Michigan Law Review

Volume 48 | Issue 8

1950

LEGISLATION-PERPETUITIES-SOME RECENT STATUTORY CHANGES IN THE LAW OF PERPETUITIES

Thomas L. Waterbury S.Ed.
University of Michigan Law School

LEGISLATION—PERPETUITIES—SOME RECENT STATUTORY CHANGES IN THE LAW OF PERPETUITIES[1]—During the past five years[2] the legislatures of several states have wrestled anew with an old problem, that of limiting the permissible duration of indirect restraints upon the alienation of property.[3] Generally speaking, these statutes may be grouped into two classes: those designed to abandon previous statutory modifications of the common law rule against perpetuities and return to the common law rule; and those designed to modify the common law rule or alter existing statutory rules. With respect to the latter group, a further classification is possible between statutes which attempt a general revision of the law as to perpetuities and those which are aimed at narrow and specific problems.

This comment will undertake an examination of these statutes for the purposes of determining the legislative objectives, the extent to which the statutes are likely to attain those objectives, and, to a limited extent, the desirability of those objectives. Particular attention will be

[1] The writer is indebted to Professor Lewis M. Simes of the University of Michigan Law School for his counsel during the preparation of this comment.

[2] From 1945 through 1949.

[3] 2 SIMES, FUTURE INTERESTS §490 (1936).

given to two statutes: the 1949 Michigan statute,[4] designed to return to the common law rule against perpetuities with respect to interests in land and chattels real, and the 1947 Pennsylvania statute[5] which attempts a general revision of the common law rule.

I

Statutes Reinstating the Common Law Rule Against Perpetuities

A. Michigan

Prior to 1846, the common law rule against perpetuities was in force in Michigan.[6] In that year, the legislature adopted the statutory two-lives rule against the suspension of the absolute power of alienation, making it applicable, however, only to interests in land and chattels real.[7] The common law rule, therefore, remained in force as to chattels personal,[8] and the resulting diversity was found to be unsatisfactory.[9] Accordingly, in 1949, the Michigan legislature enacted a new statute, having the expressly stated objective of restoring uniformity by again rendering interests in land and chattels real subject to the common law rule against perpetuities. The title and first section of the new statute are as follows:

> "AN ACT concerning perpetuities and the suspension of the absolute power of alienation with respect to interests in real property, making uniform the law as to real and personal property; and repealing sections 14, 15, 16, 17, 18, 19, 20 and 23 of chapter 62 of the Revised Statutes of 1846, being sections 554.14, 554.15, 554.16, 554.17, 554.18, 554.19, 554.20 and 554.23, respectively, of the Compiled Laws of 1948.
>
> *The People of the State of Michigan enact:*
>
> Sec. 1. The common law rule known as the rule against perpetuities now in force in this state as to personal property shall hereafter be applicable to real property and estates and other interests therein, whether freehold or non-freehold, legal or equi-

[4] Mich. Laws (1949), Act 38, 18 Mich. Stat. Ann. (1937, 1949 Cum. Supp.) §§26.49(1), (2) and (3).

[5] Pa. Laws (1947) H.B. 296, §§4, 5; Pa. Stat. Ann. (Purdon, 1940, 1949 Cum. Supp.) tit. 20, §§301.4, 301.5.

[6] St. Amour v. Rivard, 1 Gibbs (2 Mich.) 294 (1852).

[7] Mich. Rev. Stat. (1846) c. 62, §§14-21 and 23.

[8] Michigan Trust Co. v. Baker, 226 Mich. 72, 196 N.W. 976 (1924).

[9] The Michigan Supreme Court held that a trust containing some $800 worth of real property and personalty worth some $56,000 was wholly void since the trust violated the statutory rule applicable to land. In re Richards' Estate, 283 Mich. 485, 278 N.W. 657 (1938). The court also confused the law regarding the statutory two-lives rule by declaring that, for purposes of the two-lives limitation, children of the testator were but one life. Kemp

table, by way of trust or otherwise, thereby making uniform the rule as to perpetuities applicable to real and personal property."[10]

The power of the legislature to enact such a statute, affecting as it does only interests subsequently created,[11] cannot be questioned. The only questions which might possibly arise, therefore, are whether the legislature complied with constitutional requirements regarding the form of the legislation, and as to the meaning of the statutory language.

One requirement of the Michigan Constitution regarding the form of legislation is that every law enacted by the legislature must be limited to one object, which object must be stated in the title of the act.[12] With respect to the one-object requirement, it seems clear that the statute complies. It is true that the statute repeals statutes dealing with the suspension of the absolute power of alienation and enacts the common law rule against perpetuities, and that the Michigan Supreme Court has declared that these two rules are distinct.[13] But it is hardly reasonable to require the legislature to enact two statutes, one to repeal the old law and the second to replace it with new law; Justice Cooley has pointed out that this constitutional provision was not designed to require such a multiplicity of legislation, but was designed to prevent log-rolling.[14] Justice Cooley further laid down the proposition, since

v. Sutton, 233 Mich. 249, 206 N.W. 366 (1925). With respect to both of these problems, see Long, "Perpetuities and Accumulations: Recent Legislative Acts Explained," 17 DETROIT LAWYER 193 at 195 (1949).

[10] Mich. Laws (1949) Act 38, §1, 18 Mich. Stat. Ann. (1937, 1949 Cum. Supp.) §26.49(1). The second and third sections of the statute read as follows:

"Sec. 2. Sections 14, 15, 16, 17, 18, 19, 20 and 23 of chapter 62 of the Revised Statutes of 1846, being sections 554.14, 554.15, 554.16, 554.17, 554.18, 554.19, 554.20 and 554.23, respectively, of the Compiled laws of 1948, concerning perpetuities and the suspension of the absolute power of alienation, are hereby repealed.

"Sec. 3. This act applies only to wills with respect to which the testator dies after the effective date of this act and to deeds and other instruments executed after the effective date of this act." Mich. Laws (1949) Act 38, §§2, 3, 18 Mich. Stat. Ann. (1937, 1949 Cum. Supp.) §§26.49(2), (3).

[11] Mich. Laws (1949) Act 38, §3, 18 Mich. Stat. Ann. (1937, 1949 Cum. Supp.) §26.49(3). For the text of this provision, see note 10, supra.

[12] "No law shall embrace more than 1 object, which shall be expressed in its title," MICH. CONST. (1908) Art. V., §21.

