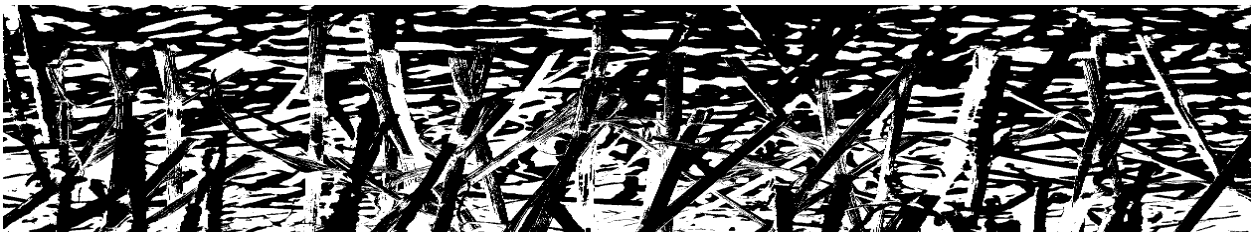

Jack Straw Fortnightly*

don't fence me in

We opened issue 12 of volume 1 with some chatter about how it had been "more than ten weeks" since the previous issue. And here we are again, just over twelve. Insert some witticism about the partial shutdown -- which, in fairness to Jack, did result in a gap of several weeks in the release of letter rulings and Tax Court decisions.

The Tax Court resumed operations on January 28, and IRS released two batches of letter rulings on February 01, albeit with stated release dates of December 28 and January 04.[1] Among these were

- yet another pair of "incomplete nongrantor" (ING) trust rulings, PLRs 201852009 and 201852014, about which more in a moment,[2]

- PLR 201852012, allowing a private foundation belatedly to elect to treat excess distribution carryovers from prior years as having been made in the current year -- with the not so incidental effect of enabling at least two individual contributors to claim larger deductions in the current year because the foundation would then be treated as a "conduit,"[3] and

- PLR 201901003, determining that the purchase by one former spouse of the other's interest as a tenant in common in a residential property more than six years after their divorce was neither a recognition event nor a taxable gift, despite the lapse of time and despite a downward adjustment in the price to reflect the purchaser's disproportionate contribution to expenses of repair in the interim.[4]

if the (international) shoe fits

Also during the hiatus, the Supreme Court granted certiorari in a case which for the sake of brevity we will call *Kaestner Trust*.[5]

At issue is whether a state, here North Carolina, may tax the income of an inter vivos irrevocable nongrantor trust where the only contact with the state is the residence of a beneficiary. The state supreme court says no, on due process grounds.[6]

We will postpone a detailed discussion of *Kaestner Trust* in these pages until after the Court decides whether or not to also grant cert in a tangentially related case, *Bauerly v. Fielding*,[7] in which the question

is whether Minnesota may tax the income of an inter vivos nongrantor trust where the only contact the relevant statute literally requires is that the settlor have been a resident at the time the trust became irrevocable.[8]

Again, the state supreme court says no, and again on due process grounds, but with two justices dissenting. *Fielding* is on the Court's conference calendar for February 22.

When we do get into these cases in more detail, Jack will be arguing that both the North Carolina and Minnesota state courts went off the rails by treating the trust as an entity, rather than as a relationship among the settlor, the trustee, and the beneficiaries. Attentive readers will have heard some parts of this rant before.

Neither of these trusts is an ING, but the outcomes in these cases could significantly affect the viability of the ING model, which on the one hand contemplates the accumulation of income by a trustee who resides in a state that does not tax undistributed trust income, but which on the other hand creates contingent remainder interests in identifiable individuals, albeit subject to defeasance by the settlor's exercise of a reserved limited power of appointment.[9]

But again, we will defer a more detailed discussion of these two cases until after the February 22 conference.[10]

meanwhile back at the ranch

Sometime in the next few weeks, the Arizona supreme court will decide whether to accept review of a state appeals court decision affirming the dismissal of a claim against a decedent's estate as untimely.

There are some "complexifiers," as my friend Jeff would say, but the dispositive issue is or ought to be whether the co-personal representatives should have given this particular claimant actual notice that the decedent had died, that a probate had been opened, and that the clock was ticking.

In granting a motion for summary judgment dismissing the claim, the trial court determined, based on the limited information it had in hand, that the claimant was not a "reasonably ascertainable creditor" within the meaning of the Wyoming nonclaim statute, so that actual notice was not required.

Wyoming, you say. I thought you said we were in Arizona.

