Washington Law Review

Volume 65
Number 2 *Dedicated to Professor Robert L. Fletcher*

4-1-1990

Perpetuities: Three Essays in Honor of My Father

Susan F. French

PERPETUITIES: THREE ESSAYS IN HONOR OF MY FATHER

SUSAN F. FRENCH*

The Rule Against Perpetuities is a frequent source of frustration and puzzlement for property students, professors, and practitioners. In this Article, the Author presents three essays; her method of analyzing perpetuities problems, a proposal for refinement of the common law rule, and an examination of the possible benefits of dead hand control. Although the Author has followed in her father's footsteps, becoming a property professor, some of her views on perpetuities diverge from his. Because scholarly discussion of perpetuities historically has taken the form of "Article and Reply" in various Law Reviews, Professor Robert L. Fletcher's response follows his daughter's essays.

An extraordinary amount of scholarly discourse has poured forth in recent years on the subject of the Rule Against Perpetuities (the Rule).[1] Now that I have an excuse, I welcome the opportunity to add my two-cents worth. My father, Professor Robert Fletcher, has devoted a substantial part of his scholarly career to teaching and writing about the Rule.[2] His insights into its rigorous internal logic[3] led him to a marvelous method of teaching the Rule, which I learned at his feet—or more accurately from a copy of his notes he gave me when

* Professor of Law, University of California, Los Angeles; B.A., 1964, Stanford University; J.D., 1967, University of Washington.

1. The classic statement of the Rule Against Perpetuities (the Rule) is: "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." J. GRAY, THE RULE AGAINST PERPETUITIES § 201, at 191 (4th ed. 1942).

2. Fletcher, *Perpetuities: Basic Clarity, Muddled Reform*, 63 WASH. L. REV. 791 (1988) [hereinafter Fletcher, *Basic Clarity*]; Fletcher, *A Rule of Discrete Invalidity: Perpetuities Reform Without Waiting*, 20 STAN. L. REV. 459 (1968) [hereinafter Fletcher, *Discrete Invalidity*].

3. Professor Jesse Dukeminier points out that the Rule Against Perpetuities did not become a purely logical theorem until the nineteenth century case, Thellusson v. Woodford, 11 Ves. Jr. 112, 32 Eng. Rep. 1030 (H.L. 1805). Dukeminier, *A Modern Guide to Perpetuities*, 74 CALIF. L. REV. 1867, 1870 (1986). Professor Dukeminier has played an important inspirational role in my life, and much of what I know about future interests, and the Rule, I have learned from him and his delightful casebooks (for which, Stan Johanson, a former student of my father's, shares the credit). I am pleased and proud to have had the opportunity to join him as a colleague on the UCLA faculty.

I first taught advanced future interests in 1976.[4] His precise understanding of the Rule's operation[5] also led him to an elegantly simple proposal for refining the common law Rule to prune its worst excesses without compromising its rigid integrity.

In these essays I pay tribute to his career at the University of Washington Law School by celebrating his contributions and calling them to the attention of my colleagues in the field.[6] His work provides the basis for a method of teaching the Rule that shows promise for reducing, if not ending, the Rule's Reign of Terror in American law schools. That method is the subject of my first essay. In my second essay, I incorporate his proposal for refining the common law rule, which he titled a Rule of Discrete Invalidity, as the key element of a total reform package. I offer that package as the basis for a peace treaty in the Perpetuities Wars of the Late Twentieth Century. In my third essay, I offer some thoughts about the need for dead hand control that he will no doubt regard as heresy, demonstrating once again—as Professor Dukeminier has so poignantly lamented over recent developments of the wait and see doctrine[7]—that the fathers can't keep control of the children, even for lives in being plus 21 years.

4. The other major sources from whom I learned future interests law were Professor Harry Cross, from whom I took the course, and Professors Olin Browder, Lawrence Waggoner, & Richard Wellman, whose richly detailed case book, FAMILY PROPERTY SETTLEMENTS (2d ed. 1973), I used when I taught a separate course in future interests. In my early teaching days, I also found L. SIMES & A. SMITH, FUTURE INTERESTS (2d ed. 1958) an indispensable companion during long tense evenings of class preparation.

5. Dad always has been a good mathematician, and a rigorous logician, which may explain why he is intrigued by the Rule Against Perpetuities, and why he is able to penetrate its mysteries better than the rest of us. His first love, and college major, was engineering. When he took up law as a career, he brought with him his mathematical approach to solving problems. I, who unfortunately did not inherit his mathematical genes, have often taken advantage of his mathematical abilities. He babysat me through high school calculus. He rescued me in law practice from making the lengthy reiterative calculations to calculate interrelated state and federal taxes by drawing me a set of equations. More recently, he taught me how to solve advancement hotchpot problems requiring proportional reductions by an example using thefts from a cookie jar—a wonderful technique for students, like me, who have trouble working with ratios. One of my favorite memories is of watching him grade bluebooks using a slide rule—something I have never seen another law professor do!

6. Although he has published his analysis of the Rule, and his elegantly simple idea for refining it, his work, like the Rule itself, is difficult to understand without a guide. I hope these essays will make it more accessible.

7. Dukeminier, *The Uniform Statutory Rule Against Perpetuities: Ninety Years in Limbo*, 34 UCLA L. REV. 1023 (1987).

I. ENDING THE RULE'S REIGN OF TERROR[8]

The victims of the Reign of Terror engendered by the Rule Against Perpetuities are not those whose interests are threatened by unborn widows, fertile octogenarians, and magic gravel pits, but the law students and practitioners laboring in the fields of property law.[9] Building from Dad's analysis of the Rule, and the set of notes he gave me so long ago, I have developed a method of teaching the Rule that shows promise of reducing, if not ending, the Rule's Reign of Terror. Dad's central insights, which underlie my method, are that the concept of measuring lives is meaningless, and that starting a perpetuities analysis by looking for validating lives is backwards.[10]

My method begins the analysis of any future interest subject to the Rule by identifying the conditions precedent that must be satisfied before the interest can vest.[11] Then I identify the events that will satisfy the conditions and lead to vesting. If there is more than one event, I identify the various sequences of events that will lead to vesting.[12] Only after I have identified a particular sequence do I look for a validating life. When I am only trying to determine whether there is a violation of the common law Rule in its traditional form, I stop my analysis when I find a sequence that has no validating life.[13] When I am teaching students how to work with the Rule, I try to identify all possible sequences that will lead to vesting, and search for a validating life for each sequence.

This method lends itself readily to classroom use. I begin by writing a conveyance on the board.[14] I ask students to classify the future interests and identify those subject to the Rule. Then I ask them to identify the conditions precedent to each interest, and I list the condi-

8. The title, of course, is from Leach's famous article advocating adoption of what has become the wait and see doctrine, Leach, *Perpetuities in Perspective: Ending the Rule's Reign of Terror*, 65 HARV. L. REV. 721 (1952).

9. Professor Bloom, in a recent article, convincingly demonstrates that very little litigation involving claims that future interests violate the Rule reaches appellate courts. Bloom, *Perpetuities Refinement: There Is an Alternative*, 62 WASH. L. REV. 23, 33-39 (1987).

10. Fletcher, *Basic Clarity, supra* note 2, at 803-08.

11. Vesting for perpetuities purposes requires not only that all conditions precedent be satisfied, but also that all classes be closed (or, in other words, that remainders not be subject to open).

12. If failure of the interest is a possibility, I also identify sequences that will lead to failure.

13. *I.e.*, there is no one alive at the effective date within whose lifetime or within 21 years after whose death the vesting will necessarily take place.

14. The students must first understand the ground rules: only class gifts, contingent remainders and executory interests are subject to the Rule; vesting means the class is closed and all conditions precedent have been met; effective date means the date of the testator's death if the instrument is a will, the date an inter vivos conveyance becomes effective, or the date an

tions on the board. I also ask for and list the events that will close a class gift both physiologically and under the rule of convenience.[15]

Next, I draw a time line on the board that begins with the effective date. Just to the left of the effective date I list the people we know were alive at that time. Then I ask students to suggest events that could happen after the effective date that would lead to vesting of the interest.[16] I mark each sequence on the time line, and then ask the students to look for people who were alive at the effective date of the instrument and try to determine whether they will necessarily still be alive when the vesting occurs, or will have died within 21 years of that time.

To determine whether there are any such people, who will serve as validating lives if they exist, I kill each one off as soon after the effective date as possible. As soon as a student suggests that some of the people in the City of Los Angeles were undoubtedly living at the effective date and still would have been alive at the vesting date, I draw a big vertical line just to the right of the effective date to represent a disaster that kills off everyone except those on our list of lives in being. If there are *still* any people from the list of lives in being who appear to be alive within 21 years of the vesting time, we try again to kill them off more than 21 years before the vesting event. If we cannot do it without changing the vesting sequence, I tell them that we have found a validating life for that sequence, and we go on to the next.

We then look for all other possible sequences of events that could lead to vesting of the future interests. Referring to our lists of the conditions precedent, class closing events and lives in being, I ask the students to imagine all the various possibilities. With a little practice in imagining things they have heretofore thought impossible,[17] I find

unrestricted power of revocation, or presently exercisable power of appointment expires; and the peculiar biology of the Rule.

I always use a diagram for working perpetuities problems and suggest to students that they do the same. I insist that we include on the diagram all steps that actually will lead to vesting or failure of the interest and that the diagram demonstrate how an interest actually could vest more than 21 years after the deaths of all lives in being (if that is the case). My model diagram is included in the Appendix, together with the handout I give students when we begin studying the Rule.

15. In the first year Property course, I work only with physiological closing of the class, leaving the rule of convenience for the wills and trusts course. Under the rule of convenience, a class will close when the first member is entitled to call for distribution of her share, even though the class has not yet closed physiologically.

16. If failure will result in a reversion, I also ask them to pose sequences that lead to failure. Otherwise, I work with sequences that lead to vesting one or another of the future interests.

