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# Wills -- Validity of Charitable Devises and Bequests

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# CASES NOTED

## WILLS—VALIDITY OF CHARITABLE DEVICES AND BEQUESTS

Petitioner sought to avoid certain charitable and scientific bequests contained in the last will of her deceased mother. Testatrix executed four wills: two were executed at least six months before death and two within six months of death. The wills all contained substantially the same charitable and scientific bequests. The District Court of Appeal affirmed the County Judge's ruling that such bequests were valid. On certiorari, *held*, reversed: charitable and scientific bequests contained in a will executed within six months of death are valid if the will "*immediately next prior to such last will*"<sup>1</sup> contained substantially the same bequests and was executed at least six months before death. Therefore, since the last will and the will "*immediately next prior to such last will*"<sup>2</sup> were both executed within six months of the testatrix's death, the charitable and scientific bequests may be avoided at the option of a specified class of heirs, of which petitioner is a member. *In re Blankenship's Estate*, 122 So.2d 466 (Fla. 1960).

At common law there were no limitations on charitable devises or bequests.<sup>3</sup> Today, a minority of states and the District of Columbia have statutes which either limit the amount that may be devised to charity<sup>4</sup> or provide that such devises or bequests must not have been made within a certain period of time before death.<sup>5</sup> Some states have statutes which contain both the time and the amount limitations.<sup>6</sup>

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1. FLA. STAT. § 731.19 (1959): "Charitable devises and bequests.—If a testator dies leaving issue of his body or an adopted child, or the lineal descendants of either, or a spouse, and if the will of such testator devises or bequeaths the estate of such testator, or any part thereof, to a benevolent, charitable, literary, scientific, religious or missionary institution . . . such devise or bequest shall be avoided in its entirety . . . by one or more of the above specified persons . . . unless said will was duly executed at least six months prior to the death of the testator, or unless testator, by his will duly executed immediately next prior to such last will and more than six months before his death, made a valid charitable bequest or devise in substantially the same amount for the same purpose or to the same beneficiary . . ." (Emphasis added.)

2. FLA. STAT. § 731.19 (1959).

3. 1 PAGE, WILLS § 40 (1st ed. 1941).

4. IOWA CODE ANN. § 633.3 (1954) (invalid in excess of one-fourth of testator's estate); N.Y. DECED. EST. § 17 (invalid in excess of one-half of testator's estate).

5. D.C. CODE ANN. § 19-202 (1951) (invalid unless the will was executed at least one calendar month before the death of the testator); FLA. STAT. § 731.19 (1959) note 1 *supra*; OHIO REV. CODE ANN. § 2107.06 (Baldwin 1958) (invalid unless the will was executed at least one year prior to the death of the testator); PA. STAT. ANN. tit. 20, § 180.7(1) (1950) note 14 *infra*.

6. CAL. PROB. CODE § 41 (valid to the extent of one-third of the testator's estate provided that the will is executed at least thirty days before the death of the testator); GA. CODE ANN. § 113.107 (1959) (valid to the extent of one-third of the testator's estate provided that the will was executed at least ninety days before the death of the testator); IDAHO CODE ANN. § 14-326 (1948) (valid to the extent of one-third of the

are: (1) the testator must have expressed substantially the same bequest in a will executed *immediately next prior* to his last will, *i.e.* in the *next to the last* will made by him, and (2) the next to the last will must have been executed at least six months before the testator's death.<sup>23</sup>

Therefore, since the testatrix executed both her last will and the will "*immediately next prior to such last will*"<sup>24</sup> within six months of death, the petitioner, who is a member of the class sought to be protected, may take her intestate share at the expense of the charitable and scientific beneficiaries.

The Supreme Court of Florida was forced to reach this decision because the statutory amendment was too narrow. If the purpose of the statute is to protect certain heirs from hasty and improvident bequests to charity by a testator who is in apprehension of impending death, it would appear unreasonable that a testator who has displayed charitable inclinations in a series of wills should not have his testamentary intentions honored. Therefore, it is submitted that the Florida Legislature might amend this statute to permit the courts to look beyond the will "*immediately next prior to such last will*"<sup>25</sup> in order to give effect to charitable bequests.

HARRY M. ROSEN

## CRIMINAL LAW—CONSPIRACY BETWEEN HUSBAND AND WIFE

A husband and wife were indicted for conspiring to defraud the United States.<sup>1</sup> The federal district court dismissed the indictment on the ground that husband and wife could not conspire within the meaning of Title 18 U.S.C. Section 371.<sup>2</sup> The United States appealed directly to the Supreme Court. *Held*, reversed:<sup>3</sup> the common law fiction of unity of husband and

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23. *In re Blankenship's Estate*, *supra* note 20, at 468. (Emphasis not added.)

24. FLA. STAT. § 731.19 (1959).

25. FLA. STAT. § 731.19 (1959).

1. 18 U.S.C. § 545 (1958): "Whoever knowingly and willfully, with intent to defraud the United States, smuggles, or clandestinely introduces into the United States any merchandise which should have been invoiced, or makes out or passes, or attempts to pass, through the customhouse any false, forged, or fraudulent invoice, or other document or paper. . . ."

2. 18 U.S.C. § 371 (1958): "If two or more persons conspire either to commit any offense against the United States, or to defraud the United States . . . and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined not more than \$10,000 or imprisoned not more than five years, or both."

3. The dissenting Justices were Mr. Chief Justice Warren, Mr. Justice Black and Mr. Justice Whittaker.