

1964

## Deadman's Statute—Nebraska Interpretation—*Light v. Ash* (Neb. 1963)

Victor J. Lich Jr.

*University of Nebraska College of Law*, vic@lichlawoffice.com

Follow this and additional works at: <https://digitalcommons.unl.edu/nlr>

---

### Recommended Citation

Victor J. Lich Jr., *Deadman's Statute—Nebraska Interpretation—Light v. Ash* (Neb. 1963), 43 Neb. L. Rev. 641 (1964)

Available at: <https://digitalcommons.unl.edu/nlr/vol43/iss3/9>

This Article is brought to you for free and open access by the Law, College of at DigitalCommons@University of Nebraska - Lincoln. It has been accepted for inclusion in Nebraska Law Review by an authorized administrator of DigitalCommons@University of Nebraska - Lincoln.

## DEADMAN'S STATUTE—NEBRASKA INTERPRETATION

*Light v. Ash* (Neb. 1963).

## I. STATEMENT OF THE CASE

In *Light v. Ash*<sup>1</sup> the Nebraska Supreme Court overruled the forty-one year old case of *Kiser v. Sullivan*.<sup>2</sup> *Kiser* held that a non-resident spouse had no direct legal interest in the outcome of a suit involving Nebraska real estate which would render him incompetent to testify under section 25-1202,<sup>3</sup> because his marital interest could be barred if his spouse conveyed the property without his joining in the conveyance.<sup>4</sup> Section 25-1202, known as the "Deadman's Statute," states:<sup>5</sup>

No person having a direct legal interest in the result of any civil action or proceeding, when the adverse party is the representative of a deceased person, shall be permitted to testify to any transaction or conversation had between the deceased person and the witness . . . .

Plaintiffs in *Light v. Ash* brought action against their brother and deceased mother in the district court to impose a constructive trust on two tracts of farm land. They alleged that, for the purpose of defrauding them, their mother procured quitclaim deeds of their interests in their father's estate upon her oral agreements and promises to retain the land unencumbered during her lifetime and

---

<sup>1</sup> 174 Neb. 627, 119 N.W.2d 90 (1963) (Supplemental opinion and re-hearing).

<sup>2</sup> 106 Neb. 454, 184 N.W. 93 (1921).

<sup>3</sup> NEB. REV. STAT. § 25-1202 (Reissue 1956).

<sup>4</sup> NEB. REV. STAT. § 30-105 (Reissue 1956). Although this discussion is limited to the application of section 25-1202 to cases involving real and personal property, it has been held that the word "transaction" makes it applicable to automobile accident cases. *Bruno v. Kramer*, 176 Neb. 597, 126 N.W.2d 885 (1964). This case held that in an action against the estate of a decedent driver of a vehicle involved in an automobile accident, a plaintiff's testimony is barred insofar as it relates to the actions or movements of decedent driver's vehicle immediately before or at the time of the accident. This was a four to three decision in which the three judges dissenting stated that "[I]n our opinions the dead man's statute is given too broad an application in *Fincham v. Mueller*, 166 Neb. 376, 89 N.W.2d 137. We think the rule therein should be modified by giving a reasonable definition of the word "transaction" as used in 25-1202, R.R.S. 1943."

<sup>5</sup> NEB. REV. STAT. § 25-1202 (Reissue 1956).

that upon her death the property would descend to plaintiffs.<sup>6</sup> Notwithstanding these promises their mother later transferred the land by warranty deed to the defendant brother.

For the purpose of proving the alleged oral promises, plaintiffs offered, and the court admitted, the testimony of nonresident spouses of the plaintiffs. The testimony was allowed in reliance upon the decision in *Kiser v. Sullivan*.<sup>7</sup> The district court ruled, on a motion by defendants, that the evidence as a whole was insufficient to establish a constructive trust in favor of plaintiffs and entered a verdict for defendants. The Nebraska Supreme Court affirmed the trial court decision on the same grounds.<sup>8</sup> Thereafter, the Supreme Court granted a rehearing and again affirmed on the same grounds, but stated further that even had there been sufficient evidence, the testimony of the nonresident spouses should have been excluded. The court, thus, specifically overruled *Kiser v. Sullivan*.<sup>9</sup> The court stated, contrary to the holding of *Kiser*, that nonresident spouses had a direct legal interest in the result of the suit which rendered them incompetent to testify under the Nebraska "Deadman's Statute."<sup>10</sup>

## II. RATIONALE OF THE NEBRASKA SUPREME COURT

*Light v. Ash* gives the most recent and probably the most definite interpretation of the "direct legal interest" clause of the "Deadman's Statute" that the Supreme Court of Nebraska has ever expounded. The court stated that "the only criterion for determining the competency of a witness under this statute [section 25-1202] is whether or not the witness will benefit from the result of the case in which he seeks to testify."<sup>11</sup> In most other cases the Supreme Court of Nebraska had determined competency under section

---

<sup>6</sup> 174 Neb. 44, 119 N.W.2d 903 (1963).