[13] Michigan Trust Co. v. Baker, 226 Mich. 72, 196 N.W. 976 (1924).

[14] "But it is insisted that the whole law is unconstitutional and void, because in violation of section twenty of article four of the constitution, which provides that 'no law shall embrace more than one object, which shall be expressed in its title.' The history and purpose of this constitutional provision are too well understood to require any elucidation at our hands. The practice of bringing together into one bill subjects diverse in their nature, and having no necessary connection, with a view to combine in their favor the advocates of all, and thus secure the passage of several measures, no one of which could succeed upon its own merits, was one both corruptive of the legislator and dangerous to the State. . . . There was no design by this clause to embarrass legislation by making laws unnecessarily restrictive in their scope and operation, and thus multiplying their number. . . ." People v. Mahaney, 13 Mich. 481 at 494-95 (1865). The case involved Art. IV, §20 of the Michigan Constitution of 1850.

followed in the Michigan cases, that this constitutional requirement is satisfied if a statute is confined to a single general object,[15] and while the common law rule and the statutory rule are distinct in the sense that they measure the permissible duration of indirect restraints by different standards,[16] both are designed to deal with the problem of perpetuities, that is, the problem of limiting the permissible duration of indirect restraints upon the alienation of property.[17] The foregoing also disposes of a possible argument that several of the statutory sections[18] repealed by the new Michigan statute do not deal with suspension of the power of alienation and therefore that their repeal gives the statute multiple objects. These sections are concerned with restrictions on the creation of estates for life, but are treated in the *Restatement of Property* as a part of Michigan's statutory perpetuities plan.[19]

Another aspect of the Michigan constitutional provisions which we have been considering is the requirement that the object of the statute must be stated in the title thereof.[20] Justice Cooley points out that this provision was designed to prevent the insertion of hidden provisions, thereby securing the approval of legislation which the majority would

[15] ". . . the framers of the constitution meant to put an end to legislation of the vicious character referred to . . . and to require that in every case the proposed measure should stand upon its own merits. . . . But this purpose is fully accomplished when the law has but one general object, which is fairly indicated by its title. To require that every end and means necessary to the accomplishment of this general object should be provided for by a separate act relating to that alone, would not only be senseless, but would actually render legislation impossible." People v. Mahaney, 13 Mich. 481 at 495 (1865). This case involved Art. IV., §20 of the Michigan Constitution of 1850 which contained the same provision in this regard as Art. V., §21 of the present Michigan Constitution of 1908. For cases supporting the test suggested by Justice Cooley see the following: Atty. Gen. v. Weimer, 59 Mich. 580 at 587-88, 26 N.W. 773 (1886) (this case also deals with Art. IV, §20 of the Michigan Constitution of 1850); Atty. Gen. v. Union Guardian Trust Co., 273 Mich. 554 at 558-59, 263 N.W. 866 (1935).

[16] The statutory test is, will there be, at the termination of two lives in being at the creation of the interest, persons in being who can convey a fee simple. Mich. Rev. Stat. (1846) c. 62, §§14, 15, Mich. Comp. Laws (1948) §§554.14, 554.15. The common law rule asks whether the contingent interest must vest, if at all, within lives in being and 21 years from the creation of the interest. GRAY, THE RULE AGAINST PERPETUITIES, 3d ed., §201 (1915). For example, assume a conveyance from *O* to those children of either *A* or *B* who are living 25 years after the decease of the survivor of *A* and *B*. This interest is good under the statutory rule since *A* and *B* are the two lives in being and their children who survive them, together with the heirs of *O*, can convey a fee simple even though no child of either *A* or *B* is yet 25. But the interest is bad under the common law rule, for the minimum membership of the class need not be determined within the period of the rule, 4 PROPERTY RESTATEMENT §§387, 388 (1940).

[17] It will be observed that the *Restatement of Property* classifies these Michigan statutory provisions as creating a statutory rule against perpetuities, 4 PROPERTY RESTATEMENT, Appendix on The Statutory Rules Against Perpetuities, c. B, ¶¶50-58 (1940).

[18] Mich. Rev. Stat. (1846) c. 62, §§17-19, Mich. Comp. Laws (1948) §§554.17-554.19.

[19] 4 PROPERTY RESTATEMENT, Appendix on the Statutory Rules Against Perpetuities, c. B, ¶53 (1940).

[20] MICH. CONST. (1908) Art. V., §21. See note 12, supra, for the text of this provision.

not knowingly approve.[21] Viewed from this standpoint, it will be seen that the title of the new Michigan statute, which carefully details the matter dealt with in the body of the statute, complies with the constitutional requirement.

Turning from the subject of compliance with constitutional formalities to a consideration of the meaning of the new statute, we find the legislative objective clearly spelled out, namely, to make the common law rule against perpetuities uniformly applicable to both real and personal property. It seems clear that the statutory reference to "real property and estates and interests therein, whether freehold or non-freehold," makes the common law rule against perpetuities applicable to leaseholds, the Michigan Supreme Court having held a lease to be a conveyance of an interest in real property.[22] It is true that the statute makes no attempt to state the common law rule against perpetuities, merely referring to "the common law rule against perpetuities now in force in this state as to personal property," but the reason for this is clear enough. The legislative objective is a uniform rule applicable to real and personal property and any legislative attempt to state the rule in detail would run the risk of deviation from the rule as applied to personal property which has developed through case law. Moreover, any statute which attempted a complete statement of the common law rule against perpetuities would be an exceedingly lengthy piece of legislation. It should also be noted that the statute does *not* refer to the common law rule "*as* now in force in this state as to personal property," hence the statute does not preclude the application of the common law rule to interests in real property in situations in which no Michigan case law has as yet been enunciated by the courts. The statutory reference to the common law rule "now in force in this state as to personal property" was doubtless intended to emphasize the legislative objective of uniformity.

It is interesting to note that, even were we to assume that the first section of the new statute does not effectively restore the common law

[21] After discussing the one-object requirement of the constitutional provision and explaining the reason for its existence, Justice Cooley refers to "... another practice, also intended to be remedied by this provision, by which, through dexterous management, clauses were inserted in bills of which the titles gave no intimation, and their passage secured through legislative bodies whose members were not generally aware of their intention and effect." People v. Mahaney, 13 Mich. 481 at 495 (1865). This case involved Art. IV., §20 of the Michigan Constitution of 1850 which contained the same language in this regard as Art. V., §21 of the present Michigan Constitution of 1908. For cases involving the present Michigan Constitution, see the following: Loomis v. Rogers, 197 Mich. 265, 163 N.W. 1018 (1917); Jacobson v. Carlson, 302 Mich. 448, 4 N.W. (2d) 721 (1942).

