



1959

Rule against Perpetuities - Possibility of Violation and Effect of Limitation - Validity of Leasehold Estate to Commence on Completion of Building

Jake C. Hodny

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Recommended Citation

Hodny, Jake C. (1959) "Rule against Perpetuities - Possibility of Violation and Effect of Limitation - Validity of Leasehold Estate to Commence on Completion of Building," *North Dakota Law Review*: Vol. 35: No. 2, Article 12.

Available at: <https://commons.und.edu/ndlr/vol35/iss2/12>

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RULE AGAINST PERPETUITIES — POSSIBILITY OF VIOLATION AND EFFECT OF LIMITATION — VALIDITY OF LEASEHOLD ESTATE TO COMMENCE ON COMPLETION OF BUILDING. — The Board of Port Commissioners of the city of Oakland, acting on behalf of the city, awarded a ten-year lease of certain property to one Goodman. The lease was to commence on the city's completion of a convention hall. Plaintiff, a city taxpayer, brought an action to restrain the Board from proceeding with the construction and the lease. The District Court of Appeal *held*, one justice dissenting, that even though the lessor was to construct the building with due diligence, the lessee's interest in the lease was not in its inception vested, and the lease was violative of the rule against perpetuities. *Haggerty v. City of Oakland*, 326 P.2d 957 (Cal. 1958).

The rule against perpetuities, a rule of law and not one of construction,¹ is applicable to equitable as well as to legal interests.² It is directed against remoteness of vesting and is concerned only with the commencement of estates,³ and not against postponement of possession and enjoyment.⁴ In determining the question of remoteness regard must be had to possible, and not merely actual events.⁵ When lives form no part of the postponed period, the estate must vest within twenty-one years.⁶

Generally, all jurisdictions where the rule is in effect apply a strict construction and declare void any interest that possibly may not vest within the prescribed time.⁷ The decision in the principal case is in accord with the view of strict construction, even though the event is to occur with due diligence. Such a construction makes the rule more definite and tends to create uniformity. However, the dissenting justice contended that "due diligence" meant that the building was to be constructed within a reasonable time and that the lease would vest or fail within the prescribed period. His view would appear to have some support by a few decisions where the contingency was to occur within a reasonable time, or where a reasonable time appeared to be necessarily less than twenty-one years.⁸ This would be a relaxation of the rule which could lead to confusion and uncertainty. What may be reasonable

1. *Smith v. Renne*, 382 Ill. 26, 46 N.E.2d 587 (1943); *Johnson v. Cosby*, 374 Ill. 407, 29 N.E.2d 608 (1940); *Thomas v. Pullman Trust & Savings Bank*, 371 Ill. 577, 21 N.E.2d 897 (1939).

2. *Beverlin v. First Nat'l Bank*, 151 Kan. 307, 98 P.2d 200 (1940).

3. *Barton v. Thaw*, 246 Pa. 348, 92 Atl. 312 (1914); *Andrews v. Lincoln*, 95 Me. 541, 50 Atl. 898 (1901).

4. *Camden Safe Deposit & Trust Co. v. Scott*, 121 N. J. 366, 189 Atl. 653 (1937).

5. *Vickery v. Maryland Trust Co.*, 188 Md. 178, 52 A.2d 100 (1947). An exception is a gift over from one charity to another charity. *Dickenson v. City of Anna*, 310 Ill. 222, 141 N.E. 754 (1923); *Storrs Agricultural School v. Whitney*, 54 Conn., 342, 8 Atl. 141 (1887).

6. *Smith v. Renne*, *supra* note 1.

7. See *e. g.*, *Lathrop v. Eyestone*, 170 Kan. 419, 227 P.2d 136 (1951); *In re Sahlender's Estate*, 89 Cal. App.2d 329, 201 P.2d 69 (1948); *Reese v. Reese*, 190 Md. 311, 58 A.2d 643 (1948). *Contra*, *Belfield v. Booth*, 63 Conn. 299, 27 Atl. 585 (1885) (gift to take effect fourteen years after settlement of estate held valid. The court said that it was not to be presumed that the settlement of the estate will be delayed more than seven years.). This case was criticized in *Gray, Rule Against Perpetuities* § 214c (3d ed. 1915).