<sup>7</sup> 106 Neb. 454, 184 N.W. 93 (1921).

<sup>8</sup> *Light v. Ash*, 174 Neb. 44, 115 N.W.2d 903 (1962). The original opinion by the court gives a more complete fact situation than is given in the decision on rehearing.

<sup>9</sup> 106 Neb. 454, 184 N.W. 93 (1921). There is some doubt as to whether *Light v. Ash* was a proper case in which to overrule the *Kiser* decision. After affirming the decision because the evidence was insufficient, the court overruled this case and stated that the evidence should not have been admitted at all. 174 Neb. 627, 119 N.W.2d 90 (1963). The overruling of this decision was not necessary to the outcome of the case.

<sup>10</sup> NEB. REV. STAT. § 25-1202 (Reissue 1956).

<sup>11</sup> *Light v. Ash*, 174 Neb. 627, 628, 119 N.W.2d 90, 91 (1963).

25-1202 by applying the principle of "direct legal interest," but had failed in giving a workable definition of the phrase.<sup>12</sup>

The court stated in *Light v. Ash* that "under these cases,<sup>13</sup> the interest of the witness in the result of the litigation, and not his relationship or status with interested parties, determined the question of the competency of the witness to testify,"<sup>14</sup> and that "with the exception of *Kiser v. Sullivan* . . . this court has consistently adhered to this construction of the statute."<sup>15</sup> The court further stated that "in *Kiser v. Sullivan* we created an exception to the general rule that the competency of a witness under section 25-1202 R.R.S. 1943, was based solely on his interest in the result of the litigation."<sup>16</sup>

*Light v. Ash* can also be interpreted as an attempt to equalize the status of residents and nonresidents in this area. The court stated that "the spouse of a nonresident owner of Nebraska land has the same marital interest in it as does the spouse of a resident owner,"<sup>17</sup> and that "the assumption in *Kiser v. Sullivan* . . . that a nonresident spouse had no marital interest in Nebraska real estate because the title owning spouse could bar it without a joinder of his spouse, is fallacious."<sup>18</sup> Whether it is or is not fallacious is a point where issue could be taken with the court. It is difficult to think of a difference in marital interest that would be more pronounced than the resident spouse's ability to protect his interest by abstaining from joining on a deed.

---

<sup>12</sup> See *Parker v. Wells*, 68 Neb. 647, 92 N.W. 717 (1903). Here the court determined that a witness was competent to testify unless a favorable result in the suit would invest him with some "direct legal interest" in the subject of the controversy.

<sup>13</sup> See *Craig v. Seebecker*, 135 Neb. 221, 280 N.W. 913 (1938); *In re Estate of Tilton*, 129 Neb. 872, 263 N.W. 217 (1935); *Oft v. Ohrt*, 128 Neb. 848, 260 N.W. 571 (1935). These cases contain similar, but less exact definitions than does *Light v. Ash*.

<sup>14</sup> 174 Neb. 627, 628, 119 N.W.2d 90, 91 (1963). *But see* 174 Neb. 627, 629, 115 N.W.2d 90, 92 (1963). (Spencer J., dissenting). Judge Spencer casts doubt on the fact that *Kiser v. Sullivan* was an exception, as the court states, by showing that a similar rule of law was followed even before dower and curtesy were abolished in 1907. *Kiser* may have been merely an affirmation of the law as it had existed for many years.

<sup>15</sup> 174 Neb. 627, 628, 119 N.W.2d 90, 91 (1963).

<sup>16</sup> *Ibid.*

<sup>17</sup> *Id.* at 629, 119 N.W.2d at 92.