17. Professor Dukeminier's casebooks always delight students because of his wonderful sense of humor and apt quotations. One of my favorites, which is particularly appropriate in teaching this part of the Rule, is from *L. Carroll, Through the Looking-Glass* (Ch. 5):

they readily identify sequences involving fertile octogenarians, precocious toddlers, unborn widows and inexhaustible magic gravel pits. Whenever we find any sequence for which there is no validating life, I tell them we have found an interest that violates the common law Rule. If there is any sequence, however unlikely, that would lead to vesting of a future interest more than 21 years after the deaths of all the lives in being at the effective date, that is enough to invalidate that future interest, even if there are other sequences that would lead to vesting in time.

Let me illustrate with a conveyance "to *A* for life, with remainder to the first child of *A* to reach 25, and if no child of *A* reaches 25, to *B*." At the time the gift is made *A* and *B* are both alive, and *A* has one child, #1 child, age 3. The gift creates two contingent remainders subject to the Rule: the gift to the first child of *A* to reach 25, and the alternative gift to *B*. The conditions precedent[18] to the gift to the first child of *A* to reach 25 are (1) birth, (2) survival to the age of 25, and (3) being the first of A's children to reach 25. The condition precedent to *B*'s interest is that no child of *A* reaches the age of 25.

The events that will lead to vesting of the interest in a child of *A* are either survival of the existing child to age 25, or birth of another child who survives to age 25 and reaches that age before any other child of *A* reaches 25. The events that will lead to vesting of the interest in *B* are death of *A*, and death of all *A*'s children before they reach age 25. The possible sequences of these events causing vesting are as follows:

(1) *A*'s #1 child reaches the age of 25 (vesting in #1 child).

(2) *A*'s #1 child dies under the age of 25. *A* dies without having any more children (vesting in *B*).

(3) *A*'s #1 child dies under the age of 25. *A* has #2 child. #2 child reaches 25 (vesting in #2 child).

(4) *A*'s #1 child dies under the age of 25. *A* has #2 child who dies under the age of 25. *A* dies (vesting in *B*).

"Now I'll give *you* something to believe. I'm just one hundred and one, five months and a day."

"I can't believe *that*!" said Alice.

"Can't you?" the Queen said in a pitying tone. "Try again: draw a long breath, and shut your eyes."

Alice laughed. "There's no use trying," she said: "one *can't* believe impossible things."

"I daresay you haven't had much practice," said the Queen. "When I was your age, I always did it for half-an-hour a day. Why sometimes I've believed as many as six impossible things before breakfast."

J. DUKEMINIER & S. JOHANSON, WILLS, TRUSTS, AND ESTATES 673 (3d ed. 1984).

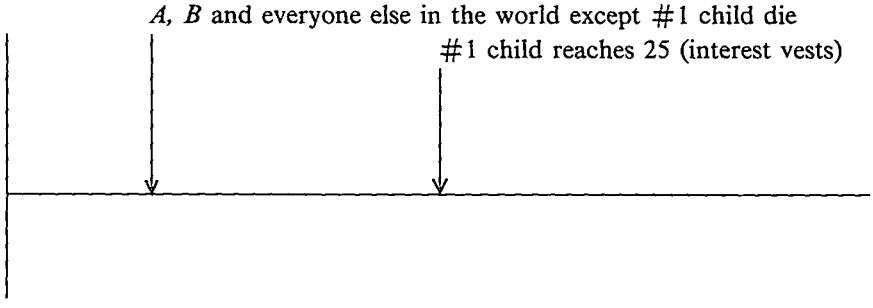
18. Conditions precedent are those which must be met to ascertain the taker.

(5) *A*'s #1 and #2 children die under the age of 25. *A* has #3 child. #3 child reaches the age of 25, or sooner dies, and *A* does or does not have more children who reach 25 or die before reaching 25 (vesting in the child who reaches 25 or in *B* if none reaches 25).[19]

Note that in identifying the sequences that will lead to vesting of the interests, I do not include anything that is not required by the terms of the gift for vesting the interest. I do not include any time periods, for example, other than a child's reaching 25. I do not specify whether a child reaches 25 within X number of years of the death of *A*, or *B*, or the #1 child, because the vesting will take place under the terms of the instrument *whenever* a child reaches 25. Since there is no requirement in the terms of the instrument that a child reach 25 within 21 years after *A*'s death, or at any other time, I do not include any particular interval between *A*'s death and the vesting. In marking sequences of events on the time line diagram, however, I do insert an interval greater than 21 years before the vesting event whenever possible.

Diagrams of the sequences on a time line look like this:

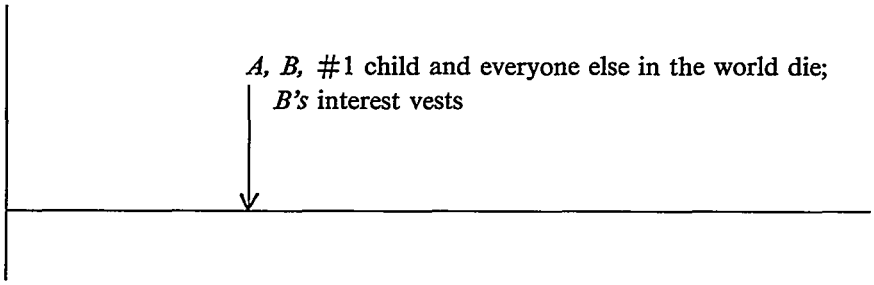
Sequence (1): *A's* #1 child reaches the age of 25 (vesting in #1 child).



Validating life: #1 child (if #1 child takes, she must do so in her own lifetime, and she is a life in being).

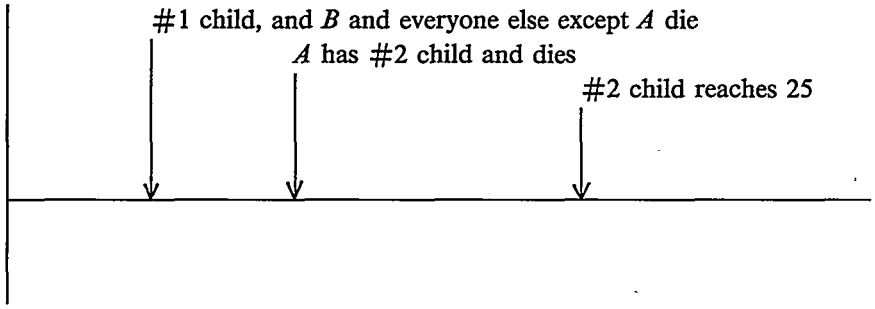
19. These sequences could be extended indefinitely, but since the outcome is the same in determining whether there is a validating life, I usually include only two. If anyone remain unconvinced that they are all the same, more sequences can be run.

Sequence (2): *A's* #1 child dies under the age of 25. *A* dies without having any more children (vesting in *B*).



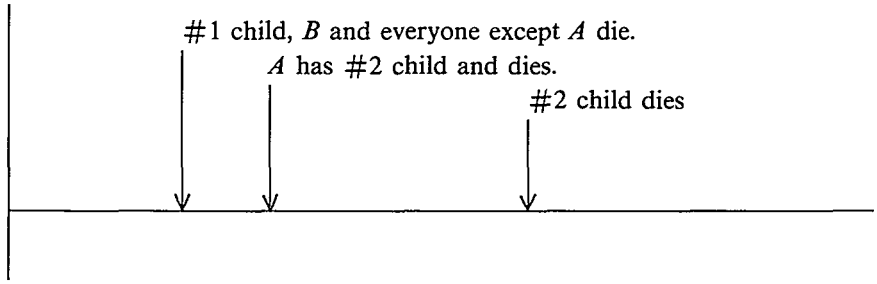
Validating life: *A* (if *A* has no other children, interest must vest at his death).

Sequence (3): *A's* #1 child dies under the age of 25. *A* has #2 child. #2 child reaches 25 (vesting in #2 child).



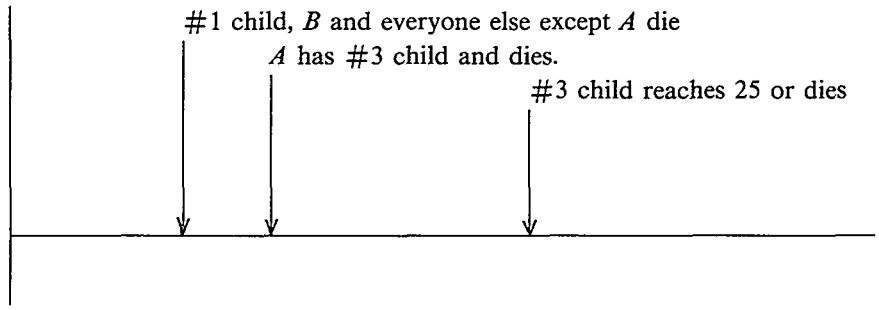
Validating life: None (#2 child could reach 25 more than 21 years after the deaths of all the others, including *A* and #1 child).

Sequence (4): *A's* #1 child dies under the age of 25. *A* has #2 child who dies under the age of 25. *A* dies (vesting in *B*).



Validating life: none (#2 child could die more than 21 years after deaths of *A* and everybody else).

Sequence (5): *A's* #1 and #2 children die under the age of 25. *A* has #3 child. #3 child reaches the age of 25, or sooner dies (vesting in #3 child or in *B*, depending on which happened).



Validating life: None (#3 child could reach 25 more than 21 years after deaths of *A* and everybody else).

Each future interest is tested separately under the Rule. For each future interest, all possible vesting sequences must have a validating life, or the future interest is void. In this conveyance there were two future interests: the contingent remainder to the first child of *A* to reach 25 and the alternative contingent remainder to *B*. Both future interests are void under the common law Rule because there is at least one sequence leading to vesting of each interest for which there is no validating life. Even though sequences (1) and (2) do have validating lives (those which would necessarily lead to vesting within 21 years after lives in being), both gifts are bad because sequences (3), (4) and (5) could lead to vesting more than 21 years after the deaths of all the

lives in being. Sequences (3) and (5) invalidate the remainder to a child; sequences (4) and (5) invalidate the remainder to *B*.

