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Use of Survivorship Clauses in Wills

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award of compensation to a garage porter who was injured by the firing of a child's air rifle, on the ground that "he was injured because he was in the garage engaged in the duty assigned to him under his contract of employment."[89] But in a later decision, the court expressly rejected the argument that an injury by accident may be found to have arisen out of employment from the mere fact that the employee would not have been in a position to receive the injury but for the duties of his employment, expressing approval of the statement that beyond this "it must appear that . . . [the accident] resulted from something he was doing in the course of his work or from some peculiar danger to which the work exposed him."[90] The court has distinguished an assault by an insane ex-fellow employee occurring on the employer's premises and an assault by an insane stranger occurring in a restaurant, finding that causal connection between the assault and the employment existed in the former case, but not in the latter.[91]

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USE OF SURVIVORSHIP CLAUSES IN WILLS

Today a draftsman of wills should consider the increased risks of multiple deaths resulting from the hazards of modern living in general and travel by airplane and automobile in particular. He should be aware of the possibility of the client's death with his intended beneficiary within a short period, in a common disaster, or under circumstances in which there is no evidence of survivorship. The failure to provide for these possibilities may lead to the frustration of a testamentary disposition, as a beneficiary must survive the testator in order to take under the testator's will.[1] Further, the advent of the marital deduction provisions in the Internal Revenue Code[2] makes a consideration of these possibilities a practical *sine qua non* to the drafting of any testamentary plan involving a husband and wife. These possibilities will herein be considered from the standpoint of the common law, applicable statutes and testamentary provisions.

89. Carmichael v. Mahan Motor Co., 157 Tenn. 613 (1928).
90. Scott v. Shinn, 171 Tenn. 478, 483 (1937).
91. Whaley v. Patent Button Co., 184 Tenn. 700 (1947); Thornton v. R.C.A. Service, 188 Tenn. 644 (1949).

1. Curley v. Lynch, 206 Mass. 289, 92 N.E. 429 (1910); *Matter of* Lott, 65 Misc. 422, 121 N.Y. Supp. 1102 (Surr. Ct. 1909). See the effect of a lapsed legacy statute in Mayor and City Council of Baltimore v. White, 189 Md. 571, 56 A.2d 824 (1948). *But cf.* Carpenter v. Severin, 201 Iowa 969, 204 N.W. 448, 451 (1925).
2. INT. REV. CODE OF 1954 § 2056.

Special attention is directed to the estate tax consequences resulting from the use of survivorship clauses and to some of the advantages and disadvantages of each type.

I. APPLICABLE LAW

A. Common Law

In the absence of statutory and testamentary provisions, there is no presumption as to survivorship where two or more persons die under circumstances in which it cannot be determined which one survived.[3] Rather, it is incumbent upon the party asserting survivorship to show it by a fair preponderance of the evidence[4] sufficient to satisfy reasonable minds.[5] Therefore, where a testator and his legatee perish under such circumstances, the legacy is distributed as though the testator and the legatee perished at the same instant of time.[6] Thus, as the legatee was incapable of taking, his heirs are deprived of the legacy.[7] Similarly, if two successive beneficiaries perish under such circumstances, the testator's heirs will inherit a reversion since neither beneficiary could be shown to have survived long enough to inherit.[8] Thus, the practical effect of the common-law rule is that

3. Carpenter v. Severin, 201 Iowa 969, 204 N.W. 448 (1925); Middeke v. Baeder, 198 Ill. 590, 64 N.E. 1002, 59 L.R.A. 653 (1902); *In re* Strong's Will, 171 Misc. 445, 12 N.Y.S.2d 544 (Surr. Ct. 1939); Will of Abram Ehle, 73 Wis. 445, 41 N.W. 627 (1889); Wing v. Angrave, 8 H.L. Cas. 183, 11 Eng. Rep. 397, 8 Eng. Rul. Cas. 519 (1860). *Contra*, Colvin v. Procurator General, 1 Hagg. Ec. Rep. 92, 162 Eng. Rep. 518 (1827). See Notes, 43 A.L.R. 1348 (1926); 5 A.L.R. 797 (1920); 25 C.J.S., *Death* § 11 (1941); 9 WIGMORE, EVIDENCE § 2532 (3d ed. 1940). The Roman and Civil law provided for such a presumption. *See* Wing v. Angrave *supra* at 403; *In re* Herrmann, 75 Misc. 599, 136 N.Y. Supp. 944 (Surr. Ct. 1912).

4. *In re* Hayward's Will, 143 Misc. 401, 256 N.Y. Supp. 607 (Surr. Ct. 1932), *aff'd* 237 App. Div. 823, 260 N.Y. Supp 995 (1932). See Notes, 18 A.L.R. 105 (1922); 5 A.L.R. 797 (1920).

5. Clarke v. Bryson, 136 Cal. App. 521, 29 P.2d 275 (1934); Sporrer v. Ady, 150 Md. 60, 132 Atl. 376 (1926); *In re* Kimmey's Estate, 326 Pa. 33, 191 Atl. 47 (1937); *cf. In re* Wallace's Estate, 64 Cal. App. 107, 220 Pac. 682 (1923).

6. *In re* Strong's Will, 171 Misc. 445, 12 N.Y.S.2d 544 (Surr. Ct. 1939); St. John v. Andrews Inst. for Girls, 117 App. Div. 698, 102 N.Y. Supp. 808 (1907), *modified*, 191 N.Y. 254, 83 N.E. 981 (1908). Some courts recognize a presumption of simultaneous and instant death here. *See* Kansas Pacific Ry. v. Miller, 2 Colo. 442, 464 (1874); Middeke v. Baeder, 198 Ill. 590, 64 N.E. 1002 (1902). Others merely reach this holding and do not raise it to the dignity of a presumption. Young Women's Christian Home v. French, 187 U.S. 401 (1903); Russell v. Hallett, 23 Kan. 194 (1880); *In re* Strong's Will, 171 Misc. 445, 12 N.Y.S.2d 544 (Surr. Ct. 1939). Distinction made in Note, 43 A.L.R. 1348 (1926). *But cf. In re* Lindop [1942] Ch. 377.

7. *In re* Burza's Estate, 151 Misc. 577, 272 N.Y. Supp. 248 (Surr. Ct. 1934); *In re* Herrmann, 75 Misc. 599, 136 N.Y. Supp. 944 (Surr. Ct. 1912); *In re* Lott, 65 Misc. 422, 121 N.Y. Supp. 1102 (Surr. Ct. 1909). See Note, 43 A.L.R. 1348, 1349 (1926). Heirs of tenants by the entirety inherit such property in proportion to the original contribution of the spouses. *In re* Strong's Will, 171 Misc. 445, 12 N.Y.S.2d 544 (Surr. Ct. 1939). *But see* McGhee v. Henry, 144 Tenn. 548, 234 S.W. 509, 18 A.L.R. 103 (1921). See note 1 *supra* as to the necessity of survivorship by a legatee.

8. Wing v. Angrave, 8 H.L. Cas. 183, 11 Eng. Rep. 397, 8 Eng. Rul. Cas. 519 (1860); cf. Young Women's Christian Home v. French, 187 U.S. 401 (1903). See 9 WIGMORE, EVIDENCE § 2532 (3d ed. 1940).

where the order of deaths cannot be established, a decedent's estate is distributed as though he survived the beneficiary.[9]

B. Statutes

The Uniform Simultaneous Death Act, in effect in 42 states, Hawaii and Alaska,[10] codifies the common-law rule into a presumption and provides that where the order of death cannot be determined[11] the property of each passes as if he had survived.[12] It also covers the simultaneous death of successive beneficiaries,[13] joint tenants and tenants by the entirety,[14] and an insured and his beneficiary.[15] However, a lapsed-legacy statute, where applicable, may have the effect of allowing a disposition to a beneficiary even though the testator is presumed to have survived under the Simultaneous Death Act.[16] The anti-lapse statute requires that a gift to a pre-deceased legatee take effect as though he were alive at the testator's death.[17] Thus, it is important to provide for a substitute legatee to cover the possibility of a beneficiary predeceasing the testator.[18]

In addition to those states adopting the Uniform Act, Georgia[19] and Ohio[20] have statutes making provision for the distribution of

9. *See* Carpenter v. Severin, 201 Iowa 969, 204 N.W. 488, 43 A.L.R. 1348 (1926). Compare the situation where a person is the sole heir of two persons perishing simultaneously [Cooke v. Caswell, 81 Tex. 678, 17 S.W. 385 (1891)], with the situation where a person is a remainderman of two persons perishing simultaneously [Wing v. Angrave, 8 H. L. Cas. 183, 11 Eng. Rep. 397, 8 Eng. Rul. Cas. 519 (1860)]. *But see* Young Women's Christian Home v. French, 187 U.S. 401 (1903). *But cf.* Fitzgerald v. Ayres, 179 S.W. 289 (Tex. Civ. App. 1915).

10. 9A U.L.A. 263 (1951).

11. The amount of proof required is the same as at common law. *In re* Di Bella's Estate, 279 App. Div. 689, 107 N.Y.S.2d 929 (1951); *In re* Dukszta's Estate, 193 Misc. 720, 87 N.Y.S.2d 245 (Surr. Ct. 1948). The act is inapplicable if there is evidence as to which survived [Savers v. Stolz, 121 Colo. 456, 218 P.2d 741 (1950)], or if the testator provides otherwise. UNIFORM SIMULTANEOUS DEATH ACT § 6.

12. *In re* Gerasimoff's Estate, 96 N.Y.S.2d 142 (Surr. Ct. 1950); *In re* Dunham's Will, 188 Misc. 1026, 69 N.Y.S.2d 572 (Surr. Ct. 1947). But testator is not prevented from providing by a survivorship clause that another is deemed the survivor. *In re* Fowles' Will, 222 N.Y. 222, 118 N.E. 611 (1918). England also provides a presumption that the younger of two persons survives where they die under circumstances in which it cannot be shown which survived. Law of Property Act, 1925, 15 & 16 GEO. 5, c. 20 § 184.

13. UNIFORM SIMULTANEOUS DEATH ACT § 2; *cf.* Miami Beach First National Bank v. Miami Beach First National Bank, 52 So.2d 893 (Fla. 1951).

14. UNIFORM SIMULTANEOUS DEATH ACT § 3. *But see* Adams v. Gardener, 237 S.W. 2d 495 (Mo. App. 1951).

15. UNIFORM SIMULTANEOUS DEATH ACT § 4. McGowin v. Menken, 223 N.Y. 509, 119 N.E. 877 (1918).

16. Mayor and City Council of Baltimore v. White, 189 Md. 571, 56 A.2d 824 (1948). *But cf.* Carpenter v. Severin, 201 Iowa 969, 204 N.W. 448, 451 (1925). See 5 AM. LAW OF PROP. § 22.49 (Casner ed. 1952).

17. *In re* Whelan's Will, 55 N.Y.S.2d 765 (Surr. Ct. 1945). Wallace v. Diehl, 202 N.Y. 156, 95 N.E. 646 (1911). See ATKINSON, WILLS 781 n.25 (2d ed. 1953).

18. *In re* Latz's Estate, 95 N.Y.S.2d 584 (Surr. Ct. 1950); *In re* Greenwood, [1912] 1 Ch. Div. 392.

19. GA. CODE ANN. § 113-906 (1937).

20. OHIO REV. CODE, tit. 21, § 2105.21 (1953).

estates of persons who die under circumstances in which it cannot be determined which one survived.

C. Survivorship Clauses

Survivorship clauses are designed to achieve particular objectives and should be used only with a definite purpose in mind. These objectives usually include: avoiding double death taxes,[21] obviating successive administration expenses,[22] averting litigation from uncertainty as to the time of death,[23] precluding an heir of a legatee in whom testator has no interest from enjoying testator's wealth,[24] preventing exposure of property to possible creditors of a legatee's estate,[25] securing the marital deduction in all events,[26] and obtaining the marital deduction only if the spouse is likely to outlive the testator by many years.[27]

Normally a testator has two primary considerations, other than the marital deduction, in mind when considering the possibility of death with a beneficiary in a common disaster. He desires first to avoid any dispute as to who survived, and second to avoid the consequences of having his property pass through the estate of a beneficiary whose death closely follows his own. To effectuate his desires the testator may utilize one of the three following types of clauses:

> 1. *Common Disaster Clause.* "If any legatee and I die as a result of a common disaster, the said legatee shall be deemed to have predeceased me and this will and all its provisions shall be construed upon that assumption and basis."[28]
>
> 2. *Simultaneous Death Clause.* "If any legatee or devisee die simultaneously with me or under such circumstances as to render it impossible to determine who predeceased the other, I hereby declare that I shall be deemed to have survived such legatee or devisee and this will and all its provisions shall be construed upon that assumption and basis."[29]
>
> 3. *Time Clause.* "For the purpose of this will a person shall not be deemed to have survived me if such person dies within 90 days of my death."[30]

A common disaster clause contemplates death occuring to a testator and his legatee from the same event. It does not contemplate death

21. See TRACHTMAN, ESTATE PLANNING, 62, 64 (5th ed. 1951). But see TWEED AND PARSONS, LIFETIME AND TESTAMENTARY ESTATE PLANNING 44-45 (1951).
22. LASSER, ESTATE TAX HANDBOOK 477 (1951).
23. TRACHTMAN, *op. cit. supra* note 21, at 58-60.
24. 9 WIGMORE, EVIDENCE § 2532 (a) (3d ed. 1941).
25. TRACHTMAN, *op. cit. supra* note 21, at 60.
26. TRACHTMAN, *op cit. supra* note 21, at 62-63.
27. TWEED AND PARSONS, *op cit. supra* note 21, at 39.
28. *See In re* Davis' Estate, 186 Misc. 955, 61 N.Y.S.2d 427 (Surr. Ct. 1946), *aff'd mem.*, 211 App. Div. 970, 69 N.Y.S.2d 327 (1st Dep't 1947). Evidence that beneficiary actually survived the testator is not precluded. Modern Woodmen of America v. Parido, 335 Ill. 239, 167 N.E. 52 (1929).
29. TWEED AND PARSONS, *op. cit. supra* note 21, at 92.
30. TRACHTMAN, *op. cit. supra* note 21, at 59. *But see* Kasper v. Kellar, 217 F.2d 744 (8th Cir. 1954).

from unrelated natural causes[31] or death of a beneficiary being precipitated by news of the testator's death.[32] Aside from the marital deduction, this clause has the advantage of achieving a testator's objective only where a testator and his beneficiary die from injuries sustained in the same accident. The disadvantages of this clause, which seem to outweigh its advantages, include the following:

1. The use of the phrase "death in a common disaster" does not cover the possibility of "death at or about the same time" and therefore, the latter contingency is not provided for.[33]

2. The clause may raise an issue as to whether an accident was the cause of both deaths when the beneficiary lives on many years and then expires. Was the accident the proximate cause of the death?[34]

3. A beneficiary may not inherit from the testator by the terms of the clause if his death, however long delayed, is the result of a common accident. Thus, in the situation in (2) above, titles to realty may be left unsettled for years where the beneficiary lingers on.[35]

The simultaneous death clause merely provides for a presumption of testator's survival and has been given effect even where the beneficiary predeceased the testator.[36] This establishes a prima facie case for one relying on testator's survivorship and having the burden of showing survivorship.[37] The clause does not cover deaths several months apart[38] and in this respect differs from the common disaster clause.[39] But it does cover the instance of simultaneous deaths from unrelated causes not covered by the common disaster clause. Such a clause may cause trouble where a husband and wife make duplicate wills each bequeathing his entire estate to the other, if surviving, and otherwise $10,000 to a son. If both the husband and wife die simultaneously, it would seem that by a proper construction of the clause the son should receive only $10,000,[40] but there is speculation to the contrary.[41] This clause, likewise has disadvantages:

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31. *In re* Bull's Estate, 175 Misc. 197, 23 N.Y.S.2d 5 (Surr. Ct. 1940).
32. *In re* Davis' Estate, 186 Misc. 955, 61 N.Y.S.2d 427 (Surr. Ct. 1946), *aff'd mem.*, 211 App. Div. 970, 69 N.Y.S.2d 327 (1st Dep't 1947).
33. *See* Rogers v. Mosier, 121 Okla. 213, 245 Pac. 36 (1926). See TRACHTMAN, *op. cit. supra* note 21, at 58.
34. TRACHTMAN, *op. cit. supra* note 21, at 58. *But cf. In re* Davis' Estate, 186 Misc. 955, 61 N.Y.S.2d 427 (Surr. Ct. 1946), *aff'd mem.*, 211 App. Div. 970, 69 N.Y.S.2d 327 (1st Dep't 1947). *Contra,* Hackensack Trust Co. v. Hackensack Hospital Ass'n, 120 N.J. Eq. 14, 183 Atl. 723 (1936).
35. TRACHTMAN, *op. cit. supra* note 21, at 58. *But cf. In re* Davis' Estate, 186 Misc. 955, 61 N.Y.S.2d 427 (Surr. Ct. 1946).
36. *In re* Fowles' Will, 222 N.Y. 222, 118 N.E. 611 (1918).
37. *Compare* Wing v. Angrave, 8 H.L. Cas. 183, 11 Eng. Rep. 397 (1860), *with* Young Women's Christian Home v. French, 187 U.S. 401 (1903). See Note, 43 A.L.R. 1348, 1350 (1926).
38. Glover v. Reynolds, 135 N.J. Eq. 113, 37 A.2d 90 (Ch. 1944).
39. Rogers v. Mosier, 121 Okla. 213, 245 Pac. 36 (1926).
40. 2 SCHOULER, WILLS, EXECUTORS AND ADMINISTRATORS § 1043 (6th ed. 1923); *cf.* Young Women's Christian Home v. French, 187 U.S. 401 (1903); Wing v. Angrave, 8 H.L. Cas. 183, 11 Eng. Rep. 397 (1860).
41. TRACHTMAN, *op cit. supra* note 21, at 135.

1. If the beneficiary survives only for a few moments, the testator's property will pass through the legatee's estate resulting in the very thing testator sought to avoid.
2. A new issue inviting litigation may be introduced, namely, whether the circumstances were such as to render it difficult or impossible to determine who died first.

Where the marital deduction is not a consideration, the time clause will generally achieve the testator's objectives most satisfactorily. Such a clause makes provisions for the contingencies not provided for in the other two clauses and at the same time covers simultaneous deaths from unrelated causes[42] and almost all deaths in a common accident.[43] The time clause has been varied by phrases such as: "simultaneously, or approximately so";[44] "at the same time or approximately at";[45] and perish "in an accident or otherwise."[46] But in order to avoid any uncertainty, it is best to provide for a specified time such as six months.

II. MARITAL DEDUCTION BEQUESTS

The most important use of survivorship clauses today is in connection with the Federal Estate Tax marital deduction. In order to obtain the deduction the beneficiary spouse must survive the testator.[47] Therefore, no reliance can be placed on the common law, the simultaneous death statutes or the survivorship clauses noted above, as they each seek to resolve the doubt in favor of the testator's survival. If, then, the testator wants it presumed that he died first he must so indicate by a clause such as the following:

> "If my wife and I die under such circumstances that it cannot be determined who died first, it shall be presumed that she survived me and this will and all its provisions shall be construed on that assumption and and basis."[48]

The Internal Revenue Code makes it clear that a clause in a will providing for a presumption of survivorship will be recognized if state law will allow property to pass thereby. But if the testator in-

42. Could a time clause provide for a delay of 10, 20 or 30 years? The only limitation seems to be one of reasonableness. See 2 PAGE, WILLS § 912 (3d ed. 1941).
43. Thus, a 90-day time clause would not provide for the situation where a death occurred one year after an injury received in a common disaster.
44. American Trust & Deposit Co. v. Eckhardt, 331 Ill. 261, 162 N.E. 843 (1928).
45. *In re* Searl's Estate, 29 Wash. 2d 230, 186 P.2d 913 (1947); *cf. In re* Rentall's Will, 60 N.Y.S.2d 646 (Surr. Ct. 1945); Ross v. Clore, 74 N.E.2d 920 (Ind. App. 1947).
46. *Matter of* Johnston, 186 Misc. 540, 64 N.Y.S.2d 543 (Surr. Ct. 1945).
47. 26 CODE FED. REGS. § 81.47a(a)(2)(i) (Cum. Supp. 1954).
48. See TWEED AND PARSONS, *op. cit. supra* note 21, at 128; LASSER, *op cit. supra* note 22 at 479. But see TRACHTMAN, *op. cit. supra* note 21, at 64. Such a clause might be used to provide for the marital deduction and another time clause used to cover the contingency of other beneficiaries dying soon after the testator.

disputably survives his spouse, such a presumption will not be recognized for marital deduction purposes.[49] Thus, the simultaneous death clause would suffice here but neither the common disaster nor the time clauses would.

The marital deduction clause is recommended when the testator desires to obtain the maximum marital deduction even though his spouse survives for only a few moments.[50] Such a case will arise where one spouse owns most of the family wealth and the other has only nominal assets. It has been suggested that the maximum estate tax saving is secured when "the husband gives his wife, instead of the maximum marital deduction, only an amount equal to one-half of the value of their combined estates less the value of her estate, e.g. if the husband has $200,000 and the wife has $100,000 he should give her $50,000."[51]

Where husband and wife both have substantial estates, the marital deduction may be desired only if the testator is likely to be survived by his spouse for a substantial period.[52] Thus, where a husband has an estate of $200,000 and his wife an estate of $150,000 there will be a tax loss of $1100 if the husband uses the full marital deduction and dies first.[53] Nevertheless, in such circumstances there are certain advantages in taking the full marital deduction on the assumption that the wife will survive for many years. First, the wife has the income from the amount which otherwise would have gone to the government in taxes.[54] Second, the wife can reduce her taxes by lifetime gifts. Third, the necessity of sale of non-liquid assets at sacrifice prices is avoided.

The Code provides that in order for an interest to qualify for the marital deduction it must vest in the wife in such a manner as to be includible in her estate. Therefore, no terminable interest such as a life estate, term of years or shifting use in the wife would qualify. However, an exception provides that a disposition to the wife, contingent on her survival for six months or contingent on her death not occurring as a result of a common disaster, will qualify.[55] Thus, a time clause providing for a suspension of the wife's interest for six months would be advantageous where both husband and wife have substantial estates. To achieve such a result the following clause is recommended:

49. 26 CODE FED. REGS. § 81.47a(a) (2) (i) (Cum. Supp. 1954). See LASSER, *op. cit. supra* note 22 at 477. *But see In re* Fowles' Will, 222 N.Y. 222, 118 N.E. 611 (1918).
50. TWEED AND PARSONS, *op. cit. supra* note 21 at 41-42, 127.
51. *Id.* at 39.
52. See TRACHTMAN, *op. cit. supra* note 21, at 62.
53. TWEED AND PARSONS, *op. cit. supra* note 21, at 38-39.
54. Note, however, that the wife will have to pay income tax on the income received.
55. INT. REV. CODE OF 1954, § 2056(b) (3); 26 CODE FED. REGS. § 81.47b(d) (Cum. Supp. 1954).

> "For the purpose of this will my wife shall not be deemed to have survived me if she dies within six months of the date of my death."

On testator's death title would vest in the executor subject to a springing use in the wife which would be executed by the Statute of Uses and automatically vest on the wife's surviving the required six months.[56] If the wife failed to survive, the executor would hold in a resulting trust for the heirs of the testator.

If a common disaster clause is used an interest will qualify for the marital deduction unless either (1) the wife dies as a result of the common disaster or, (2) upon the final audit of the decedent's estate tax return it is possible that the beneficiary may die as a result of the common disaster.[57] Under the latter possibility it may be that an interest will not qualify for the marital deduction and will be taxed in both the decedent's and beneficiary's estates.[58] However, the dangers inherent in the use of the common disaster clause may be obverted by use of a time clause limiting a spouse's right to take on his survival for six months.[59] Such a clause will also usually cover the situation sought to be provided for by use of a common disaster clause, since, if the wife survives for six months after being injured in a common accident it is not likely that she will be found to have died as a result of such accident.

CONCLUSION

The possibility of death in a common accident, or under circumstances in which it cannot be determined who survived, has increased with the pace of modern living. Reliance on common-law rules and simultaneous death statutes to provide for such situations is generally unsatisfactory. Resort should be had to a survivorship clause to achieve the proper disposition of testator's property, having in mind the particular objective sought to be achieved. Apart from the marital deduction, the time clause is generally recommended. Where the marital deduction is desired in all events, the simultaneous death clause is best. However, where the marital deduction is desired only because the wife is likely to survive for a substantial time, the time clause should be used.

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56. See 1 SIMES, FUTURE INTERESTS § 30 (1936); NOTE, 1 WASH. L. REV. 135 (1925).
57. INT. REV. CODE OF 1954 § 2056; 26 CODE FED. REGS. § 81.47b(d) (Cum. Supp. 1954).
58. The beneficiary spouse may have a deduction for previously taxed property, however. See INT. REV. CODE OF 1954 § 2013.
59. The time clause must insure that the surviving spouse's interest will definitely vest within the six-month period. See Kasper v. Kellar, 217 F.2d 744 (8th Cir. 1954).