<sup>18</sup> *Ibid.*

## III. COMPETENCY: "DEADMAN'S STATUTE"

The "Deadman's Statute"<sup>19</sup> is an incompetency rule. Its purpose is to prevent the opportunity and temptation to give false testimony.<sup>20</sup> Since 1855 the Nebraska Legislature's general trend has been one of increasing liberalism in deciding who should be competent to testify. More persons are competent to testify today than in 1855.<sup>21</sup> Until *Light*, the Nebraska Supreme Court, as shown by *Kiser*, has also followed this trend in construing the "Deadman's Statute." That the legislature intended for more persons to be competent to testify is shown by the fact that it acquiesced in *Kiser* for forty-one years.

In dealing with the Nebraska "Deadman's Statute" it is necessary to remember that its scope is limited to certain given situations. For example, many cases can be found where it first appears that the statute should have been applied in order to make the witness incompetent to testify; but a thorough reading of the case shows that the witness was actually testifying as to another person's conversation with the deceased rather than as to his own.<sup>22</sup> Problems of this nature are easily avoided by a careful reading of the statute and the facts of the cases.

The statute itself, however, gives no solution to the problem of determining when an interest is a "direct legal interest." A

---

<sup>19</sup> NEB. REV. STAT. § 25-1202 (Reissue 1956).

<sup>20</sup> 2 WIGMORE, EVIDENCE § 579, at 686 (3d ed. 1940). Pospishil, *The "Deadman's Statute" In Nebraska*, 31 NEB. L. REV. 1 (1952).

<sup>21</sup> In 1855, in its first session, the Nebraska Territorial Legislature adopted the evidence section of the Iowa Code. IOWA LAWS c. 30 (1851). Territorial Laws of Neb. 1st sess. p. 134 (1855). This chapter on evidence had within it a section that changed the strict witness disqualification rule of the common law, and provided that "every human being of sufficient capacity to understand the obligation of an oath is a competent witness in all cases both civil and criminal." The section immediately following provided that the "facts which have heretofore caused the exclusion of testimony may still be shown for the purposes of lessening its credibility." When these two sections are read together, it is obvious that the legislature's intention was to allow more persons to testify—persons who would previously have been barred therefrom by the strict common law rules of evidence.

The 1865 amended statute dropped the word "certain" from the statute, and it now reads "direct legal interest" instead of "direct, certain, legal interest." Territorial Laws of Neb. 10th sess. p. 35 (1865).

<sup>22</sup> *Nelson v. Nelson*, 133 Neb. 458, 275 N.W. 829 (1937) where a granddaughter was allowed to testify to conversation between mother and deceased grandmother.

careful reading of the cases construing "direct legal interest" becomes necessary,<sup>23</sup> and the importance of *Light v. Ash* and *Kiser v. Sullivan* becomes apparent. Though the statute itself is narrow in scope, it is broad when compared with the area that is covered by the decision in *Light v. Ash*. The decision purports to control only situations arising under *Kiser v. Sullivan*, which deal with nonresident spouses and owners of real property. But, the impact of the decision could extend far beyond these bounds.

#### IV. RESIDENT AND NONRESIDENT SPOUSES' INTERESTS CONTRASTED

Under section 30-101 of the Nebraska statutes,<sup>24</sup> which deals with real property descent, a surviving spouse of a person dying intestate receives a statutory share of real estate of which the deceased was seized during the marriage and also any legal or equitable interests which the deceased had at the time of death. By this statute the surviving spouse receives real estate which (1) has not been lawfully conveyed by husband and wife, or (2) has not been conveyed by the deceased while the husband or wife was a nonresident of the state, or (3) has not been lawfully devised by the deceased.<sup>25</sup> A surviving spouse, by this statute, does *not* receive a share of real property which was conveyed by deceased alone, if either the husband or wife was a nonresident at the time of the conveyance. Section 30-105 also specifically provides that a spouse's interest in real estate may be barred by a conveyance by the one seized if *either* of them was a nonresident at the time of the con-

---

<sup>23</sup> Pospishil, *The "Deadman's Statute" in Nebraska*, 31 NEB. L. REV. 1, 14 (1952).

<sup>24</sup> NEB. REV. STAT. § 30-101 (Reissue 1956): "When any person shall die, leaving a husband or wife surviving, all the real estate of which the deceased was seized of an estate of inheritance at any time during the marriage, or in which the deceased was possessed of an interest either legal or equitable at the time of his or her death, *which has not been lawfully conveyed by the husband and wife while residents of this state, or by the deceased while the husband or wife was a nonresident of this state, and which has not been lawfully devised, shall descend . . .*" (Emphasis added).