Once I have gone through this process with one or two conveyances, I usually turn it into a game called "Perpetuities Challenge." One student or group of students are the "Challengers," another the "Defenders." I put a conveyance on the board that includes a contingent remainder or an executory interest. The Challengers begin the game by suggesting a sequence of events that they think will result in vesting of the interest more than 21 years after all the lives in being have died. I mark the sequence out on the time line. The Defenders then identify a person who was alive at the effective date, who is either still alive, or who died within 21 years of the vesting date. The Challengers respond by killing that person. If the person can be killed without affecting the date of the vesting or failure of the interest, play returns to the Defenders who must then find another person who is still alive, or who died within 21 years of the vesting. Play continues with that sequence until it is clear whether there is a validating life for the sequence. If the Defenders cannot come up with a validating life, the Challengers score a point. If they can, the Defenders score, and the Challengers must come up with another sequence.

Play continues until it is determined that there is a validating life for every possible sequence, or that there is at least one sequence for which there is no validating life. At that point we move on to another disposition. I hand out a list of conveyances creating future interests and suggest that they continue playing Perpetuities Challenge outside of class to cement their understanding of the Rule.

The virtue of this method of teaching perpetuities analysis is that it focuses the students' attention on what will cause vesting before it asks whether the vesting necessarily will occur within 21 years after some life in being. By asking them to identify the conditions that must be met, and then the events that will meet them, it helps them to see all the possibilities, including afterborns where that is possible. From laying out the sequences of vesting events, it is a fairly natural step to identifying the validating lives, if there are any.

Although this method tends to reduce error by forcing explicit attention to conditions precedent and class closing events, and by helping students to see all the sequences of events that will lead to vesting and failure of the interests, it does not eliminate errors. It asks students the right questions, and takes them through the right steps, but it does not guarantee that they will produce the right answers. Some go astray because they misclassify the future interest initially;

others fail to see that there are possible unborn beneficiaries, or that a class member could call for a distribution before the class is biologically closed. There are lots of places where students can make mistakes, even if they are following the right process.

I like to think that widespread adoption of this method of teaching the Rule would end its Reign of Terror, but it probably won't. For even with this method, the Rule is not easy to understand, and students will continue to struggle with it. More important, however, the mythology of the Terrible Rule has such great power in American law schools that I think nothing short of abolishing the Rule could end its Reign of Terror.[20]

II. ENDING THE PERPETUITIES WARS OF THE LATE TWENTIETH CENTURY: A BETTER REFORM PACKAGE

When Professor James Casner persuaded the American Law Institute to adopt the "wait and see principle" in 1979,[21] he touched off a new and ferocious round[22] in the Perpetuities War begun in 1952 by

20. Whether we should do that is touched on, but not resolved, in my third essay.

21. *Discussion of Restatement of the Law, Second, Property, Tentative Draft No. 1—Part 1*, 56 A.L.I. PROC. 466 (1980). The principle is stated in RESTATEMENT (SECOND) OF PROPERTY (Donative Transfers) § 1.4 (1983). Wait and see was adopted by the Institute only after heated debates at the 1978 and 1979 Annual Meetings. Those debates pitted Professor Powell, Reporter for the *First Restatement of Property*, against Professor Casner, Reporter for the *Second Restatement*, in what Professor Donahue called the Battle of the Titans. *Continuation of Discussion of Restatement of the Law, Second, Property, Tentative Draft No. 1*, 55 A.L.I. PROC. 289 (1979). It is interesting to remember that Professor Powell brought Professor Casner into the American Law Institute in 1935 to work as an associate reporter for the *First Restatement* while Casner was still a graduate student at Columbia. Siding with Powell in the debates were Professors Lusky, Berger and Rohan. Professors Stein, Donahue, Maudsley and Heckerling sided with Casner.

22. After the adoption of wait and see by the Institute, Professor Lawrence Waggoner of Michigan and Professor Jesse Dukeminier of UCLA joined the fray. They have since become the principal protagonists. Professor Waggoner published *Perpetuity Reform*, 81 MICH. L. REV. 1718 (1983) [hereinafter Waggoner, *Perpetuity Reform*], and then Professor Dukeminier published *Perpetuities: The Measuring Lives*, 85 COLUM. L. REV. 1648 (1985) [hereinafter Dukeminier, *Perpetuities: The Measuring Lives*]. The two continued with Waggoner, *Perpetuities: A Perspective on Wait-and-See*, 85 COLUM. L. REV. 1714 (1985); Dukeminier, *A Response by Professor Dukeminier*, 85 COLUM. L. REV. 1730 (1985); Waggoner, *A Rejoinder by Professor Waggoner*, 85 COLUM. L. REV. 1739 (1985); and Dukeminier, *A Final Comment by Professor Dukeminier*, 85 COLUM. L. REV. 1742 (1985). The exchange grew even more heated with Dukeminier, *The Uniform Statutory Rule Against Perpetuities: Ninety Years in Limbo*, *supra* note 7, and Waggoner, *The Uniform Statutory Rule Against Perpetuities: The Rationale of the 90-Year Waiting Period*, 73 CORNELL L. REV. 157 (1988) [hereinafter Waggoner, *The Uniform Statutory Rule*]. Their struggle continues in state law revision commissions and state legislatures considering adoption of the Uniform Act.

his former colleague, Professor Barton Leach.[23] The war was begun over the question *how* and not *whether* the common law Rule Against Perpetuities should be modified.[24] Although some have quarreled with Professor Leach over the extent of the problem caused by the Rule in its traditional form, no one disagrees with his basic premise that the common law Rule goes too far in striking down reasonable dispositions because of remote and fantastical possibilities.

In the first War, the major battlefield was the "wait and see" principle, named by Professor Leach, and carefully expounded and refined by Professor Dukeminier.[25] Opponents of wait and see claimed that the doctrine is unnecessary, and that in most of its forms it is incoherent because there is no principled way to determine the length of the waiting period within the framework of the common law Rule Against Perpetuities.[26] Instead of wait and see, opponents led by Professor Lewis Simes proposed adoption of limited, specific statutory reforms tailored to eliminate particular violations of the Rule.[27] Some also advocated statutory grants of cy pres powers to permit judicial reformation of instruments that violate the Rule.[28]

In drafting the *Restatement Second of Property, Donative Transfers*, Professor Casner incorporated an expanded version of wait and see into his statement of the common law Rule.[29] When his position carried the day at the American Law Institute, wait and see received a tremendous boost. The Uniform Law Commissioners undertook preparation of a Uniform Statutory Rule Against Perpetuities based on the principle of wait and see. Under the leadership of the Reporter, Pro-

23. Leach, *supra* note 8, at 730.

24. The Perpetuities Wars have engaged some of the best minds and most distinguished scholars working in the property field in the second half of the 20th century. Like most wars, this one has generated a lot of intemperate language and strained relations among the combatants, but it also has released a lot of creative energy. Professor Bloom recounts the history and lists the major protagonists in Bloom, *supra* note 9.

25. J. DUKEMINIER, PERPETUITIES LAW IN ACTION (1962); Dukeminier, *Perpetuities: The Measuring Lives, supra* note 22; Dukeminier, *A Modern Guide to Perpetuities, supra* note 3.

26. See Bloom, *supra* note 9; Fletcher, *Basic Clarity, supra* note 2, for recent thorough critiques of the wait and see doctrine in all its forms.

27. L. SIMES, PUBLIC POLICY AND THE DEAD HAND 78-79 (1955). The New York statutes provide the model for later reformers of this school. See Bloom, *supra* note 9, at 66 n.258, 67 n.261.

28. Professor Bloom in his *Perpetuities Refinement* article, *supra* note 9, gives a comprehensive account of these reforms.

29. *Restatement* § 1.3 provides a list of measuring lives to be used if there is no life in being within which (or within 21 years after its end) the interest will necessarily vest or fail. The list includes the transferor, anyone who owns a beneficial interest in the property in which the future interest is created, whether vested or contingent, and the parents and grandparents of all owners of beneficial interests in the property. It also includes the donee of a power of appointment. RESTATEMENT (SECOND) OF PROPERTY (Donative Transfers) § 1.3 (1983).

fessor Waggoner, the Uniform Act expanded wait and see again, and finally converted it from a doctrine based on "measuring lives" to a simple 90-year time period.[30]

When the Uniform Act was approved in 1986, it appeared that wait and see had won the war. However, the expansion and conversion of the wait and see doctrine worked by Professors Casner and Waggoner provoked sharp dissension in the ranks of wait and see proponents. Professor Dukeminier has staunchly maintained that the measuring lives can be determined within the logic of the common law Rule.[31] Professor Waggoner has been equally vehement in contending that there is no principled method of selecting measuring lives this way.[32] The ferocity of this round in the Perpetuities Wars has given new hope to those who would reform the Rule without wait and see, and has spurred me to search for an alternative reform package that might prove acceptable to both sides.[33]

Opposition to the Uniform Act[34] centers on its use of an alternate 90-year period, which can either be used by a drafter as a period in gross, or by the intended beneficiaries of an interest that violates the common law Rule as the wait and see period. The primary objection to the 90-year period is that it is likely to encourage the use of long-term trusts, which will lead to increased dead hand control of property in the United States.[35] Proponents of the Uniform Act respond that use of some arbitrary time period is necessary in an effective wait and see regime, and claim that reducing the perpetuities violations in trust instruments drafted for ordinary people[36] will not lead to an increase in dead hand control in any event. Neither side has taken the position

30. Waggoner, *Perpetuities: A Progress Report on the Draft Uniform Statutory Rule Against Perpetuities*, 20 U. MIAMI INST. ON EST. PLAN. § 7.03 (1985); Waggoner, *The Uniform Statutory Rule Against Perpetuities*, 21 REAL PROP. PROB. & TR. J. 569 (1986). Professor Waggoner also advocated changing the underlying rationale for reform from mitigating the harshness of the common law Rule to preventing the unjust enrichment that ensues from invalidity of interests under the Rule. See Waggoner, *Perpetuity Reform*, *supra* note 22.

31. *See* Articles cited *supra* note 22.

