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Accounting between Life Tenants and Remaindermen

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Herein it is proposed to discuss various questions in accounting arising out of the legal relation of life tenant and remainderman. Strictly, a life tenant is a person who, for and during his natural life enjoys the benefit of real or personal estate, or both, without any right to encroach upon the principal of the estate; that is, one who is entitled to enjoy only the net income from property or investments, or both, for his natural life. A person who for a period of years is entitled to the enjoyment of the net income of an estate is commonly spoken of as a life tenant; yet, properly, he is a mere tenant for years, whose enjoyment of the estate may cease long before his death. Sometimes one person may enjoy the net income of an estate for a prescribed period, or until the happening of an event, followed by another person, who, for another period, or until another event, or for life, may enjoy the subsequent net income from the same estate, before the estate shall vest in an absolute owner. Sometimes there are several persons who as life tenants at the same time enjoy the net income of an estate. In the sense in which the term "life tenant" is herein used, it includes a person who for his natural life enjoys, or persons who for their natural lives enjoy, or for a specified period or periods, or until the happening of an event or of events, the net income of real or personal estate, or both. A remainderman is a person in whom an estate shall absolutely vest, on the termination of the rights of the life tenant. Sometimes it is provided that property shall vest in several persons on the termination of a prior estate or of prior estates therein. In the sense in which the term "remainderman" is herein used,

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it shall be held to include any person or persons in whom property shall vest, on the termination of the rights of the life tenant therein. Estates for life and estates in remainder are frequently created by deeds and wills without the intervention of a trustee. In cases where such estates are created as to realty, a trustee to hold the realty for the period of enjoyment of the life tenant is not absolutely necessary, as the life tenant cannot sell and convey the whole estate without the remainderman joining in the conveyance. A conveyance by the life tenant alone would carry only his own interest, unless express authority is given him also to sell and convey the whole estate. Full power of conveyance is sometimes given, and in such case the life tenant is held to act for himself individually and as trustee for the remainderman. It is usual, and best, where a life estate is created in personalty, or partly in personalty and partly in realty, to appoint a trustee to hold and manage the estate during the life tenancy, and on the termination of the life tenancy to convey, or transfer and deliver, the then principal of the estate to the remainderman. Where successive life tenants are to enjoy the net income of realty, or where the life tenant is not himself, by reason of legal disability or other cause, to control his own estate, it is usual, and best, to appoint a trustee to hold and manage the property during the life tenancy. Whether there is a trustee or be no trustee to hold and manage a given estate, the rights as to the enjoyment of the estate of the life tenant and remainderman are governed by the same general legal principles, except as to the question of management of the estate. Where there is a trustee, such management is vested in the trustee, instead of either the life tenant or remainderman. Where there is no trustee and there is no specified restriction as to the management of the estate, such management is vested in the life tenant during his enjoyment of the estate. Although the management of the estate is in the life tenant, he cannot lease the estate beyond the time of his own enjoyment nor can he encumber more than his own interest, unless express authority so to do is given. Where leasing or encumbering by the life tenant is properly prohibited, then he can give no lease or encumbrance, even on his own interest. Dower of a widow in realty of her deceased husband, curtesy of a widower in the realty of his deceased wife, and homestead rights of a widow and minor children in the realty of a deceased

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husband and father, are life estates or estates for years created by operation of law; all other life estates or estates for years exist only by express provisions under instruments *inter vivos* and under wills. In estates where the rights of life tenants and remaindermen are involved, the law requires the most exact accounting as to items of income and items of principle. As to some items, on their mere statement it will be self-evident that they affect the income or the principal of the estate; other items require close analysis as to facts involved and critical application of legal principles. Herein we are to consider quite carefully various items legally requiring close distinctions as to charges and credits between income and principal in fiduciary accounting.

1. The life tenant, during the continuance of his interest in a trust estate, is to enjoy the exact legal net income of the estate—no more and no less; and the remainderman, on the termination of the life estate, is to receive the exact legal principal of the estate—no more and no less. Therefore, it is the duty of the trustee of the estate in his accounts to keep all legal items of income separate from all legal items of principal, or legally to pro rate any items between income and principal where such apportionment is required by law or proper order of court. In fiduciary accounts there is ever present the difficulty of exactly tracing pecuniary transactions, yet the trustee must keep his accounts legally accurate; that is, not merely accurate as to amounts of the items, but precise in the relation of all the items to the rules of law, as such rules may affect the income or principal of the estate, or both such income and principal. The rights of the beneficiaries interested in a trust estate are primarily governed by the express terms of the instrument or will creating the trust, so far as they are within the law, and the clear and proper intention of the creator of the trust will prevail. The general rules of law control where there are no proper and express terms, or where, by reason of changed conditions, such terms can no longer be carried out. Thus, in fiduciary accounting there is involved the proper and legal construction of the terms used by the trustor in declaring his intentions in the instrument or will, and an understanding is required of the instrument or will as a whole in relation to the law. It is sometimes difficult or impossible legally to construe the terms used. In case of

