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Henry M. Grether

University of Nebraska College of Law

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Section on Probate**THE LITTLE HORRIBLES OF A SCRIVENER**

Henry M. Grether * †

The following articles on Nebraska probate administration are based upon papers delivered at the Institute on Probate Administration presented by the University of Nebraska College of Law and the Junior Bar Section of the Nebraska State Bar Association September 18 and 19, 1959. The articles are not meant to be a summary of Nebraska probate procedure, but rather a presentation of the highlights of the Institute.

*The Editors***I. INTRODUCTION**

The following is a short discussion of selected common drafting problems confronting the scrivener of an ordinary will, excluding tax implications, problems created by renunciation or widow's election, and problems of invalid provisions because of public policy, the rule against perpetuities and other substantive rules of law.

Common drafting errors to be avoided will be discussed by way of illustration. These drafting "horribles" have been selected as typical "drafting horrors" because of the frequency with which scribes have used these unwise provisions.

II. EXTREME BREVITY**A. EFFECT UPON ABATEMENT**

The first type of common error is extreme brevity which fails for lack of completeness in successfully stating the intentions of the testator.

In the first example, the client's assets consist of a modest amount of miscellaneous property and about equal value in "blue chip" securities and a farm, after deducting the amount of the mortgage against the farm. He has a son, Bill, and a daughter,

* B.A. 1943; LL.B. 1947, University of Utah; LL.M. 1948, University of Minnesota; Member Nebraska Bar; Admitted to practice before I.C.C. 1959; Presently Professor of Law, University of Nebraska.

† Staff Assistant, Parker L. Shipley, B.S. 1957, University of Omaha; Presently a Junior in College of Law, University of Nebraska.

Mary, whom he desires to treat equally. He wants his son to have the farm, and thus his will is as follows:

"I direct that all my just debts be paid.

"I give all of my securities to my daughter, Mary.

"I give, devise, and bequeath to my son, Bill, my farm (legally describing it).

"All the rest, residue, and remainder of my estate, of whatsoever nature, and wheresoever located, I give, devise and bequeath, share and share alike to my daughter, Mary, and my son, Bill, absolutely and forever.

"I nominate and appoint my son, Bill, to be executor of this, my last will and testament."¹

This will is grossly inadequate. What if the testator has a long serious illness and hospital bills are unpaid when he dies? It is not unlikely that there may be insufficient personal property to pay those hospital bills. Where is the money to come from? Should Mary's securities be sold to make these payments? What if Mary had been left a stated sum of money instead of the securities? It might be that after payment of the hospital bills there would be an insufficient amount of personal property to pay the legacy to Mary.

Thus, involved in this simple will are the questions: (1) Whether the residuary real estate as well as the residuary personal property should be used to pay the expenses of the last illness and the costs of administration. (2) Whether the personal property should be used to pay off the mortgage on Bill's farm, and (3) Whether the legacy should be charged against the real estate in the residue.

In *In re Patrick's Estate*,² the court said that it is presumed that the intent of the testator is that a devisee of lands should take them free from encumbrance. The case of *Schade v. Connor*,³ stated further that the personal estate is a "natural and primary fund" for the payment of debts and legacies. Thus, the general rule is that the personal estate must be exhausted before the real estate can be made liable.

However, it may be, in the above example, that the devise to Mary was intended to be absolute and unconditional and thus not

¹ For a discussion of this "horrible" see Kuhns, *Some Suggestions Regarding Wills*, 29 NEB. L. REV. 247 (1950).

² 72 Neb. 454, 100 N.W. 939 (1904).

³ 84 Neb. 51, 120 N.W. 1012 (1909).

affected by the rule that the personal estate is the primary fund for payment of debts and legacies.⁴

There is also a question of whether a legacy is specific or general.⁵ A legacy is specific, when it is the intention of the testator that the legatee should have the very thing bequeathed, and not merely a corresponding amount in value. The distinction between specific and general legacies is that the former singles out the particular thing which the testator intends the donee to have, no regard being had to its value, while the latter are payable out of the general assets, the chief element of the gift being its value.

Generally where the estate assets are insufficient, abatement will be in the following order: (1) Residuary estate, (2) Other general legacies, and (3) Specific bequests or devises.

B. EFFECT UPON CLASS DESIGNATIONS

Another example of extreme brevity is the following bequest of a fund in trust:

“For my Aunt Mary for life and upon her death in trust for my nephews and neices at their ages of 21.”

To this language much can be implied. How many of the following claimants are entitled to participate in this fund?

