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MERIDITH V. INGRAM: A FAILURE TO SHED THE SHACKLES OF STARE DECISIS

In *Meridith v. Ingram*[1] the Kentucky Court of Appeals held that indefeasibly vested remaindermen were not barred by the statute of limitations from bringing an action for permissive waste which could have been maintained almost a half-century prior to the actual bringing of the suit. In 1913, Riker Kyle[2] was devisee in trust of a farm of which:

> . . . the rents, issues, and profits [were] to be applied first to the payment of taxes and the proper maintenance of the farm, and the residue thereof to be paid to said beneficiary during his lifetime.[3]

An indefeasibly vested remainder was devised which would ripen into a fee simple absolute upon the death of Kyle. From 1924, upon the resignation of the trustee and the failure to appoint a replacement, Kyle acted as though he were a legal life tenant until his death in November, 1965. Two suits, each seeking $30,000 damages, were instituted in September, 1966, alleging that during Kyle's possession he had allowed the farm to become dilapidated. One suit was filed in Mercer County where the farm was located. The other suit was filed in Boyle County where Kyle's personal representative qualified.[4] In its first decision, the Court of Appeals held that since the complaint that had been filed in Boyle County alleged damages to real property, the proper venue for the suit was in the county where the farm was located.[5] The remaindermen next attempted to amend their pleadings in Boyle County to demand an accounting of trust income alleged to have been improperly used. In its second decision, the Court of Appeals held that the remaindermen were barred from amending their complaint in Boyle County because that particular suit was no longer pending.[6] Thereafter, the only course available to the remaindermen was to prosecute the permissive waste action that already had been filed in Mercer County.

The implications of the failure to appoint a trustee in 1924 and other issues concerning the trust are not examined in this comment. The scope of this discussion is confined solely to the issue of whether

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1 495 S.W.2d 171 (Ky. 1973). This was the third decision handed down involving the same case.

2 The first two *Meredith* decisions referred to "Ricker" Kyle. *See* Meredith v. Ingram, 465 S.W.2d 38 (Ky. 1971); Meredith v. Ingram, 444 S.W.2d 551 (Ky. 1969).

3 495 S.W.2d at 171; 444 S.W.2d at 552.

4 Brief for Appellants at 6-7, Meredith v. Ingram, 495 S.W.2d 171 (Ky. 1973).

5 444 S.W.2d at 551.

6 465 S.W.2d at 38.

or not an indefeasibly vested remainderman should be *required* to bring an action against a life tenant for permissive waste at the time it occurs and prior to the termination of the life estate.

I. DEVELOPEMENT OF THE LAW OF WASTE

A. *English Law*

The beginning point for the evolution of the law of waste occurred in England more than eight hundred years ago.[7] Early common law provided that owners of life estates created by operation of law[8] were liable for waste, whereas owners of conventional life estates were not liable unless a specific provision had been made for such liability.[9] Commentators are in disagreement as to when owners of conventional life estates were first held liable for waste.[10]

The first significant statute on the law of waste, the Statute of Marlbridge,[11] was enacted in 1267.[12] It provided that "fermors"[13] who make waste shall be liable for it, but there is disagreement as to whether tenants for life were included in the statute's coverage.[14] Any doubt as to the inclusion of the tenant for life was erased with the enactment in 1278 of the Statute of Gloucester. Professor Simes[15] believes that this statute enlarged the coverage of persons liable for waste to expressly include tenants for life, whereas Professors Casner and Powell[16] are of the opinion that this statute did not broaden the coverage of persons previously held liable by the Statute of Marlbridge. Aside from this relatively insignificant area of conflict, the Statute of Gloucester is chiefly noted for its procedural aspects in that it provided for treble damages plus "forfeiture of 'the thing he hath wasted.' "[17]

The central question was whether the term "make waste" encompassed both voluntary and permissive waste.[18] Coke and Blackstone

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[7] 5 R. POWELL, POWELL ON REAL PROPERTY ¶ 637 (1971) [hereinafter cited as POWELL].

[8] These estates were dower, curtesy, and the rights of a guardian in chivalry. POWELL ¶ 637.

[9] 4 L. SIMES & A. SMITH, THE LAW OF FUTURE INTERESTS § 1654, at 8 (2d ed. 1956) [hereinafter cited as SIMES & SMITH].

[10] POWELL ¶ 637.

[11] This statute is also referred to as "Marlborough." SIMES & SMITH § 1654, at 8.