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doubt, the trustee for his own protection, should bring proceedings in the court having jurisdiction of the matter, for the proper determination under the law of the meaning of the terms used in such instrument or will. Where the trustee, through carelessness or ignorance, fails to keep his accounts legally accurate, and by reason thereof should over-pay the life tenant during the trust, or on the termination of the trust should over-pay the remainderman, the trustee is personally responsible, notwithstanding his entire good faith in the charging or crediting of any item or items to income or principal in his trust accounts. In the principal account must appear all items affecting the principal of the estate, and in the income account must appear all items affecting the income of the estate. The trustee must know that his accounts are correct in principle and in detail; otherwise, he is liable.

2. Since a life tenant and a remainderman, interested in a trust estate in the hands of a trustee under an instrument or will, do not enjoy the entire estate at the same time and in the same right, legally their pecuniary interests in the estate are antagonistic. In the management of the trust the trustee is required to be absolutely impartial, as between the interests of the life tenant and remainderman, except where he is directed or authorized to favor the life tenant as against the remainderman, or vice versa. Ordinarily, the trustee must show no partiality whatever. In the sale of property belonging to the trust estate, in order to make a quick sale for the convenience of the life tenant, he is not allowed to do so if the quick sale will cause the sale to be at less than a reasonable price or at a sacrifice price. If a trustee, having authority, should be requested by a life tenant to purchase a particular dwelling for the use of the life tenant, if such dwelling should be located in a community wherein the trustee believes values are decreasing, and although the trustee should be able to purchase the property at a fair present price, yet the trustee should not do so, if in his opinion such purchase will involve a certain loss to the principal of the estate by depreciation in value. The trustee must so invest trust funds as to insure the safety of the principal and at the same time earn a reasonable income for the life tenant; the trustee should not make investments looking only to the safety of the principal, nor should he make investments looking only to the production of

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a large income for the life tenant. In the purchase of realty for an estate, or in making investments of trust funds, the trustee should not make purchases or investments looking only to a future increase in value of the property or securities purchased, disregarding the present income for the life tenant.

3. In case a life tenancy is given in a trust estate, wherein the legal charges against the income of the estate exceed the gross income, so that in such estate there is no net income, the life tenant is not required to pay the deficit of such income. The liability of the life tenant for the legal charges against the income of the estate is limited to the net income of the estate, unless the life tenant, by reason of some contract or agreement, shall have assumed the payment of the deficit. The liability of the life tenant is not limited year by year, so that in a given year, if there shall be any net income, he may elect to take, and in a subsequent year, if there shall be a deficit, he may refuse. The life estate for the entire period of years over which it is to continue must be considered, and the net income of previous years stand as the amount of the liability of the life tenant in subsequent years for any deficit of income in such subsequent years. The liability of the life tenant in the trust estate is with respect to the whole estate, and not to any part or parts thereof. The life tenant cannot elect to accept the income from several profitable assets of the trust estate, and refuse to assume the liability for the deficit of other assets not in themselves bringing in any net income. The net income from and charges against the whole estate must be considered, and the net income from the profitable assets must be used to meet the deficit from unprofitable assets, before there can legally be any payment of net income from the trust estate as a whole to the life tenant.

4. Where the income of an estate held by a trustee for a life tenant and remainderman is directed to be paid the life tenant from time to time as income, the rents and interest on the assets of the estate are said to accrue from day to day, although only collectible periodically. In such case, notwithstanding the death of the life tenant before the collection of any accruing rents and interest, such income of the trust estate is apportioned to the date of death of the life tenant, and the amounts accrued are to be paid to his legal representative. Where the life tenant does not receive the income of the estate as income, but receives fixed

