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William M. Simmons
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MARYLAND INHERITANCE TAXATION OF TESTAMENTARY OPTIONS TO PURCHASE

William M. Simmons†

This Article examines a Kent County, Maryland Circuit Court opinion, the rationale of which leads to a result arguably at odds with the purpose of Maryland inheritance tax law. The author, after a review of relevant extra-jurisdictional case law, offers suggestions for judicial and legislative remedial action.

I. INTRODUCTION

On August 8, 1961, the Honorable George B. Rasin, Jr., then an Associate Judge of the Second Judicial Circuit for Kent County, Maryland, filed a memorandum opinion in the case of *Clark v. Miller*,[1] which held that a person who receives by will an option to purchase property for a specific sum that is less than the property's fair market value is not liable for the inheritance tax on the difference between the option price and the fair market value.

Such a holding should come as a shock to anyone familiar with our modern scheme of inheritance taxation. The Supreme Court of Washington succinctly stated the problem in *In re Cowles' Estate*.[2] There the decedent's son, who received by his father's will an option to purchase stock at a fixed price, contended that the option price was binding on the court when valuing the property for inheritance tax purposes. The court pointed out that to permit this type of scheme would be to frustrate the purpose of the inheritance tax statutes because a decedent could effectively determine the amount of inheritance tax to be paid.[3]

Because the rationale of *Clark v. Miller* arguably frustrates the inheritance tax statute in Maryland, this article will carefully examine Judge Rasin's reasoning. Furthermore, as this case is the only decisional law authority on point in Maryland,[4] this article will

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† B.A., 1975, *magna cum laude,* Ohio Wesleyan University; J.D., 1978, University of Maryland; Assistant Reporter to the Court of Appeals Standing Committee on Rules of Practice and Procedure; Member of the Maryland State Bar Association.

1. Daily Record, December 13, 1961 at 3 (Kent Co. Cir. Ct., Equity No. 4517, filed Aug. 8, 1961).
2. 36 Wash. 2d 710, 219 P.2d 964 (1950).
3. *Id.* at 717, 219 P.2d at 967–68.
4. Although an unreported opinion of a circuit court is not true case law authority in the sense that it would bind other courts by the rule of *stare decisis,* it is authority of sorts. On the basis of this decision, the Maryland Comptroller of the Treasury authorized a refund of the disputed tax, an amount totalling $1,125, in the instant case. Moreover, the Register of Wills of Kent County believes he is bound by this decision in similar cases. Conversation with Janet Ashley, Deputy Register of Wills, Kent County, Maryland (October, 1978).

review relevant out-of-state and federal case law in order to determine the proper course for the Maryland General Assembly, or the Maryland courts, to follow to avoid the undesirable result of *Clark v. Miller.*

II. *CLARK v. MILLER*

In *Clark v. Miller* the decedent's will granted an apparent option to buy a farm to C. Edward Miller for $15,000, a price equal to approximately one-half its value at the time of decedent's death. The executor, Marion Clark, paid the collateral inheritance tax on the appraised value of the farm ($30,000). After Miller decided to exercise the option, Clark brought suit in equity for a decree that Miller was liable to the estate for the inheritance tax due on $15,000, the difference between the option price and the appraised value.

The chancellor held that no tax was due on the difference in value and suggested that the executor should apply for a refund of the excess tax paid.[5] In so holding, Judge Rasin reasoned that the only issue was whether Miller was "a beneficiary or 'donative taker' under the will" or whether he received an option to purchase.[6] Judge Rasin decided that the will created an option to purchase. Such an option, he reasoned, is taxable only at the option price because executing the option made Miller a purchaser by deed, not a donative taker under the will.[7] Moreover, the judge stated that Miller did not receive $15,000 by way of distribution because the will did not contain a provision to that effect.[8]

An examination of the chancellor's opinion suggests that he erred. Although he made a logical (and in the author's opinion, correct) determination of what Miller received by virtue of the will — an option to purchase — Judge Rasin failed to confront the problem of valuing this apparent gift.[9] Certainly, if the option price equaled

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5. The Executor applied for the refund and, on October 10, 1961, the Comptroller authorized that the $1,125 previously paid be refunded. (Authorization No. 3166).
6. Daily Record, December 13, 1961 at 3, col. 1 (Kent Co. Cir. Ct., Equity No. 4517, filed August 8, 1961).
7. *Id.*
8. *Id.* at 3, col. 2. The $15,000 represents the difference between the appraised value ($30,000) and the option price ($15,000).
9. Although the posture of this article makes clear the donative aspect of this devise, it may be less clear to persons in rural counties, where non-resident land owners often encounter difficulty in finding tenants to farm their land. When a good tenant is located, most non-resident owners will make great efforts to keep him because his work is highly valued. If a good relationship continues, the landowner may very well create a testamentary option allowing the tenant to purchase the land at a reduced price after the landowner's death. This is not so much a gift as it is a recognition by the landowner of the fact that the tenant has already invested a great deal in the land in continued service and human labor, and the option is in the nature of deferred compensation, over and above his share of crops, for the real value of the tenant's contribution in keeping the farm operative.

the fair market value of the property, no problem would exist. Where, however, the option price is less than the value of the property, the difference in value is tantamount to a gift to the optionee. If the option price is determined in an arm's-length transaction, a court would probably accept the price as the valuation regardless of the apparent gift. Where, however, the price is not established by bargaining, or it is ascertained in a non-arm's length transaction (such as an intra-family sale), courts have traditionally looked beyond the price established by the parties to search for concealed gifts. Judge Rasin erred by failing to conduct this search. Consequently, this article will examine both the manner in which other courts have decided what passed under wills in similar situations and the manner in which the courts valued these similar testamentary dispositions.

III. WHAT PASSES AT DEATH BY VIRTUE OF THE WILL

In general, Judge Rasin was correct in his determination that what passed under the will was an option to purchase. It has been noted that, where it appears there has been a bequest of an option, one of two things could have been created by the words of the will: an option to purchase property or a devise subject to a charge.[10]

The distinction between a devise subject to a charge and an option to purchase was discussed by the Supreme Court of Pennsylvania in *In re Ludwick's Estate*.[11] In that case the testator's will contained a provision that gave his son the right to buy a farm at its appraised value, but if he refused, then the testator's four daughters, in order of seniority, were "to have the privilege of taking."[12] The son was ill at the time of the appointment and died five days later without having made either an election to take or not to take the farm at its appraised value. In holding that the right to elect did not pass to the son's heirs because the testamentary provision granted an option to purchase that terminated at the son's death, the court noted that if the will had devised the farm subject to a charge of the appraised value, a fee simple would have been acquired subject to the charge.[13] In this case, however, the court stated that the son "had a right to refuse to take, and fee-simple title could not vest until his decision on this point, and he never did decide."[14] Citing Chief Justice Marshall, the court reasoned that "[i]t seems to be of the very nature of a right to elect one of two things, that actual ownership is not acquired in either, until it be elected."[15]

10. Annot., 44 A.L.R.2d 1214 (1955).
11. 269 Pa. 365, 112 A. 543 (1921).
12. *Id.* at 368, 112 A. at 543.
13. *Id.* at 369, 112 A. at 544.
14. *Id.*
15. *Id.* (*quoting* United States v. Grundy, 7 U.S. (3 Cranch) 337, 352 (1806)).

The court also held that there was no presumption of election to exercise the option merely because it would have been to the advantage of the recipient to do so.[16]

This case suggests that a devise subject to a charge is a gift (devise) with a condition subsequent. Thus, once given, title vests and is subject to divestment only upon occurrence of the condition — non-payment of the charge on the property. Where there is an option to purchase, however, there is no interest in the property, and title does not vest until an election to purchase is made in accordance with the terms of the will.[17]

This reasoning is further supported by the later Pennsylvania case of *In re Horn's Estate*.[18] In that case, the lower court decided that the will created a fee simple estate upon a condition subsequent. Consequently, the lower court held that title passed to the recipient as of the decedent's death and that the recipient was entitled to all rents, issues, and profits accruing thereafter. This reasoning was affirmed on appeal. The appellate court stated that the codicil in question in the case, which used the words "give and devise" and "heirs and assigns," evidenced the determination that there was an outright devise of the farm subject only to the conditions of payment described later in the codicil. The court distinguished this case from *In re Ludwick's Estate* because no outright devise was made in that case. Title would have passed to the optionee only upon a clear acceptance of the option and compliance with its conditions and this was clearly unlike the situation resulting from Horn's devise upon a condition subsequent.

Additional clarification of the term "option to purchase" is found in the common definitions given to it by the courts. The best example is the definition given by the Utah Supreme Court in *Chournos v. Evona Investment Co.*[19] There the court stated that,

> An option to purchase may be defined as a contract by which an owner agrees with another person that he shall have the privilege of buying his property at a fixed price within a specified time. The landowner does not sell his land; he does not then agree to sell it; but he does then sell something, — viz., the right or privilege to buy at the

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16. *Id.* at 369-70, 112 A. at 544-45.
17. Under current law it is clear that a devisee has a right to refuse to take under the will. MD. EST. & TRUSTS CODE ANN. §§9-201 to 9-209 (Supp. 1978). Consequently, the distinction between a devise subject to a charge and an option to purchase is less clear now then at the time of *Ludwick*. A distinction exists nonetheless, in that if a devise subject to a charge exists and one fails to act, one receives the property subject to the charge, whereas, if one has an option to purchase, a failure to act results in a loss of any right to the property.
18. 351 Pa. 131, 40 A.2d 471 (1945).
19. 97 Utah 335, 93 P.2d 450 (1939).

> election, or option, of the other party. The second party gets *in praesenti,* not lands, or an agreement that he shall have lands, but he does get something of value; that is, the right to call for and receive lands if he elects.
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> . . . .
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> According to the great weight of authority, a court of Equity will decree specific performance in favor of the holder of an option who has duly elected to exercise his right to purchase. The principle on which this seeming exception to the general requirement of mutuality in contracts is based, is that the vendor's agreement to convey at the option of the purchaser is a continuing offer until accepted within the time and on the terms limited in the option, and when accepted it becomes a valid agreement, supported by mutual promises.[20]

With these distinctions in mind, we can look to the will involved in *Clark v. Miller* and determine what passed under it. In addition, we can speculate as to what would pass under various other types of testamentary dispositions.

In *Clark,* the will read, in part:

> Kent Manor Farm to be sold, or, if C. Edward Miller, the present tenant, wants to buy it, he may do so for $15,000.[21]

It is clear that what is contained in the will is an option to purchase. The right of election is clear, and it is also evident that the title to the land did not vest in Miller unless and until he exercised the option by paying the $15,000. Therefore, if a testamentary option to purchase is exercised, the question becomes whether it is the land or the option that passes by the will. It seems proper to say that the option was all that passed under the will. As noted above, an option creates no interest in the property. Neither does it create a contract to sell. All that passes is a right to elect to purchase and, upon such an election, an enforceable contract to sell at the stated price comes into being. Thus, it seems that the land passes under the contract created by exercise of the option, while the option is what passes by will.

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20. *Id.* at 340, 93 P.2d at 452 (citations omitted). This definition is well supported by other case law. *See, e.g.,* Whitworth College v. City of Brookhaven, 161 F. Supp. 775, 782 (S.D. Miss. 1958); Jonas v. Leland, 77 Cal. App. 2d 770, 776, 176 P.2d 764, 768 (1947); Equitable Trust Co. v. Delaware Trust Co., 30 Del. Ch. 118, 125, 54 A.2d 733, 736 (1947); Morgan v. Forbes, 236 Mass. 480, 483, 128 N.E. 792, 793 (1920); Wurdemann v. Hjelm, 257 Minn. 450, 460, 102 N.W.2d 811, 818 (1960); *In re* Hall's Estate, 99 N.J.L. 1, 5, 125 A. 246, 248 (1923); Larson v. Wood, 75 N.D. 9, 25 N.W.2d 100, 107 (1946).
21. Daily Record, December 13, 1961 at 3, col. 1 (Kent. Co. Cir. Ct., Equity No. 4517, filed Aug. 8, 1961).

On the other hand, where there exists a devise subject to a charge, as in *In re Horn's Estate,*[22] the title vests by virtue of the will, and therefore the land would be regarded as passing by will.

Although silent on the issue of inheritance tax, the Missouri case of *Hirlinger v. Hirlinger*[23] is in accord that where an option is created, it, and not the land, is what passes under the will. The court stated that the optionee received no interest in the property by will. All he received was a testamentary option to purchase real estate, and options are no more than continuing offers to sell, which may be created in a will.[24]

Another analogous line of cases is that dealing with federal income tax law and options to purchase stock created by wills. In the case of *Cadby v. Commissioner,*[25] where an optionee sold his interest in a stock option left to him in a will, the court had to determine the basis of the option so that the gain or loss on its sale could be computed for income tax purposes. The court found that the option was property of value which passed by will. Therefore, the option acquired a basis by virtue of its transmission by inheritance. The court concluded that since the sale of the option was for less than the basis established when the option was acquired by inheritance, no gain was realized from its sale.[26]

In *Mack v. Commissioner,*[27] the court was faced with determining the basis of stock that had been acquired by the exercise of a testamentary option and then sold. The court, in concluding that the basis was the amount paid for the stock, recognized that the property was acquired by purchase and not by bequest,[28] thereby recognizing that the option, and not the stock, passed by will.

Although in the *Mack*[29] case one of the results the Internal Revenue Service was attempting to avoid was the fair market value basis that formerly was accorded to bequeathed property,[30] these cases do speak to the issue of what passes under the will. The cases indicate that it is the option, not the property, that passes by will at death. Therefore, it is the option that must be valued for the purposes of inheritance taxes.

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22. 351 Pa. 131, 40 A.2d 471 (1945).
23. 267 S.W.2d 46 (Mo. App. 1954).
24. *Id.* at 49.
25. 24 T.C. 899 (1955).
26. *Id.* at 900.
27. 148 F.2d 62 (3d Cir.), *cert. denied,* 326 U.S. 719 (1945). *See also* Annot., 78 A.L.R.2d 1079 (1961).
28. 148 F.2d at 62-63.
29. 148 F2d 62 (3d Cir.), *cert. denied,* 326 U.S. 719 (1945).
30. Prior to the Tax Reform Act of 1976, inherited property acquired a tax basis equal to its fair market value on the date of federal estate tax valuation. I.R.C. § 1014(a). The Tax Reform Act of 1976 substituted the basis of the property in the hands of the decedent — a "carry-over" basis — for the previously allowed fair-

There are some cases, however, which appear to disagree with this theory. One is *Schroeder v. Zinc*,[31] a New Jersey case in which the deceased had given his company, during his life, an option to be exercised at his death to buy certain stock for a fixed price. In response to a contention that this contract did not create a taxable transfer, the court stated that the agreement was a contract to sell the stock through the medium of his executor and, therefore, was to take effect after death. Although there was an obligation to hold the stock until death, the possession and enjoyment of the rights and privileges of voting and dividends — the subjects taxed — were not transferred at the time of the agreement, but instead at Schroeder's death. The net effect of this agreement was a transfer "intended to and actually taking effect after the death of the owner" for a price far below the stock's actual worth. The transfer, therefore, was a succession after death without adequate consideration, in effect a testamentary disposition, and as such an attempt to escape the normal tax burden on this type of succession. The court concluded that, to the extent the consideration was inadequate, the transfer was "tantamount to a gift and taxable."

The appellant/recipients in this case also contended that the agreement's binding price should be equally binding for tax valuation since this price could not be affected subsequent to the agreement by price fluctuations occurring in the value of non-contract stock. The court dismissed this by noting that the applicable statute mandated that valuation for transfers of this type be determined by the fair market value at the time of the transfer.[32]

The *Schroeder* court found that the contract to sell made during the decedent's life and intended to be exercised at death through decedent's executor was a "bargain or sale . . . intended to take effect in possession or enjoyment at or after . . . death."[33] As a result, the property sold at death was directly taxable. It was not the option which was valued, but the property itself.

The New Jersey statute is almost identical to article 81, section 151 of the Maryland Annotated Code. The Maryland statute reads, in part:

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market value basis. I.R.C. §§ 1016, 1023. This new law was tempered somewhat by a transitional measure that allowed the basis of property held by the decedent on December 31, 1976, to be increased to its fair market value on that date. I.R.C. § 1023(h)(2). The Revenue Act of 1978 defers the effective date of the "carry-over" basis by allowing the estates of persons dying before December 31, 1979, to use the "stepped-up" basis in effect before the Tax Reform Act of 1976. Revenue Act of 1978 § 515, Pub. L. No. 95-600, 92 Stat. 2763, *reprinted in* [1978] U.S. CODE CONG. & AD. NEWS No. 11B. Estates of persons dying after December 31, 1979, will be subject to the transitional rule and the Tax Reform Act. I.R.C. §§ 1014, 1016, 1023.

31. 4 N.J. 1, 71 A.2d 321 (1950).
32. *Id.* at 11-12, 71 A.2d at 326.
33. *Id.*

> The taxes imposed by §§149 and 150 of this subtitle [Inheritance Tax] apply to all tangible or intangible property, real or personal, passing either by will or under the intestate laws of this State, or by deed, gift, grant, bargain or sale, made in contemplation of death, or intended to take effect in possession or enjoyment at or after the death of the decedent . . . .[34]

This provision apparently specifically covers contracts entered into before death and intended to be executed after death, as *Schroeder* suggests.

The question remains whether the language of the statute also refers to options created by wills. The only case the author has discovered touching on this question is *In re Cory's Estate,*[35] a New York decision in which two brothers made a contract, which each affirmed in his respective will, that gave the survivor the option to purchase certain stock owned by the decedent at his death. The court said that the stock sold to the survivor by virtue of the option in the will was subject to the transfer tax[36] since the consideration required — the option price — was less than the assessed value. In the court's words, "Subdivision 4, § 220, of the Transfer Tax Act imposes a tax upon the transfer 'by deed, grant, bargain, sale or gift . . . intended to take effect in possession or enjoyment at or after . . . death'."[37] The court found the brothers' agreement fell within the intent of the statute. Even though the court found mutuality of obligation in the brothers' contract, the agreement was characterized as merely an agreement having no effect upon enjoyment or possession until death. It was pointed out that either brother could have alienated the stock during his life and, until one brother died, the agreement remained wholly executory. At death, the surviving brother acquired a right to purchase at a fixed price.

The court found, as did the court in *Schroeder,*[38] that the contract was made during life to be executed at death. The option was merely put in the will to confirm the contract. Thus, the court was correct in applying the transfer tax statute.

Where the option is created purely by will, however, no "deed, gift, grant, bargain, or sale" is made during the decedent's life. All that has occurred during life is the making of a revocable will containing an option, itself revocable. As a result, the property does not pass by deed, gift, grant, bargain or sale, intended to take effect at death. Instead, it passes by virtue of a contract created by the

34. MD. ANN. CODE art. 81, § 151 (Supp. 1978).
35. 177 A.D. 871, 164 N.Y.S. 956, *aff'd,* 117 N.E. 1065 (1917).
36. Section 220(r) of the Transfer Tax Act of New York is essentially identical to that of MD. ANN. CODE art. 81, § 151 (Supp. 1978).
37. 164 N.Y.S. at 957.
38. See text accompanying note 31 *supra.*

exercise of an option given by will. The option, not the property, passes at death and, therefore, such an option is property under article 81, section 151 of the Maryland Code and subject to inheritance tax.

There is one more case deserving discussion because of an assumption by the court that decided it. This case, *In re the Will of Mary Ashbrook,*[39] involved a decedent who died testate as a resident of Delaware. Her will gave the son of a long-term tenant an option to purchase her farm in Kent County, Maryland for a fixed price. The optionee chose to exercise the option but the appraised value of the farm had risen over $60,000 from the time of making of the will until the death of the testatrix. The chancellor sitting in Kent County, Delaware, had to determine which party "should bear the burden of estate and inheritance taxes on the value of Mrs. Ashbrook's bequest to Mr. Wiest (the optionee), the difference in value between the option price and the appraised value of the farm."[40]

It is obvious from the last phrase of the above quotation that the chancellor of Kent County, Delaware, would disagree with the chancellor of Kent County, Maryland. The Delaware chancellor *would* find taxable the difference between the option price and the appraised value. There is no discussion of the theory on which taxation is based, but we can speculate.

There appear to be two theories upon which taxation could have been based:

(1) That the land passed under the will by bargain or sale intended to take effect at death; or
(2) That the option is property passing by will that could be valued and taxed.

It seems unlikely that the first possibility is the one used because if it were, the Delaware court would be upholding taxation of the transfer of land not situated in Delaware, which would be unconstitutional under the well established doctrine of *Frick v. Commonwealth of Pennsylvania.*[41] The only valid theory, then, is that the option is property passing at death by will.[42]

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39. 291 A.2d 301 (Del. Ch. 1972).
40. *Id.* at 302. *See also* Armstrong's Estate v. Commissioner of Internal Revenue, 146 F.2d 457 (7th Cir. 1944), which refused to limit the value of stock to be included in an estate for federal estate tax purposes to the stated option price where the lower court found the stock's actual value to be in excess of this price.
41. 268 U.S. 473 (1925) (finding that a state's attempt to tax the transfer of tangible personal property having an actual situs in another state contravenes the Due Process Clause of the Fourteenth Amendment to the United States Constitution). *See also* 53 Md. Att'y Gen. Op. 516 (1968).
42. Options, being intangible personal property, are taxable at the domicile of the testator upon his death. This is based upon the legal fiction *mobilia sequuntur personam.* See Frick v. Commonwealth of Pennsylvania, 268 U.S. 473, 477 (1925).

Thus, we are faced with two methods of taxing the transaction at issue: (1) consider the option as passing by will or death and value it accordingly, or (2) consider the land as passing by bargain or sale intended to take effect at death and so value it. The first method clearly seems to be the correct method. Each, however, would do the job if an appropriate standard of valuation is determined.

IV. VALUATION

Certainly there should be little difficulty valuing the transaction to be taxed if the property is considered to have passed at death. Because Maryland, like all other states, does not place an inheritance tax on transfers for adequate consideration, the amount to be taxed would be the difference between the assessed value and the consideration paid.[43]

If, on the other hand, we accept the theory that what passes at death is the option, valuation is slightly more complex. The complexity arises because there are four situations that could give rise to different valuations:

(1) The optionee elects to exercise the option;
(2) The optionee sells the option (if allowed);
(3) The optionee rejects the option; or
(4) The optionee does nothing.

The last two of these situations will be treated the same because "doing nothing" usually results in the property being disposed of as if the person had elected not to exercise the option.

