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Bibliography of William F. Fratcher's Writings

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Bibliography of William F. Fratcher's Writings

Compiled by Susan D. Csaky, Professor of Law and Director of the Law Library, University of Missouri-Columbia.

It is not easy to compile a list of all of Professor William F. Fratcher's writings. He was a prolific and meticulous author who published on a variety of topics. In view of his life and career it is not surprising that his two favorite subjects were trusts and estates and military law.

He was the son of a vice president of the Detroit Trust Company and perhaps it was this circumstance that determined his future interest in the subject. His first legal job as attorney with the Detroit firm of Lewis and Watkins required him to deal with trust and estate problems, as can be seen by the text of a number of appellate briefs that he wrote or co-authored during this period. His lifelong preoccupation with the field culminated in 1986 with his authorship of the fourth edition of *Scott on Trusts*. But more on this later.

His commitment to the study of the principles of bequests and life estates took second seat only during his military service. During World War II William F. Fratcher joined the Judge Advocate Staff, U.S. Army, as captain, and later became major, lieutenant colonel, and colonel. During his active military career he served as chief of branch with the European Theater of Operations, Paris, and as chief of War Crimes Branch, Legal Division, Office of Military Government for Germany (U.S.). As staff judge advocate he was assigned to the Berlin District, Headquarters Command of U.S. Forces, European Theater. His military career explains his interest and publications concerning the history of the JAG Corps and his writings and speeches on the Nuremberg trials.

Professor Fratcher also produced books and articles on such diverse topics as religion and government, and wrote numerous book reviews. Some of his writings in this regard can be documented only tangentially. He was a productive member and occasional chair of several subcommittees in charge of reviewing the significant literature dealing with real property (1954 - 1982), with wills, estates and trusts (1973 - 1980), and with probate and trusts (1978 - 1982). The reviews, although anonymous, were published as part of the Report of the Committee on Real Property Law, Literature and Research, Section of Real Property, Probate and Trust Law of the American Bar Association, in various issues of the *Proceedings of the Section of Real Property, Probate and Trust Law* (1955 - 1965) and volumes 1-18 of *Real Property, Probate and Trust Journal* (1966 - 1983). Professor Fratcher always listed these volumes in his personal bibliography; consequently one has to assume that he wrote most of the annotations and was the main force behind the compiled surveys.

There is another type of publication which cannot be listed readily in a bibliography. As professor of law, Fratcher compiled and edited his class notes. Most of these remained in manuscript form and were distributed only to his students. For instance, under the title *Perpetuities and Restraints on Alienation*, he wrote an eight page mimeographed memorandum "for students in courses in trusts and succession (wills) to provide elementary knowledge of the common law Rule Against Perpetuities." Class notes that were published in print or mimeographed form are listed in the bibliography below. Some of his course notes and exams can be reviewed at the University of Missouri Archives. They relate to his teaching of Property I (1963 - 1982), Trusts (1945 - 1973), Trusts and Succession I (1948 - 1982) and Trusts and Succession II (1958 - 1981), Veterinary Jurisprudence (1951 - 1968), Insurance (1947), and Legal Profession (1948 - 1977). He also maintained extensive files of his exam questions covering Decedent's Estates and Trusts (1980 - 1983), Estate & Trust Administration (1982), Future Interests (1976, 1982), Law of Fiduciary Administration (1976), Legal History (1965 - 1982), Agency (1948 - 1951), Insurance (1947 - 1957), Future Interests (1970 - 1982), etc. He taught most of these courses at UMC but some of the class notes and exams refer to courses taught at University of California, Hastings College of Law, New York University School of Law, Western New England College of Law, and the University of Puget Sound School of Law.