<sup>25</sup> Even if the deceased did lawfully devise, this statute will operate if the surviving spouse elects to take against the will under NEB. REV. STAT. § 30-107 (Reissue 1956). This right of election apparently applies equally to residents and nonresidents, for the statute speaks of "any person."

veyance.<sup>26</sup> A nonresident spouse's interest is, therefore, not protected from a conveyance made by his or her spouse, who is seized of the property. Also, a resident spouse's interest is not protected if his spouse is a nonresident and seized of the property.<sup>27</sup> Where both spouses are residents, the interest of the spouse not seized is protected.

Because of these statutes concerning real property (1) neither a resident nor a nonresident spouse's interest can be defeated by will,<sup>28</sup> (2) under section 30-107 either may elect to take under the will or by statutory share under the provisions of section 30-101,<sup>29</sup> (3) under section 30-105<sup>31</sup> only a nonresident spouse's interest in

<sup>26</sup> NEB. REV. STAT. § 30-105 (Reissue 1956): "The right of a married man or woman to inherit a part or all of the real estate of which his or her spouse was seized of an estate of inheritance at any time during the marriage, may be barred by a conveyance executed by such husband and wife while residents of this state, and if either such husband or wife be not a resident of this state, by a deed of conveyance executed either by both of such parties or by the one seized at the time of such conveyance . . . ." (Emphasis added). It should be noted that the statute purports to say that if either spouse is a nonresident, the one seized may bar the other. *Kiser v. Sullivan*, 106 Neb. 454, 184 N.W. 93 (1921). A deed from a nonresident married woman gives good title to real estate without husband joining in conveyance.

<sup>27</sup> For the purpose of simplifying this discussion, "resident spouse" denotes a situation where both spouses are residents. The term "nonresident spouse" applies to any other situation. This problem arises because § 30-105 states that "interest in real estate may be barred if either of them was a nonresident . . . ." If either is a nonresident, the one not seized is a nonresident spouse.

<sup>28</sup> NEB. REV. STAT. § 30-107 (Reissue 1956): "If any real estate be devised by a deceased husband or wife, to the surviving husband or wife of such deceased person, or other provision be made for him or her in the last will and testament of such deceased person, he or she shall be entitled to his or her election to take the lands so devised, or the provision made for him or her in the last will and testament of such deceased husband or wife, or to take by inheritance, descent and distribution the interest in the estate of the deceased, provided by law . . . ."

<sup>29</sup> *Richardson v. Johnson*, 97 Neb. 749, 151 N.W. 314 (1915) (wife cannot lawfully dispose of her real estate by will so as to deprive husband of interest given him by § 30-101); *In re Estate of Robertson*, 86 Neb. 490, 125 N.W. 1093 (1910) (husband cannot by will deprive his wife of all interest in his property).

<sup>30</sup> *In re Estate of Manning*, 85 Neb. 60, 122 N.W. 711 (1909) (widow has right of election).

<sup>31</sup> *Kiser v. Sullivan*, 106 Neb. 454, 184 N.W. 93 (1921) (deed from a nonresident married woman gives good title to real estate without husband joining in conveyance).

real property can be defeated by a conveyance made by the deceased during his lifetime.<sup>32</sup>

For the purpose of comparison, it is here relevant to discuss and contrast the interests of residents and nonresidents in personal property situated in Nebraska. The Supreme Court of Nebraska has set down the rule that "the only criterion for determining the competency of a witness under this statute [section 25-1202] is whether or not the witness will benefit from the result of the case in which he seeks to testify."<sup>33</sup> It therefore would seem logical to apply this rule to cases concerning personal property, if the spouse's interests are as "direct" and "legal" as those in real property.

Section 30-103 deals with personal property and states that "when any person shall die possessed of any personal estate or of any right or interest therein, not lawfully disposed of by his last will, the same shall be applied and distributed as follows . . ."<sup>34</sup> The statute then provides for the payment of certain costs and fees out of the personal estate. Thereafter, the personal property is to be distributed in the same manner as provided for in section 30-101. A surviving spouse's interest in personal property is apparently the same whether he is a resident or a nonresident of Nebraska, for the statute speaks of "any person." Both residents and nonresidents (1) cannot have their interests defeated by will; (2) may elect to take by will or statutory share under section 30-107; (3) can have their interest defeated by a conveyance made by the deceased before his death. When the nature of a spouse's interest in personal property is thus compared, it becomes apparent that a nonresident spouse has the same marital interests in personal property that he has in real property.