The decedent was a resident of Wyoming for much of his adult life, but there was an interval of some years during which he lived in Arizona with his second wife, the claimant here, whom he had married in Wyoming. They divorced in 1987 after fifteen years, no children, she remained in Arizona, and at some point he returned to Wyoming, by way of Las Vegas.[11]

The divorce decree incorporated the terms of a settlement agreement, which among other things required the decedent to provide for the payment to his former spouse of $150k if she survived him, "as an additional adjustment of [her] property rights." Her claim was that he did not do this.

At the time of his death in October 2013, the decedent did still own real property in Arizona, which had been the marital residence during his marriage to the claimant, and which apparently continued to function as a second home for him and his third wife until his death.

This despite language in the settlement agreement that the property was to be sold. Pending the sale of the property, it was to be held in joint tenancy with right of survivorship. So apparently some other arrangement was made along the way. More on this in a moment.

Three years after the initial decree the former spouse, the claimant here, petitioned the divorce court to extend the alimony award another three years. The trial court granted that petition, and the decedent appealed.

The appeals court decision dismissing that appeal was issued not quite three months after the date of the decedent's remarriage. By which Jack means to suggest that the surviving spouse may have had some familiarity with what was going on in connection with his divorce from her predecessor.

the Wyoming probate

At item "first" of the decedent's will, he names three individuals as daughters "from a prior marriage" -- the claimant here was his second wife, and the surviving spouse was his third --, and another individual whom at some point he had adopted.

These four are referred to collectively throughout the will as "my daughters." At item "eighth," the decedent makes a nominal bequest to a named individual who is identified in other filings (and in the published obituary) as another "daughter."

The will would have left the bulk of the decedent's estate in equal shares among the surviving spouse and the four "daughters" identified as such.[12] However, the surviving spouse elected instead to take her statutory share -- in this case half, which would seem to imply that the fifth daughter was hers.[13]

By stipulation filed with the probate court in Wyoming, the co-personal representatives agreed

> (a) the surviving spouse would receive half the proceeds of the sale of two large ranch properties in Wyoming, with the other half to be divided among the four "daughters,"
> (b) the Arizona property would be distributed to the surviving spouse upon her payment of $200k to "the remaining heirs," apparently meaning the four daughters, and
> (c) the balance of the estate would be distributed according to the terms of the will.[14]

The two daughters who had been named co-personal representatives with the surviving spouse relinquished their right to act with respect to any "necessary" ancillary probate in Arizona. But the surviving spouse did not immediately take steps to open an ancillary probate.

and when did she know it

Not quite a year later, a lawyer for the former spouse in Arizona wrote to the surviving spouse and one of the daughters, saying hey, sorry

about your loss, but your decedent still owes my client $150k and some other stuff.

A few weeks passed, and then a lawyer for the surviving spouse wrote back saying, my client tells me the decedent settled all this with your client in 1993, in connection with a quitclaim of the marital residence. [15] A month later, another lawyer, representing only the other two co-personal representatives, sent a letter enclosing a copy of the publication notice.

The claimant here asserts that this was the first she heard there had been a probate. But by then she had already petitioned a court in Arizona to open an ancillary probate, so she could file her claim within two years of the decedent's death, as the Arizona nonclaim statute would require, assuming she was not already precluded by the Wyoming statute.

The surviving spouse and the two daughters objected to the claimant's appointment as personal representative, though they acknowledged that an ancillary probate was necessary. The court appointed the three of them as co-personal representatives, and ordered that the property[16] be distributed to the surviving spouse "under an arrangement whereby" she would immediately sell the property and place $175k in a restricted account pending resolution of the claim.

The claim was set for hearing, but the hearing was postponed due to some confusion over notice. And then something odd occurred.

The two daughters hired separate counsel[17] and filed a motion for summary judgment in which the surviving spouse did not join.

The motion was supported by an affidavit from one of the daughters saying, my father told me "on multiple occasions" that "he no longer owed [the claimant] anything and that any obligation he had to [her] had long ago been paid in full," therefore it never occurred to me she might be a possible creditor of the estate.

That is some considerable distance short of the level of detail given in the letter from the Wyoming lawyer for the surviving spouse, which itself hinted at much more. But a copy of that letter was also appended to the summary judgment motion, so the trial court could readily have seen the discrepancy.[18] The surviving spouse herself was not a party to the motion, and she did not respond to the claimant's discovery requests. The trial court took the daughter at her word and granted the motion.