[12] 5 AMERICAN LAW OF PROPERTY § 20.16 (A.J. Casner ed. 1952) [hereinafter cited as ALP]; W. BURBY, HANDBOOK OF THE LAW OF PROPERTY § 13 (3d ed. 1965) [hereinafter cited as BURBY]; POWELL ¶ 637; RESTATEMENT OF PROPERTY § 139 (1936) [hereinafter cited as RESTATEMENT]; SIMES & SMITH § 1654, at 8.

[13] ALP § 20.16, at 109; POWELL ¶ 637, at 7-8; SIMES & SMITH § 1654, at 8.

[14] ALP § 20.17; POWELL ¶ 637; SIMES & SMITH § 1654, at 8.

[15] SIMES & SMITH § 1654, at 8.

[16] ALP § 20.17; POWELL ¶ 637.

[17] POWELL ¶ 637, at 9. *See also* ALP § 20.17; BURBY § 13.

[18] POWELL ¶ 637; RESTATEMENT, *supra* note 12, § 139, comment *a* at 458.

answered in the affirmative.[19] However, the argument was presented that "make" was equivalent to "commit" and that, therefore, affirmative acts were contemplated by the drafters of the statute. The assertion thereby arose that the statute referred only to voluntary waste.[20] In rejecting the view of Coke and Blackstone, English courts established the rule that a tenant for life is liable only for voluntary waste.[21] American courts and the *Restatement of Property* followed the Coke and Blackstone view that tenants for life are liable for permissive waste.[22] An even greater perplexity is evidenced by the failure of either statute to hint at what acts constituted waste or even to define "waste."[23] Deliberate or otherwise, this omission created a vacuum which inevitably has been filled by statutory and common law through the centuries.

B. *Modern Law*

1. *Definition of Waste*

Professor Powell defines waste as "conduct . . . on the part of the person in possession of land which is actionable at the behest of, and for the protection of the reasonable expectation of, another owner of an interest in the same land."[24] Other American commentators define "waste" in terms of diminution of value of the occupied premises.[25] In Kentucky, waste has been defined as an act that "does a lasting damage to the freehold."[26]

2. *Voluntary Waste*

There are several types of waste.[27] This comment focuses only upon voluntary and permissive waste. It is universally agreed that voluntary waste includes affirmative acts, destructive in nature, which reduce the value of the future interest;[28] in addition, the injury to the future interest must be substantial.[29] The classic example of voluntary waste is that of cutting timber. Perhaps Lord Coke, who first stated that cutting timber constitutes waste, is responsible for the many

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19 SIMES & SMITH § 1654, at 8.
20 *Id.*
21 SIMES & SMITH § 1654, at 8.
22 RESTATEMENT, *supra* note 12, § 139, comment *a* at 458.
23 POWELL ¶ 637.
24 POWELL ¶ 636, at 5.
25 BURBY § 12; H. TIFFANY, THE LAW OF REAL PROPERTY, § 322 (3rd ed. abr. 1970) [hereinafter cited as TIFFANY].
26 Loudon v. Warfield, 28 Ky. (5 J.J. Mar.) 196 (1830).
27 BURBY § 12; POWELL ¶ 640; SIMES & SMITH § 1654, at 9-11.
28 ALP §§ 20.2-.10; BURBY § 12; POWELL ¶ 640; SIMES & SMITH § 1654, at 9. *See also* Smith v. Mattingly, 28 S.W. 503 (Ky. 1894).
29 BURBY § 12; POWELL ¶ 640; TIFFANY § 323.

decisions in accord with that conclusion.[30] Nevertheless, the common law evolved exceptions to the timber-cutting rule. The right of estovers permits a life tenant to cut timber necessary for fuel and agricultural operations:[31] "The question is what would the tenant do with due regard to the custom of the neighborhood, and in the exercise of good husbandry, if he were the owner of the fee."[32]

Another heavily litigated area of voluntary waste concerns the removal of minerals from the soil. It is generally stated that a life tenant may not engage in mining operations unless the land was being mined at the creation of the life estate; a life tenant may not open new mines or quarries but may continue the operation already in existence.[33]

3. *Permissive Waste*

While it is recognized that voluntary waste includes *affirmative* acts, the converse is true regarding permissive waste. Permissive waste results from an *omission,* a failure to exercise proper care respecting one's duties.[34] In some instances, therefore, a life tenant is guilty of permissive waste by literally doing nothing.