32. *Id.*

33. I have found this War particularly painful as I respect and admire the work of both Professors Dukeminier and Waggoner, and consider myself in intellectual debt to both of them.

34. Opposition to the Uniform Act is comprehensively covered by Bloom, *supra* note 9, and Dukeminier, *The Uniform Statutory Rule Against Perpetuities: Ninety Years in Limbo*, *supra* note 7. I will not elaborate further here, but instead refer the interested reader to those articles.

35. There is also opposition to the Uniform Act's reformation provision because it requires waiting until events have shown that the interest will not vest within 21 years after any life in being before reformation can take place. Secondarily, there is objection to its undermining of the common law Rule while purporting to leave it in effect.

36. Those who cannot afford or are not lucky enough to find lawyers skilled enough to draft within the common law Rule.

that an extension of dead hand control would be desirable, a possibility I raise in my third essay.

The growing opposition to the Uniform Act from friends and foes of wait and see has slowed its momentum,[37] raising the question whether this might be an appropriate time to propose a peace treaty. In all the furor over the merits of wait and see and various specific statutory reforms of the common law Rule, little attention has been paid to the "Rule of Discrete Invalidity," a simple and elegant judicial reform of the common law Rule that Dad proposed in 1968.[38] In a recent article in this *Review*,[39] he again called our attention to that proposal. In that article, he also demonstrated that his method of analysis, focusing on the sequences of events that lead to vesting, yields a ready method of identifying the lives to be used for a wait and see measuring period without departing from the strict logic of the common law Rule. It also channels reformation efforts productively by precisely identifying the alternatives available within the dispositive scheme. From those ideas, a very attractive reform package can be constructed.

The discrete invalidity principle substantially limits the problems caused by the common law Rule without causing any distortion in its underlying logic. It should be embraced by all reformers, regardless of their other persuasions. Coupled with a wait and see regime strictly limited within the logic of the common law Rule and immediately available reformation, it offers a complete package for curing the deficiencies of the common law Rule Against Perpetuities. I think it comprises the best reform package currently on the market. It eliminates the problems caused by the excesses of the common law Rule without departing from its underlying rigor or logic; it does not destroy any interests unnecessarily; and finally, it can be implemented by judges in their continuing evolution of the common law, as well as by statute.[40]

---

37. Only four states are listed as having adopted the act as of early 1988: Florida, Minnesota, Nevada, and South Carolina. UNIFORM STATUTORY RULE AGAINST PERPETUITIES, 8A U.L.A. 132 (Supp. 1989).

The California Law Revision Commission has circulated letters from Professors McGovern, Bird, Bloom, Maxwell, and Whitebread opposing enactment of the Uniform Act. Professor Bloom states in his letter to the Commission that he has received letters supporting his opposition to the Uniform Act from a "substantial number" of law professors. Copies of the letters are on file with *Washington Law Review*.

38. Fletcher, *Discrete Invalidity, supra* note 2.

39. Fletcher, *Basic Clarity, supra* note 2.

40. In result, this package is not too different from the package of specific statutory reforms proposed by Professor Bloom. However, it is better in at least two respects. It can be used by courts and lawyers in states where the legislature has not acted. In addition, it does not require destruction of the interests of the unborn widow and afterborn children to the extent that Professor Bloom's statutory rules of exclusionary construction do. As I explain below, the

If retention of the common law Rule's basic method of curbing dead hand control is desirable, this package offers the best way to get rid of the common law Rule's excesses while retaining its virtues.

The first element of the package is the rule of discrete invalidity, or doctrine of alternative gifts.[41] To adopt it, a court need only overrule or reject *Proctor v. Bishop of Bath & Wells*,[42] an English case decided in 1794. Twentieth century American courts are free to reject eighteenth century English precedents, and American cases based on those precedents, when the results no longer fit contemporary society.[43]

In *Proctor*, the court held invalid a bequest to *B* if no son of *A* became a clergyman.[44] The bequest violated the common law Rule because it was possible for *A* to have a son after the death of the testator, who would live 21 years longer than everyone else alive at the effective date, and then die without having become a clergyman. Although it was also possible that *A* would die without ever having a son, which in fact is what happened, the court refused to recognize the implicit alternative gift to *B* in the event *A* died without ever having had a son. The court acknowledged that the alternative gift was inherent in the gift that was made, but stated that if the testator had not separated the contingencies, the court would not do it for him.[45]

This decision greatly extended the reach of the common law Rule to sweep in many dispositions that could have been given effect without tying up property longer than lives in being plus 21 years. It is consistent with other decisions of the time, like those establishing the conclusive presumption of fertility,[46] and the all or nothing rule for class gifts,[47] but it lacks the practical justifications underlying the others.[48] It is consistent with the linguistic formalism of the times and did avoid

---

unborn widow can take without disturbing the remainder to the life tenant's issue so long as there is some taker who was a life in being. If there is not, the instrument can be reformed to permit all those born within 21 years after the life tenant's death to take. This approach is thus less destructive of the original dispositive plan than a statute mandating construction to eliminate an afterborn widow.

41. Professor Dukeminier uses this label. J. DUKEMINIER & S. JOHANSON, *supra* note 17, at 794-95.

42. 126 Eng. Rep. 594 (C.P. 1794).

43. Holmes, *The Path of the Law*, 10 HARV. L. REV. 457, 469 (1897).

44. 126 Eng. Rep. at 596. The bequest to *B* was an alternative to a bequest to the first son of *A* to become a clergyman.

45. *Id.*

46. Jee v. Audley, 1 Cox 324, 29 Eng. Rep. 1186 (Ch. 1787).

47. Leake v. Robinson, 2 Mer. 363, 35 Eng. Rep. 979 (Ch. 1817).

48. The conclusive presumption of fertility avoids the need to determine on a case by case basis who in fact can have children, a decision which in the eighteenth century would have been much more problematic than today. The class gift rule avoids the problem of treating unequally persons equally related to the donor and reduces the need for infectious invalidity litigation.

the need for courts to do something that might have looked like adding language to a will, but primarily it served to confirm that conveyancing was an art confined to the few, and to extend the reach of the Rule. By refusing to recognize the separate contingencies or alternative gifts inherent in many gifts of future interests, the court greatly increased the swath of destruction wreaked by the Rule.

Since the result of *Proctor* is simply to extend the reach of the common law Rule to invalidate dispositions that would be valid if the donor had used a more elaborate form of expression, there is no reason it should be retained as part of modern law. Whatever led eighteenth century judges to their decisions extending the destructive reach of the Rule Against Perpetuities as far as possible without abandoning the ostensible position that interests vesting within 21 years after a life in being were permissible, is not operating in modern America. American commentators universally call for curbing the excesses of the Rule.[49] The rule of *Proctor* is not essential to retaining the core of the common law Rule Against Perpetuities; rather it extends the reach of the Rule beyond the point required by modern conditions, and even to the point where it offends modern sensibilities. A twentieth century lawyer should have little difficulty persuading a twentieth century judge that *Proctor* can safely be relegated to history.[50]

Rejecting the rule of *Proctor* would permit American courts to avoid invalidating most future interests that fall to the Rule because of the presence of possible unborn widows, fertile octogenarians, and precocious toddlers. Recognizing the alternative gifts inherent in many gifts of future interests would permit them to validate those which are sure to vest within lives in being plus 21 years, voiding only those which are not. If wait and see is accepted in the jurisdiction, separately identifying the gifts that will vest in time permits more precise identification of the instances where waiting is necessary, and allows immediate identification of those which are valid without waiting. Separate identification of invalid gifts also permits more precise direction of actions for reformation to the invalid gifts.

Application of the discrete invalidity principle requires recognition of the alternative gifts inherent in gifts of future interests. This can be most easily done by the method of analysis described in my first essay. From the conditions precedent stated by the donor and the classes

49. *See, e.g.*, Bloom, *supra* note 9, at 63.

50. Arguments that there are reliance interests worthy of protection should be unsuccessful except in what would be a very rare case of the beneficiary who can plausibly argue justifiable reliance on the court's unwillingness to split contingencies. If that case arose, the court could resort to prospective overruling.

named as takers, you determine what events will be necessary to produce vesting in the takers identified by the donor. If more than one sequence of events can lead to vesting, you treat each sequence as a separate gift. Each sequence for which there is a validating life is a valid gift; only those sequences for which there is no validating life are void. If you are going to wait and see, you only wait to see whether the valid or invalid sequence is going to take place. If you are going to reform the instrument, you reform only to cure the problems with the invalid sequences. Reformation can take place at any time that it appears that an invalid sequence, rather than a valid one, is actually going to take place, or whenever certainty as to ultimate ownership is desired. To understand how the discrete invalidity principle works, it is helpful to apply it to some particular cases. I will begin with *Proctor*, then take up *Jee v. Audley*,[51] the fertile octogenarian case, and then finally, the case of the unborn widower.

Case 1: In *Proctor v. Bishop of Bath & Wells*,[52] the gift was to the first son of *A* to become a clergyman, but if none, to *B*. *A* and *B* were alive at the testator's death and *A* had no sons. Looking at the interest of the first son of *A* to become a clergyman, we can identify three conditions precedent: (1) a son must be born, and (2) must become a clergyman, (3) before any other son does so. Looking at the interest of *B*, we identify one condition: that no son of *A* becomes a clergyman. There are three possible sequences that would lead to vesting of the interest in a son of *A* or failure of that interest, with vesting in *B*:[53]

> (1) *A* has a son who becomes a clergyman (vesting in the son; no validating life because afterborn son could become a clergyman more than 21 years after death of *A*, *B*, and everyone else alive at the effective date).
>
> (2) *A* has a son (or sons), none of whom becomes a clergyman (vesting in *B*; no validating life because all afterborn sons might die without having become clergymen more than 21 years after deaths of *A*, *B*, and everyone else. *B* is not required to survive to take).

51. 1 Cox 324, 29 Eng. Rep. 1186 (Ch. 1787).

52. 126 Eng. Rep. 594, 595 (C.P. 1794).