Many of Professor Fratcher's lectures and speeches remain in unpublished manuscript form. They can be accessed through the University Archives but are not listed by title or subject. Some of them have interesting titles: *Legal Terms Women Should Know*, a talk given to the University Dames on April 9, 1959 on the Columbia campus. Others, like his paper *Property Curricula—Then and Now*, delivered at the December 1973 meeting of the Association of American Law Schools, lives only in the memory of the attendees of the AALS Property Section. A draft of the paper is in box no. 18 of the Fratcher archives. Other similar publications are *Legal Regulation of the Use of Land in the United States*, presented at a 1965 colloquium conducted by the United Kingdom National Committee of Comparative Law at the University of Manchester; *New Directions in the Employment of Equitable Doctrines: Home Purchase Developments*, delivered in 1988 at the International Symposium on Trusts, Equity and Fiduciary Relationship, held at the University of Victoria; and his paper *Trusts in the USA*, delivered at the 1975 Colloquium on Trusts organized also by the United Kingdom National Committee of Comparative Law. As the bibliography below indicates, these presentations and other similar talks were eventually published in revised form.

In reviewing Professor Fratcher's productivity some recurrent characteristics can be observed. He appears to have been rarely content with his own work as the "final word" on any given topic. He had to revise,

supplement, or substantially rewrite any paper that was destined to be included in an anthology, an encyclopedia, or in any other form of later publication.

Another typical trait of most of William F. Fratcher's writings is his reference to legal history. Apparent already in his first student publication and becoming more prevalent in his later writings, he regularly refers to famous British treatises and early English cases and statutes. Of course, the topic of wills and trusts begs for an explanation of the legal roots of these doctrines, which reach to the thirteenth century. It is less known, however, that one of Professor Fratcher's last class compendium covers English legal history beginning with the Roman conquest of the island in 43 A.D. and ending with the reign of Queen Victoria (1837 - 1901). One should also mention his numerous book reviews of the Seldon Society publications, a British organization dedicated to the republication of many remnants of early English legal history. Besides writing reviews of these historical gems, Fratcher was also the Missouri correspondent for the Society.

Professor Fratcher was also the in-house legal historian of the University of Missouri School of Law. The two editions of *The Law Barn*, in 1978 and 1988, became the cherished gift of many recent law graduates of our School.

Looking over the list of close to 175 writings it would be hard to single out Professor Fratcher's most important publication. His contribution to the Uniform Probate Code, his biennial revision of the pocket parts to the second edition of Simes and Smith, *The Law of Future Interests*, which grew from a total of 326 pages in 1961 to 869 pages by 1989, and many of his elegant articles vie for the honor. Yet it was the supplementation (1982 - 1992) and eventual total rewriting of *Scott, The Law of Trusts* (4th edition, 1987 - 1990) that brought him the most recognition. The 6-volume set grew into 12 volumes under his authorship. By early 1993 Fratcher's name has been cited in six United States Supreme Court cases, fifty-two federal cases, and fifty-nine state court cases, most of which single out his editorship of *Scott on Trusts*. Within a five year span, from 1988 to 1993, 98 law review articles have cited Professor Fratcher's writings, a number which would more than double should one cover the entire 58 years of his productivity. Fratcher was justly proud of his work on *Scott on Trusts*. As he himself explained in the preface to the 1985 supplement of this work, Professor Austin Wakeman Scott asked him in person in 1979 to continue the updating of his publication because failing health prevented him from doing so. After Scott's death in April 1981, William Fratcher became the sole author of this monumental work.

It is impossible to list all of Professor Fratcher's intellectual accomplishments, many of which took the form of editorial or unpublished research contribution. He was student editor of the *Michigan Law Review* (1935-36), editor of the *Bulletin of the Judge Advocate General of the Army* (1942-43), and research assistant, later research associate, of the University of Michigan, research director of the American Bar Association Special