A life tenant ". . . is obligated to preserve the land and structure in a reasonable state of repair, but he is not bound to make expenditures for the purpose in excess of the profits, rent or income received by him."[35] He is also obligated to pay property taxes, interest on mortgages, and betterment assessments.[36] Failure to fulfill these obligations will sustain an action for permissive waste.[37] Judicial recognition of this duty appears in *Prescott v. Grimes,*[38] a case in which a widow acquired a 200 acre farm as her dower interest in her husband's estate and left the farm in a dilapidated state at her death. In discussing the duty of a life tenant to maintain his estate in good condition, the Court reviewed earlier Kentucky cases which held, *inter alia,* that a tenant for life has a duty to make repairs, pay taxes, and pay for the cost of repairing pavement in front of his property. The Court added,

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[30] ALP § 20.1.
[31] ALP § 20.2; BURBY § 14; POWELL ¶ 640; TIFFANY § 327.
[32] TIFFANY § 326, at 262.
[33] BURBY § 14; POWELL ¶ 610; SIMES & SMITH § 1654, at 9-10.
[34] ALP § 20.12; BURBY §§ 12, 14; POWELL ¶ 640. *See also* Smith v. Mattingly, 28 S.W. 503 (Ky. 1894).
[35] C. MOYNIHAN, INTRODUCTION TO THE LAW OF REAL PROPERTY § 12, at 60 (2d ed. 1956) [hereinafter cited as MOYNIHAN]; *see, e.g.,* Lindenberger v. Cornell, 229 S.W. 54 (Ky. 1921); Fisher's Ex'r v. Haney, 202 S.W. 495 (Ky. 1918); Prescott v. Grimes, 136 S.W. 206 (Ky. 1911).
[36] ALP § 20.12; MOYNIHAN, *supra* note 35, § 12; RESTATEMENT, *supra* note 12, § 139; TIFFANY §§ 61-62.
[37] TIFFANY §§ 61-62.
[38] 136 S.W. 206 (Ky. 1911).

however, that the tenant for life had only a duty to deliver the property in a reasonable state of repair *at the end* of the tenancy. Under the *Prescott* rationale, it would be possible to neglect the estate for several years and later repair it without being liable for permissive waste.

C. *Methods to Determine the Existence of Waste*

Various approaches exist to determine whether certain conduct is actionable as waste. The "mnemonic" approach fixes "liability to certain acts, regardless of their factual context."[39] For example, if cutting timber is considered waste, this is an act of waste in and of itself under the mnemonic approach without regard to any mitigating circumstances such as the need for firewood. This approach has been severely criticized,[40] because even Lord Coke, who stated that cutting timber was waste,[41] recognized that there were some exceptions to his statement. The "functional" approach inquires whether the inheritance has been damaged.[42] Professor Tiffany recognized this approach as the proper one.[43] In addition, he suggested that the inquiry was not complete without considering the particular locality, because acts which constitute waste in one locale may not constitute waste in another. For example, cutting timber in a region traditionally relying upon the woodlands for agriculture purposes would produce a different result than would cutting timber in a region economically dependent upon lumber as a commercial enterprise. The third approach centers upon intention. In a unilateral conveyance, it is the donor's intention that controls, and in the absence of express provisions, prohibiting certain acts, the inquiry becomes whether the donor impliedly intended that certain acts would constitute waste. Professor Casner suggests that the intent approach is the proper one.[44] He rejects the notion that the functional approach applies in all situations and suggests that the functional approach is valid only when applied *in conjunction with the intent approach.*[45]

D. *Remedies*

The law of waste in the United States is largely statutory. The remedies of the Statute of Gloucester[46] were not received in this

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[39] ALP § 20.1, at 71.
[40] *Id.*
[41] *Id.* at 71-72.
[42] *Id.*; TIFFANY § 323.
[43] TIFFANY § 323. Tiffany states that this method is the primary one used today to determine the existence or non-existence of waste.
[44] ALP § 20.1.
[45] *Id.*
[46] *See generally* ALP § 20.17; BURBY § 13; POWELL ¶ 637.

country[47] as part of the common law in a majority of the states.[48] Nevertheless, there are numerous remedies available to the holder of an indefeasibly vested remainder or reversion against a life tenant:

> [The future interest holder] . . . may secure compensatory damages for the injuries sustained[,] . . . recover multiple damages, or . . . forfeit the life estate. . . . He may enjoin threatened acts of waste, or secure a mandatory injunction to compel the performance of a duty by the life tenant with respect to the care of premises. He may be entitled to an accounting for the proceeds of sales by the life tenant of something improperly severed from the land. In a proper case he is privileged to enter and inspect the premises to determine whether waste has been committed. He may also have a receiver appointed to make repairs on the structures when the life tenant has failed to do so. In some cases, he may have a receiver appointed to sell the property and hold the proceeds in trust.[49]

II. JUDICIAL TREATMENT OF PERMISSIVE WASTE

A. *Kentucky*

The availability of the remedies referred to above varies among the states depending upon the category[50] of waste involved. In Kentucky, the remedies of the Statute of Gloucester[51] were enacted in 1798[52] and remain in effect substantially unchanged.[53] In *Salyer's Guardian v. Keeton*,[54] the similarity between the Kentucky statute and the Statute of Gloucester was recognized when the Court stated that the Kentucky statute should be construed as the English statute had been.[55]

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[47] Forfeiture and treble damages have been abolished in England. ALP § 20.19.

[48] BURBY § 13; POWELL ¶ 650; RESTATEMENT, *supra* note 12, §§ 198-99; SIMES & SMITH § 1658.

[49] SIMES & SMITH § 1654, at 11-12; *see also* ALP §§ 20.17-.23; BURBY § 13; POWELL ¶¶ 641-42.

[50] *See* sources cited in note 27 *supra*.

[51] *See supra* note 17.

[52] Law of January 23, 1798, ch. 44, § 1, [1799] Laws of Ky. 83 (now KY. REV. STAT. § 381.350 (1971) [hereinafter cited as KRS] provided:

> Be it enacted by the General Assembly, that if any tenant by the courtesy tenant, in dower, or otherwise for term of life or years, shall commit waste, during their several estates, or terms, of the houses, woods, or any other thing, belonging to the tenants, so held, without special license, in writing so to do, they shall be subject respectively to an action of waste, and shall moreover loose [*sic*] the thing wasted, and recompence the party injured, at three times the amount, at which the waste, shall be assessed.

[53] KRS § 381.350 provides:

> If any tenant for life or years commits waste during his estate or term, of anything belonging to the tenement so held, without special written permission to do so, he shall be subject to an action of waste, shall lose the thing wasted, and pay treble the amount at which the waste is assessed.

[54] 283 S.W. 1015 (Ky. 1926).

[55] To be entitled to treble damages in Kentucky, the waste must have been "wantonly committed." KRS § 381.400.

In *Smith v. Mattingly*,[56] a case similar to *Meredith v. Ingram* with respect to the acts allegedly constituting waste, the Court of Appeals held that the Kentucky statute refers *only* to voluntary waste. This construction, said the Court, was necessitated by "language . . . too clear for discussion."[57] The Court examined the history of legislation on the subject of waste and concluded that since the remedy of the 1798 statute which permitted an action at law for permissive waste had been omitted from the statute then in existence, this omission was a repeal of the action at law. Moreover, the Court was convinced that the members of the General Assembly must have viewed the equitable remedy for permissive waste as "more easy, expeditious, and complete"[58] than a remedy at law. Lastly, the Court held that a remedy at law did not exist for permissive waste; therefore, *exclusive jurisdiction* over permissive waste had been left to courts of equity.

A further development of the law of waste in Kentucky occurred in *Prescott v. Grimes*[59] where the Court held that the statute of limitations would not bar an action for permissive waste during the life tenancy. The Court arrived at its decision by reasoning that since the life tenant had a continuing duty only to leave the premises in a reasonable state of repair *at the end of* the tenancy, he could allow the premises to deteriorate at any time and still not be liable for permissive waste if the necessary repairs were completed *prior to the termination of* the tenancy. Moreover, the *Prescott* opinion stated that a life tenant's estate would be subject to an action for the cost of repairs necessitated by permissive waste.

In a later case, *Fisher's Executor v. Haney*,[60] involving an action brought in equity to recover damages against a life tenant's executor for both permissive and voluntary waste, the defense of the statute of limitations was interposed by the defendant. The Court stated that the statute of limitations began to run when the voluntary waste was committed and that, under this rule, plaintiffs could not recover for the voluntary waste because it had been committed more than five years prior to the commencement of the suit and thus was barred by the statute of limitations. As for the permissive waste, however, the Court relied upon *Prescott* in allowing recovery, since the life tenant had an "ever-present, existing duty"[61] to leave the premises in a reason-

[56] 28 S.W. 503 (Ky. 1894); *see also* Collins v. Security Trust Co., 266 S.W. 910 (Ky. 1924); Continental Fuel Co. v. Haden, 206 S.W. 8 (Ky. 1918); Fisher's Ex'r v. Haney, 202 S.W. 495 (Ky. 1918).