53. Dad and I part company here. He would include as separate sequences those in which a child of *A* becomes a clergyman before and after reaching the age of 21. For any sequence in which a child became a clergyman before reaching the age of 21, *A* could serve as the validating life. I have resisted this suggestion on the ground that the conditions precedent do not require becoming a clergyman before any particular age or prohibit it after any particular age. The difference in practical terms is which interests are valid ab initio and which require waiting or reformation. I think it is simpler to confine those declared valid ab initio to those meeting conditions required by the donor and not parsing them into whether they are met more or less than 21 years after the taker is born.

(3) *A* never has a son (vesting in *B*; *A* is validating life because vesting must take place at *A*'s death).

Subjecting each of these sequences to a perpetuities analysis, we see that there is a validating life only for sequence (3). Since there is no validating life for either sequence where *A* has a son after the effective date of the gift, neither the gift to *A*'s first son to become a clergyman, nor the alternative gift to *B* in the event *A* has sons who do not become clergymen is valid. However, the gift to *B* if *A* never has a son is good. The rule of discrete invalidity treats each of these sequences as a separate gift. Invalidity of gifts (1) and (2) does not cause invalidity of gift (3).[54]

Standing alone, adoption of the discrete invalidity principle permits effectuation of the donor's intent if *A* dies without having had sons. It does nothing, however, for the case where *A* does have a son.

To save the gifts to the son, or to *B* if the son does not become a clergyman, wait and see or reformation is necessary. If reformation is available without waiting, the instrument could be reformed immediately to provide that the gift goes to the first son of *A* to become a clergyman within 21 years after the death of *A*, and if none, to *B*. It also could be reformed to provide that the son would take if he became a clergyman within 21 years after the death of either *A* or *B*. However, if we are going to reform to include an extraneous life such as *B*'s, we should probably also reform to require that *B* survive, and provide an alternative gift in the event he does not.[55] If there is no need for an immediate determination of the validity of *B*'s interest, however, nothing need be done until *A* has a son because *B*'s interest, contingent on *A*'s death without having had a son, is valid from the beginning.

Under a wait and see regime, we would wait to see if *A* has a son. If he does not, there is no need for anything further—*B* takes. If *A* does have a son, then we need to wait to see if the son's interest will vest in time. The question of how long to wait is an interesting one, and one over which there can be some disagreement. With respect to the inter-

54. Adoption of the discrete invalidity principle does not prevent invalidation of alternative gifts on the infectious invalidity principle.

55. One problem with instruments that violate the Rule Against Perpetuities is that they are likely to have other drafting problems. Failure to include a survival condition to *B*'s interest is obviously bad drafting in current conditions because it requires inclusion of the executory interest in *B*'s estate which leads to additional taxes and administrative expenses. If the court is going to reform the instrument at all, it also should fix this problem by substituting an alternative gift to *B*'s issue or *B*'s heirs or devisees in the event *B* fails to survive. *See* French, *Implying Conditions of Survival*, 27 ARIZ. L. REV. 801 (1985).

est of any particular son, *A*'s life becomes irrelevant once the son is born. That would lead to the conclusion that you should wait only until 21 years after the son's birth to see if he had yet become a clergyman. If he had not, reformation would be needed to save the gift to that son.[56] However, if *A* has another son, that son, too, could take the gift if he were the first to become a clergyman. That would lead to the conclusion that you would wait 21 years after the birth of the first son to see whether that son had become a clergyman or whether *A* had given birth to another son. If a second son had been born, you would wait 21 years after his birth to see if he became a clergyman. If the first son becomes a clergyman during that period, he should be permitted to take, even if it happens more than 21 years after his own birth.

There are two rationales for permitting the first son to take without reformation, even if he becomes a clergyman at an age beyond 21, but before a later born son reaches 21: either that his becoming a clergyman would prevent the condition precedent for the later sons from being satisfied; or that, since you are waiting anyway, there is no reason to invalidate the gift to the first son on the basis of something that might have happened, but did not (death of A immediately after the first son's birth). Since *A* could produce a son who would become a clergyman and take the gift so long as *A* is alive and no son has yet become a clergyman, the waiting period should extend until 21 years after *A*'s death, whenever it occurs.[57] If at that time the interest has not yet vested in a son of *A*, the instrument should be reformed to give it to *B*, or *B*'s successors, if that has not already been done. If *B* is still alive, or died after *A*, the instrument could be reformed to provide that the first son of *A* to become a clergyman within 21 years of *B*'s death should take the property, and if none becomes a clergyman, to *B* or *B*'s successors. Alternatively, the instrument could be reformed to provide that *B* or *B*'s successors take the property 21 years after *A*'s death, if no son of *A* has yet become a clergyman.

56. Reformation most likely would take the form of "to that son of *A* if he becomes a clergyman within 21 years of *A*'s death."

57. Here I part company with Dad and side with Professor Dukeminier. Dad insists that the validity of each taker's interest be judged solely on the basis of the sequence of events that leads to vesting in him, and that all lives extraneous to that process be removed as soon as they become extraneous. Thus, the waiting period for each son can be only 21 years after his own birth because *A*'s life thereafter is extraneous to vesting in that son. It seems to me, however, that as long as there is any sequence that could still take place which requires continuance of *A*'s life, you would permit waiting in any sequence that is not foreclosed by the continuance of *A*'s life. In other words, I would regard as relevant lives all those necessarily involved in any sequence of events which could still take place.

Case 2: Jee v. Audley[58] involved a gift to Mary Hall in fee, but if her line of descendants ran out, to the then living daughters of John and Elizabeth Gee. The conditions precedent to the executory interest of the daughters of John and Elizabeth Gee are (1) death of the last descendant of Mary Hall, (2) birth of class members, and (3) survival to the death of the last descendant of Mary Hall. Class closing will take place at the death of John or Elizabeth, physiologically, and, under the rule of convenience, when Mary Hall's line dies out. At the effective date, Mary Hall had no issue, and John and Elizabeth Gee were alive, of advanced age, and had 4 living daughters.

The variables that will affect vesting are:

(1) Mary Hall will or will not have a surviving descendant when she dies.

(2) John and Elizabeth will or will not have another daughter before one of them dies.

(3) A daughter of John and Elizabeth will or will not survive until the death of Mary Hall's last descendant.

Put into sequences, we find the following possibilities:

(1) Mary Hall dies without a surviving descendant. John and Elizabeth do have another daughter. A daughter of John and Elizabeth is alive at Mary Hall's death. (Validating life is Mary Hall because vesting takes place at her death).

(2) Mary Hall dies with a surviving descendant. John and Elizabeth Gee do not have another daughter. A daughter of John and Elizabeth is alive at the death of Mary Hall's last descendant. (Validating life is the daughter of John and Elizabeth who takes the interest because she was a life in being and had to survive to take).

(3) Mary Hall dies with a surviving descendant. John and Elizabeth do have another daughter. One of the four daughters of John and Elizabeth living at the testator's death is alive at the death of Mary Hall's last descendant. (Validating life is the surviving daughter of John and Elizabeth who was alive at the effective date).

(4) Mary Hall dies with a surviving descendant. John and Elizabeth do have another daughter. The only daughter of John and Elizabeth alive at the death of Mary Hall's last descendant is the afterborn daughter. (No validating life because vesting can take place more than 21 years after the deaths of Mary Hall, John and Elizabeth, the 4 daughters who were alive at the effective date, and everyone else who was alive at the effective date).

58. 1 Cox 324, 29 Eng. Rep. 1186 (Ch. 1787).

Of these four sequences, three will be valid under the discrete invalidity principle. Only the gift to the afterborn daughter of John and Elizabeth is void, and it is void only if none of the four daughters alive at the effective date survives to the vesting event. The gifts to the daughters of John and Elizabeth Gee surviving at the death of Mary Hall, if Mary Hall then dies without issue, are valid, as are the gifts to the daughters, if any of the four living at the death of the testator survives. Since it is highly unlikely that John and Elizabeth will have an afterborn daughter, there is no need to reform the instrument initially or to wait and see. All of the interests that any of the living claimants could take are valid from the beginning.

If John and Elizabeth do have another daughter, and if Mary Hall does have issue, there is still no need to wait and see, or to reform the instrument. Only if the other four daughters of John and Elizabeth die while a descendant of Mary Hall is still alive, is there a problem with the afterborn daughter's interest. If this happens, she could wait to see whether the last descendant of Mary Hall dies within 21 years after the deaths of Mary Hall, the first to die of John or Elizabeth,[59] and the last survivor of the four daughters who were lives in being. If so, her interest is valid. If not, she would need to seek reformation. If the daughter wanted earlier certainty as to the validity of her interest, she could seek reformation at any time after her birth.

Case 3: The unborn widower: "to daughter for life, remainder to her widower for life, remainder to her children who survive the widower." At the effective date, the daughter is married to #1 husband and has #1 child. The conditions precedent to the widower's remainder are (1) birth, (2) marriage to the daughter and (3) survival of the daughter being still married at the time of her death. Since all sequences leading to vesting of the interest of the widower terminate at the daughter's death, the widower's interest is valid under the traditional common law Rule.

The conditions precedent to the childrens' remainders are (1) birth, and (2) survival of the widower, if any. The possible sequences of events leading to vesting in children of the daughter are as follows:

(1) Daughter dies survived by #1 husband and #1 child; widower dies survived by #1 child. (Vesting in #1 child; validating lives are #1 husband and #1 child).

59. John and Elizabeth are relevant lives only so long as both are living because the daughter must be a child of both. Once one of them has died, the other becomes an extraneous life, usable for reformation but not for wait and see.

(2) Daughter has #2 child and dies survived by #1 husband and children; widower dies survived by #2 child. (Vesting in #2 child; validating life is #1 husband).

(3) *X* is born, Daughter divorces #1 husband, marries *X*, has child #2 and dies survived by *X*, *X* dies survived by #1 and #2 children. (Vesting in #1 and #2 children; validating life is #1 child).

(4) *X* is born, #1 husband dies, Daughter marries *X* and has #2 child, #1 child dies, *X* dies, survived by #2 child. (Vesting in #2 child; no validating life, *X* could survive Daughter and #1 child by more than 21 years).