His interests are the same in that (1) in both real and personal property his marital interest may be defeated by his spouse without his consent; (2) in neither situation can his marital interest be defeated by will; (3) with either real or personal property he can elect to take by statute or will. As a nonresident spouse's interest in real property is identical to his interest in personal property, it would seem that the rule laid down by the court concerning his competency to testify under section 25-1202 would be uniform for both. But, after *Light v. Ash* it is not.

---

<sup>32</sup> See Appendix.

<sup>33</sup> *Light v. Ash*, 174 Neb. 627, 628, 119 N.W.2d 90 (1962).

<sup>34</sup> NEB. REV. STAT. § 30-103 (Reissue 1956).

V. STATE OF THE LAW UNDER *KISER v. SULLIVAN*

Before *Light v. Ash*<sup>35</sup> the court's application of section 25-1202 was somewhat uniform. The Nebraska Supreme Court has consistently held, in actions against the representative of a deceased person involving money and personal property, that either spouse is competent to testify for the other with reference to transactions or conversations with the deceased person.<sup>36</sup> Before *Light v. Ash*, a nonresident spouse was competent to testify against the representative of a deceased person under section 25-1202 in cases concerning either real or personal property. This was a rational result because the nonresident spouse's interests in result of cases concerning real or personal property is apparently identical. A resident spouse could not testify against the representative of a deceased person in real property actions, but could in personal property cases. This was also a rational result as a resident spouse was held to have a greater interest in the result of a real property suit than in one involving personal property, because his interest in personal property could be defeated by his spouse's conveyance. Before *Light v. Ash*, the court had only one competency rule which was applied uniformly to real and personal property cases, and which was based on interest.<sup>37</sup> This rule is restated in *Light v. Ash*<sup>38</sup> as follows:

The only criterion for determining the competency of a witness under this statute is whether or not the witness will benefit from the result of the case in which he seeks to testify.

---

<sup>35</sup> 174 Neb. 44, 115 N.W.2d 90 (1962).

<sup>36</sup> In *Gillette v. Morrison*, 9 Neb. 395, 401-02, 2 N.W. 853 (1879), the husband of plaintiff in a suit on a note as her separate property did not have a direct legal interest in the result of the suit which rendered him incompetent to testify. In *Foster v. Murphy*, 76 Neb. 576, 107 N.W. 843 (1906), a wife's interest in the action of her husband for funds as administrator was not a legal interest which disqualified her as a witness. In *Wilkins v. Skoglund*, 127 Neb. 589, 256 N.W. 31 (1934), a wife was held to be a competent witness in her husband's action on an alleged lost note. In *Bratt v. Wishart*, 127 Neb. 836, 257 N.W. 258 (1934), plaintiff's wife was held to be competent to testify concerning a trust declared for value of improvements on real estate. In *re Estate of Jelinek*, 146 Neb. 452, 20 N.W.2d 325 (1945), the husband of claimant for a distributive share of money from her father's estate was held competent to testify. See Pospishil, *The "Deadman's Statute" In Nebraska*, 31 NEB. L. REV. 1, 4 (1951).

<sup>37</sup> *Craig v. Seebecker*, 135 Neb. 221, 280 N.W. 913 (1938); *In re Estate of Tilton*, 129 Neb. 872, 263 N.W. 217 (1935); *Oft v. Ohrt*, 128 Neb. 848, 260 N.W. 571 (1935).

<sup>38</sup> *Light v. Ash*, 174 Neb. 627, 628, 119 N.W.2d 90 (1962).

[T]he interest of the witness in the result of the litigation, and not his relationship or status with interested parties, determined the competency of the witness to testify.