[57] 28 S.W. 503 (Ky. 1894).

[58] *Id.* at 504.

[59] 136 S.W. 206 (Ky. 1911).

[60] 202 S.W. 495 (Ky. 1918).

[61] *Id.* at 497, *citing* Prescott v. Grimes, 136 S.W. 206, 208 (Ky. 1911) (emphasis added).

able state of repair. "During the life of the tenancy *there is no limitation* to the time within which the action to compel reparation for permissive waste must be commenced."[62]

In *Collins v. Security Trust Co.*,[63] the Court of Appeals again outlined the conditions under which action for damages[64] for permissive waste. There the Court stated:

> . . . it cannot be doubted that in this jurisdiction *an action purely for damages for permissive waste can be maintained in equity, and there only,* by the remaindermen against the estate of the original life tenant, *at the expiration of his* tenancy.[65]

B. *Other Jurisdictions*

The result in *Meredith v. Ingram* was based upon clear authority; however, when confronted with the same issue of whether or not an indefeasibly vested remainderman should be *required* to bring an action against a life tenant for permissive waste prior to the termination of the life estate, other jurisdictions have reached a result contrary to the result reached in Kentucky.

An Ohio case, *Reams v. Henney*,[66] has held that in an action for permissive waste against a life tenant's estate, the applicable statute of limitations barred any evidence of waste *committed or suffered* prior to the statutory period for filing of the suit. The Ohio court distinguished *Prescott* by stating that while the Kentucky statute covered only voluntary waste, the Ohio statute covered both voluntary and permissive waste, because the Ohio statute used the language "commits or suffers."[67] Holding that the cause of action, for statute of limitations purposes, accrued *not* at the death of the life tenant but rather at the moment when the waste first occurred,[68] the *Reams* court relied upon the North Carolina case of *Sherrill v. Connor*[69] and thus

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[62] 202 S.W. at 497, *citing* Prescott v. Grimes, 136 S.W. 206, 208 (Ky. 1911).

[63] 266 S.W. 910 (Ky. 1924).

[64] The proper measure of damages is the difference between the value of the premises in its present condition and what it would have been had the life tenant maintained the premises in a reasonable state of repair. *See, e.g., In re* Estate of Stout, 50 P.2d 768 (Ore. 1935).

[65] 266 S.W. 910, 911 (Ky. 1924) (emphasis added).

[66] 97 N.E.2d 37 (Ohio App. 1950).

[67] OHIO REV. CODE ANN. § 2105.20 (1968) provides:

> A tenant for life in real property who commits or suffers waste thereto shall forfeit that part of the property, to which such waste is committed or suffered, to the person having the immediate estate in reversion or remainder and such tenant will be liable in damages to such person for the waste committed or suffered thereto.

[68] The North Carolina statute is not as explicit as the Ohio statute. N.C. GEN. STAT. § 1.533 (1969) states:

> Wrongs, remediable by the old action of waste, are subjects of action as other wrongs; and the judgment may be for damages, forfeiture of the estate of the party offending, and eviction from the premises.

[69] 12 S.E. 588 (N.C. 1890).

reached a conclusion contrary to that reached in *Prescott*. The court in *Sherrill* reversed a trial court determination that no statute of limitations applied to permissive waste due to the continuous duty of the life tenant to maintain the premises.

III. IMPLICATIONS OF MEREDITH V. INGRAM

As previously stated, in Kentucky there was no action at law[70] for permissive waste.[71] Moreover, in this jurisdiction an action purely for damages may be maintained *only* at the termination of the life tenancy.[72] While in some cases injunctive relief plus an accounting for waste will be awarded,[73] this additional remedy is usually available only where the complainant has a damage remedy available.[74] For example, a remainderman in Kentucky may be confronted with a situation in which the life tenant has allowed the premises, consisting of a house, barn, and other out-buildings, to deteriorate below a state of reasonable repair. If this remainderman is contemplating a plan to develop the premises as a commercial venture, would he rather have a decree enjoining future waste and a decree to repair the premises or damages once the life tenant dies? Would it matter that he receive the premises in a reasonable state of repair if the site would have to be cleared for development? Under these circumstances, a recovery for damages would amount to a windfall.