Committee on Revision of Model Probate Code (1962-63), research counsel of the New York Temporary State Commission on Estates (1963), Ford Foundation fellow in International Legal Studies at the Faculty of Laws of King's College, University of London (1963-64), and research grantee of the National Conference of Commissioners on Uniform State Laws at the University of Michigan (1966), of the American Bar Foundation at the University of Colorado (1967), and of the International Association of Legal Science at the University of Oxford, England (1969). He was the coordinator of civilian publications on military justice program, Office of the Judge Advocate General, U.S. Army (1959 - 1963), and member of the Advisory Committee to the U.S. Secretary of State on the UNIDROIT Draft Convention to Establish an International Form of Will (1967). He was chairman and member of numerous committees of the American Bar Association, the Missouri Bar Association and the Boone County Bar Association. In addition to many of his published contributions to the work of the various organizations it should be noted that he was the reporter for the Uniform Probate Code (1963 - 1970) and prepared the initial drafts of Articles I, II and V. He was the general reporter on trusts for the *International Encyclopedia of Comparative Law* (1966 - 1974) and reporter for the Missouri Bar projects for Revision of Missouri Probate, Guardianship and Trust Laws (1973 - 1983). Among his last unpublished contributions was his work as consultant (1988 - 1989), thereafter adviser for the American Law Institute Restatement (Third) of Trusts (Prudent Investor Rule).

Finally a word on the bibliography below. Only those works have been listed which were printed or mimeographed in more than one copy. Attached to each listing are some of the reviews of that particular work and, in case of polemics, the reply article. The works are grouped in three broad categories: (1) real property, trusts and estates; (2) military law and history; and (3) miscellanea. Within each topic the material is listed in chronological order and subdivided into books or chapter(s) in books, articles, case notes and comments, appellate briefs, drafts of state legislation, book reviews, and mimeographed materials. Some of his posthumous publications are so noted.

I. REAL PROPERTY, TRUSTS AND ESTATES.

A. *Books and chapter(s) in books*

PERPETUITIES AND OTHER RESTRAINTS. (Pp. xx, 728p. Ann Arbor, University of Michigan, 1954. Reviewed, 8 J. LEG. ED. 539; 30 N.Y.U. L.REV. 1256; 10 MIAMI L.Q. 124; 72 L.Q. REV. 137; 1 SYDNEY L. REV. 380.)

Real and Personal Property, chapter in 1954 ANNUAL SURVEY OF AMERICAN LAW. (Pp. 593-646. New York, New York University School of Law,

1955. Reprinted from 30 N.Y.U. L. REV. 751-804 (1955).)

CASES AND MATERIALS ON THE LAW OF FIDUCIARY ADMINISTRATION. (2d ed. co-authored with Lewis M. Simes. Pp. xii, 397. Chicago, Callaghan, 1956. Reviewed, 9 J. LEG. ED. 558.)

L. SIMES & A. SMITH, THE LAW OF FUTURE INTERESTS, 2d ed. 1956. Pocket Parts 1961, 1965, 1967, 1969, 1972, 1973, 1975, 1977, 1979, 1981, 1983, 1985, 1987 and 1989. (St. Paul, West.)

Powers and Duties of Guardians of Property, in 2 LANDMARK PAPERS ON ESTATE PLANNING, WILLS, ESTATES AND TRUSTS. (A. Winard, ed., pp. 942-1008. Englewood Cliffs, N.J., Prentice-Hall, 1968. Revision and updating of 45 IOWA L. REV. 264 (1960).)

Trustees' Powers Legislation, in PLANNING LARGE ESTATES WORKSHOP. (Pp. 265-302. New York, Practising Law Institute, 1968. Reprint of 37 N.Y.U. L. REV. 627 (1962).)

PROBATE CAN BE QUICK AND CHEAP: TRUSTS AND ESTATES IN ENGLAND. (Pp. xiv, 106. New York, Pageant Press, 1968. Revision of 40 N.Y.U. L. REV. 12 (1965). Reviewed, 55 A.B.A. J. 172; 54 CORNELL L. REV. 323; 5 GONZAGA L. REV. 345; 44 INDIANA L.J. 670; 56 IOWA L. REV. 1117; 33 MO. L. REV. 687; 46 WASH. L. REV. 619.)