Then, having worked their magic, separate counsel for the two daughters dropped out of the picture -- as did the daughters themselves. The claimant's appeal was defended only by the surviving spouse as "sole personal representative," using the lawyers she came in with. Entries to the online docket for the probate court indicate this change occurred about five months after the filing of the notice of appeal.

reasonably ascertainable

Some of you may be old enough to remember the Supreme Court decision in *Tulsa Professional Collection Services, Inc. v. Pope*, 485 U.S. 478

(1988), which invalidated what had been a common feature in state probate statutes, cutting off creditor claims thirty or sixty days after the executor or administrator placed an advertisement in a newspaper "of record" that almost no one actually read.

The Court said publication notice did not provide due process to a creditor of whom the personal representative had actual knowledge, or whose identity was "reasonably ascertainable by reasonably diligent efforts." What made it a due process question was the involvement of the state in the probate process itself.

The response from state legislatures was mixed. Some states that already had a longer, backup nonclaim statute, measured from the date of death rather than from the date of the appointment of the personal representative, simply shortened that backup deadline. The date of death being not "state action," therefore no due process concerns.[19]

Some states added language to an existing publication statute, imposing a separate thirty- or sixty-day limit on the filing of claims by creditors to whom the personal representative had provided actual notice, and incorporating some version of the "reasonably ascertainable" standard. If the personal representative should have given actual notice, publication alone would not bar the claim.

Wyoming fell into this latter category. Arizona, following the lead of the Uniform Law Commissioners, also kept a two-year backup statute.

The difficulty the claimant is facing in the present case is that the Arizona statute draws a distinction between claims that "arose before" and those that "arise at or after" the decedent's death.

If the former, and if the claim is already barred by the nonclaim statute of the state of the decedent's domicile, then you are out of luck. That, says Jack, is a lot of "ifs." Well, two anyway.

The trial court here determined

> (a) that the claim here at issue "arose before" the decedent's death, and
> (b) that the claim was already barred by the Wyoming nonclaim statute -- that is, that the co-executors could not reasonably have been expected to have ascertained the identity of this particular claimant within the publication period.

when does a claim "arise"

The appeals court agreed, citing *Spohr v. Berryman*, 589 So.2d 225 (Fla. 1991), in which the Florida supreme court quashed a state appeals court decision that would have allowed the decedent's former spouse and her children to file a lawsuit against the personal representative -- within the nonclaim period, but not presented as a "claim" in the probate division -- to enforce a divorce settlement agreement to leave them at least half his estate.

Somewhat analogous facts, certainly.[20] But the question remains whether the Florida case was correctly decided.

The intermediate appeals court had determined that the state's nonclaim statute, which barred any claim that "arose before the death of the decedent" unless it was presented within three months of publication or thirty days of actual notice, did not apply because the "claim," which it somewhat clumsily described as

> the decedent's failure, pursuant to a divorce separation agreement made part of a court order, to make a provision for the future maintenance of his ex-wife and children via a will in which he was to devise to them a portion of his estate,

of necessity "did not arise until after the decedent's death." It was this logic that the Florida supreme court rejected.[21]

The distinction being drawn here is between when a "claim" "arises" and when it "accrues."[22] The Florida supreme court in *Spohr*, and the Arizona appeals court in *Evitt*, are saying the "claim" here "arose" from the divorce settlement agreement.

But one might equally argue that the "claim," as such, "arises" from the breach of the agreement, which did not occur until the decedent died without having performed. Until the agreement is actually breached, there is an inchoate obligation, but not yet a "claim."

Or to put it another way, the fact that the "claim" "arises from" an agreement the decedent entered into during his life does not answer the question "when" it "arises." Or when it becomes a "claim."

Jack would argue that while the decedent was alive and might still have performed his obligation under the agreement, his former spouse did not yet have a "claim."

The Arizona appeals court might well have rejected that argument, but in fact they did not even address it.[23]

reasonably diligent efforts

But what about the second prong of the *Pope* analysis -- that the personal representative make "reasonably diligent efforts" to ascertain the identities of creditors to whom actual notice should be given.[24]

We do have some scraps of information in the record that suggest the surviving spouse, at least, had some relevant information that maybe should have put her on what they call a duty of inquiry, see the discussion above in connection with footnotes 11 and 15. But as also noted above, see footnote 18, she managed to avoid going on record on the question.

Anyway. The claimant's petition for review may come up on the court's conference agenda as early as the first week of March. We will report back on whether the court decides to accept the case.

miscellany

clawback redux

In a postscript to the last issue, I mentioned the February 21 deadline for comments on proposed regulations that would forgo "clawback" in the estate of a taxpayer who dies after 2025 of gifts she might have made while the applicable exclusion amount is temporarily doubled.