[22] Pickalo v. Mack, 217 Mich. 274, 186 N.W. 502 (1922).

rule against perpetuities as to interests in real property, the second section,[23] which repeals the pre-existing statutory law, should effectively accomplish that objective. This is so because of the following: prior to 1846, Michigan recognized the common law rule with respect to interests in real property;[24] the Michigan Supreme Court has recognized the doctrine that repeal of a statute re-instates pre-existing common law;[25] therefore the repeal of the 1846 statutes by the second section of the new statute should re-instate the pre-existing common law rule as to interests in real property.

As to the effect of the new statute on pre-existing legislation to which the statute does not refer, two such statutes may be briefly mentioned. It is clear that the employees' trust statute[26] is not affected since this statute only has reference to trusts of personal property. Nor does it appear that the new statute affects prior legislation dealing with transfers to charity.[27] This conclusion seems justified for two reasons: first, the second section of the new statute lists those statutory provisions which are intended to be repealed and makes no reference to the charitable transfer statutes,[28] the fair inference being that the legislature listed those prior statutory provisions which were to be wholly or partially repealed; second, the declared objective of the new statute is to make the law of perpetuities uniform as to real and personal property, and a holding that there was an implied repeal of the charitable transfer statutes insofar as they enlarge the common law exemption of charitable trusts from the common law rule against perpetuities[29] would leave Michigan with one rule applicable to charitable trusts of personalty and another applicable to charitable trusts of realty.[30]

To summarize, it seems clear that the new Michigan statute, fairly construed, will achieve the declared legislative objective of making the common law rule against perpetuities uniformly applicable to both real and personal property. However, as we have observed, the new legis-

[23] Mich. Laws (1949) Act 38, §2, 18 Mich. Stat. Ann. (1937, 1949 Cum. Supp.) §26.49(2). For the text of this provision, see note 10, supra.

[24] See note 6, supra.

[25] People v. Hodgkin, 94 Mich. 27 at 29, 53 N.W. 794 (1892).

[26] Mich. Laws (1947) Act 193, 18 Mich. Stat. Ann. (1937, 1949 Cum. Supp.) §26.82(1).

[27] Mich. Comp. Laws (1948) §§554.351 to 554.353, 554.381, 19 Mich. Stat. Ann. (1937) §§26.1191 to 26.1193, 26.1201.

[28] Mich. Laws (1949) Act 38, §2, 18 Mich. Stat. Ann. (1937, 1949 Cum. Supp.) §26.49(2). For the text of this provision, see note 10, supra.

[29] For the common law rules with respect to charitable transfers, see 2 SIMES, FUTURE INTERESTS §§540-49 (1936).

[30] To the effect that these charitable transfer statutes have enlarged the common law exemption, see In re Brown's Estate, 198 Mich. 544, 165 N.W. 929 (1917).

lation has only prospective effect, from which it follows that the old statutory rules will continue to plague both bench and bar for some time to come.

B. Indiana

In 1945, after slightly more than a century of experience with various versions of the New York rule against the suspension of the absolute power of alienation,[31] the Indiana legislature decided to return to the common law rule against perpetuities.[32] The resulting statute consists in substance of three parts: first, a paraphrase of Professor Gray's famed statement of the rule;[33] second, a general statement of intention to adopt the common law rule against perpetuities; and finally, a repeal of the pre-existing statutory law.[34] This new statute may enjoy, as does the Michigan statute previously discussed, the advantage that its repeal provisions will suffice to restore the common law rule against perpetuities for, prior to the adoption of the old statutory scheme now repealed, the common law rule was in force in Indiana.[35]

It has been observed that the Indiana statute differs from that of Michigan in that the former attempts to state the common law rule. Doubtless this attempt will do no harm, inasmuch as substantially the same statement is found in many cases which purport to declare the common law rule. But were this brief statutory statement literally construed and enforced, it would change the common law substantially since, for example, it contains no exception in the case of contingent gifts to charity.[36] As a matter of draftsmanship, it may well be asked why the legislature did not rest with the general statement that it wished to adopt the common law rule against perpetuities instead of adding an incomplete definition which must be disregarded in order to give effect

[31] For an excellent summary of the New York and Indiana statutory rules, see 4 PROPERTY RESTATEMENT, Appendix on the Statutory Rules Against Perpetuities, c. A, c. B, ¶40. For an unqualified denunciation of the Indiana statutory rule, see Leach, "The Rule Against Perpetuities and the Indiana Perpetuities Statute," 15 IND. L.J. 261 (1940).

[32] Ind. Acts (1945) c. 216, §1, 10 Ind. Stat. Ann. (Burns, 1935, 1949 Cum. Supp.) §51-105.

[33] "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." GRAY, THE RULE AGAINST PERPETUITIES, 3d ed., §201 (1915).

[34] Ind. Acts (1945) c. 216, §6, 10 Ind. Stat. Ann. (Burns, 1935, 1949 Cum. Supp.) §51-105.

[35] Stephens v. Evans' Admx., 30 Ind. 39 (1868).

[36] For the common law rules with respect to charitable gifts, see 2 SIMES, FUTURE INTERESTS §§540-49 (1936).

to the general expression of intention.[37] The Indiana Appellate Court has recognized this general intention by dictum.[38]

C. *Wyoming*

In 1949, the Wyoming legislature repealed the singularly obscure statutory rule against perpetuities which had been in force in that state since 1939,[39] replacing it with the Model Rule Against Perpetuities Act.[40] This statute was drafted by the Commissioners on Uniform State laws as a model act to be used by any state which might desire to abandon its statutory rules and return to the common law rule against perpetuities. Wyoming is the first state to enact it.

Like the Indiana statute, the Wyoming version attempts an abbreviated statement of the common law rule, modeled after that of Professor Gray,[41] and the observations made above with respect to the same feature of the Indiana legislation are relevant here. One rather unique feature of the Wyoming statute is the specification that the legislature intends to adopt the "American common law rule against perpetuities."[42] This language apparently means that, where the English rule differs from the majority view in the United States, the latter is to prevail, a logical provision from the standpoint of the Commissioners on Uniform State Laws, but one which may limit the autonomy of the Wyoming Supreme Court to an undesirable degree with respect to a few problems.[43] However, the foregoing criticisms are, after all, rather

[37] This is largely an academic objection, however. Both Alabama and Ohio have statutes which returned them to the common law rule; the former does not attempt a statement of the rule while the latter contains a brief statement, again borrowed from Professor Gray. Both statutes appear to have accomplished their purpose; see Ala. Code (1940) tit. 47, §16; 7 Ohio Gen. Code Ann. (Page, 1938) §10512-8.