Of these sequences, only (4) lacks a validating life. Applying the rule of discrete invalidity, the only invalid remainder to the children of *D* would be the remainder to an afterborn child of *D* on the death of *D*'s widower, if the widower was an afterborn, and if he was not survived by any child of *D* born before the effective date. Remainders to all children in the event a child alive at the effective date is one of the takers, and to all children in the event the widower was alive at the effective date, are valid.

Under a wait and see regime, you would wait until the death of the daughter to determine whether she had a widower who was an afterborn, and afterborn children. If there is a widower who is an afterborn and there is an afterborn child, then you would wait until the death of the widower or the #1 child, whichever first occurred. Only if the widower outlived the #1 child would you know that the only remaining vesting sequence is one which could lead to vesting more than 21 years after the deaths of the lives in being. At that point, you could wait for 21 more years to see if the widower or the afterborn child had died. If not, the interest is void. Reform should provide that in the event of an afterborn widower, the afterborn child takes only if a child of the daughter, who was a life in being, survived the death of the widower, or the widower died within 21 years of the deaths of the daughter and the child who was a life in being.

As in the case of the fertile octogenarian, the discrete invalidity principle, standing alone, limits invalidity under the common law Rule Against Perpetuities to the future interest contingent on the widower's birth after the effective date. It limits the destruction to an interest that is not likely to materialize, leaving intact most of the disposition desired by the donor. It is better than the statutory provision directing construction to exclude an afterborn child or widow, because it does not prevent them from taking if they materialize, and invalidates their interests, or the interests dependent on them for vesting, only if there is no vesting sequence in which they play a part that can vest in time.

Whenever the event that causes invalidity under the common law Rule is one that is unlikely to occur, like the birth of a child to John and Elizabeth Jee, or the marriage to the unborn widower, adoption of the discrete invalidity principle solves the problem of frustrated donor intent without the need to wait to see what actually happens, and without the need to reform the instrument to eliminate the possibility that the interest might vest in an afterborn. The Rule simply says that the executory interest held by the afterborn on the contingency that the vesting event occurs after the death of Mary Hall, and after the death of the four living daughters, is void. Since it is highly unlikely that this interest would ever vest, no harm is done by declaring it invalid at the outset. Likewise, no harm is done by declaring all the other executory interests (those which will vest at the death of Mary Hall or in the lifetime of any of the four living daughters) valid at the outset. If the dispositive scheme does not violate the policy of the common law Rule, use of the discrete invalidity principle prunes the excesses of the common law Rule and permits the testator's intent to be carried out. The parties do not need to wait to find out whether their interests are valid, nor do they need to reform the instrument.

If the event that causes invalidity under the common law Rule is likely to occur, as the birth of a son to *A* in *Proctor*, or if the event has no inherent time limit, as in a gift "to *A* if the war ends," or if the event is survival to an age in excess of 21, the relief provided by the rule of discrete invalidity is limited. It cuts back the need to wait and see or reform the instrument to situations where the valid sequences become impossible, leaving only invalid sequences, or where certainty by the takers under invalid sequences is desired. However, it does not validate gifts under invalid sequences which could result in vesting later than 21 years after lives in being. To validate those gifts which in fact vest within 21 years after the death of some life in being, and to cure those which would in fact vest later than 21 years after the deaths of the lives in being, reformation, or a combination of reformation and wait and see, is necessary.

Reformation alone could be used to eliminate all perpetuities violations. However, it is the most expensive remedy since it requires judicial action. The discrete invalidity principle operates automatically, validating some interests immediately without the need for any judicial action.[60] Reformation coupled with discrete invalidity provides a

60. This, of course, assumes that lawyers and judges can be taught to understand the Rule so that litigation establishing valid and invalid sequences will not be necessary, an assumption which will not hold all of the time. But even if there are some cases brought because of the

better solution than reformation alone, but the package is improved by adding wait and see because wait and see also can be used without the need for judicial action. Using wait and see to find out whether the events in invalid sequences actually happen before 21 years have elapsed from the deaths of the relevant lives in being is cheaper than bringing a reformation action. If reformation is available from the outset, as I think it should be, the availability of wait and see, as well as reformation, provides beneficiaries the maximum flexibility in choosing between cost and certainty.

A few more examples will illustrate the cases in which discrete invalidity is usefully supplemented by wait and see and reformation, and to illustrate how both doctrines can be cabined and channeled by the logic lying behind the discrete invalidity principle.

Case 4: No inherent time limit: "To *A* if the war (pick any war) ends." The only condition precedent to vesting is ending of the war. The only possible sequences are that the war continues or the war ends. There is no validating life for either sequence, since the war will not necessarily end within 21 years of anyone's life.[61] Wait and see

possibility that the judge can be led into a misunderstanding of the Rule, the frequency of litigation will certainly be less than under a pure reformation regime.

61. At this point, it is very tempting to say that the possible sequences include one in which the war ends within 21 years of the effective date. If they did, *A*'s gift contingent on the war's ending within 21 years is good, all the others are void. The problem, however, is that the donor did not include any time contingency, and there is none necessarily included in the events leading to vesting or failure of the interest. The discrete invalidity principle does not permit you to create sequences that include contingencies beyond those necessarily included in the vesting events specified by the donor.

This point is sometimes difficult to understand. Why can't we say that there is almost always a possibility that the vesting events will occur within 21 years of the effective date or within 21 years after the death of some life in being? Why don't we state that there is a contingency in all gifts which says the taker takes if all vesting events occur within 21 years?

At one level, the reason is that the time limit is not a contingency necessarily included within the vesting events spelled out by the donor, and our proposed principle of discrete invalidity permits us to separate only those contingencies included by the donor expressly or by necessary implication. On another level, the reason is that if we did this, we would run into the same problem that proponents of wait and see have encountered: there is no principled place to stop, short of including sequences in which the vesting takes place 21 years after the death of any person who was alive at the effective date. Once you permit the inclusion of an irrelevant or extraneous life, there is no logical place to stop. There is no distinction between the sequences in which the war ends 21 years after the death of *A*, within 21 years after the death of the last survivor of *A*'s family members living at the effective date, and 21 years after the death of the last person in the world alive at the effective date. The continued existence of all of these lives is irrelevant to vesting.

If we believe that the gift to *A* should be valid if the war ends within 21 years of the effective date, or within 21 years after the death of someone or some group of people, we must either reform the instrument to read in a time condition, or we must change the common law Rule more radically than by simply rejecting the *Proctor* rule. The principle of discrete invalidity does not solve the frustrated donor intent problems posed by gifts that have no inherent time limits.

will permit us to wait for 21 years to see whether the war has ended. If it ends within 21 years, *A* takes the property. If it does not, reformation is needed to save the gift to *A*. Reformation might appropriately take the form of giving the property to *A* if the war ended within her lifetime, or if it ended within 21 years of her death, giving the property to her issue, or heirs or devisees.

Age contingencies in excess of 21 years also create problems that require reformation or wait and see for satisfactory resolution.

Case 5: Take the case of the gift to the first child of *A* to reach age 25, if none, to *B*. At the time the gift is made *A* and *B* are alive and *A* has #1 child. The possible sequences are:

(1) #1 child reaches 25. (Vesting in #1 child; validating life is #1 child).

(2) #1 child dies, *A* has child #2, child #2 reaches age 25. (Vesting in #2 child; no validating life because #2 child could reach 25 more than 21 years after the deaths of *A* and the #1 child).

(3) #1 child dies, *A* has #2 child, #2 child dies, *A* has #3 child, #3 child dies under 25, *A* has no more children. (Vesting in *B*, no validating life because death of #3 child could take place more than 21 years after deaths of *A, B,* and #1 child).

(4) #1 child dies, A dies without having further children. (Vesting in *B, A* is validating life).

The discrete invalidity principle declares sequences (1) and (4) valid, leaving any sequence in which *A* has a child after the effective date invalid, except the one in which the #1 child survives to 25 and becomes the taker. No gift to an afterborn child is valid. If the #1 child reaches 25, the #1 child takes without any need for wait and see or reformation. Likewise, if #1 child dies under 25 and *A* dies without having had another child, *B* takes under the valid gift. However, if #1 child dies under 25 and *A* has an additional child, either wait and see or reformation is necessary to permit either *B* or an afterborn child of *A* to take. Since we will not know whether *A* will produce a child who could live to 25 until a child has reached 25, or *A*'s death if no child has yet reached 25, we must wait until a child reaches 25 or *A* sooner dies to find out. If at the time of *A*'s death there is no child under the age of 4, the interests of all children between 4 and 25 are valid, as is the alternative gift to *B*, since all must vest or fail within 21 years of *A*'s death. Only if at *A*'s death there is a child under the age of 4 will reformation be needed. At that point, the interests could be

---

Wait and see validates the gift to *A* if the war ends within 21 years; reformation is necessary to validate the gift under any other circumstances.

reformed to provide that the child takes if it reaches the age of 21, and if it dies under that age, to *B*, or to *B*'s issue or heirs or devisees.

Standing alone, adoption of the principle of discrete invalidity eliminates the problems caused by postponement of vesting until an event which could possibly, but is highly unlikely to take place more than 21 years after the deaths of all the lives in being. The circumstance that could cause the vesting event to occur too late is usually the appearance of an afterborn. Simply declaring that the interest in the afterborn (or attendant on death of the afterborn), if such a person appears, is void will cause little inconvenience or intent frustration because the person is not likely to appear. The cases of the fertile octogenarian, the unborn widow, and the precocious toddler are easily disposed of without the need for special statutory canons of construction, wait and see, or reformation.

Adoption of the principle of discrete invalidity would not disturb the strict internal logic of the common law Rule Against Perpetuities. Nor would it interfere with settled expectations. There is no constituency in favor of destroying gifts because the drafter failed to anticipate the possibilities of fertile octogenarians, unborn widows, or precocious toddlers. If proof is needed that such a reform would not be controversial, one needs only look to the states where the same results have been achieved by legislation requiring that these possibilities be ignored in the construction of instruments.[62] In states without such legislation, courts should not hesitate to solve the problem by adopting the principle of discrete invalidity as a modification to application of the common law Rule. The eighteenth century rule of *Proctor* no longer serves any useful purpose and twentieth century judges should eliminate it from the common law.