And I suggested that this result might not literally be within the authority granted to the Treasury in section 2001(g)(2) to "prescribe such regulations as may be necessary or appropriate to carry out this section with respect to any difference between" the exclusion amount in effect at the date of a taxpayer's death and the amount in effect when a gift is made.

A part of my theory was that the Joint Committee revenue estimate for the interval following the sunset might have assumed there would be a clawback. Admittedly this was a longshot, and two things have since occurred that have caused me to reconsider.

One, the "blue book" prepared by the JCT staff back in December 2017 explicitly states at page 89 that "it is expected" that formal guidance "will prevent" clawback.

And two, I actually spoke by phone with a couple of JCT staffers who had participated in drafting the language in question, and they said whoever was in the room as this was being negotiated understood there would be no clawback.

Which is maybe not the same as saying everyone understood. And certainly the legislative language could have been much more explicit as to what result was intended, even if it was not practical to work out the details at the eleventh hour.

But at this point it seems unlikely the Greystocke Project will be submitting comments.

RERI Holdings

In issue nine, we briefly mentioned the taxpayer's appeal from the decision of the Tax Court in *RERI Holdings, LLC v. Commissioner*. The appeals court did hear oral argument on November 09.

Because of the way the lower court decided this case, pretty much the only issue on appeal was whether the failure to make an entry on Form 8283 showing cost basis should be fatal. If the appeals court remands, we will probably get deep into the weeds on valuation.

Jack is watching the appeals court's opinions release page, and we will report the decision soon after it comes down.

qualified appraisal regs

Some of you who are subscribed to the discussion boards on the NACGP site will have seen a thread sparked by an item Jonathan Tidd posted to the Sharpe blog back in December suggesting that recently finalized regulations on the substantiation of noncash gifts might require a "qualified appraisal" of the present

value of the remainder of a charitable remainder trust, even if the trust is entirely funded by cash and/or marketable securities.

This will almost certainly be one of the primary subjects of our next newsletter, which we will endeavor to have out within the fortnight.

and, in addition, as well

We are launching a Patreon page to support the newsletter and related writing projects. Certainly Jack would like to have five hundred subscribers at a dollar or more per, not for the money per se, but for the broader exposure.

If you throw a dollar or three in the kitty, please also take a moment to mention the Jack Straw to someone you think might enjoy reading.

If we do hit five hundred, we may take at least some of this content behind a paywall, but those of you who have supported our early efforts here will be exempted.

Also, it appears I will be speaking at the Western Regional Planned Giving Conference in Costa Mesa in late May. To some extent a reprise of the talk I gave at the NACGP conference in Las Vegas in October. Hope to see some of you there.

notate bene

[1]

Another batch of rulings, released February 8, carried a release date of January 11. A third batch released on February 15 carried a release date of January 18. Nothing of particular note in these two batches.

[2]

It would require several hundred words to elaborate exactly how the ING is structured. And in some future issue Jack may do an extended rant on this subject -- he does have a couple of axes to grind here.

But for the moment, suffice it to say that the ING trust is an irrevocable, discretionary trust for the benefit of a class of beneficiaries that includes the settlor, her descendants, and typically some other individuals, but the mechanisms for exercising that discretion are structured in such a way that

(a) the settlor may participate in a decision to distribute to another beneficiary, but only with the approval of at least one "adverse party," unless
(b) acting in a nonfiduciary capacity, she directs a distribution subject to an "ascertainable standard," and
(c) other members of the discretions committee -- the other beneficiaries, acting in concert -- could in theory redistribute the corpus to the settlor,
etc., etc., dark magic.

The upshot being, the ING is not a completed gift except as distributions are actually made, but it is also not a "grantor" trust for income tax purposes. And no one has any taxable powers.

And that is well over a hundred words right there.

There have been something like a hundred of these rulings issued over the past eighteen years. The earliest seem to have been PLRs 200148028 and 200247013. In those two rulings the settlor was asking only to confirm that the trust would not be treated as a "grantor" trust, and that her contributions to the trust would not be treated as completed gifts.

It was not until PLR 200502014 that IRS began holding back on the question whether the settlor might actually have sufficient administrative controls to be treated as the income tax "owner" of the trust under section 675.

That ruling and subsequent rulings have taken the position that this is a matter that should be dealt with in possible audits of the various parties' returns.