periodical payments out of the income only, or out of the estate as a whole, the life tenant is said to receive annuity payments, and a different legal rule prevails. Such fixed periodical payments are legally designated as annuity payments, although payable annually, semi-annually, quarterly or otherwise periodically. Where not directed to be paid in advance, annuity payments are payable at the end of the respective periods. Unless otherwise specified, an annuity period under a will commences at the date of death of the testator, and runs regularly thereafter. Unless otherwise specified, an annuity period under a trust agreement commences at the date of execution and delivery of the instrument, at which date the trust becomes effective. To be entitled to an annuity payment, the life tenant must survive until the expiration of the respective annuity periods, when the annuity payments become due and payable. In the event of the death of the life tenant, his interest in the next ensuing payment lapses and no part of such ensuing payment becomes payable to his legal representative. An annuity payment legally does not accrue from day to day, but is a conditional payment—the condition being that the person to whom payable shall survive until the payment becomes due. Where an annuity payment has become due and payable to a life tenant and the life tenant shall not have collected it before his decease, then such past due payment has become a debt due the life tenant, and as such is payable to his legal representative.

5. Frequently there is a provision that on the death of a life tenant his interest in the income and principal of the trust estate shall terminate and end, and that any income then on hand should go with the then principal of the estate to the remainderman. This is a convenient provision where the life tenant has no property outside of his interest in the trust estate, and will avoid the necessity and expense of having an administrator or executor appointed to administer on the estate of the deceased life tenant merely for the purpose of legally collecting and disbursing the accrued and uncollected, or collected and undisturbed, income in the hands of or due the trustee of the trust estate at the death of the life tenant.

6. All collections by the trustee for a life tenant and remainderman on account or in full of the principal of notes or bonds held by the trustee at par, should be held for the remain-

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derman and should be credited by the trustee to principal of the trust estate. Such collections of principal in no sense represent any interest or earnings on the notes or bonds, but represent merely a change or conversion of the assets from one form to another. Where such loans or bonds are sold by the trustee before maturity, the same principles apply so far as the proceeds represent the principal of the notes or bonds. If any of the proceeds of collection or sale represent accrued interest, so much as shall represent accrued interest should go to the life tenant and by the trustee should be credited to income of the trust estate.

7. Attorneys' fees and costs of court in proceedings for the removal of trustees and for the appointment of successor trustees from time to time, should in general be paid out of the principal of the trust estate. Such fees and costs are counted as incurred in preserving the integrity of the trust as a whole. Although such fees and costs are usually charged to principal, yet the life tenant shares to some degree in payment of all fees and costs charged to principal. The payment of any fees and costs out of principal reduces the amount of the principal by the amount paid, leaving a decreased amount of principal upon which the life tenant is thereafter entitled to net income. Where change of trustees is requested by the life tenant for purely personal convenience or reason, such as a desire for a trustee who shall reside at the place of residence of the life tenant, the change otherwise not being necessary or probable, the court, in its discretion, may order payment of fees and costs connected with such change of trustees to be borne by the life tenant, and same must then by the trustee be paid out of the income of the trust estate. Should the court apportion such fees and costs, as it may in its discretion deem fair, then such fees and costs must proportionately be paid out of income and principal. It is usual in cases of change of trustees for the court to direct how the costs shall be taxed. Where no special order is made, the above general rule will apply.

8. Attorneys' fees and court costs arising out of legal proceedings for the protection of the assets of the trust estate, in general are paid out of the principal of the estate. Such fees and costs are assumed to be more for the benefit of the remainderman than life tenant. Fees and costs incurred by a trustee in a suit against the trustee, and involving the title of the trustee

to property held in trust, are clearly incurred for the protection of the estate as a whole. Such fees and costs are certainly incurred for the benefit of both the life tenant and remainderman. If in the proceedings the trustee shall be successful, the property involved will continue to earn income for the life tenant and will ultimately go to the remainderman. The same may be said as to fees and costs incurred by the trustee in legal proceedings for obtaining possession of property, to which title is claimed by the trustee and disputed. If successful, the property will thereafter earn income for the life tenant and ultimately go to the remainderman. Therefore, fees and cost in the proceedings mentioned should in general be paid out of the principal of the estate. In either proceedings, the court may direct how such fees and costs shall be paid, or in its discretion apportion them for payment partly out of income and partly out of principal. Whatever the court may direct, must be done. Where litigation is clearly for the sole benefit of the life tenant, as for ouster of a delinquent tenant of trust property, then the fees and costs must be borne by the life tenant and paid out of income of the trust estate.

9. Fees of attorneys and costs of court in proceedings for the construction by the court of the terms of an instrument or will creating the trust, where the terms of the instrument or will are uncertain, should in general be paid out of the principal of the trust estate; unless by reason of peculiar facts in a given case the court shall order payment out of income. The court in its discretion may order payment entirely out of income or entirely out of principal, or in certain proportions out of both income and principal. In any such case the costs must be charged as ordered. If no special order is made, then the costs should be paid according to the general rule.