UNIFORM PROBATE CODE WITH OFFICIAL COMMENTS. (Co-authored with Richard V. Wellman and others. Pp. 278. St. Paul, West, 1970. Republished both as a separate book and as part of 8 UNIFORM LAWS ANNOTATED (Master Ed.) 281-592. St. Paul, West, 1972.)

Persons Under Disability, ch.14 in UNIFORM PROBATE CODE PRACTICE MANUAL (Pp.195-250, 417-471. New York, Association of Continuing Legal Education Administrators, 1972.

Trust, ch.11 in 6 INTERNATIONAL ENCYCLOPEDIA OF COMPARATIVE LAW (PROPERTY AND TRUST). F. Lawson, ed. pp.120. Published under the auspices of the International Association of Legal Science. Tuebingen, J.C.B. Mohr, 1974. Reviewed, 1974 PROBATE NOTES 9. A modified version of articles in 34 MO. L. REV. 39 and 36 MO. L. REV. 153.)

Mortgages, Law of, in 12 ENCYCLOPEDIA BRITANNICA (Pp. 459-462. 15th ed. Chicago, 1974.)

The English System: Simplified Probate in a Similar Context, in DEATH,

TAXES AND FAMILY PROPERTY: ESSAYS AND AMERICAN ASSEMBLY REPORT (E.Halbach, ed. Pp. 152-164. St. Paul, West, 1977.)

Protection of Persons Under Disability, ch.17 in 2 UNIFORM PROBATE CODE PRACTICE MANUAL (2d ed. edited by Richard V. Wellman. Pp.495-550, 737-791. Philadelphia, ALI-ABA Committee on Continuing Professional Education, 1977.)

Trusts in the United States of America, ch.3 in TRUSTS AND TRUST-LIKE DEVICES (W. Wilson ed., London, United Kingdom National Committee of Comparative Law, 1981.)

A. W. SCOTT, THE LAW OF TRUSTS, 3d ed., 1967. Annual supplements 1982, 1983, 1984, 1985, 1986, 1987, 1988, 1989, 1990, 1991, 1992. (Boston, Little, Brown.)

THE LAW OF TRUSTS, 4th ed, 1987-1991. 12 vols. and Annual supplements 1987, 1988, 1989, 1990, 1991, 1992. (Boston, Little, Brown.)

Termination and Variation of Trusts, in TRUSTS AND ESTATES SYMPOSIUM. (Pp. 23-86. Columbia, University of Missouri-Columbia School of Law, Office of Continuing Legal Education, 1988.)

New Directions in the Employment of Equitable Doctrines: Home Purchase Developments, ch.13 in EQUITY, FIDUCIARIES AND TRUSTS (T. Youdan ed., pp. 349-364. Toronto, Carswell, 1989.)

Recent Developments in Trust Administration, in v.1, SECOND ANNUAL TRUSTS AND ESTATES SYMPOSIUM. (Pp. 189-262. Columbia, University of Missouri-Columbia School of Law, Office of Continuing Legal Education, 1989.)

Estate and Trust Developments since June 1989, in FOURTH ANNUAL TRUSTS AND ESTATES SYMPOSIUM. (Pp. 105-226. Columbia, University of Missouri-Columbia School of Law, Office of Continuing Legal Education, 1991.)

Inheritance Law, ch.12 in INTRODUCTION TO THE LAW OF THE UNITED STATES (D. Clark and T. Ansary eds., pp. 263-278. Deventer, Kluwer, 1992. Published posthumously.)

B. Articles

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Restraints on Alienation of Equitable Interests in Michigan Property, 50 MICH. L. REV. 675-736, 793-836, 1017-1046 (1952), 51 MICH. L. REV. 509-552 (1953)

A Half Century of Trust Law, 93 TR. & EST. 275-279 (1954)

Defeasance as a Restrictive Device in Michigan, 52 MICH. L. REV. 505-534 (1954)

Real and Personal Property, 30 N.Y.U. L. REV. 751-804 (1955). (Co-authored with E. Million, R. Kharas and C. Martz.)

