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property to a minor's trust and leases it back, no inquiry should be made as to whether there was a business reason for making the gift."³⁴ The article states further, "The test of business necessity should be made by viewing the situation as it exists after the gift is made."³⁵ This approach would lend more certainty to the efficacy of the family trust and lease-back arrangement and would avoid judicial speculation in determining whether the lease back is in fact "ordinary and necessary."

Daniel Skemp

COMMUNITY PROPERTY: SURVIVORSHIP
PROVISIONS OF UNITED STATES
SAVINGS BONDS: *IN RE*
BRAY'S ESTATE
(CAL. 1964)

In *In Re Bray's Estate*¹ the widow of Walter Bray appealed from a probate court order distributing community property to her husband's son. In 1929, ten years after their marriage, Walter Bray started a food brokerage business. The business was solely owned by the decedent until 1960, the time of his death. Bray's son by a former marriage worked for him from 1938 until 1960. Bray had purchased United States Savings Bonds with community funds without the knowledge or consent of his wife. The bonds were registered in the names of the decedent and his son as co-owners. After his father's death, the son claimed the bonds as surviving co-owner. The wife claimed that since the bonds were purchased with community property funds their distribution to the son would be in violation of California Civil Code Section 172. Civil Code Section 172 provides that:

. . . the husband has the management and control of the community personal property, with like absolute power of disposition, . . . provided, however, that he cannot make a gift of such community property, or dispose of the same without a valuable consideration, . . . without the written consent of the wife.

This section clearly covers Bray's purchase and disposition of the savings bonds without his wife's consent or knowledge. However, a conflict arises because these bonds were an issue of the United States

³⁴ 52 CALIF. L. REV. 974.

³⁵ *Ibid.*

¹ 230 A.C.A. 144, 40 Cal. Rptr. 750 (1964).

government, regulated by Federal law. Although the Code of Federal Regulations was not mentioned in the case, its provisions should be noted in order to present the problem. The Code of Federal Regulations states:

After the death of one or both co-owners. If either co-owner dies without the bond having been presented and surrendered for payment or authorized reissue, the survivor will be recognized as the sole and absolute owner. Thereafter, payment or reissue will be made as though the bond were registered in the name of the survivor alone. . . . The presentation and surrender of the bond by one co-owner for payment establishes his right to receive the proceeds of the bond. . . .²

This regulation is further strengthened by a following section which provides that "No judicial determination will be recognized which would . . . defeat or impair the rights of survivorship conferred by these regulations upon a surviving co-owner or beneficiary."³ California Civil Code Section 704 contains essentially the same rule:

All United States savings bonds . . . which are registered in the name of two persons as co-owners in the alternative, shall, upon the death of either of the registered co-owners, become the sole and absolute property of the surviving co-owner, unless the Federal laws . . . provide otherwise.⁴

The conflict arises between the federal regulations and California Civil Code Section 704 both covering the survivorship provisions of United States savings bonds and California Civil Code Section 172 governing community property dispositions. The federal regulations and California Civil Code provide that the survivorship provisions of savings bonds are absolute while Civil Code Section 172 provides that the husband may not make a gift or a transfer without valuable consideration of the community property without his wife's consent. In light of the Supremacy Clause of the United States Constitution which provides, "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; . . . shall be the supreme Law of the Land,"⁵ it would seem that Federal law must prevail. This was not the holding in the case.

Bray's son based his claim upon Civil Code Section 704, and a United States Supreme Court case, *Free v. Bland*.⁶ However, the

² 31 C.F.R. 315.61.

³ 31 C.F.R. 315.20(a).

⁴ This section makes no mention of any problems which might arise when the co-ownership of the bonds was created in violation of Cal. Civ. Code § 172.

⁵ U.S. CONST. ART. VI, § 2. In this area the federal regulations have the force of law. See *Free v. Bland*, 369 U.S. 663 (1962).

⁶ 369 U.S. 663 (1962).

case relied on was as much against his contention as it was in his favor. The court in *Free* stated that:

The relative importance to a State of its own law is not material when there is a conflict with a valid Federal law . . . (A)ny state law, however clearly within a State's acknowledged power, which interferes with or is contrary to a federal law, must yield.⁷

However, it also added:

(But) relief is available where the circumstances manifest fraud or a breach of trust tantamount thereto on the part of the husband while acting in his capacity as manager of the general community property.⁸

The Probate Court in *Bray* found valuable consideration in the services rendered by the son and thus excluded the bonds from the estate. The son claimed that he was underpaid and worked long hours and that he was made co-owner of the bonds in lieu of wages. There was however, no substantial evidence to show that the son rendered these services for his father in consideration of the purchase of the bonds. Evidence was introduced that tended to show the decedent's state of mind regarding compensation for his son's services, but the district court held . . ." (T)hat it falls far short of substantial evidence to show that a valuable consideration was received sufficient to support the transfer of community funds."⁹

Bray's wife relied upon *Yiatchos v. Yiatchos*,¹⁰ a recent United States Supreme Court decision, in which the husband purchased bonds with community funds and made his brother co-owner. The Supreme Court in that case declared that "The deceased being under a fiduciary duty to manage the community funds, a breach of this duty is a constructive fraud."¹¹ The finding of constructive fraud brought the case within the rule of *Free* which specifically excludes cases of fraud from the protection of the Supremacy Clause, on the basis that United States Savings Bonds should not be allowed to become a "sanctuary for a wrongdoer's gains."¹² *Yiatchos* also establishes the test to be used in determining what would constitute fraud:

(W)hether or not there is fraud which will bar the named beneficiary in a particular case must be determined as a matter of Federal law. . . . But in applying the Federal standard we shall be guided by

⁷ *Id.* at 666.

⁸ *Id.* at 670.

⁹ 230 A.C.A. 144, 148, 40 Cal. Rptr. 750, 752.

¹⁰ 376 U.S. 306 (1964). For a complete discussion of the Supreme Court cases see Note, *Yiatchos v. Yiatchos: A Sequel to Free v. Bland*, 38 So. CALIF. L. REV. (1965).

¹¹ *Id.* at 308.

¹² 369 U.S. 663 (1962).