10. Commissions of an agent paid by the trustee for a life tenant and remainderman in the purchase as an investment of realty or personalty, with funds held in the principal of the trust estate, are legally regarded as adding to the cost of the property purchased, and the commissions so paid by the trustee should be charged to the principal of the trust estate. Commissions paid to an agent by the trustee in the sale of realty or personalty held in the principal of the trust estate, are legally regarded as a deduction to be made out of the proceeds of sale of the property

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sold, and the commissions so paid by the trustee should be charged to the principal of the trust estate. Other expenses necessarily incurred in connection with the purchase and sale of assets held in the principal of the trust estate, where such expenses do not come under the head of mere administration costs, should be charged to the principal of the trust estate, so as to come out of the fund ultimately to go to the remainderman.

11. In the event of injury or destruction by casualty of property securing bonds held by a trustee in trust for a life tenant and remainderman, or in the event of such injury or destruction of property owned by a corporation in which such trustee holds shares, loss may result in the value of such bonds or shares held by the trustee, and question will arise between the life tenant and the remainderman as to who shall bear the loss. Any such loss legally will be a depreciation and affects the corpus of the trust estate, and the trustee must charge the loss to the principal of the estate. While injury or destruction of improvements upon mortgaged property, as a matter of fact may be the primary cause of default in a real estate loan held by the trustee, yet legally this is not assumed to be true, and if on foreclosure of the mortgage securing the loan loss result, such loss, nevertheless, should be borne as explained elsewhere herein.

12. In event of the injury or destruction by casualty not insured against of improvements upon realty held by a trustee in trust for a life tenant and remainderman, question arises as to whether the loss by such casualty should fall upon the life tenant or the remainderman, or both. If the life tenant is in possession of the premises, and the injury or destruction is caused by neglect of his duty to protect the premises, he is liable because of such negligence. Where the life tenant in possession is not negligent, or where the life tenant is not in possession of the premises, and such injury or destruction is by casualty for which he is in no way responsible, then the life tenant cannot be held for such loss, and the loss falls upon the entire estate and any expense of repairing or restoring the premises must be charged to the principal of the estate. Any loss of income from the property by reason of the injury or destruction of the premises and until repaired or restored is a loss to be borne by the life tenant of the estate. It is the duty of the trustee promptly to repair the improvements injured if they are in condition to be repaired and

if there are available funds for such repairs in the estate. The question of restoring the improvements destroyed or replacing with other suitable improvements is discretionary with the trustee, and the trustee must exercise prudence and good business judgment, having in mind that he should look with favor upon the restoration or replacement of the improvements destroyed, so as again to put the property on a reasonable income basis, instead of allowing the property to remain unoccupied.

13. Where the trustee of an estate has authority to invest in realty and such trustee purchases property upon which the improvements at the time of purchase are not in good order and tenantable condition, and it is necessary for the trustee immediately upon consummating the purchase to repair the improvements so as to make the premises tenantable, then the trustee is required to put the property in good order and tenantable condition and pay the cost thereof out of the principal of the trust estate. In such case the trustee is presumed to have purchased the property at a less price than would have been the price of the property had the improvements been in good order and tenantable condition at the time of purchase by the trustee, such difference in price being as much or exceeding the cost of the repairs necessary to restore the property to good order and tenantable condition. Often with good renting property the question of the condition of the improvements may make no practical difference in the purchase price; yet the rule applies. Where mere minor repairs are required to the improvements, the question of the charge of the cost thereof to income or principal is not important. The question is one of importance where extensive repairs are necessary at the time of purchase by the trustee and in fairness the legal rule should be observed.

14. On foreclosure sale of realty securing a loan held by a trustee, in order to protect the trust estate the trustee is authorized to bid for the realty, in bidding not exceeding the reasonable value of the realty and not exceeding the debt, interest and costs, unless the trustee have power and shall wish to purchase the realty as an independent investment. If the realty is bid in by the trustee, then during the ownership by the trustee such realty is subject to the same incidents as other realty held by the trustee and acquired by devise or regular purchase. Subsequently, the trustee may sell the realty. The trustee, if trustee for a life

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tenant and remainderman, is required to hold the entire proceeds of the resale for the remainderman of the estate and should credit such proceeds to principal of the trust estate. If on the resale a higher price is obtained than the cost of the property at the foreclosure sale, the increase is legally a profit belonging to the principal of the trust estate; and if on the resale a lower price is obtained than such cost, the deficit is legally a loss to the principal of the trust estate.

