDENCE APPLICABLE.—In delinquency proceedings against a minor in the Philadelphia juvenile court, the minor was shown to have operated an automobile without the owner's consent and without a driver's license. Guilty knowledge of the theft of the car was not shown. The child was adjudged delinquent after admitting that he was not a licensed driver. A later delinquency petition alleged his participation in an armed robbery and, at the hearing, a detective testified that a person who confessed to the armed robbery had implicated the minor, who was shown to have been before the juvenile authorities several times before. The court committed him to a training school and he appealed, complaining that the juvenile court compelled him to answer a self-incriminating question and that testimony as to the confession was inadmissible hearsay. *Held*, commitment sustained; juvenile courts are not criminal courts to which the constitutional rights granted to persons accused of crime are applicable and the nature of their hearings renders inapplicable the rules of evidence applied in criminal trials. *In re Holmes*, 109 A.2d 523 (Pa. 1954).

It seems to be well accepted today that a minor is not entitled in juvenile court proceedings to all the constitutional safeguards available to the adult criminal. *People v. Lewis*, 260 N.Y. 171, 183 N.E. 353 (1932); *cf. Cinque v. Boyd*, 99 Conn. 70, 121 Atl. 678 (1923) (*contra* on evidence point of principal case); Mack, *The Juvenile Court*, 23 HARV. L. REV. 104 (1909); Comment, 35 VA. L. REV. 1097 (1949). The functions of the juvenile court are considered so important that the limitations of the Constitution are