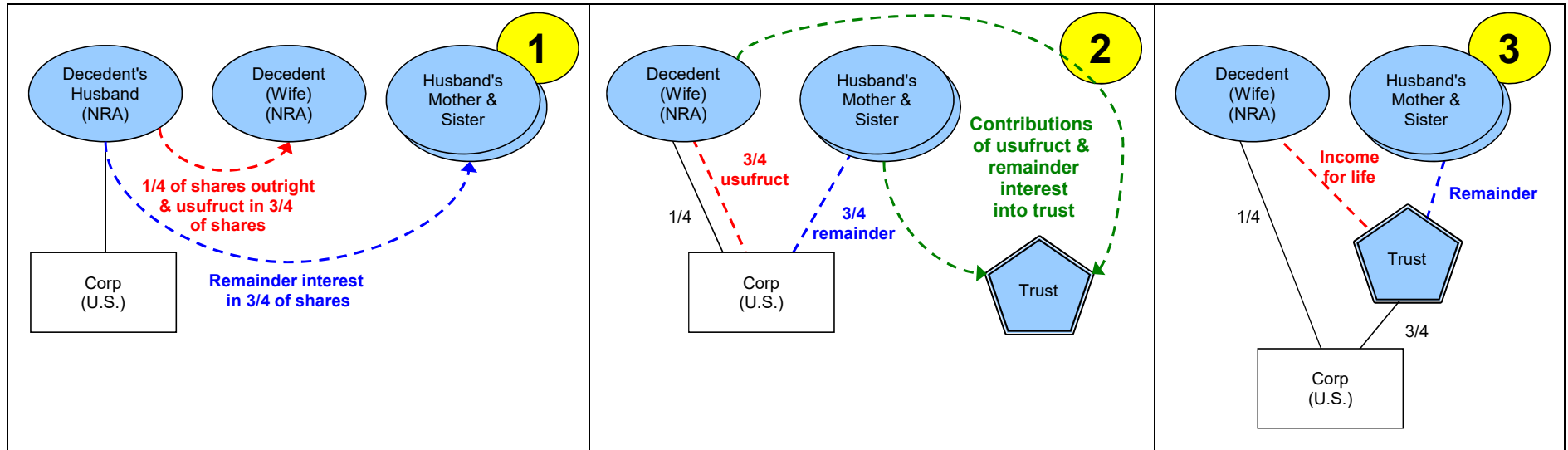


Section 2036 Does Not Apply to Life Interest In Trust For Inherited Usufruct

**Death of Decedent's Husband
(Creation of Usufruct)**

Transfers to Trust

Ending Point



The decedent's (wife's) former husband died intestate in 1930, a citizen and resident of Switzerland. At the time of his death, his estate in the U.S. consisted of shares of stock in a U.S. corporation. The husband was survived by the decedent (wife), his mother, and a sister. Under the laws of Descent and Distribution of Switzerland, a surviving spouse receives ownership in one-fourth and the usufruct for life in three-fourths of her husband's estate if he, as here, leaves no descendants but does leave legal heirs designated as "the group of his parents." A usufruct is comparable to the life estate of the common law.

To effect the distribution of the assets of the estate of decedent's husband in accordance with the laws of Descent and Distribution of Switzerland, one-fourth of the shares of stock were distributed to the decedent outright. The remaining three-fourths of the shares were placed in trust by the decedent and the remaindermen acting together. The trust indenture provided that the net trust income was to be distributed to the decedent during her lifetime. After her death, the trust assets were to be divided into two equal shares. One such share was to be distributed to the mother of the decedent's husband. The other share was to be distributed to the sister of the decedent's husband.

The value of the property subject to a decedent's life estate is includible under Code §2036 only where the decedent, in legal effect, made a transfer of the property and retained the life estate. Here, although the decedent was one of the settlors of the trust, she was never entitled to more than a usufruct for life in the trust property. Thus, she did not have a sufficient interest in the trust property to make a transfer thereof within the meaning of Code §2036. Accordingly, the ruling held that no part of the value of the assets of the trust involved was includible as a part of the decedent's (wife's) estate for Federal estate tax purposes.