8. See *Plummer v. Brown*, 315 Mo. 627, 287 S.W. 316 (1926) (trustees were to sell and distribute trust when it could be done to advantage and without injury to the estate or beneficiaries); *West Texas Bank & Trust Co. v. Matlock*, 212 S.W. 937 (Tex. Com. App. 1919) (A trust was created to pay a bonus to the first railroad passing through within a reasonable time.); *Brandenburg v. Thorndike*, 139 Mass. 102, 28 N.E. 575 (1885) (trustees to make gift effective three years after wife's death, or at such time, earlier or later, as in their discretion would be expedient and practicable for settlement of the estate).

under one set of circumstances may not be reasonable under another. Thus, disputes would be promoted and the result would be an increase in litigation. Therefore, if there is to be any revision of the rule it should be by legislative action. The common law rule against perpetuities, without material alteration, is in force in about two-thirds of the states.⁹ California has adopted by statute the rule already in existence by virtue of a constitutional provision.¹⁰ North Dakota has no statute against perpetuities, although there are statutory restraints on alienation. There was some indication in *In re Gray's Estate*¹¹ that the law in North Dakota included a rule against remoteness in vesting; however, since the decision in *Anderson v. Blixt*,¹² it is certain that no such rule exists here.

JAKE C. HODNY

WRONGFUL DEATH — EFFECT OF LIMITATION STATUTE — ACCRUAL OF CAUSE OF ACTION. — In 1954 defendant forced plaintiff's car off the highway killing plaintiff's wife and child. Defendant did not stop at the scene of the accident, nor did he report the incident to authorities as required by statute.¹ Plaintiff learned defendant's identity in 1956 and filed suit the same year. Defendant pleaded the one year statute of limitations² for wrongful death actions. The Supreme Court of Missouri *held* that the cause of action accrued at the time of the death and was not tolled under the general statutory provisions for fraudulent concealment or other improper acts.³ *Frazee v. Partney*, 314 S.W.2d 915 (Mo. 1958).

A cause of action for wrongful death is a statutory creation having its origin in England in 1846.⁴ The first wrongful death statute in the United States was passed by New York in 1847,⁵ and we now have similar enactments in all the states.⁶

Every state has a time limitation for commencing action for wrongful death,

9. Smith, Real Property Survey, c. 9 h (10) (1956).

10. Victory Oil Co. v. Hancock Oil Co., 125 Cal. App.2d 222, 270 P.2d 604 (1954) (Section 715.2 of the Civil Code, provides as follows: "No interest in real or personal property shall be 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 and any period of gestation involved in the situation to which the limitation applies . . .").

11. 27 N.D. 417, 146 N.W. 722 (1914).

12. 72 N.W.2d 799 (N.D. 1955) (The lease involved agricultural land with an option to purchase, and was to continue as long as any one of the lessors was alive or until the option was exercised. It was contended that § 47-1602 of the N. Dak. Rev. Code (1943) was a rule against perpetuities, therefore the lease was invalid. The court held that there was no statutory or common law rule against perpetuities in force in North Dakota.).

1. Mo. Rev. Stat. § 564.450 (1949) (Provides no person involved in an accident while operating a vehicle on a highway shall leave scene without stopping and giving personal information to injured party or police officer.).

2. Mo. Rev. Stat. § 537.100 (1949) ("Every action . . . shall be commenced within one year after the cause of action shall accrue . . .").

3. Mo. Rev. Stat. § 516.280 (1949) ("If any person, by absconding or concealing himself, or by any other improper act, prevent the commencement of an action, such action may be commenced within the time herein limited, after the commencement of such action shall have ceased to be so prevented.").

4. Lord Campbell's Act 9 & 10 Vict. c. 93 (1846).

5. N. Y. Sess. Laws 1847, c. 450, §§ 1 & 2. See also *Salsedo v. Palmer*, 278 Fed. 92 (2d Cir. 1921).

6. 11 Blashfield, Cyc. Auto Law & Pr. § 7412 (Perm. ed. 1936).