15. A trustee for a life tenant and remainderman, in the distribution of the estate of a decedent under a will, may receive a loan secured by mortgage or deed of trust upon real estate, or the trustee under an instrument or will creating a trust for a life tenant and remainderman may invest in a loan so secured. Thereafter, if the owner of the property securing the loan allows the loan to become in default, it becomes the duty of the trustee holding the loan to foreclose the same. At the foreclosure sale the trustee is required, to the extent of the reasonable value of the property, to bid for the property and protect the interests of the trust estate as holder of the loan, so that the property will not go to sale for a sacrifice price and below the debt due the trustee and interest and costs added. By bidding up the property to its reasonable value the trustee will protect the trust estate, and cause the property to sell for what it reasonably should. The trustee should not bid over the amount of his debt, interest and costs, unless the trustee has power to invest in real estate and deems the property a good investment for his trust estate and wishes to buy the property on an investment basis, independent of the question of protecting the loan under foreclosure. If at the time of the foreclosure the property is subject to delinquent taxes, after the property is bid in by the trustee question will arise as to whether the delinquent taxes should be paid out of the principal of the trust estate or the income of the trust estate. Legally such taxes should be paid out of the principal of the trust estate. It is conclusively presumed that the property subject to delinquent taxes was purchased at a less price at the foreclosure sale than would have been required had there been no delinquent taxes against the property.

16. Where realty is devised or conveyed to a trustee in trust for a life tenant and remainderman subject to a mortgage encumbrance thereon, question arises as to how the payment of

interest and principal on the mortgage debt should be charged with reference to the income and principal of the trust estate. In case of such devise or conveyance in trust of realty, subject to a mortgage debt, the value of the estate placed in trust is the value of the property, less the principal of the mortgage indebtedness thereon, and the life tenant is entitled to income with reference to such decreased value, not the full value of the realty, and from the time of the taking effect of the devise or conveyance in trust. In case of a devise of realty under a will to a trustee in trust for a life tenant and remainderman, subject to a mortgage debt, the interest accruing after the death should be paid by the trustee out of the income of the trust estate; all payments of principal of the mortgage debt by the trustee should be paid out of the principal of the trust estate. Where by the law or by will such mortgage debt should be paid out of the personal estate of the testator and the realty exonerated from the entire debt, the executor should pay both the principal and interest of the mortgage debt, the same as any other debt against the decedent. In case of the purchase of realty by, and conveyance to, the trustee for a life tenant and remainderman, subject to a mortgage encumbrance thereon, any interest accrued to the date of conveyance should be taken into consideration in connection with the payment of the purchase price and paid by the seller or allowed to the trustee on the purchase price and paid out of the principal of the trust estate; and thereafter the interest accruing should be borne by the life tenant and by the trustee paid out of the income of the trust estate; all payments on principal of the mortgage debt should be paid out of principal of the trust estate. Where a trustee for a life tenant and remainderman is authorized to encumber realty belonging to the trust estate and borrows money for the purposes of the trust, the proceeds of the principal of the mortgage note or notes should be credited to the principal of the trust estate and applied in the improvement of the property or for other authorized purposes; and thereafter from time to time the payments of interest on such mortgage debt should be paid out of and charged to the income of the trust estate, and payments of principal should be paid out of and charged to principal of the trust estate.

Should the life tenant, or the trustee if in funds, default in the payment of interest on a mortgage encumbrance on property

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of the trust estate, or fail to protect such encumbrance from any other default, and thus cause foreclosure of the property mortgaged, the life tenant or the trustee will be responsible to the remainderman for the damage caused to the remainderman. In the event of such foreclosure of any property of the trust estate, if the life tenant should directly or indirectly purchase the property in an attempt to buy in the property free from the trust and the rights of the remainderman, yet nevertheless such direct or indirect purchase by the life tenant will not avail, and in equity the life tenant will be held to have so purchased the property for the benefit of himself and remainderman, and the remainderman will be allowed a reasonable time to pay his proportion of the debt foreclosed and be reinstated to his rights in the property, as before foreclosure. The life tenant may himself take up the debt against the property, and in such event will hold the debt as to principal as if a stranger to the property.