Legal Servitudes as Devices for Imposing Use Restrictions in Michigan, 2 WAYNE L. REV. 1-17, 98-117 (1955-56)

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Powers and Duties of Guardians of Property, 45 IOWA L. REV. 264-335 (1960)

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Model Probate Code, 35 PA. B. ASS'N Q. 206-217 (1964) (co-authored with J. Straus)

Fiduciary Administration in England, 40 N.Y.U. L. REV. 12-99 (1965)

Toward Uniform Guardianship Legislation, 64 MICH. L. REV. 983-1010 (1966)

Sovereign Immunity in Probate Proceedings, 31 MO. L. REV. 127-139 (1966)

Toward Uniform Succession Legislation, 41 N.Y.U. L. REV. 1037-1092 (1966)

Powers of Appointment to Unspecified Charities, 32 MO. L. REV. 443-458 (1967)

The Uniform Probate Code and the International Will, 66 MICH. L. REV. 469-496 (1968)

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Exorcise the Curse of Reversionary Possibilities, 28 J. MO. B. 34-40 (1972)

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Proposed 1975 Amendments to the Missouri Probate Code of 1955, 30 J. MO. B. 500 (1974)

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Bequests of Orts, 48 MO. L. REV. 475-493 (1983) (Reviewed, 69 A.B.A. J. 1777)

Class Gifts to "Heirs," "Issues," and Like Groups, 55 ALBANY L. REV. 1205-1231 (1992) (published posthumously)

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Appellate Brief, *Detroit Trust Co. v. Struggles*, 289 Mich. 595 (1939) (Pp.76, co-authored with M. Mallender.)

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An Act to Modify the Application of Common Law Rule Against Perpetuities, 1965 Mo. Laws 628, § 1 (codified at MO. REV. STAT. § 442.555 (1978) (with W. L. Eckhardt, published also in the 1976 pocket part to V.A.M.S.)

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Proposed 1976 Amendments to the Missouri Probate Code of 1955 (1975) (Pp. 178. A draft of legislation, with comments and citations, prepared by the Reporter for the Subcommittee on Revision of Missouri Probate Laws, Missouri Bar Probate and Trusts Committee; approved by the Board of Governors of the Missouri Bar; enacted as 1980 Mo. Laws 446 - 486; codified at MO. REV. STAT. §§ 430.330, 472.005-.320, 473.013-.843, 474.010-.490, 475.015-.210 (Supp. 1982)

Proposed 1977 Amendments to Chapter 475 of the Missouri Revised Statutes of 1969 (1976) (Pp. 110. A draft of legislation, with comments and citations, prepared by the Reporter for the Subcommittee on Revision of Missouri Guardianship Laws, Missouri Bar Probate and Trusts Committee; introduced as H.B. 756, 79th Mo. Gen. Assem. (1977).)

Trusts and Estates of Decedents and Persons Under Disability, 1980 Mo. Laws 446; codified as MO. REV. STAT. chaps. 473 - 475 (effective 1-1-1981) (Introduced as S.B.637, a comprehensive revision of the Missouri Probate Code, prepared by the Reporter for the Missouri Bar Probate and Trusts Committee.)

Approved Final Draft of 1981 Amendments to Chapter 475, MO. REV. STAT. 1978 (1980) (Pp. 111. Introduced as S.B. 498, 81st Mo. Gen. Assem. (1981), a comprehensive revision of the Missouri guardianship laws, prepared by the Reporter for Drafting Subcommittee for Guardianship Law Revision, Missouri Bar Probate and Trusts Committee.)

Approved Final Draft of 1982 Amendments to Chapter 456, MO. REV. STAT. 1978 (1981) (Pp. 92. Introduced as H.R. 1733, 81st Mo. Gen. Assem. (1981), a comprehensive revision of the Missouri trust laws prepared by the Reporter for the Subcommittee of the Missouri Bar Probate and Trusts Committee.)

