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Trusts -- Rule Against Perpetuities -- Severability of Remainders

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deavored to establish a new precedent.16 Legal writers have sided with the dissenting judges, in urging an overthrow of precedent, where the reason for the rule has failed.17

In the instant case, the court did justice by refusing to follow the hard and fast non-liability rule. In classifying drunken driving as a wilful tort, that is, one committed intentionally,18 or where there is knowledge that the act will result in injury, and an utter disregard of the consequences,19 the court allowed the emancipated minor child to sue his parent. Here, the wrongful conduct of the father had disrupted the peace, security, and tranquility of the home. Since the reason for the rule was not present, the rule itself should not be applied.

The principal case is merely the expression of a trend away from the decision in the 1891 case of Hewlett v. George. Gross injustice has prevailed merely because precedent has been followed blindly. Suits between parents and children could be allowed with little disruptive effect when, as here, the parent is guilty of a wilful or malicious act, for the family relationship has already been disrupted. Since financial hardships within the family can be alleviated by insurance, indemnifying parents against loss, no logical reason exists for refusing to allow such suits to redress obvious injustices.

TRUSTS — RULE AGAINST PERPETUITIES — SEVERABILITY OF REMAINDERS

Upon the death of one of the four children of testator’s son, the surviving children brought suit to invalidate the will in part. The testator died in 1890 leaving a gift in trust as a life estate to his son with a remainder over to his grandchildren and then upon the death of each grandchild, his or her share in the principal sum to pass according to the intestate laws of Pennsylvania. All of the grandchildren were living when the testator died and none were born thereafter. The lower court declared the gifts in remainder to the heirs of the deceased child void under the rule against perpetuities. Held, in reversing on appeal, that the remainders to the heirs of the testator’s grandchildren who were living when the testator died are valid and separable from a void remainder to the heirs of a possible afterborn grandchild of testator. In re Harrah’s Estate, 364 Pa. 451, 72 A.2d 587 (1950).

A plenary power of disposal is not incident to the ownership of property. The rule against perpetuities manifests a public policy which is repugnant

16. See the vigorous dissent of Justice Clark in Small v. Morrison, supra note 6, at 588, 118 S.E. at 17; also, the dissent of Justice Crowhart in Wick v. Wick, 192 Wis. 260, 212 N.W. 787, 788 (1927).
17. McCurdy, supra note 11, at 1056-1081; Notes, 18 B.U.L. Rev. 468 (1938); 7 Ford L. Rev. 459 (1938); 28 Geo. L. J. 430 (1939) (when there is indemnity liability insurance); 79 U. of Pa. L. Rev. 80 (1930) (when there is indemnity liability insurance or great injustice).
19. See Bessemer Coal, Iron & Land Co. v. Doaks, 152 Ala. 166, 44 So. 627 (1907).
to remotely vesting interests that encumber the free marketability of property. An acceptable version of this rule is that: “No interest is good unless it must vest, if at all, not later than twenty-one years after some life in being at the creation of the interest.” The general construction of the rule is that a bequest is void if there is any possibility that a future interest may vest beyond the period allowed by law.

A devise of an executory limitation to a class presents a situation which has not been uniformly resolved by the courts. There has been some attempt to formulate a general rule, separating class gifts partially invalid under the rule against perpetuities, when the testamentary scheme of disposition is not destroyed. These cases, however, rely heavily on an analogy to the well established Pennsylvania rule that, subject to a contrary intention on the part of the testator, valid life estates will be sustained notwithstanding the fact that ultimate estates may vest in remainder beyond the limits allowed by law. Several views in resolving this class gift problem have arisen in the law. A strict rule, previously followed in Pennsylvania, is that if the interest of any member of the class may vest too remotely, the whole gift fails. Supplementing this, are the views that separation of class gifts will be allowed; when (1) the bequest is, in fact, a specific gift to each

1. See Weber v. Texas Co., 83 F.2d 807, 808 (5th Cir. 1936), cert. denied, 299 U.S. 561 (1936); Northern Trust Co. v. Porter, 368 Ill. 256, 263, 13 N.E.2d 487, 491 (1938); Ford v. Yost, 299 Ky. 682, 688, 186 S.W.2d 896, 899 (1944); Ryan v. Ward, 64 A.2d 258 (Md. 1949); Barton v. Illaw, 246 Pa. 348, 351, 92 Atl. 312, 313 (1914); Thelinsson v. Woodford, 4 Vcr. 277, 31 Eng. Rep. 117, 162 (Ch. 1799).


5. See In re Maltman, 195 Cal. 643, 651, 234 Pac. 898, 902 (1925); In re Van Wyck, 185 Cal. 49, 62, 196 Pac. 50, 56 (1921); Lepard v. Clapp, 80 Conn. 29, 35, 66 Atl. 780, 782 (1907); Johnston v. Preston, 226 Ill. 447, 458, 80 N.E. 1001, 1004 (1907); Eldred v. Meek, 183 Ill. 26, 38, 55 N.E. 536, 540 (1899); Fidelity & Columbia Trust Co. v. Tiffany, 202 Ky. 618, 260 S.W. 357, 360 (1924); Springfield Safe Deposit & Trust Co. v. Ireland, 268 Mass. 62, 66, 167 N.E. 261, 263 (1929); In re Kern's Estate, 296 Pa. 348, 357, 145 Atl. 824, 826-828 (1929); 2 Simson, op. cit. supra note 4, at § 529.