For those who are interested in a more complete reform of the excesses of the common law rule, a combination of discrete invalidity, wait and see measured by lives necessarily involved in the sequences of events leading to vesting, and reformation informed by sound drafting practices and accepted limits of dead hand control provides an attractive package. I believe that the entire package, not just the discrete invalidity element, can be adopted by judges without the need for legislation. American commentators generally agree on the desirability of achieving the results I have described in this essay.[63] There is no longer any constituency, if ever there was one, in favor of a remorse-

62. See Bloom, *supra* note 9 at 66-73, for suggested statutory reforms and the existing statutes on which they are modeled.

63. Bloom, *supra* note 9, at 63.

less application of the common law Rule Against Perpetuities, and there are sufficient precedents to permit a common law judge exercising common law powers to adopt both wait and see and judicial reformation without trespassing on fields appropriately left to the legislature.[64] The Rule Against Perpetuities was created by judges and it should be adapted to modern conditions by judges. This reform package provides them with a way to carry out their responsibility strictly within the common law tradition.[65] I hope it also will provide a package that could serve as the basis for a peace treaty to end the Perpetuities Wars of the Late Twentieth Century.

III. WHY NOT A 90-YEAR TRUST? WHAT'S SO BAD ABOUT DEAD HAND CONTROL, ANYWAY?

Everyone involved in the current Perpetuities Wars embraces the idea that the common law Rule Against Perpetuities strikes the right balance between permitting people to tie up their own property into the future and preventing them from doing it for too long. A major subject of contention between professors Dukeminier and Waggoner in the current Perpetuities Wars, however, is the question whether the Uniform Act changes the balance struck by the common law Rule. Professor Dukeminier takes the position that the Uniform Act's adoption will radically extend the amount of property subject to dead hand control in America.[66] Professor Waggoner as emphatically denies that the extension is significant.[67]

Professor Dukeminier strongly opposes the Uniform Act on two different, but related grounds. He believes that very few trusts drafted under existing law will last for 90 years. He predicts that adoption of the Uniform Act will encourage the use of 90-year trusts, and trigger widespread marketing of 90-year trusts by financial services vendors. As a result, the amount of property held in trust will be greatly increased, which he believes is socially undesirable because trust property is subject to dead hand control.

64. J. DUKEMINIER & S. JOHANSON, *supra* note 17, at 843-60, contains a sampling of judicial opinions adopting wait and see and equitable reformation as matters of common law. To those can be added the RESTATEMENT (SECOND) OF PROPERTY (Donative Transfers), §§ 25.1-30.2 (1983) as support for common law adoption of wait and see.

65. For those who are less sanguine about the willingness of judges to take responsibility for keeping the common law in shape, and more optimistic about the value of legislative reform than I, there is no reason that this package could not be put in the form of legislation.

66. Dukeminier, *supra* note 7.

67. Waggoner, *The Uniform Statutory Rule, supra* note 22.

He also opposes the Act because it will permit continuation of trusts containing perpetuities violations for up to 90 years, and perhaps longer. This is undesirable both from a societal point of view because it extends the period of dead hand control, and from the family's point of view. An instrument that violates the Rule was probably drawn by an unskilled lawyer, who probably also failed to include the powers necessary to incorporate flexibility into a long-term trust. Validating the contingent interests permits the defective trust to continue to the detriment of the family, which will be caught up in the trust's straitjacket. He also suggests that 90-year tax saving trusts marketed by the financial services industry will be similarly unsuited to the task.[68]

Professor Waggoner has completely opposing views. He predicts that the effect of the Uniform Act will simply be to rescue beneficiaries from the mistakes of their donors' lawyers. In his view, the Uniform Act makes available to all the benefits that heretofore have been reserved for those rich enough and lucky enough to find a lawyer who could create long-term trusts without violating the Rule. The Act creates social benefits by effectuating donor intent, even if the result is to tie up property within the outer limits of the common law Rule. In addition, he disagrees that the American public will be attracted to use of 90-year trusts.[69]

While I am inclined to agree with Professor Dukeminier's assessment of the probability that instruments creating Rule violations are also badly drafted in other respects, and with the likely attractiveness of a 90-year tax saving trust, I am also inclined to think that there are other solutions to those problems. Recent statutory revisions in California provide courts with the ability to modify trust provisions that become counterproductive, whether those provisions govern management of the assets or disposition of the income and principal.[70] Similar provisions could be enacted in conjunction with enactment of the Uniform Statutory Rule Against Perpetuities. In states which adopt the Uniform Act without such additional statutes, judges could look to statutes in other jurisdictions as additional bases on which they might extend their traditional equitable powers to modify trust provisions to adapt to unforeseen circumstances. If courts or legislatures

68. Dukeminier, *supra* note 7.

69. Waggoner, *The Uniform Statutory Rule, supra* note 22.

70. CA. PROB. CODE § 15409 (West Supp. 1990) provides that on petition by a trustee or beneficiary, the court may modify the administrative or dispositive provisions of the trust or terminate the trust if, owing to circumstances not known to, or anticipated by, the settlor, the continuation of the trust under its terms would defeat or substantially impair the accomplishment of the purposes of the trust. If necessary, the court may order the trustee to do acts forbidden by the trust instrument.

are willing to remedy poor drafting by providing flexibility, the egalitarian ideal of making the benefits of long-term trusts available beyond the group of the super rich or sophisticated could be furthered with the 90-year trust of the Uniform Act.

That brings us to the more difficult questions: are long-term trusts good or harmful for society or for families? If they are good, are they good only for a certain period of time? If there is a limit beyond which they become undesirable, does "lives in being plus 21 years" capture that limit? Should long term trusts be made available to everyone whose assets will justify the expense of trust management? All of the participants in the current Perpetuities Wars seem to accept, almost without discussion, the ideas that dead hand control is bad and that lives in being plus 21 years imposes a suitable limit on its reach.[71]

While I am inclined to agree, the question might be worth some further exploration.[72] In particular, I think a readily available 90-year trust might have some benefits. If you believe that Americans do not save enough, and we are therefore in the process of losing our dominant position in the world's economy, you might also believe that we should be actively looking for ways to encourage ourselves and our fellow citizens to save.[73] Increasing the availability of IRA's is recur-

71. *See, e.g.*, Bloom, *supra* note 9, at 26.

72. I confess at the outset that I don't know the answers to these questions. I know little of economics, less about the security of pension plans and social security, and not much about the actual amount of property currently held in long-term trusts, pension plans, and IRA's. I suspect, however, that I know about as much about most of these subjects as most of my colleagues who worry about dead hand control and the utility of the Rule Against Perpetuities in late twentieth century America.

73. Two Wall Street Journal articles illustrate the deluge of material in the common press telling us that we need to save more. On the front page, writer David Wessel tells us that the national savings rate—what is left of private savings after subtracting the deficit—is lower than our postwar average and lower than that of Britain, France, Italy, Canada, Germany, and Japan. The problem is that:

> When a nation saves too little, it doesn't pay the price for decades. Profligacy is fun. But it means that the U.S. isn't investing enough to assure a better life for our children and grandchildren. It also forces the U.S. to borrow heavily from abroad, incurring debts that coming generations will have to pay.

Wessel, *As Cold War Ends, Will Savings Rise?*, Wall St. J., Nov. 27, 1989, at 1, col. 5. On the second page, Alan Murray tells us that the Organization for Economic Cooperation and Development, an international economic association, in its annual review of the United States economy, called on America to reduce its budget deficit and change its tax structure to encourage national savings. The result of our budget being too high and our saving rate too low is "a heavy dependence on foreign capital to finance U.S. economic growth." Murray, *U.S. Urged to Cut Budget Deficit, Change Taxation*, Wall St. J., Nov. 27, 1989, at A-2, col. 3.

Lack of savings, of course, is not alone to blame for our decline in economic dominance. Poor education, sloppy management habits, and an unwillingness to work hard are also frequently mentioned as contributing causes. Nor is the problem of our economic decline the only one we might want to address by encouraging more private savings. There are charges that pension

rently suggested as a way to promote more savings,[74] but 90-year trusts could do much more.[75] A well drafted trust can provide a stable but flexible financial base for a family, as well as a source of forced savings for the economy. Since the size and terms of the trusts can be tailored to family needs, they are likely to attract more funds than IRA's. If Americans can be encouraged to save more by readily available 90-year trusts, the Uniform Statutory Rule Against Perpetuities may promote sound public policy, rather than the reverse.

Those who argue that encouraging long-term trusts is bad social policy raise a number of points. Some say that assets in trust harm the economy rather than helping it because they must be conservatively invested.[76] I am not convinced. It seems to me that some portion of a society's assets should be placed in conservative investments, and that portion might as well include the assets held in private trusts. The question we need to ask is whether we have too many assets restricted to conservative investments, and if this is a problem, whether the assets held in private trust contribute significantly to the problem.[77] Personally, I doubt that they do.

---

plans are not adequately regulated, and have increasingly been subject to depredation. Even the social security system may be threatened again by the off-budget financing currently used to avoid Gramm-Rudman limits. In addition, there are the enormous sums that will be needed to clean up the toxic wastes we have piled up over the years. There seems to be no end to the money we will need to pay off the debts we have accumulated in the twentieth century.

74. As Wessel notes:

> After months of head-scratching, a Bush task force is nearing the end of its search. To finance its proposals, it is toying with suggesting higher taxes on alcohol and tobacco and new taxes on polluters—all taxes that would discourage consumption, rather than saving. But some top administration officials already are pouring cold water on that idea. So the likely result will be another pledge to reduce the deficit, a new call for Americans to be thrifty and a modest proposal for a new-fangled Individual Retirement Account that would offer a tax break in the future instead of an immediate deduction.

Wessel, *supra* note 73.