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Book review, *M. Rheinstein, The Law of Decedents' Estates*, 8 J. LEGAL EDUC. 125-127 (1955)

Book review, *J. Morris & W. Leach, The Rule Against Perpetuities*, 55 MICH. L. REV. 149-154 (1956)

Colloquium Paper, *Legal Regulation of the Use of Land in The United States*. MS pp. 60. Mimeo. (Presented at a colloquium conducted by the United Kingdom National Committee of Comparative Law at the University of Manchester, 1965.)

Colloquium Paper, *Trusts in the United States (excluding Louisiana)*. MS. pp. 20. Mimeo. (Presented at a colloquium conducted by the United Kingdom National Committee of Comparative Law at the University of Exeter, 1975.)

Perpetuities and Restraint on Alienation (Written for students in courses in Trusts and Succession (wills) together with Proposed Missouri

Perpetuities Legislation, Pp. 9, 1960, mimeo.)

II. MILITARY LAW AND HISTORY

A. Books and chapter(s) in books

A MANUAL FOR COURTS-MARTIAL, U.S. ARMY. Editor of 1943 reprint of 1928 edition. (Pp. ix, 342. Washington, U.S. Gov. Print. Off., 1943.)

THE NATIONAL DEFENSE ACT; THE PAY READJUSTMENT ACT; ARMY PAY TABLES (Pp. vi, 275. Washington, U.S. Gov. Print. Off., 1945. Prepared for the use of the U.S. Senate, Committee on Military Affairs.)

MANUAL FOR COURTS-MARTIAL, U.S. ARMY. 1949. (Editor and co-author with C. Decker et al. Pp. x, 467, Washington, U.S. Gov. Print. Off., 1949). Author of ch. XXI, *Appellate Review—Confirmation* (pp. 104-107), ch. XXX, *Habeas Corpus* (pp. 262-272)

Control Council Law No. 10, *Punishment of Persons Guilty of War Crimes, Crime Against the Peace and Against Humanity*. (1945) (Co-author with H. Phleger, published by Allied Control Authority for Germany) also in 1 TRIALS OF WAR CRIMINALS BEFORE THE NUERNBERG MILITARY TRIBUNALS UNDER CONTROL COUNCIL LAW NO.10 xvi (Pp. xvi-xix, Washington, U.S. Gov. Print. Off., 1950.)

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B. Articles

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American Military Justice, 2 BULL. ADJUTANT GENERAL'S SCH. 13-16, 55-57 (June 1943)

Notes on the History of the Judge Advocate General's Department, 1775 - 1941, 1 JUDGE ADVOC. J. 5-15 (June 1944) (See later revision below.)

Colonel William Winthrop: A Biographical Sketch, 1 JUDGE ADVOC. J. 12-14 (Dec. 1944)

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The New Military Justice Code, 28 MICH. ST. B.J. 30-35 (Aug. 1949)
(Published with slight changes and without permission under the name of Thomas P. Dickinson.)

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C. *Case notes, comments, book reviews
and miscellaneous publications*

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Book review, *Taylor, Nuremberg and Vietnam: An American Tragedy*, 36 MO. L. REV. 145-151 (1971). (Reprinted in XI-I REVUE DE DROIT PENAL MILITAIRE ET DE DROIT DE LA GUERRE 217-223 (1972))

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III. MISCELLANEA

A. Books and unpublished manuscripts for books

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Cases and Materials on Veterinary Jurisprudence. (Pp. iv, 124. Columbia, University of Missouri School of Veterinary Medicine, 1951. mimeo.)

CASES AND MATERIALS ON VETERINARY JURISPRUDENCE. 2d ed. (Pp. iv, 106. Columbia, University of Missouri Extension Division, 1968.)

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THE LUNCHEON GUEST. (Written under the pseudonym Franklin F. Thomas. Pp. xiii, 165. Hicksville, N.Y., Exposition Press, 1979.)

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B. Articles, biographical notes and comments

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