6. In re Quigley's Estate, 329 Pa. 281, 198 Atl. 85 (1938); In re McCreary's Estate, 328 Pa. 513, 196 Atl. 25 (1938); In re Kern's Estate, 296 Pa. 348, 145 Atl. 824 (1929); In re McCaskey's Estate, 293 Pa. 497, 145 Atl. 209 (1928); In re Feeley's Estate, 293 Pa. 273, 142 Atl. 284 (1928); In re Jones' Trust Estate, 284 Pa. 90, 130 Atl. 314 (1926); In re Liley's Estate, 272 Pa. 143, 116 Atl. 392 (1922); In re Whitman's Estate, 248 Pa. 285, 93 Atl. 1062 (1915); In re Johnston's Estate, 185 Pa. 179, 39 Atl. 897 (1898).

member of the class; or (2) where the membership of the class is definitely fixed within the period allowed by law; and (3) where the gift is to a subclass derived from an earlier class, the gift to one particular subclass being valid even though the gift to another subclass is void for remoteness.

In Pennsylvania, the common law rule that the possibility of a remotely vesting interest at its creation measures the validity of a gift, has been abridged by statute to make actualities at the end of the period control. Statutory innovation in the rule against perpetuities has not resolved all the problems incident to this branch of the law, but while subject to criticism, this statute tends towards a more equitable distribution of otherwise void gifts and furthers a trend upholding the intentions of the testator rather than harsh bars to the free alienation of property.

Since the testator's son, in the instant case, might conceivably have had a child after the death of the testator, who possibly could have had children born more than twenty-one years after the death of the last of testator's children, the gift contemplates a possible remainder which would be void under the rule against perpetuities. The death of the testator in 1890 precludes the application of the 1947 Pennsylvania statute which would have validated the gifts in question since all the children involved were actually born before the death of the testator. Controlling then, is the rule of Leake v. Robinson to invalidate the entire gift. The court, in the noted case, first concedes the separability of valid life estates from void remainders. In reviewing the authority urged by the appellants, they include law which, if applicable, would seemingly validate the gifts in question. Although it appears that the court was influenced by this authority, it was not expressly relied upon. Rather, dicta from the cases splitting valid life estates from ultimate void remainders is cited as a basis for separating the class gift here in question. "Horizontal separability" as effected by the rationale of the cases separating valid life estates from void remainders is juxtaposed

8. RESTATEMENT, Property § 389(a) (1944); Gray, op. cit. supra note 2 at § 389; 2 SIMES, op. cit. supra note 4, at § 528.
9. RESTATEMENT, Property § 389(a) (1944); Gray, op. cit. supra note 2, at § 392.
11. PA. STAT. tit. 20, § 301.4(b) (1947).
12. See LEGIS., Legislative Interference With the Rule Against Perpetuities, 46 HARV. L. REV. 701 (1933).
15. See note 7 supra.
17. Compare IN re Harrah's Estate, supra note 16, with cases cited note 10 supra.
against the facts of the instant case and provides the basis for the "vertical separability" of valid remainders from void remainders. In effect, the court applied the current statute sub silentio, perhaps in an effort to provide case law for similar questions in the future which might not have benefit of the statute. The law from foreign jurisdictions which, if applied, would have effected the identical result, is passed up seemingly by the reluctance of the court to overrule themselves with foreign law. While the noted case does present a violation in law of the rule against perpetuities, there is no violation of the purpose of the rule in fact. This allows a decision in keeping with the present trend to maintain the testator's plan of distribution and lends support to the public policy evidenced by statutory revision of the rule against perpetuities.

UNITED NATIONS CHARTER—TREATY OF UNITED STATES—SUPERSEDES STATE LAW

An alien, ineligible to attain citizenship in the United States of America because of ancestry, received land in the State of California by grant deed. The state claimed that this acquisition was in violation of the Alien Land Law of that state, which forbids aliens not able to attain citizenship from owning land. It was further contended that, by another provision of this same act, the land which had been deeded to this alien had escheated to the state. Held, that since the United Nations Charter is a treaty, the Alien Land Law, which is in direct conflict with the Charter, must yield to its superior authority. Set Fujii v. State, 217 P.2d 481 (Cal. App. 1950).

The President of the United States has the power to negotiate treaties with other sovereign nations and, upon advice and consent of the Senate, these documents with the Constitution and Laws of the United States become the supreme law of the land. The judiciary in an effort to declare the force and effect of treaties have divided them into two categories: one, immediately operative, is called a self-executing treaty; the other, needing implementing legislation, is labeled executory. United States treaties are usually found to be self-executing contracts, but those instruments which

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18. See note 16 supra.

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