Perhaps not coincidentally, the 2005 ruling was the also first in which the stated facts included mention that the settlor was a resident of one state, but the trustee was domiciled in another -- let's say, maybe a state that does not tax trust income, though this is not expressly stated. Nearly every ING ruling since has included this feature.

Starting in about 2007, the proponents of this ~~dodge~~ ~~scheme~~ ~~gimmick~~ device began to turn up the heat. In 2014 alone, there were forty of these rulings, in three large batches.

[3]

The same accounting firm had prepared the 990-PF and the 1040s for the individual contributors.

The text of the ruling says the difference for the individual contributors was between the 20 pct. limit of section 170(b)(1)(D) versus the 50 pct. limit of section 170(b)(1)(F)(ii). But there is a mismatch here somewhere.

The 20 pct. limit would apply to a contribution of appreciated property to a nonoperating private foundation other than a conduit. If the foundation was treated as a conduit, the 30 pct. limit at section 170(b)(1)(C) would apply.

Unless we are talking about a step-down election, which certainly is not mentioned in the text.

[4]

Possibly key to the favorable ruling was the fact that the parties asked the divorce court to reopen the case to enter a revised stipulation.

Jack observes that a similar logic seems to be implicit in the effective date provision for the permanent repeal of the alimony deduction, and conforming amendments to related provisions, at section 11051 of the 2017 tax bill.

These changes apply not only to divorce or separation "instruments" executed after December 31, 2018, but also to instruments executed on or before that date and later modified "if the modification expressly [so] provides," otherwise apparently not.

[5]

The full name of the case is *North Carolina Department of Revenue v. The*

Kimberly Rice Kaestner 1992 Family Trust, No. 18-457.

Actually, this would be as good a place as any to mention that the taxpayer has been misdesignated throughout this litigation in a manner that indicates a fundamental confusion which arguably lies at the heart of the dispute.

A trust is not itself a legal entity, but a relationship among the settlor, the trustee, and the beneficiaries. It is the trustee who is liable to report and pay taxes on undistributed income, and who would have applied for the refund that was denied here.

[6]

The trial court had also invalidated the statute purporting to tax trust income based only on the residence of the beneficiary for whom it is held as violating the "commerce clause," Article I, section 8 of the federal constitution. But neither the state appeals court, affirming, nor the state supreme court found it necessary to reach this question.

In his response to the petition for cert, the trustee argued that because of this procedural history, the case was not a suitable vehicle for resolving the question presented. Even if the Court determined that the state statute as applied did not violate the Fourteenth Amendment due process clause, this would not resolve the commerce clause issue.

[7]

Here the parties are correctly identified. "Bauerly" is the name of the state revenue commissioner, and "Fielding" is the name of the trustee. The Minnesota supreme court opinion affirms a decision of the state tax court granting summary judgment on the trustee's refund claim. In this case, the tax court had found it unnecessary to reach the commerce clause issue.

Although Minnesota does have an intermediate appellate court, appeals from the state tax court are taken directly to the supreme court.

[8]

In the particular case, there were multiple other contacts with the state, but the tax court focused only on the statutory criterion, *i.e.*, the settlor's residence at the time the trust became irrevocable, and disregarded the others as "irrelevant."

The state supreme court ostensibly took the other contacts into account, in order to determine whether the statute was unconstitutional "as applied," but found them "either irrelevant or too attenuated" to create the necessary nexus.

[9]

Again without getting too deep into the details of these cases just yet, it seems possible the outcome in *Kaestner* may ultimately depend on whether the individual beneficiary for whom income was being accumulated was somehow vested in those accumulations. The facts as recited in the various opinions below are not entirely clear on this point, though the trustee's response opposing the petition for cert does refer to the settlor's daughter as "the" beneficiary of the subject trust.

The state supreme court opinion mentions that the daughter was to receive the entire corpus of the trust at age forty -- by which time apparently she had moved to California, which does also tax accumulations for a resident "noncontingent" beneficiary --, but that she had instead consented to a decanting to another trust, the terms of which are not described. Jack would like to see the documentation of this transfer.

[10]

Those students who would like to read ahead might take a look at *McCulloch v. Franchise Tax Board*, 390 P.2d 412 (Cal. 1964), *Chase Manhattan Bank v. Gavin*, 733 A.2d 782 (Conn. 1999), and *Linn v. Department of Revenue*, 2 N.E.3d 1203 (Ill. App. Ct. 2013).

[11]

Much of what we are recounting here is derived from information that was available to the trial court. Most of the linked documents were submitted in support of the co-personal representatives' motion for summary judgment, and were attached as appendices to their response brief to the appeals court.