## VI. STATE OF THE LAW UNDER *LIGHT v. ASH*

After *Light v. Ash*,<sup>39</sup> the nonresident spouse cannot testify under section 25-1202 in actions concerning real property, but under the prevailing cases can still testify in personal property cases. Because the court stated that "the only criterion for determining the competency of a witness . . . is whether or not the witness will benefit from the result of the case in which he seeks to testify,"<sup>40</sup> it is apparent that *Light v. Ash* did not reach a result consistent with the line of personal property cases. If the nonresident spouse's interest is equal in both real and personal property cases, then his benefit from the result of the suit would be identical. Therefore, if he is competent to testify in one action he should also be competent in the other. It appears that the court is faced with two rules concerning what kind of interest is a "direct legal interest"—one for real property and another for personal property. As the Supreme Court of Nebraska in *Light v. Ash* did not even mention personal property cases, it must be assumed that it had no intention of overruling the long line of personal property decisions. But the court has set down a definition of "direct legal interest," which if applied to personal property cases, could do nothing but overrule the personal property decisions as they now stand.

The Supreme Court of Nebraska has made the "Deadman's Statute"<sup>41</sup> more inclusive as to cases involving real property. It is entirely possible that the court could extend this broad construction to suits involving personal property, and hold some witnesses incompetent who are now held competent, under the prevailing personal property decisions. If the court declines, however, to overrule the series of cases involving a spouse's right to testify against the representative of a deceased in personal property actions, it will be faced with the impossibility of distinguishing *Light v. Ash* from the personal property cases on the basis of interest and benefit. On this basis *Light* stands in opposition to the personal property decisions.

---

<sup>39</sup> 174 Neb. 627, 119 N.W.2d 90 (1962).

<sup>40</sup> *Ibid.*

<sup>41</sup> NEB. REV. STAT. § 25-1202 (Reissue 1956).

## CONCLUSION

The trend in the United States is toward abolition of the common law rules and statutes which bar persons from testifying because they are interested in the outcome of the litigation.<sup>42</sup> Nebraska, in *Light v. Ash*, appears to have taken a step away from this trend. This decision holds that for purposes of the "Deadman's Statute," in real property litigation, the residency or non-residency of the spouse makes no difference, overruling a distinction relied upon for forty-one years. And this is despite that fact that there is a substantial property law difference: A resident spouse's real property interest can not be defeated by an inter vivos transfer, a nonresident spouse's interest can be defeated by an inter vivos transfer.

The court has extended the prohibition of the "Deadman's Statute" into areas of real property where the interests of resident and nonresident spouses are the same as their interests in personal property. A logical extension, then, is to apply the prohibitions of the "Deadman's Statute" to all cases in the personal property area since the interests in both areas are equal. It will be difficult to draw a distinction allowing spousal testimony in personal property litigation.

Victor J. Lich, Jr. '65

## APPENDIX

RESIDENCY	REAL PROPERTY	PERSONAL PROPERTY
<i>Both spouses are residents.</i>	(a) Spouse's interest cannot be defeated by inter vivos conveyance.*  (b) Spouse's interest cannot be defeated by will.**  "Deadman's Statute" would apply.	(a) Spouse's interest can be defeated by inter vivos conveyance.***  (b) Spouse's interest cannot be defeated by will.**  "Deadman's Statute" may apply as a result of <i>Light v. Ash</i> .

---

<sup>42</sup>McCORMICK, EVIDENCE § 65, at 142 (1954).

*Both spouses are nonresidents* (a) Spouse's interest can be defeated by inter vivos conveyance.\* (Under normal Conflict of Law rules, the Nebraska law would be unimportant).  
 (b) Spouse's interest cannot be defeated by will.\*\*  
 "Deadman's Statute" would apply. *Light v. Ash.*

*One having seisen or being owner is a resident, other spouse is a nonresident.* (a) Spouse's interest can be defeated by inter vivos conveyance.\* (a) Spouse's interest can be defeated by inter vivos conveyance.\*\*\*  
 (b) Spouse's interest cannot be defeated by will.\*\* (b) Spouse's interest cannot be defeated by will.\*\*  
 Appears that "Deadman's Statute" would apply following *Light v. Ash.* Application of "Deadman's Statute" dependent upon application of *Light v. Ash* to personal property area.

*One having seisen or being owner is a nonresident, other spouse is a resident.* (a) Spouse's interest can be defeated by inter vivos conveyance.\* (Under normal Conflict of Law rules, the Nebraska law would be unimportant).  
 (b) Spouse's interest cannot be defeated by will.\*\*  
 Appears that "Deadman's Statute" would apply, following *Light v. Ash.*

\* NEB. REV. STAT. § 30-105 (Reissue 1956).

\*\* NEB. REV. STAT. § 30-107 (Reissue 1956).

\*\*\* See cases cited at note 30 *supra*.