[38] In re Lowe's Estate, 117 Ind. App. 554, 70 N.E. (2d) 187 at 195 (1946).

[39] Wyo. Laws (1939) c. 92, §1. 4 Wyo. Comp. Stat. Ann. (1945) §66-137, which purports to be the official law of the state, omitted a dependent clause from this statute as originally enacted in 1939, rendering it meaningless; the original was undesirable enough, having been originally adopted in the 19th century in Connecticut and Ohio, only to be repealed. See Conn. Acts and Laws (1784) p. 3 and Conn. Pub. Acts (1895) c. 249, p. 590; and see 10 Ohio Laws (1811) c. 4, p. 7 and 7 Ohio Gen. Code Ann. (Page, 1938) §10512-8.

[40] Wyo. Laws (1949) c. 92, §1, 4 Wyo. Comp. Stat. Ann. (1945, 1949 Cum. Supp.) §66-140; the model statute will be found in 9 Uniform State Laws Ann. (1942, 1950 Cum. Supp.) p. 249.

[41] See note 34, supra.

[42] Wyo. Laws (1949) c. 92, §1, 4 Wyo. Comp. Stat. Ann. (1945, 1949 Cum. Supp.) §66-140.

[43] For example, there is some authority to the effect that rights of entry are subject to the common law rule in England, whereas they clearly are not thus limited in the United States; see 2 SIMES, FUTURE INTERESTS §506 (1936). The Illinois legislature was suffi-

minor; in general, the Wyoming statute, like those of Michigan and Indiana, seems entirely adequate to accomplish the legislative purpose.

II

Statutes Which Depart from the Common Law Rule against Perpetuities

A. *Statutes Undertaking a General Revision of Perpetuities Law: The New Pennsylvania Statute*

The only statute enacted during the past five years which has attempted the ambitious task of a general perpetuities revision is the Pennsylvania Estates Act of 1947.[44] There is much to justify the belief that this statutory scheme has created more serious problems than those which it attempts to solve; the fundamental departure from the common law rule against perpetuities is to be found in the following provision of the statute: "Upon the expiration of the period allowed by the common law rule against perpetuities *as measured by actual rather than possible events* any interest not then vested and any interest in members of a class the membership of which is then subject to increase shall be void."[45] What the italicized language appears to mean is this: "whereas the common law rule validates only those interests which are sure to vest, if at all, within lives in being and twenty-one years, we wish to validate all interests which in fact do vest within lives in being and twenty-one years, whether they are sure to do so at the time of their creation or not."

The policy behind this change seems clear enough; the common law rule lays a trap for the unwary by virtue of its insistence upon mathematical certainty of vesting, and the legislature was attempting to improve the common law rule by eliminating the trap. Perhaps the most common tragedy of this sort is the "unborn widow" case;[46] for

ciently dissatisfied with the American common law rule to enact a statute subjecting both rights of entry and possibilities of reverter to a statutory perpetuities plan. Ill. Laws (1947) S.B. 347, Ill. Stat. Ann. (Smith-Hurd, 1935, 1949 Cum. Supp.) c. 30, §§37b through 37h. See p. 1172 infra, for a brief discussion of this Illinois statute; for an exhaustive discussion, see comment, 43 ILL. L. REV. 90 (1948).

[44] Pa. Laws (1947) Act 39, §§4, 5; Pa. Stat. Ann. (Purdon, 1940, 1949 Cum. Supp.) tit. 20, §§301.4, 301.5.

[45] Id., §4(b), §301.4(b). Italics supplied.

[46] For example, testator *T* leaves his estate to son *S* for life, remainder to *S*'s widow for life, remainder to the children of *S* who survive the widow. A recent sample is Perkins v. Iglehart, 183 Md. 520, 39 A. (2d) 672 (1944).

others, see Professor Leach's well-known article, "Perpetuities in a Nutshell."[47] However, the legislature neglected to spell out the precise form of its new rule against perpetuities; we are told that the interest is good if it actually does vest within lives in being and twenty-one years, but this information is useless unless we are also told how to select the measuring lives. This problem, which the legislators probably would have dealt with more explicitly had they been aware of its existence, must be dealt with in the conventional phraseology of "legislative intent."

To begin with, we may lay aside some methods of selection which clearly will not work. Obviously, the legislature did not mean that any life in being when the interest was created may be a measuring life; this conclusion would lead to a comic search for century-old lives in being. And obviously the legislature did not mean that the lives in being must be a reasonable number, to be specified by the creator of the interest;[48] such a conclusion would invalidate many interests under the statute which were valid at common law because many transfers do not specify measuring lives at all, thus requiring an assumption that the legislature wished to substitute a new trap for the unwary for that created by the original common law rule. Nor could the legislators have intended to employ only those measuring lives which would satisfy the common law rule, for such a conclusion would nullify the statute completely. This is so because, if common law lives in being are employed under the statute, the only cases in which a permissible life in being will be found will be those cases in which the interest would be valid at common law—in other words, those cases in which the interest *must* vest, if at all, within lives in being and twenty-one years, and the statute clearly contemplates that interests shall be valid if they *do in fact* vest within twenty-one years after the termination of the measuring lives.

If there is to be a satisfactory solution to the problem of selecting measuring lives under this statute, perhaps it lies in some such approach as this: a life in being at the creation of the interest may be a measuring life for purposes of the Pennsylvania statute if said life is either expressly or impliedly referred to in the instrument creating the interest. Or, in other words, those lives in being which are related to the happening of the conditions precedent to the vesting of the interest may be meas-

[47] 51 HARV. L. REV. 638 (1938).

[48] Some such suggestion as this appears in a note, 97 UNIV. PA. L. REV. 263 at 267 (1948).

uring lives, such lives being either expressly or impliedly referred to in the instrument.

Of course this criterion is too slippery to be entirely satisfactory, but half a loaf is better than none. For purposes of illustration, let us take two transfers, one involving express reference and the other involving implied reference to the measuring lives. For the first, we may use the "unborn widow" case: testator *T* transfers property to son *S* for life, remainder to those children of *S* who survive his widow. We may suppose three possibilities: (1) *S* is survived by a widow who was in being at *T*'s death and eventually she dies, leaving surviving children of *S*; under our statutory test, the remainder is valid because it *did in fact* vest within twenty-one years after the death of the widow—she can be a measuring life since she is expressly referred to in the instrument as a life in being which must terminate as a condition precedent to the vesting of the remainder. (2) *S* is survived by a widow unborn at *T*'s death and she dies more than twenty-one years after *S*'s death, leaving surviving children of *S*; our statutory test invalidates this remainder, there being no life in being expressly or impliedly referred to in the instrument which *did in fact* terminate within twenty-one years prior to the vesting of the remainder. (3) Suppose the same situation as (2), but the widow dies one week after *S* dies; under our statutory test, this remainder is valid since it *did in fact* terminate within twenty-one years after the death of *S*, a life in being expressly referred to in the instrument, the termination of which is a condition precedent to the vesting of the remainder. Let us now try a case involving implied reference to measuring lives: testator *T* transfers property to those grandchildren of *A* who attain the age of twenty-one, *A* being alive at *T*'s death. At common law, this interest is of course invalid because of the possibility of after-born children of *A*. For purposes of our statutory test, we may suppose two possibilities: (1) *A* dies leaving surviving children, all of whom were in being at *T*'s death, and there are grandchildren of *A* who attain the age of twenty-one; here the interest is valid since the children of *A* are measuring lives, *A*'s children being impliedly referred to in the instrument because they must give birth to the grandchildren as a condition precedent to the vesting of the interest in the grandchildren; (2) *A* dies leaving surviving children, one of whom was born after *T*'s death, but the grandchildren who attain the age of twenty-one are all born of children of *A* who were in being at *T*'s death and *A*'s after-born child is the first child of *A* to die; again the interest is valid, *A*'s children who were alive at *T*'s death again being the lives in being.

Of course, there is no express sanction in the statutory language for any such limitation upon permissible measuring lives as that which has been suggested; furthermore, it is *not* asserted that this limitation will solve all measuring lives problems under the Pennsylvania statute. It is merely suggested that this limitation is a device whereby the legislative purpose in enacting the statute might be effectuated.

The next problem to be faced is, how does the Pennsylvania statute's *vest-in-fact* test affect interests which have no relation to measuring lives? Under the common law rule against perpetuities, such interests are invalid unless they *must vest* if at all within twenty-one years after their creation. The substitution of the statutory test would seem to require the validation of such interests if they actually do vest within twenty-one years, requiring a waiting period of that length in order to resolve the matter.[49]

We now come to the provision of the Pennsylvania statute which deals with class gifts; the statute provides that, upon the expiration of the measuring period, ". . . any interest not then vested and any interest in members of a class the membership of which is subject to increase shall be void."[50] A fair construction of this language in the light of its legislative history[51] leads one to the conclusion that the legislature merely intended a codification of the common law rules relating to class gifts, as modified of course by the *vest-in-fact* test previously discussed.[52] For example, suppose a transfer to *A* for life, remainder to those children of *A* who graduate from law school, *A* being alive when the transfer was made, but having since deceased leaving three surviving children, all of whom were born after the transfer and only one of whom had finished law school twenty-one years after *A*'s death. Under the statute, assuming for the sake of what we may doubtfully call simplicity

[49] Of course, the *vest-in-fact* approach of the statute will require a waiting period in any case, whether there are measuring lives involved or not; for a highly entertaining and informative article, arguing that the imposition of such a waiting period is undesirable, see Phipps, "The Pennsylvania Experiment in Perpetuities," 23 TEMPLE L.Q. 20 (1948).

[50] Pa. Laws (1947) Act 39, §4(b), Pa. Stat. Ann. (Purdon, 1940, 1949 Cum. Supp.) tit. 20, §301.4(b).

[51] The drafting commission's comment appears in Pa. Stat. Ann. (Purdon, 1940, 1949 Cum. Supp.) tit. 20 in a footnote to §301.4: "Gifts to a class, the membership of which is still subject to increase at the expiration of the period, are treated in the same manner as contingent interests although there may have been a technical vesting in some of the members. This is in accord with the common law which invalidates the entire class gift if the class will not be closed within the period. See SIMES, FUTURE INTERESTS, Sections 498 and 499."

[52] The *vest-in-fact* test will validate many class gifts which were invalid at common law because mathematical certainty of vesting is no longer required.

that our formula for selection of measuring lives will be given effect by the Pennsylvania courts, it is clear that the remainder to the child who has graduated has vested within the permissible measuring period; but it is equally clear that the remainders to the other two children have not so vested. Under the statutory language above quoted, the entire remainder would seem to be void since, at the termination of the measuring period, the membership of the class is still subject to increase—the two children of *A* who have not yet graduated from law school may yet do so.[53] Thus construed, the above-quoted language is merely a codification of the well-known doctrine of *Leake v. Robinson*[54] which prohibits the splitting of a class so as to hold a gift valid as to some members and invalid as to others.[55]

Finally, the Pennsylvania statute makes some changes in the common law with respect to the effect of the invalidity of an interest.[56] Presumably these changes were made on the hypothesis that they will be more likely to effectuate the transferor's intent than were the common law rules.[57]

B. *Statutes Modifying the Pre-Existing Law with Respect to Specific Problems*

1. *Alabama*

In 1949, the Alabama legislature enacted a statute relating to insurance trusts[58] which in substance provides as follows: for purposes of

[53] The reader may be wondering at this point what would happen in our hypothetical case if the child who did graduate from law school within 21 years after *A*'s death had been in being when the transfer was made, the question being: can this child be a measuring life so as to validate the gifts to *A*'s two other children if the latter two graduate from law school within 21 years after the death of the former? Under the express or implied reference test previously suggested as a criterion for selecting measuring lives under the Pennsylvania statute, the answer would seem to be yes. This child of *A* is a life in being, expressly referred to in the instrument, whose graduation from law school is a condition precedent to the vesting of the transferred interest.

[54] 2 Mer. 363, 35 Eng. Rep. 979 (Ch. 1817).

[55] See 2 SIMES, FUTURE INTERESTS §§526-28 (1936).

[56] Pa. Laws (1947) Act 39, §5, Pa. Stat. Ann. (Purdon, 1940, 1949 Cum. Supp.) tit. 20, §301.5: "(a) A valid interest following a void interest in income shall be accelerated to the termination date of the last preceding valid interest. (b) A void interest following a valid interest on condition subsequent or special limitation shall vest in the owner of such valid interest. (c) Any other void interest shall vest in the person or persons entitled to the income at the expiration of the period described in section 4(b)." For the common law rules as to the effect of invalidity, see 2 SIMES, FUTURE INTERESTS §§520, 529-33 (1936); 3 SIMES, FUTURE INTERESTS §§768-72 (1936). The drafting commission's comment on these changes appears in Pa. Stat. Ann. (Purdon, 1940, 1949 Cum. Supp.) tit. 20 in a footnote to §301.5. For a brief discussion of the above-quoted statutory language, see note, 97 UNIV. PA. L. REV. 263 at 266-67 (1948).

[57] The comment of the drafting commission so indicates; see Pa. Stat. Ann. (Purdon, 1940, 1949 Cum. Supp.) tit. 20, footnote to §301.5.

[58] Ala. Acts (1949) Act 265.

applying the common law rule against perpetuities or the pre-1931 Alabama statutory rule,[59] any unfunded insurance trust consisting of life, health, accident or disability insurance policies shall be regarded as created when the liability of the insurer accrues because of the happening of the event insured against.

To what extent does this statute change the common law? Quite independent of the rule against perpetuities, if it be regarded as providing that an unfunded insurance trust is not a present trust, the statute has embraced a discredited view.[60] At least this is true insofar as the statute deals with unfunded life insurance trusts and there would seem to be no reason for distinguishing life, health, accident and disability insurance trusts for this purpose other than the uniformly rejected argument that a life insurance trust is testamentary.[61]

It seems more likely that the Alabama legislature does regard the unfunded insurance trust as a present trust and merely intended to provide that, in applying rules against perpetuities to such trusts, the period of the rule should be measured from the happening of the event rather than from the creation of the trust. Again assuming the equivalence of the unfunded life insurance trust with the other varieties mentioned in the statute, it appears that this statute has codified the common law in part and departed from it in part. Where the settlor-insured of an unfunded life insurance trust has reserved a power to revoke the trust and to change beneficiaries, there is authority that the period of the common law rule against perpetuities is to be measured from the death of the insured,[62] and the more recent writers are in accord with this view.[63] On the other hand, where an unfunded life insurance trust is irrevocable and there is a renunciation of power to change beneficiaries, it seems fairly clear that the common rule against

[59] The statute literally refers to "...any law against perpetuities or suspension of the power of alienation of title to property." Ala. Acts (1949) c. 265, but it seems clear that the legislature was referring to the former Alabama statutory rule applicable to interests in land, Ala. Civ. Code of 1923, §6922, rather than the more common statutory rule against suspension of the absolute power of alienation, 4 PROPERTY RESTATEMENT, Appendix on The Statutory Rules Against Perpetuities (1940), for the latter has never been law in Alabama. The Alabama statutory rule was repealed in 1931 by General Acts of Alabama, Act 684, Ala. Code Ann. (1940) tit. 47, §16 which re-enacted the common law rule as to real property.

[60] SMITH, PERSONAL LIFE INSURANCE TRUSTS §§13-16 (1950).

[61] Id., §17.

[62] Mfgr's. Life Ins. Co. v. The von Hamm-Young Co., Ltd., 34 Hawaii 288 (1937).

[63] Morris, "The Rule Against Perpetuities as Applied to Living Trusts and Living Life Insurance Trusts," 11 UNIV. CIN. L. REV. 327 (1937); SMITH, PERSONAL LIFE INSURANCE TRUSTS §34.2 (1950). *Contra:* Phillips, "Life Insurance Trusts: A Recapitulation for the Draftsman," 81 UNIV. PA. L. REV. 284 at 293 (1933).

perpetuities is to be applied as of the creation of the trust.[64] Where the degree of control retained by the settlor-insured lies between the above extremes, the safest generalization is that the law is unsettled.[65]

As to the desirability of this new statute, at least it can be said that it settles a controversial point of law in a field which has become increasingly important in recent years. Absent such a statute, a careful draftsman would probably so design an insurance trust as to render it valid even though the applicable rule against perpetuities were applied as of the creation of the trust.[66] However, it must be recognized that the net effect of the statute is to permit an inter vivos settlor to create contingent interests of greater duration via an unfunded insurance trust than is possible by any other method. Whether such a gratuitous boon to the insurance salesman is justifiable might be questioned.

2. *Illinois*

Despite the protests of various legal writers, denouncing rights of entry and possibilities of reverter as stumbling blocks in the path of full utilization of land,[67] it is well settled, at least in the United States, that the common law rule against perpetuities does not apply to rights of entry and possibilities of reverter.[68]

In 1947, the Illinois legislature decided to impose limitations upon the permissible duration of these interests.[69] The nub of this statutory plan is contained in section 4 of the statute,[70] which, in general, places a fifty-year limitation upon the duration of such interests, provides that if such an interest is created to endure for a longer period it shall be valid for fifty years, and further provides that the statute shall apply to interests previously created as well as those created subsequently.

[64] 4 PROPERTY RESTATEMENT §374, comment *c* (1940).

[65] SMITH, PERSONAL LIFE INSURANCE TRUSTS §34.3 (1950) contains a discussion of the possibilities.

[66] Leach, "Perpetuities in a Nutshell," as appearing in Appendix II of SHATTUCK, AN ESTATE PLANNER'S HANDBOOK 405 (1948).

[67] Goldstein, "Rights of Entry and Possibilities of Reverter as Devices to Restrict the Use of Land," 54 HARV. L. REV. 248 at 250-54 and 271-72 (1940).

[68] 2 SIMES, FUTURE INTERESTS §§506-07 (1936).

[69] Ill. Laws (1947) S.B. 347, Ill. Stat. Ann. (Smith-Hurd, 1935, 1949 Cum. Supp.) c. 30, §§37b through 37h.

[70] "Neither possibilities of reverter nor rights of entry or re-entry for breach of condition subsequent, whether heretofore or hereafter created, where the condition has not been broken, shall be valid for a longer period than fifty years from the date of the creation of the condition or possibility of reverter." Ill. Laws (1947) S.B. 247, §4, Ill. Stat. Ann. (Smith-Hurd, 1935, 1949 Cum. Supp.) c. 30, §37e. For a detailed examination of the entire statute with reference to Illinois law, see comment, 43 ILL. L. REV. 90 (1948).

The attempt to apply the statute to pre-existing interests is, of course, open to some question on due process grounds,[71] and yet a statute having only prospective effect would leave the current problem created by such interests entirely unsolved. Further due processs questions are raised by differences in the applicable statutes of limitations which result in some rather arbitrary distinctions. For example, section 5 of the statute[72] provides that, if a determinable fee was created more than fifty years prior to the enactment of the statute and terminated prior to the enactment of the statute, any action to recover the land must be brought within one year from the effective date of the act. On the other hand, consistently with the statutory language, if a determinable fee were created forty-nine years before the enactment of the statute and terminated within one year after its enactment, an action to recover the land might be brought at any time within the succeeding seven years or twenty years.[73] Thus the legislature is more rigorous in its treatment of determinable fees which have terminated prior to the enactment of the statute than in dealing with those which terminate subsequently, a rather unusual approach.

Another distinction which the legislature has drawn is rather hard to justify at first glance. The new statute applies only to those rights of entry in which the condition remains unbroken for fifty years.[74] Hence the statute imposes no apparent limitation upon the duration of a right of entry wherein the condition has been broken within fifty years after its creation, but the owner of the right has neglected to elect between forfeiture of the estate and waiver of forfeiture.[75] What limitations are imposed upon the duration of such a right of entry by statutes of limitations? By the literal terms of the applicable Illinois statute, the permissible duration may be either seven or twenty years.[76] Hence the result is reached that a right of entry may exist under Illinois law for a maximum period of fifty years if the condition remains unbroken, but if the condition is broken, the right may remain for a total period of a

[71] For a discussion of this problem, see comment, 43 ILL. L. REV. 90 (1948).

[72] Ill. Laws (1947) S.B. 347, §5, Ill. Stat. Ann. (Smith-Hurd, 1935, 1949 Cum. Supp.) c. 30, §37f.

[73] In such a case, the grantor or his heirs hold a fee simple, not a possibility of reverter, 2 PROPERTY RESTATEMENT §239 comment g (1940). The period of limitation is seven or twenty years, depending on the nature of the adverse possession. Ill. Laws (1871-72) pp. 556-57, §§1, 6, Ill. Stat. Ann. (Smith-Hurd, 1935, 1949 Cum. Supp.) c. 83, §§1, 6.

[74] See the statutory language, note 70, supra.

[75] 1 SIMES, FUTURE INTERESTS §170 (1936).

[76] Ill. Laws (1871-72) pp. 556-57, §§1, 3 *Fourth* and 6, Ill. Stat. Ann. (Smith-Hurd, 1935) c. 83, §§1, 3 Fourth and 6.

little less than fifty-seven or seventy years. It would seem that the cloud upon title would be the same whether the condition had been broken or not. However, a plausible explanation for this distinction may be found in the justifiable desire of the legislature to make the statute retroactively applicable. With an eye upon constitutional difficulties, the legislators might well be more careful in dealing with a right of entry wherein the condition has been broken since this is the more susbtantial property interest.

On the whole, the problem of the duration of these interests would appear to be a difficult one to solve by the enactment of perpetuities statutes, though it is difficult to quarrel with the legislative objective.

3. *Minnesota*

Minnesota is one of eleven states which have statutory perpetuities rules modeled more or less after the original New York statutes of 1830;[77] in Minnesota, the statutory rule is confined to interests in real property and chattels real.[78] In 1947, the Minnesota legislature repealed the sections of the real property statutes dealing with estates for life and altered the section dealing with chattels real so as to render the language consistent with the remaining real property sections.[79]

The repealed sections have been roundly denounced by Dean Fraser[80] as creating needless complications. The result of their repeal will be to leave the creation of life estates subject to the same general limitation against suspension of the absolute power of alienation for more than two lives in being at the creation of the interest which is imposed upon the creation of other interests in real property and chattels real by the Minnesota statutes.[81] Certainly any steps in the direction of uniformity in perpetuities law are to be applauded, but it will be observed that Minnesota still has one rule against perpetuities applicable to personal property and another for interests in realty and chat-

[77] 4 PROPERTY RESTATEMENT, Appendix on the Statutory Rules Against Perpetuities, Intro. Note (1940). The *Restatement* lists 13 such states, but Indiana and Michigan must now be subtracted from the list, see this comment, supra.

[78] 28 Minn. Stat. Ann. (1947) §§500.11 through 500.13.

[79] Minn. Laws (1947) c. 207, §§1, 2, 28 Minn. Stat. Ann. (1947, 1949 Cum. Supp.) §500.13, §§3-6.

[80] "No one has ever succeeded in giving a good reason for these restrictions, not even the New York revisors who drafted them. They serve no useful purpose, and their results are generally absurd." Fraser, "Future Interests, Uses and Trusts," 28 Minn. Stat. Ann. (1947) 54 at 84. For a discussion of these provisions, see Fraser, "Suspension of the Power of Alienation," 8 MINN. L. REV. 295 at 310-16 (1924).

[81] Minn. Stat. Ann. (1947) §§500.13, §§1, 2.

tels real,[82] a situation found to be undesirable in Michigan,[83] and one which has apparently caused no little confusion in Minnesota with respect to trusts of real estate.[84] It is to be hoped that the Minnesota legislature will soon take further steps in the direction of uniformity in the law as to perpetuities.

4. *Statutes Exempting Employees' Pension Trusts and Analogous Trusts from the Operation of Rules against Perpetuities*

Professor Simes pointed out a few years ago[85] that an increasing number of jurisdictions were enacting statutes exempting pension trusts and similar trusts from the operation of rules against perpetuities. This trend has continued during the past five years, ten states having enacted statutes dealing with this problem.[86]

Some of these statutes exempt only trusts of personalty from the operation of perpetuities rules,[87] while others exempt such trusts whether they be of real or personal property.[88] Of course there are potential problems involved in having different perpetuities rules applicable to trusts of real and personal property.[89] But query as to the

[82] Id., §§1, 2 and 7. The common law rule against perpetuities is in force in Minnesota with respect to interests in personal property other than chattels real. In re Tower's Estate, 49 Minn. 371, 52 N.W. 27 (1892); 4 PROPERTY RESTATEMENT, Appendix on the Statutory Rules Against Perpetuities c. B, ¶59 (1940). But compare Minn. Stat. Ann. (1947) §501.11.

[83] See this comment, supra, for a discussion of the recent Michigan statute restoring the common law rule as to real property and chattels real.

[84] In re Tower's Estate, 49 Minn. 371, 52 N.W. 27 (1892); Fraser, "The Rules Against Restraints on Alienation and Against Suspension of the Absolute Power of Alienation in Minnesota: III, Their Application to Trusts," 9 MINN. L. REV. 314 at 339-52 (1925).

[85] Simes, "Trusts and Estates—Trends in the Law: 1941-1945," 44 MICH. L. REV. 833 at 837 (1946).

[86] Alabama, California, Connecticut, Delaware, Illinois, Massachusetts, Michigan, New York, Pennsylvania and Wisconsin.

[87] Del. Laws (1945) c. 224, §1; Wis. Laws (1945-46) c. 553, 2 Wis. Stats. (1947) §272.18 (31) (b); Mich. Laws (1947) Act 193, 18 Mich. Stat. Ann. (1937, 1949 Cum. Supp.) §26.82(1).

[88] Ala. Gen. Acts (1945) Act 306, Ala. Code (1940, 1949 Cum. Supp.) tit. 47, §152(1); Cal. Codes, Statutes and Amendments (1945) c. 1035, §9, Cal. Code Ann., Corp. (Deering, 1948, 1949 Cum. Supp.) §28004; New York, having previously had a statute applicable only to personal property, N.Y. Laws (1928) c. 173, Personal Property §13(c), has now enacted a statute applicable to trusts of real estate as well. N.Y. Laws (1946) c. 701, Real Property §42-a. Several states have enacted statutes which do not expressly distinguish between realty and personalty and hence probably apply to both: Conn. Laws (1947) Pub. Act No. 81, 3 Conn. Gen. Stat. (1949) §6898; Ill. Laws (1945) S.B. 425; Mass. Acts & Resolves (1946) c. 287, 6 Mass. Ann. Laws (1933, 1949 Cum. Supp.) c. 203, §3 A; Pa. Laws (1947) Act 210, §4, Pa. Stat. Ann. (Purdon, 1940, 1949 Cum. Supp.) tit. 20, §301.4.

[89] For example, in Michigan when the common law rule was in force as to personalty while a statutory rule was in force as to realty and chattels real, the court held a trust

likelihood that such a trust for the benefit of employees will contain realty?

Presumably no one would quarrel with the exemption of these trusts from rules against perpetuities. Employees' trust programs, if they are to be efficiently administered, probably should make provision for future employees. These future beneficial interests are necessarily contingent and are by no means certain to vest within any particular period, nor can such trusts properly be termed charitable so as to benefit from this exception to the common law rule against perpetuities.[90] On the whole, these statutes appear to be the most satisfactory solution to the problem.

III

Conclusions

While the legislation which we have been reviewing is rather diverse, a few general conclusions are possible. In the first place, the general trend seems to be away from the various statutory substitutes for the common law rule against perpetuities as a basic approach to the problem of limiting the duration of indirect restraints upon the alienation of property. The reason for this is not difficult to visualize; as of 1944, there were thirty-two states in which the common law rule against perpetuities was in force without substantial statutory modification.[91] The net result of this is a wealth of case law exploring the various aspects of the rule and, a fortiori, a definite rule in a field of law where definiteness is at a premium. Secondly, we have in these recent statutes, particularly in that of Pennsylvania, pointed illustrations of the difficulties which confront a draftsman who seeks to devise a workable substitute for the common law rule. The attempt by the New York draftsmen in the Revised Statutes of 1830[92] has been the most popular effort[93] but as we have observed, Michigan and Indiana have now

consisting of some $800 worth of realty and some $56,000 worth of personalty invalid because it violated the statutory rule. In re Richard's Estate, 283 Mich. 485, 278 N.W. 657 (1938). For a discussion of the recent Michigan statute abolishing the statutory rule, see this comment, supra.

[90] For the common law exception, see 2 SIMES, FUTURE INTERESTS §§540-50 (1936).

[91] 4 PROPERTY RESTATEMENT, Appendix on The Statutory Rules Against Perpetuities, Intro. Note (1940). To this list we may now add Indiana, Michigan and Wyoming, but we must subtract Pennsylvania. With respect to the current law of these four states, see this comment, supra.

[92] New York Rev. Stat. 1830.

[93] 4 PROPERTY RESTATEMENT, Appendix on The Statutory Rules Against Perpetuities, Intro. Note (1940) lists 13 states which had adopted all or part of the New York statutory scheme as of 1944; from this list, Indiana and Michigan must now be subtracted, see this comment, supra.

returned to the common law fold, and the New York statutory rule has been severely criticized.[94] Finally, we have observed that some narrower statutory modifications of the common law rule appear to be quite clear and workable.

Despite Professor Leach's beatific comment on the rule,[95] we need not conclude from the foregoing that general statutory revisions of the law of perpetuities are doomed to failure, embracing the common law rule as a timeless answer to the perpetuities problem. In the light of the statutes which we have examined, however, it seems safe to observe that the draftsman who would revise the law of perpetuities successfully must be a very able and a *very* lucid man.

Thomas L. Waterbury, S.Ed.

---

[94] Professor Gray, in his famed work on the rule against perpetuities, has this to say of the New York rule: "... in no civilized country is the making of a will so delicate an operation and so likely to fail of success as in New York." GRAY, THE RULE AGAINST PERPETUITIES, 3d ed., §750 (1915). Professor Leach, in speaking before the Indiana State Bar Association regarding the Indiana version of the New York statutes, remarked that the Indiana statutes omitted some of the New York provisions and then declared: "But they have all of the difficulties in application which have driven New York lawyers and judges nearly mad for about a hundred years." Leach, "The Rule Against Perpetuities and the Indiana Perpetuities Statute," 15 Ind. L.J. 261 at 263 (1940). For one who pines for a return to the New York statutory scheme, see Sherrard, "Perpetuities in Michigan Today," 29 Mich. State B.J., March, 1950, p. 5.

[95] "The Rule Against Perpetuities is the *sanctum sanctorum* of the law, complete with its bearded and incomparable high priest, John Chipman Gray, and a coterie of acolytes. The Rule is all things to all men ... to the troubled spirit, a blessed sheltering realization that lives-in-being-and-twenty-one-years have the same validity after two world wars and four Democratic administrations that they had when Queen Victoria ascended the throne." Leach, "Perpetuities in a Nutshell," as appearing in Appendix II of SHATTUCK, AN ESTATE PLANNER'S HANDBOOK 373 (1948).