17. Upon death of the owner of realty, rents due and unpaid, whether partly or practically entirely for a period of time subsequent to the date of death of the owner, should be collected by the executor or administrator of the decedent and forms part of his general estate. Rents becoming payable after the death of the owner, whether partly or practically entirely for a period of time prior to the date of death, are collectible by the devisee of the realty. If the devisee be a trustee for a life tenant and remainderman, such trustee is entitled to collect such rents so becoming payable after the death of the testator and owner of the realty. Any rents so received by the trustee should go to the life tenant and by the trustee should be credited to income of the trust estate, although it may happen, if the rent is payable at the end of the rent periods, that the first rent so collected by the trustee is for a time prior to the death of the owner, and therefore prior to the date that the realty under the will passes to the trustee. Thereafter, as payable, so long as the trustee hold the property, the trustee should collect the rents accruing from the property. Rents so collected should go to the life tenant as income from the property and the trustee should credit the amounts collected to income of the trust estate. Where the trustee for a life tenant and remainderman is authorized and shall purchase realty, rents should be adjusted to the date of conveyance to the trustee, and from the time of conveyance, so long

as the trustee holds the property, the trustee should collect the rents accruing from the property. The rents so collected should go to the life tenant as income from the property, and the trustee should credit the amounts collected to income of the trust estate. During the continuance of the life tenancy the life tenant is entitled to the net rents collected from the property and to all rents accruing to the date of his death, and the last rent must be adjusted to the date of his death, so that his legal representative will receive any amount accrued and not collected by the trustee at the death of the life tenant, or collected and not disbursed by the trustee. As to a life tenant, rent is said to accrue from day to day. It will be noted that on the death of an owner devising realty the rents are not adjusted, while on the death of a life tenant having an enjoyment of the same property the rent is adjusted to the date of the death of the life tenant. These opposite methods of adjustment of rents, in the event of the death of an owner of realty and in the event of the death of a life tenant having an interest in realty or held in trust for such life tenant, should be noted.

18. Where agricultural property is held by a trustee in trust for a life tenant and remainderman, if authorized the trustee may cultivate the land—otherwise the trustee should lease the same for a cash rental or for usual shares of the crops raised by the lessee; or the trustee may allow the life tenant himself to cultivate the land at his own cost. In the event of the death of the life tenant before the harvesting and disposal of any crops in the case of crop rental, then, although the interest of the life tenant in the trust estate is terminated, his legal representative is entitled to what would have been his share of the crops had he survived. In event of the death of the life tenant before harvesting and disposing of any crops, in case the life tenant himself shall cultivate the land, then, notwithstanding his death and the termination of the interest of the life tenant in the trust estate, his legal representative is entitled, at the expense of the estate of the life tenant, to continue the cultivation of the unmaturing crops and promptly on maturity to harvest them and take the same as an asset of the estate of the deceased life tenant. The usual rule is that a lessee or tenant renting for a fixed period, on the expiration of such period has no right to continue in possession of the leased premises and must remove from the premises,

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with no right to return and cultivate the crop until it matures and then to harvest and remove it. This rule does not apply to a life tenant, since the continuance of his term is indefinite, and under the law in the event of his death his legal representative has the right to complete the cultivation of any crop that has been planted by the life tenant. This equitable rule as to life tenants in legal contemplation is necessary for his protection, as otherwise he would annually incur risk of losing the fruit of his industry in the event of his death. The foregoing rule does not apply to crops that grow from year to year without cultivation. As to such crop, on the death of the life tenant this prospective interest therein if he had survived until the harvesting is lost, and his legal representative has no right thereto; instead such crop falls to the remainderman.

19. Where a loan is made direct from trust funds held by a trustee and the loan is not purchased from a previous holder thereof, any commission paid by the borrower for the making of the loan and received by the trustee of a life tenant and remainderman should go to the life tenant and by the trustee should be credited to the income of the trust estate. The trustee legally is not allowed personally to accept and retain such commission. Where the loan has been placed through another and the trustee purchases the loan from a previous holder, the trustee for the life tenant and remainderman is not responsible for the commission, unless he should receive some portion or all of such commission; and in the latter event he is responsible for the amount of commission received, and such amount should also go to the life tenant and by the trustee should be credited to the income of the trust estate. Where a loan held by a trustee for a life tenant and remainderman matures and is renewed by the trustee, any commission received by the trustee for such renewal should go to the life tenant and by the trustee should be credited to the income of the trust estate. The trustee legally is not allowed personally to accept and retain any renewal commission on loans held in trust. The principles above stated as to commissions on loans, likewise apply to investments in bonds by the trustee, where commissions are allowed the trustee on the purchase or extension of bonds.

20. The life tenant of a trust estate having realty is entitled to the net rental income from the property. It is the duty of

the trustee to keep the improvements upon the lots in good repair and tenantable condition, and to pay the cost thereof out of the income of the trust estate; that is, the trustee out of the income of the trust estate must keep the property in as good order as when the same comes to the trustee under the instrument or will creating the trust, without deterioration except by ordinary wear and tear. A building necessarily depreciates by natural wear and tear from the moment it is completed and then so long as it remains standing. This natural depreciation affects the principal of the trust estate and finally falls on the remainderman receiving the principal of the trust estate. This depreciation is unavoidable and the trustee cannot be held therefor, nor can the life tenant.

Where power is given the trustee so to do, and extensive alterations are made in the building, or the building is reconstructed, if such alterations or reconstruction do not add to the value of the building over its value before such alterations or reconstruction, then such alterations or reconstruction are not to be deemed an improvement to the building and increasing its value, although the premises so altered or reconstructed may thereafter be more readily let or leased.

Where power is given the trustee and additions are made to the building, so that the value of the building is increased over its value before the additions were made, then the cost of such additions, not exceeding such increase in value, may properly be charged to the principal of the trust estate. The building as improved finally goes to the remainderman, on the termination of the interest of the life tenant. In the meantime the life tenant is entitled to the increased rental from the improved building; later, when the remainderman becomes entitled to the trust estate, he will receive the principal of the trust funds, decreased by the amount invested in the building in making the additions to the building and increasing its value. The life tenant is properly entitled to the increased rent obtained by reason of such additions to the buildings, since the amount of trust funds to earn interest is decreased by the amount invested in making the additions to the building.

21. Should realty be devised or conveyed to or in trust for a life tenant and remainderman, the trustee or life tenant are not to do or allow acts which the law regards as waste of the prem-

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ises. They are allowed only to use the property in the usual manner for like property; that is, a dwelling for proper dwelling purposes, business property for lawful business purposes and agricultural property for agricultural purposes. In the use of agricultural property the life tenant is entitled to cut trees for wood for domestic use, as for fencing and for heating of his home thereon and to clear land for the purpose of cultivating the same, but is not allowed to cut timber for commercial purposes. In case agricultural property is let or leased to a person not a life tenant, unless expressly prohibited, such person is entitled to cut wood for domestic purposes and to clear land for cultivation, but not to cut timber for commercial purposes. Although lands considered timber lands should be devised to or in trust for a life tenant and remainderman, yet, unless the life tenant is expressly authorized to cut timber for commercial purposes, he will not have authority so to do, as under the legal rule stated his doing so without express authority is legal waste of the property. Unless expressly authorized, a life tenant has no right to open a mine or mines upon property in which he has a life tenancy. If at the creation of the life tenancy there is an existing mine on the property, the identical mine may be continued by the life tenant at his expense and for his profit during his life tenancy; but the life tenant is not allowed to open other mines upon such property. Where a mine is open and the property is placed in trust for a life tenant, it is conclusively assumed that the use made of the mine will be continued by the life tenant, and such use is permitted.

22. As has been stated, the life tenant of a trust for a life tenant and remainderman is generally entitled to the entire net income produced by realty held in trust. However, where the interest in realty held by the trustee is a ground lease and the property leased thereunder is occupied by a tenant or sub-lessee, the life tenant is not entitled to the full income received from the tenant or sub-lessee, after deducting merely the ground rent from time to time and other proper charges required by the terms of the ground lease. If the ground lease is limited to a number of years, within the expectancy of life of the life tenant, so that should the life tenant live his expectancy in full, and in the meantime receive all of the rental payments from the tenant of the premises, and out of the rents paid by the tenants no deduction

should be made other than the mere ground rent and other charges specified in the ground lease, then at the expiration of the ground lease and during the life tenancy the ground lease would expire and thereafter have no value. Under such circumstances it would be a legal wrong on the remainderman to allow the life tenant to enjoy the full income from the tenant, without making provision for the protection of the interests of the remainderman in the ground lease. The remainderman should be protected in either of two ways, to wit: First, the ground lease may be sold by the trustee for its reasonable value, such value to be determined by proper appraisement, the appraisers to take into consideration the rental received from the tenant or sub-lessee, in excess of the rental under the ground lease and charges therein required to be paid by the ground lessee, and the condition and desirability of the improvements upon the land. After sale, the proceeds should be held for the remainderman and credited to principal of the trust estate, and should be properly invested by the trustee so as to produce an income. The income on such proceeds should go to the life tenant from time to time and by the trustee should be credited to income of the trust estate. Second: The value of the ground lease may be determined by appraisement, in like manner as aforesaid, and the trustee may periodically set aside as a sinking fund, out of the rental derived from the tenant or sub-lessee, such amounts as at the expiration of the ground lease will equal the appraised value of the ground lease at the beginning of the trust under the instrument or will creating the trust. The sinking fund installments reserved from time to time should be held for the remainderman and credited to principal of the trust estate, to be from time to time properly invested by the trustee. The income on such sinking fund investments should go to the life tenant from time to time and by the trustee should be credited to income of the trust estate. The foregoing principles of adjustment between life tenant and remainderman have been applied to a limited lease of a coal mine, but have been held not to apply to a perpetual lease of such mine.