But Jack is filling in a few details derived from an obituary for the decedent published in the local paper at the time. Other sources are noted along the way.

[12]

The interest of each of these five cotenants was contingent on her surviving the decedent, *i.e.*, the descendants of a predeceased cotenant would not succeed to her interest.

[13]

It is possible the election to take against the will created a sufficiently large marital deduction to bring what would otherwise have been a taxable estate under the applicable exclusion amount. Wyoming itself does not impose an estate or inheritance tax.

[14]

The stipulation says that certain real property in New Mexico was to be "set over to the seven grandchildren, as specified in [the decedent's will]." What the will actually provides is that this property is to be sold and the proceeds distributed among those of the named grandchildren who survive. We are not informed whether there has been an ancillary probate in New Mexico.

[15]

As noted above, there was in fact some activity in the divorce file in the early 90s, having to do with extending the alimony obligation, of which the decedent's third wife was likely aware.

But one might expect a settlement renegotiating the division of marital property to be memorialized by a modified decree.

The online docket for the divorce court does show some entries in 1994 and 1995 (not "April of 1993"), but these do not seem to reflect a formal modification of the divorce decree.

[16]

Just the parcel with the residence, actually, not the adjoining undeveloped ten acre tract. The internet says the house sold a few months later at $700k.

Interestingly, the same source does also show a sale in 1995 at $70k -- but not quite within the window of the docket entries linked in footnote 15. And of course a purchase at that price would not begin to cover the $150k adjustment at paragraph 10 of the divorce settlement agreement.

[17]

Specifically, two lawyers from the Phoenix office of Bryan Cave at god knows what per hour.

In granting summary judgment, the trial court allowed "the estate" -- Jack again notes, not the co-personal representatives -- lawyer fees of almost $50k. Even at three hundred an hour we would be looking at over a hundred fifty hours.

[18]

Although the claimant sought discovery from all three co-personal representatives, only the two daughters responded. The surviving spouse has escaped going on record with what exactly she knew about what supposedly happened between the claimant and the decedent in the early 90s.

[19]

Heirs and legatees who can be patient will sometimes wait until just before the backup deadline to open a probate, in order to defeat the claims of known creditors who are not aware the decedent has died.

[20]

To be clear, if the claimant here was entitled to and did not receive actual notice, the Arizona statute would give her two years from the date of the decedent's death to file her claim. This she did do.

Both the trial court and the appeals court ignored an argument advanced by the co-personal representatives that she should have filed a claim in the Wyoming probate within thirty days of the letter from the daughters' Wyoming lawyer enclosing a copy of the published notice.

The Wyoming statute bars claims only if actual notice is mailed no later than thirty days prior to the expiration of the three month nonclaims period running from publication.

[21]

Three justices dissented in *Spohr*, arguing that filing a lawsuit in a civil division rather than a "claim" in the probate division was "a defect of form, not substance," and that the civil division should simply have transferred the matter to the probate division.

[22]

The appeals court's citation to *Ader v. Estate of Felger*, 240 Ariz. 32 (App. 2016), on this point is off the mark.

In that case, as the court observed, the alleged fraud occurred

and the claim "arose" while the decedent was alive, but the claimant's cause of action did not "accrue" for purposes of the otherwise applicable limitations statute until she had a reasonable opportunity to discover the alleged fraud.

In making this point, the *Ader* court explained that "by contrast" to the limitations statute, "in the context of a nonclaim statute, 'arise' refers to the decedent's act or conduct upon which a claim is based."

In *Evitt*, one may argue whether the decedent's "act or conduct" in failing to provide for a payment to be made at his death occurs "before" or "at" his death. But the appeals court did not engage the argument.

[23]

Both the trial court and the appeals court got caught up in the question whether the claim here was "contingent," and both concluded -- because they were treating the "claim" as having "arisen" before the decedent's death -- that it was. Obviously the only contingency to the decedent's obligation to provide an additional $150k to his former spouse was that she survive him. At the moment of his death, this obligation was no longer "contingent."

Jack would argue that the word "contingent" in the nonclaim statute merely clarifies that a claimant may establish the decedent's, and therefore the estate's, potential liability to cover an obligation has not yet "accrued."

[24]

The Court in *Pope* did also say a personal representative should not be expected to provide actual notice to a purported creditor whose claim is merely "conjectural," but no one has argued that was the case here.

Jack says,
I want to gaze at the moon until I lose my senses.