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## Personal Property

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chase only 2% of A's interest, and B and C were to split the remainder. The court also held that if A's executor exercised his option to leave A's interest in the firm for the five year period and collect A's share of the profits, the executor had no voting or control rights in the absence of an express agreement. On this last point, the court did not cite any authority, and if the executor is treated as a partner, the Uniform Partnership Act requires that he be given an equal right with the other partners in the management and conduct of the business.<sup>2</sup> If the profits paid to the estate are not treated as a payment for the interest of the deceased partner,<sup>3</sup> then the general rule is that the executor becomes a partner and is entitled to the rights and subject to the liabilities of a general partner.<sup>4</sup>

HUGH ALAN ROSS

## PERSONAL PROPERTY

Two recent cases demonstrate the increasing reluctance of the Ohio courts to sanction the disposition of personalty by way of gift, particularly when the donor is deceased at a time when ownership is in dispute. In the case of *Tilton v. Mullen*,<sup>1</sup> the donor was an invalid widow who five months before death gave her friend, the defendant, the keys to her safe deposit box with the statement "like for her to have the contents."<sup>2</sup> At death the box was inventoried and was found to contain unendorsed stock certificates and bonds. The bank was never notified of any change of ownership. The court of appeals held that the transfer of the key was insufficient to support an *in praesenti* transfer of the contents of the box. Great emphasis was placed by the court on the failure of the donor to endorse the certificates, in keeping the dividends, and in not segregating the certificates into a separate envelope with the name of the donee.<sup>3</sup> The court concluded that the donor still retained substantial rights of possession.<sup>4</sup> The contents of the box were held to constitute assets of the estate properly included in the inventory and appraisal. Defendant's claim of a gift inter-vivos was rejected. In *Renee v. Sanders*,<sup>5</sup> the plaintiff claimed a gift causa mortis of the contents of a household strongbox. Plaintiff was a trusted employee and confidant of the decedent. The decedent contemplated entering a hospital for his last illness and gave plaintiff the key with words of gift. Plaintiff-donee kept the strongbox at decedent's house where it was found with his personal effects after death.

<sup>1</sup> 166 Ohio St. 496, 143 N.E.2d 840 (1957).

<sup>2</sup> OHIO REV. CODE § 1775.17 (E).

<sup>3</sup> OHIO REV. CODE § 1775.06 (D) (3).

<sup>4</sup> See cases discussed in CRANE, PARTNERSHIP § 90a (2d ed. 1952).

The court of appeals held that words of gift are not enough if the property remains in the donor's room with his effects so that no apparent change was made in possession and control.<sup>6</sup> The court noted that a will executed a year before death gave plaintiff a ten percent share of the estate.

One must conclude from these opinions that the courts favor the disposition of property by will or under the Statute of Descent and Distribution as a matter of public policy<sup>7</sup> in view of the difficulty of preventing fraud upon the heirs if gift claims are sustained.<sup>8</sup>

The incidents of ownership of combined savings accounts is thoroughly discussed in a practical opinion of the probate court.<sup>9</sup> These incidents are important under Ohio Inheritance Tax laws which provide for a tax on successions even though they are not probate assets subject to the reach of creditors.<sup>10</sup> An account "A" or "B" without survivorship provisions was held to create a tenancy in common in which only one-half constitutes a taxable succession. An account "A or B" with signature cards signed by both, making the account payable to "either or the survivor thereof," constitutes a true survivorship account in which the entire account is a succession for tax purposes. However if a contribution by the survivor can be proved, the contribution is not taxable.<sup>11</sup>

The incidents of ownership of personalty proved to be important in a recent conversion action.<sup>12</sup> Plaintiff and her husband stored personal effects at defendant's home. Plaintiff made a demand for the property during the lifetime of her husband, which demand was refused. The husband subsequently died. The court held that the taking became wrong-

<sup>1</sup> 101 Ohio App. 129, 137 N.E.2d 125 (1956).

<sup>2</sup> A third party witness is essential to prove a prima facie case under the Dead Man's Statute, OHIO REV. CODE § 2317.03.

<sup>3</sup> Cf. *Bolles v. Toledo Trust Co.*, 132 Ohio St. 21, 4 N.E.2d 917 (1936), in which evidence of delivery was held insufficient to sustain a gift inter vivos of securities standing in decedent's name without endorsement or assignment, on which the donor collected dividends and interest.

<sup>4</sup> The donor must part with complete ownership, dominion and control over the subject matter of the gift. *Bolles v. Toledo Trust Co.*, 132 Ohio St. 21, 4 N.E.2d 917 (1936), Syl. #1.

<sup>5</sup> 102 Ohio App. 21, 131 N.E.2d 846 (1956).

<sup>6</sup> *Gano v. Fisk*, 43 Ohio St. 462, 3 N.E. 532 (1885).

<sup>7</sup> *Gano v. Fisk*, 43 Ohio St. 462, 3 N.E. 532 (1885); *Foster v. Reiss*, 18 N.J. 41, 112 A.2d 553 (1955).

<sup>8</sup> These cases require proof by clear and convincing evidence. *Bolles v. Toledo Trust Co.*, 132 Ohio St. 21, 4 N.E.2d 917 (1936), Syl. #2.

<sup>9</sup> *In re Schroeder*, 75 Ohio L. Abs. 555, 144 N.E.2d 435 (Ohio Prob. 1957).

<sup>10</sup> OHIO REV. CODE § 5731.02.

<sup>11</sup> *Bauman v. Walter*, 160 Ohio St. 273, 116 N.E.2d 435 (1953).

<sup>12</sup> *Trout v. Tipton*, 76 Ohio L. Abs. 19, 145 N.E.2d 478 (Ct. App. 1956).