The foregoing adjustment between the life tenant and remainderman should also be made as to property that wears out by the use thereof. In the latter case no fixed period could be the basis of the appraisement, and instead the appraisers would have

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to estimate the probable life of the property and then make their calculations accordingly, after allowing fair amounts for repairs and other necessary expenditures with respect thereto.

23. Costs of repairs during the life tenancy upon improvements on realty held in trust for a life tenant and remainderman, made under the duty of the life tenant to keep the improvements in repair, should be borne by the life tenant and by the trustee charged to income of the trust estate. In the event any such repairs shall not have been paid for and the life tenancy shall terminate by the death of the life tenant, the cost thereof should nevertheless be borne by the life tenant, the remainderman being entitled on the termination of the life tenancy to receive the premises free of any charges imposed thereon by the life tenant. It may be suggested that any repairs made immediately before the death of the life tenant can be of no benefit to the life tenant; yet the life tenant cannot know that his interest in the property will terminate and he must perform his duty as to making repairs from time to time as occasion may arise to keep the property in good repair and tenantable condition, and the uncertainty that he may not survive to get the benefit of any repairs is legally no relief from the performance of his duty. He enjoys the benefits and must assume the legal burdens of his life tenancy.

24. In a trust for a life tenant and remainderman, as in other trusts, it is not an absolute legal duty on the trustee to insure the improvements of realty owned by the trust estate, since the life tenant and the remainderman, as a matter of law, have an insurable interest in the property and may do their own insuring, if they desire insurance. In the present time it is common for the trustee to insure the improvements against fire and wind storms, although the trustee is not expressly directed so to do, and courts look with favor upon the protective act of the trustee in insuring improvements of realty held in trust. Where the trustee is directed to insure, it is his duty and he must insure. Where a trustee insures improvements, he must use his discretion in determining the amount thereof. All premiums paid for insurance of improvements on realty owned by the trust estate is an expense chargeable to the life tenant, and the trustee should pay the premiums out of the income of the trust estate. Insurance carried by the trustee is considered to be for the benefit of both the life tenant and remainderman, and in case of loss the pro-

ceeds of the insurance should be applied to the repair of the improvements damaged or to the restoration of the improvements destroyed. Where a life tenant insures his interest in the improvements of realty of a trust estate, it is usually optional with him to expend the amount in repair or restoration of the improvements damaged or destroyed; likewise as to the remainderman. Where a trustee collects the proceeds of insurance, if it is not advisable to restore the improvements destroyed, the trustee will consider the proceeds as belonging to the principal of the trust estate and invest the same, retaining the proceeds in the estate for the remainderman and in the meantime paying the income thereon to the life tenant. In case of a trust having a valuable business lot, and the estate not having sufficient funds to replace a building destroyed and erect a suitable business building, and it is determined by the trustee to erect a smaller building on the lot, so as to keep it reasonably productive, in which event it would not be necessary to expend all of the proceeds of any insurance in replacing the building destroyed, the trustee should credit to and hold in principal of the estate any surplus of such proceeds remaining, and such surplus should be invested as other trust funds and the income thereon should be credited to income of the trust estate and from time to time paid to the life tenant with other income. In case of such a trust having a valuable business lot and other funds, in the event the trustee within his authority should determine to erect a proper business building in place of a building destroyed, the cost of the new building in excess of the proceeds of the insurance on the old should be considered as an investment in the new building of part of the principal of the estate and should be charged to principal of the trust estate. Where the cost of repairs or reconstruction is equal to the proceeds of the insurance, the matter takes care of itself and legally it is immaterial whether the proceeds be credited to income or principal, so long as the expense for the repairs or reconstruction are charged to the same account in which the proceeds are credited.

(To be continued)