75. IRA's are limited to small amounts of money, probably cost the government quite a bit in foregone taxes, and impose substantial penalties if the owner of the account needs to withdraw the money before age 59½.

76. J. DUKEMINIER & S. JOHANSON, *supra* note 17, at 779 (quoting F. LAWSON & B. RUDDEN, THE LAW OF PROPERTY 185-88 (2d ed. 1982)):

> Trust capital and risk capital are very different. . . . And since economic progress in the modern world demands bold speculation, it is a matter of public concern to preserve a proper balance between trust capital and risk capital. . . . A fortiori individuals should not be unduly protected against themselves. They should have ample scope to take risks and, if necessary, go bankrupt. The economic health of a nation is, according to one view, measured by the number of its bankruptcies. Trusts exist to prevent bankruptcies. Hence they should be curbed.

77. Since assets held in pension plans subject to ERISA are subject to the same kind of "prudent investor" standard as assets in private trusts, they must be considered in any discussion of the problems caused by the existence or amount of assets held in conservative investments.

Others argue that the property of the world should be controlled by the living rather than the dead.[78] While this argument has intuitive appeal, the premise is subject to some question. When property is held in trust, management of the assets is not controlled by the dead, but by a trustee who is a living person,[79] within the confines of trust investment law which is controlled by legislatures and courts with living members. Under the prudent investor standard which controls most trust investments, permissible investments are determined entirely by practices of living investors. Even when the donor has specified a different investment policy, courts can modify it if the policy produces unacceptable levels of risk or return.[80]

The arguments over the costs and benefits of dead hand control are no easier to assess in trying to determine whether long-term trusts are good or bad for families. The primary effect of the Rule Against Perpetuities is to limit the extent to which the dead hand can control future ownership of property. The Rule requires that ultimate ownership be knowable within 21 years after lives in being. The harm controlled is that of uncertainty. Whether uncertainty is really bad for families is another hard question to answer.

Certainty of ownership is good both for the person who ends up owning the property and for the person who loses it, because it permits both to plan their lives accordingly. On the other hand, certainty of receiving gift property may reduce the incentive to productive labor for the recipient. Certainty of loss may produce a sense of unfairness, and demoralization or worse in the loser, which may lead to unproductivity or even unsocial conduct. Having property tied up in a trust providing a steady stream of economic benefits to a family may provide a solid base from which family members can pursue productive lives without the insecurity and compromises on education and culture that lack of money may bring. Alternatively, it may induce them to arrogance and sloth. If more members of our society had a secure financial base, we might have a healthier, better educated and more creative society. We might end up, however, with a more complacent, boring, and less productive society. Who knows?

78. L. SIMES, *supra* note 27, at 56-60 says that the Rule:

> strikes a fair balance between the desires of members of the present generation, and similar desires of succeeding generations, to do what they wish with the property which they enjoy. . . . But, . . . an even more important reason for the Rule is this. It is socially desirable that the wealth of the world be controlled by its living members and not by the dead.

79. Even if the trustee is a corporation, investment decisions are made by living people.

80. Modification is usually permitted only if changes in conditions are shown, but that should seldom provide a barrier to modification today.

In sum, I find it very difficult to feel certain either that more dead hand control is a bad thing or that it is a good thing. I envy those who are confident that we will be better or worse off if we permit 90-year trusts—I am not at all sure. Of one thing, however, I am sure: enactment of the Uniform Statutory Rule Against Perpetuities would not be the end of the world. Whatever problems would be created by bad drafting of long-term trusts could be ameliorated by increasing the discretionary powers of trustees, and increasing the ability of courts and beneficiaries to modify and terminate trusts. The law does not need to leave beneficiaries of poorly drafted 90-year trusts tied up in straitjackets.

APPENDIX: CLASS HANDOUT AND DIAGRAM

The Rule Against Perpetuities invalidates contingent remainders, class gifts, and executory interests unless they must vest, if at all, not later than 21 years after some life in being at the creation of the interest. In analyzing future interests to determine whether they violate the Rule, you are trying to figure out whether there is any possibility, however remote, that the interest could vest more than 21 years after the death of the last person who was alive at the time the future interest was created. If there is, the future interest violates the Rule, and is invalid; if there is not, the interest is valid.

There are four preliminary matters you must understand before you begin your analysis of conveyances that create future interests.

(1) The Rule applies only to contingent remainders, vested remainders subject to open, and executory interests. It does not apply to indefeasibly vested remainders, reversions, possibilities of reverter, or rights of entry.

(2) Vesting means either vesting in interest or vesting in possession, whichever occurs first. A class gift, whether a remainder or an executory interest, is vested only when the class is closed and all class members have met all conditions precedent to taking the interest.

(3) The "date of creation of the future interest," called "the effective date" of the instrument, is the date of the testator's death if the instrument is a will. It is the date the conveyance became effective if the instrument is an inter vivos conveyance. If anyone holds an unrestricted power to revoke the instrument, or the future interest, it is the date the power terminates.

(4) In figuring out whether there is any way that the interest could possibly vest more than 21 years after the deaths of all the people who were alive at the effective date of the instrument, you must observe the biology of the Rule, which includes the following axioms:

a. A person can live to any age, and can continue to live, even if there are no other living persons in the world.

b. A person can die at any time. A corollary is that everybody can die at any time, including everybody at the same time.

c. A person can bear or beget a child at any age, without regard to that person's physical condition or medical realities.

d. A person can marry at any age, can divorce at any age, and can marry another person of any age, including a person who was not alive at the effective date (an afterborn).

To determine whether a future interest violates the Rule, follow these steps:

STEP 1: Classify the interests created by the disposition to identify those that are subject to the Rule. Are there any contingent remainders? class gifts? executory interests?

STEP 2: Enter each interest subject to the Rule on a time-line diagram. Then write in all the conditions precedent to the vesting of the interest. Is there any possibility that an unborn person could take the interest? If so, be sure to include birth as a condition precedent.

STEP 3: If there are any class gifts, enter each class separately, and for each one write down the event(s) that will close the class biologically. Who has to die before you will know who all the members of the class are? (Who are the people who can give birth to class members or to their parents?) Then write down the events that will close the class under the rule of convenience. When can the first class member call for a distribution of his or her share? Can that take place before the class will close biologically?

STEP 4: Identify the effective date of the instrument.

STEP 5: List the people that you know are alive at the effective date under the "lives in being" heading to the left of the effective date line.

STEP 6: Take the first interest that is subject to the Rule, and figure out a sequence of events that could take place after the effective date that would lead to vesting of the interest. Then figure out a sequence that would lead to failure of the interest because it becomes impossible for the conditions precedent ever to happen. Think about how long it will take before you would know whether the interest had vested or failed under those sequences.

STEP 7: Enter the sequence that takes the longest time you can think of on the time line. Draw additional time lines for other sequences that you can think of. Enter the events of the sequences on the time lines, using arrows to mark where each event takes place. Be sure to mark the number of years between the effective date and the

events in the sequence. Have you included the possibility of afterborns?

STEP 8: Draw a vertical line immediately after the effective date to represent a disaster that eliminates everyone in the world except the people you listed to the left as lives in being. (Remember that this is possible under the ground rules—you must consider everything that could possibly happen.)

STEP 9: Identify all the people who were alive at the effective date and according to your diagram are still alive within 21 years of the vesting point. Try killing each of them off more than 21 years before the vesting point. Enter the deaths of all those who can be killed more than 21 years before vesting on your time line.

STEP 10: Look to see whether there is anyone still alive who was alive at the effective date, or whether there is anyone who died within 21 years of the vesting point. If there is, try again to kill that person more than 21 years before vesting. If you cannot, you can conclude that the sequence of events you have been looking at is one which will necessarily lead to vesting within 21 years of some life in being. The person or group you have found is the validating life (sometimes called the measuring life) for the sequence you have just tested. Go on to Step 13. If you cannot find any validating life for the sequence, look again. If you still cannot, go to Step 11.

STEP 11: If you cannot find a validating life that proves the interest must vest within 21 years after some life in being, ask whether there is anything that would cause the interest to fail if it had not vested by some earlier point in time. If the interest is a class gift, look to see whether some class member would be able to call for distribution of her share at an earlier time. If so, that would make it impossible for people born after that date to come into the class under the rule of convenience, so their interests would fail. If the interest will necessarily fail if it has not vested by a particular time, look to see whether this would have to happen within 21 years after the death of some life in being. If so, you have a validating life. If you still have no validating life, you have either missed a validating life, or you have found an interest that violates the Rule.

STEP 12: Think of all the other sequences of events that would lead to vesting of the interest, or to failure of the interest because it becomes impossible that the conditions precedent will ever occur. Remember that anyone alive can have a child, even if the person is aged 5 or 85. Have you included the possibility of people being born after the effective date as parents, spouses, and takers?

Repeat steps 7 through 10 for each sequence until you find a sequence for which you can find no validating life, or until you are satisfied that there is no sequence which lacks a validating life. If you find one that lacks a validating life, you have proved that the interest violates the Rule. If you find a validating life for every sequence, you may conclude that the interest is valid. If you have thought of all possible sequences of events that will lead to vesting and failure, you are right. If you have not, you are wrong.

STEP 13: Go on to another disposition and repeat Steps 1-12. Keep practicing until you feel comfortable with the process.

PERPETUITIES DIAGRAM

Disposition:

Interests created:

INTEREST SUBJECT TO THE RULE #1:	*INTEREST SUBJECT TO THE RULE #2:*
Conditions Precedent: 1. 2. 3.	*Conditions Precedent:* 1. 2. 3.
Class Gifts: Class: Class closing: Biological: Rule of Convenience:	*Class Gifts:* Class: Class closing: Biological: Rule of Convenience:
TIME LINE SEQUENCE #1: Lives in Being: → Effective Date	*TIME LINE SEQUENCE #1:* Lives in Being: → Effective Date
Validating Life Sequence #1:	Validating Life Sequence #1:
TIME LINE SEQUENCE #2: Lives in Being: → Effective Date	*TIME LINE SEQUENCE #2:* Lives in Being: → Effective Date
Validating Life Sequence #1:	Validating Life Sequence #2: