

November 10, 1939

Re Dr. Albert Einstein Will

Dr. Otto Nathan,
132 West 11th Street,
New York, N. Y.

Dear Dr. Nathan:

We have given a great deal of thought to the discussions which we have had with you with reference to Dr. Einstein's present will, which is dated August 6, 1937, and which is not changed, except as to withholding distribution as to beneficiaries abroad, by the codicil of September 16, 1938, all with particular reference to the suggestions which we put forth so strongly, even when the will was executed, to the effect that we believe the dispositive provisions to be so lacking in precision and definition as to amounts of the various funds as to be a very unwise document.

You will remember that practically the whole scheme of the will is based, insofar as the amounts of the various dispositions are concerned, on paragraph FIFTH.

Paragraph FIFTH provides for a trust fund in an amount which, if invested at 4% per annum, would yield an annual income equal to the aggregate amount remitted to Dr. Einstein's son, Edward, for his maintenance and support during the twelve months immediately preceding Dr. Einstein's death. The capital of this trust fund passes, on the death of the son Edward, to the son Albert, Jr.

Paragraph SIXTH provides for a trust fund which will be exactly one-half of the amount under paragraph FIFTH, with the entire income, but not less than \$480.00 annually, to Dr. Einstein's sister, Marie Wintler, for life, and the capital on her death to Albert, Jr.

Paragraph SEVENTH is also a fund exactly half of the amount under paragraph FIFTH, with the entire income, but not less than \$480.00 annually, payable to Dr. Einstein's secretary, Helena Dukas, for life or until marriage, with the capital likewise passing to Albert, Jr.

Paragraph EIGHTH establishes the priorities in the setting up of the three funds referred to above, and provides that the trust

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under paragraph FIFTH shall first be provided in full, and that the trusts under paragraphs SIXTH and SEVENTH shall, if necessary, abate proportionately so that there will be no preference as between those two funds.

Paragraph NINTH provides that after setting up the three prior trust funds, (a) a sum equal to one-half of the aggregate of those three funds is to go outright to Albert, Jr., and (b) a similar amount is to be held in trust for Miss Marianoff for life or until remarriage, with the capital then passing to Albert, Jr.; and it is further provided that there is to be no priority or preference as between the legacy and trust under this paragraph, so that they too, if necessary, will abate proportionately.

Paragraph TENTH provides for the holding of whatever remaining estate there may be in trust for a period equivalent to the joint lives of Albert, Jr. and Miss Marianoff or ten years, whichever shall be the shorter, with income to relatives of Dr. Einstein and his deceased wife to be distributable in accordance with the discretion of the Trustees, any remaining income balance to be payable to Albert, Jr., or, if dead, to Miss Marianoff, and with the capital passing, on the termination of the trust, to Albert, Jr.

We repeat, as we have said so many times, that our criticism is lodged chiefly against the fact that every fund is based upon the first fund under paragraph FIFTH, and that in turn is based upon an indeterminate amount which may frequently vary and which may be difficult to prove without possible difficult and extended litigation and uncertainty, to ascertain what amounts were distributed to Edward during the year prior to death, and thus to establish the amount of the various funds. However, even apart from the matter of determining what this basis should be, there is the further fact that we consider it unwise to have the scheme of the whole will turn upon a variable amount, which may for some fortuitous reason be, for the period involved as the basis, a sum much larger or much smaller than Dr. Einstein would wish to constitute the real basis for each of the funds.

If, for instance, during any given twelve-month period, there were unusual medical bills which would have to be defrayed for the maintenance, comfort and support of the son Edward, and then something were to happen to Dr. Einstein, the fund under paragraph FIFTH would be swelled out of all proportion and might seriously deplete or completely wipe out all of the subsequent provisions of the will; and conversely, during a similar period, there might for some reason be a minimum amount distributed or sent abroad by Dr. Einstein to his son, and then if something were to happen, the trust

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fund under paragraph FIFTH would be entirely inadequate to meet the needs which might arise after Dr. Einstein's death.

Accordingly, we think that the scheme of the will should be completely revised along somewhat the following lines:

1. Estimate what, in all reasonable likelihood, are the annual needs for the son Edward (which, we assume, will correspond fairly closely with what is actually being disbursed to him or for his benefit), and provide for a trust fund in a definite amount which, invested at a reasonable income rate, will produce such income. Let this fund constitute the definite amount of the trust under what is now paragraph FIFTH, and provide also that if the income should ever be less than a stated amount, then the capital may be used to make up the difference, and also, to meet any further unusual necessities that may arise during Edward's life.

2. Then modify all of the subsequent funds in line with the above suggestion, and fixing the specific amounts on the same basis as exists under the present will.

3. Make further provision to the effect that, whenever necessary, amounts may be taken from any of the subsequent trust funds to meet the requirements of the son Edward, as the same will be defined in the new paragraph FIFTH.

This, I think, gives you the essential criticisms and proposed recommendations to meet these criticisms.

When you shall have had a full opportunity to discuss these with Dr. Einstein, I shall be glad to hear further, so that we may do whatever shall then be determined to be necessary. We will be glad to be of any service to you or to him in discussing these suggestions further, if you think it advisable.

An extra copy of this letter is enclosed for your convenience, should you wish to transmit it to Dr. Einstein or to leave it with him.

Faithfully yours,

David J. Levy

DJL:PT
Deliver

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