Where the beneficiary elects to exercise the option, the valuation process should be the same as valuing property received part by purchase and part by devise. This results in taxing the difference between the option price and the assessed value of the property as did the Delaware court in *In re the Will of Mary Ashbrook.*[44] This method would produce consistency between transferring property directly and transferring options to purchase the property, thereby preventing tax avoidance possibilities.

In the cases where the option is sold, the value should be the fair market value of the option. This is the position taken by the court in *Cadby v. Commissioner.*[45]

In the last situation, where one fails to elect or affirmatively rejects the option, it seems that the only fair valuation is zero. Even though the option could have been exercised or sold, once the right to do so is lost, the option has no real value and has not benefitted the

43. Register of Wills v. Blackway, 217 Md. 1, 141 A.2d 713 (1958).
44. See text accompanying note 39 *supra*.
45. 24 T.C. 899 (1955).

recipient in any way. The court in *In re Hall's Estate*[46] apparently agreed when it observed that an option, which may or may not be exercised, is not the same as ownership. Options do not vest any ownership of property itself or any interest in the property. If the option lapses unexercised, nothing is transferred back to the offeror. All that has changed is that the possibility no longer exists that the offeror will be deprived of ownership by the exercise of the option. For this reason, in *In re Hall's Estate,* a surrender of an option was held not taxable.[47]

At this point, we have two systems of valuation, each producing the desired taxation. The remaining question is which is best for Maryland.

V. WHICH VALUATION SYSTEM SHOULD MARYLAND ADOPT?

It seems clear from the analysis of the law and the cases that Maryland should consider the option as passing at death. The "bargain or sale" provision of article 81, section 151 appears not to cover options created purely by will. Moreover, if one considers the property, as opposed to the option, as passing at death, several inconsistencies are bound to arise. If there is an option to purchase and the recipient sells it instead of exercising it, no title to property ever vests in him.[48] Therefore, in order for the state to tax the transfer, the Maryland courts would have to consider the option as property passing at death while denying that it was property in all other instances. Furthermore, in a situation involving out-of-state land, such as occurred in *In re the Will of Mary Ashbrook,*[49] the court would have to consider the option as property passing by will or be barred from taxing the transfer, under the doctrine of *Frick v. Commonwealth of Pennsylvania.*[50]

VI. CONCLUSION

Judge Rasin's conclusion may seem equitable in light of the circumstances of the owner/tenant relationship,[51] but it clearly departs from the proper legal conclusion. Inheritance tax must be

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46. 99 N.J.L. 1, 125 A. 246 (1925).
47. *Id.* at 5, 125 A. at 248.
48. It is possible that a court could find that, since the option holder has exercised sufficient control over the option to sell it, he has exercised sufficient control over the land to charge him with receiving it by devise. This would eliminate the inconsistency noted in the text. It would not, however, change the valuation, as the court would still limit the value to the amount received from the sale, assuming there was a fair sale, since this would be the limit of the benefit.
49. 291 A.2d 301 (Del. Ch. 1972)
50. 268 U.S. 473 (1925).
51. See note 9 *supra.*

paid on such testamentary dispositions unless it can be shown that the purchase price (whether money, money and labor, or merely labor) equals the appraised value of the property. In fact, Judge Rasin seemed to recognize the dangers inherent in his decision when he stated,

> There is no prohibition against the decedent establishing a price and it may well be that the Legislature should provide for the situation where there is a wide discrepancy between the price established in the Will and the appraised value at the time of death as determined by the Orphans' Court appraisers.[52]

Probably legislative action is necessary, even if Judge Rasin's conclusion is not accepted, because it would clearly establish the legislature's intent. Until such time, however, the Maryland courts should take the position that a testamentary option to purchase is property to be valued and taxed under the present inheritance tax laws.

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52. Clark v. Miller, Daily Record, December 13, 1961 at 3, col. 2 (Kent Co. Cir. Ct., Equity No. 4517, filed Aug. 8, 1961).