- (1) The executor of a nephew living at the time of the will who reaches twenty-one but predeceases the testator;
- (2) A nephew born after execution of the will who reaches twenty-one after the testator's death but before Aunt Mary's death;
- (3) The executor of a nephew living at the testator's death who thereafter reaches twenty-one and dies in the life of Aunt Mary;
- (4) A nephew born after the testator's death but in the life of Aunt Mary, and who survives her and then reaches twenty-one;
- (5) A nephew born after Aunt Mary's death but during the minority of the eldest nephew or niece, the claimant later reaching twenty-one;

⁴ *Smullin v. Wharton*, 86 Neb. 553, 125 N.W. 1112 (1910).

⁵ *In re Estate of Grenier*, 168 Neb. 633, 97 N.W.2d 225 (1959).

- (6) A nephew born after Aunt Mary's death and after the eldest nephew reaches twenty-one, the claimant later reaching twenty-one.

After considering the enumerated possibilities, an informed person must doubt that the scrivener's client had any clear notion of what the language meant.

In another example of a common drafting "horrible, an elderly testator tells his attorney that he wants to leave his property to his daughter Mary for life and then to her children. From this embryo idea the attorney drafts a will in which he creates a trust giving Mary the income for life, an appropriate power to consume principal, and a power of appointment for the benefit of her family. As to the power of appointment the will directs the trustees:

" . . . to pay the principal among the children of Mary as she shall by will appoint and in default of appointment to the children equally."⁶

Professor W. Barton Leach states that such a disposition is gravely defective and suggests clauses to remedy the defects.⁷

⁶ Leach, *Powers of Appointment*, 24 A.B.A.J. 307 (1938).

⁷ *Id.* at 311. Changes in the tax laws require some revision of the following suggested clauses:

" . . . 3. Upon the death of my daughter, Mary, to pay the principal to, or hold the principal for, such issue, spouses of issue and widows and widowers of deceased issue of Mary as she shall by will appoint. In the exercise of said power of appointment, my said daughter may appoint life estates to one or more objects of the power with remainders to others; appoint to grandchildren or more remote issue even though the parents of such appointees are living; impose lawful conditions upon any appointment, provided that a condition must not cause the appointment to benefit any person not an object of the power; impose lawful spend-thrift restrictions upon any appointment; make appointments outright to an object or in trust for the object; create in any object of this power a new power to appoint among some or all of my said daughter's issue or the spouses, widows or widowers of the same; appoint by a will which was executed before my death. But my said daughter shall not release this power of appointment in whole or in part; and, should any release be attempted, any appointment which she makes by will shall be as effective as if no such release had been attempted."

" . . . 4. Upon the death of my daughter, Mary to whatever extent the trust estate is not effectively appointed by said Mary, the trustee shall distribute the same to such of the issue of Mary and in such shares and proportions as said issue would have

C. ESTATES BY IMPLICATION

“To A for life, and if he dies without issue, to B.”

If A dies leaving issue the problem is whether there is an intestacy on A's death or whether a gift to A's issue will be implied. It seems peculiar that the testator provided for A's death without issue and yet made no provision for A's death with issue. The court, in *Hunter v. Miller*,⁸ refused to imply a remainder in favor of the issue of A.

Another illustration is whether a life estate to A will be implied from a gift to B after the death of A?⁹

In a third example of an incomplete expression, T devised Blackacre to his brother Bill and his heirs on condition that Bill should give a general release of all claims against the estate, within three months after the testator's death, and if Bill should give no such release within three months then Blackacre should go to Richard and his heirs. Examine this last situation and see if you can detect a defect of incomplete thought which may cause a problem. (What if Bill predeceases the testator?)

III. OVER SPECIFICITY

Leaving examples of the incomplete expression, we next come to the over specific clauses which have the effect of placing a fiduciary in a legal strait-jacket from which he is expected to perform as some kind of economic and financial genius.¹⁰

A. INVESTMENT CLAUSES

1. “. . . to be kept invested, at all times, in good, safe securities.”

It is serious enough to restrict the trustee's investment power to a legal list or some homemade substitute for it. It is worse

received the personal property of Mary under the laws of the Commonwealth of Massachusetts in force at Mary's death, if Mary had died intestate, domiciled in Massachusetts, having no next-of-kin other than her issue and owning only personal property. Provided that, no person to whom any appointment is made by Mary shall be entitled to receive any property distributed under this Clause (4) unless such person shall bring his appointed share into the fund to be distributed in default of appointment under this clause (4).”

⁸ 109 Neb. 219, 190 N.W. 583 (1922). Cf. *Bishop v. Bishop*, 257 N. W. 40, 177 N.E. 302 (1931).

⁹ See *Ralph v. Carrick*, 5 Ch. D. 984 (877), 11 Ch. D. 873 (1879).

¹⁰ For a discussion of some specific pitfalls see SHATTUCK & FARR, *AN ESTATE PLANNER'S HANDBOOK* § 61 (2d ed. 1953).

to place an injunction upon the trustee, which by its own definition, is impossible to perform even assuming that anyone can understand it. *There is no such thing as a "good safe security."* The draftsman thinks he has made an intelligent specification; but, in fact, the words have no ascertainable meaning.