To allow a remainderman to stand idly by[75] and permit a life tenant to "suffer the property to become out of repair for *years* and later fix it up"[76] without compelling the remainderman to seek injunctive relief seems contrary to the public policy of this Commonwealth. Since the remainderman has no obligation to bring an action, the property is allowed to recede into a blighted condition with the resultant diminution in property tax revenues.[77]

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[70] Notwithstanding the widespread merger of law and equity courts, there still exists a tendency on the part of lawyers and judges to speak of law and equity as though they are separate courts. Nevertheless, aside from the right to jury trial, in some instances there *may be* sufficient reason to retain the distinction between legal and equitable remedies. D. DOBBS, LAW OF REMEDIES §§ 2.1-.9 (1973).

[71] Smith v. Mattingly, 28 S.W. 503 (Ky. 1894).

[72] Collins v. Security Trust Co., 266 S.W. 910 (Ky. 1924).

[73] ALP § 20.20.

[74] *Id.* at § 20.22.

[75] Riker Kyle was an invalid for the last ten years of his life, the last five years of which were spent in a hospital. Brief for Appellant at 4-5, Meredith v. Ingram, 495 S.W.2d 171 (Ky. 1973).

[76] 136 S.W. 206, 208 (Ky. 1911) (emphasis added).

[77] *See* Muskie, *Student Symposium on Kentucky Property Tax*, 60 KY. L.J. 75 (1971). For a discussion of the importance of ad valorem taxes to public education in the United States, *see* O'Connell, *Symposium: Equal Protection Against Unequal Schools*, 1972 U. ILL. L. FOR. 215. *See also* Schoettle, *Judicial Requirements for School Finance and Property Tax Design: The Rapidly Evolving Case Law*, 25 NAT. T.J. 455 (1972).

There are solutions to the present inequitable state of the law on permissive waste in Kentucky. The first possible solution would involve reversal of more than 75 years of judicial reliance upon prior decisions beginning with *Smith v. Mattingly*.[78] A judicial remedy, however, is not likely, due to the explicit wording of the Kentucky statute[79] and to the very thorough analysis the statute received in *Mattingly*.

If any remedy is forthcoming in this area, it presumably will come from the General Assembly due to the Court of Appeals' strong dependence on *Smith v. Mattingly* and its progeny. The Kentucky statute should be amended to read ". . . commits or suffers waste . . ." in order to encompass both voluntary and permissive waste. Support for such an interpretation of "commits or suffers" appears in *Reams* and *Prescott*. In the latter, the Court, explaining the duties of a tenant for life to maintain his estate, stated that "he may not suffer it to go to decay or waste for want of necessary repairs *any more* than he may injure its value by acts of *voluntary* waste."[80] The indefeasibly vested remainderman should have to file suit seeking injunctive relief either when he knows or should know that the life tenant is not fulfilling his obligation to maintain the premises in a reasonable state of repair. After the statute has been so amended, the Court of Appeals should adopt the rationale of *Reams* and *Sherrill* when a cause of action for permissive waste accrues.

The unimaginable implications of *Meredith v. Ingram* should serve as a catalyst for the General Assembly to extricate our present state of law from an outmoded and unjust rule. While ancient rules and maxims form the cornerstone upon which our legal system has been constructed, such guidelines must be adaptable to constantly changing conditions. The present rule regarding permissive waste, engendered by a line of cases beginning with *Smith v. Mattingly*,[81] is a rule that is no longer adaptable, and the law of future interests[82] respecting an indefeasibly vested remainderman's cause of action for permissive waste in Kentucky should be changed to meet today's socio-economic needs.

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[78] 28 S.W. 503 (1894).
[79] KRS § 381.350 (1971).
[80] 136 S.W. 206, 207 (Ky. 1911) (emphasis added).
[81] 28 S.W. 503 (1894).
[82] For a discussion of changes in the law of future interests, *see* Fratcher, *A Modest Proposal for Trimming the Claws of Legal Future Interests*, 1972 DUKE L.J. 517. *See also* Mersky, *Introductory Essay on the Literature of Future Interests*, 17 VAND. L. REV. 1457 (1964), for a survey of texts and treatises covering the law of future interests.