The primary rule to follow is that no clause, phrase or word should be employed which the draftsman cannot clearly expound to a lay client. A secondary rule is that mandatory injunctions with relation to management duties and investment participations should be held to an absolute minimum.

2. "*. . . to be kept invested in good income bearing securities.*"

Again the question, what are good income bearing securities? To illustrate: Mr. A doubtless means well when he had his notary prepare his will, but it contained a restriction that backfired. The trust company which was appointed trustee had not been consulted, and upon conclusion of the executorship it was found that the will expressly prohibited sale of Canadian Pacific stock. For many years during the testator's lifetime this had been a good investment and had paid handsome and regular dividends. He doubtless figured it would always continue so and put ninety-eight per cent of his savings into the stock. He further provided that the trustee could pay only income to the wife during her lifetime.

Unfortunately, just after his death, the company passed its dividend and no more were declared for ten years. The subsequent return to a paying basis was of no help to the widow or the children during the intervening long and crucial time. The trust company's hands were tied, and what could have been a bequest of security became one of enforced penury.¹¹

3. "*. . . to be kept invested in first mortgage bonds.*"

To say that the trustee shall invest only in real estate mortgages is to make it impossible at some times to keep the funds invested, and impossible at all times to keep the investments properly diversified.

4. *Clauses prescribing mathematical standards by which to select investments.*

These provisions apply particularly to municipal and industrial bonds. In the former, such standards as population, outstanding

¹¹ 89 TRUSTS AND ESTATES 562 (1950).

debts, and value of taxable property are used. In the latter, earnings over a specified period of years, liquid assets, fixed charges, dividend payment record and default in interest are used as standards. The problem here is that once the provisions are written into the instrument, they cannot be changed after the death of the testator, and thus fail to change with the above variables.

5. *Clauses specifying the proportions which the several types of securities shall bear to the total.*

In this situation, what is the trustee to do if he cannot find securities in the specified amount? Diversification becomes inflexible.

6. *Clauses restricting the investment in any one security to a small specified amount.*

The object is to provide for diversification. The danger is that, as the size of the trust estate changes with the fluctuations in the market value of the investments, the trustee may find himself guilty of breach of trust by going over the prescribed amount. Viewed from the standpoint of the beneficiaries, this requirement may produce over-diversification.

7. *Clauses specifying the time at which or the price for which trust property shall be sold.*

At the time of sale the market value may be at its lowest and a reasonable price impossible to obtain. Specifying the price for which the property shall be sold, the trustee is put at a disadvantage. If the trustee cannot get the price specified, does he hold the property and perhaps let it deteriorate further? Or if the specified price is below the existing market price, should the trustee sell at the higher market price or the specified price? If the market price is higher than the specified price, and the purchaser learns of the specified price, will not the purchaser only offer the specified price?

8. *Clauses specifying the contingency (e.g. as when a security has been in default a year) upon the happening of which property shall be sold.*

The default may have been under such conditions that the sale of the security within that time would be disadvantageous to the estate. Yet under such a condition, the trustee has no choice in the matter.

B. PAYMENT OF DEBTS CLAUSES

Before including such a clause, one should ask the question: Should any such clause be omitted entirely from the will? The answer as to the following clause would definitely be in the affirmative:

I direct that all my just debts be paid.¹²

Does the testator intend that all his just debts shall be paid regardless of whether they are filed against the estate? A debt not filed against the estate was upheld against the executor in *Huebner v. Sessemann's Estate*.¹³ Also, no intent has been expressed as to the handling of unmatured debts.¹⁴

A recommended clause reads:

I direct that the expenses of my last illness and burial and that all just claims filed against my estate be paid when they become due, provided, however, that my executor hereinafter named may, in his sole judgment and discretion, make immediate payment of the present value of any unmatured claims.¹⁵

C. COMMON DISASTER AND RELATED CLAUSES

Testator's concern is not whether the deaths are common or whether they result from a common cause, which itself is a litigable issue. His problems stem from the possibility of disputes as to who died first, or avoiding double estates.¹⁶ Life estates and remainders are usually what the testator wants, unless the marital deduction is involved.

The objectives often sought to be met by such a clause include:

- (1) A fear of double death taxes.
- (2) The avoidance of successive administration expenses and lawyer's and executor's fees, which cause further diminution of an estate.

¹² For a discussion of the "horribles" of this sentence see Kuhns, *supra* note 1.

¹³ 38 Neb. 78, 56 N.W. 697 (1893).

¹⁴ See NEB. REV. STAT. §§ 30-607, -608 (Reissue 1956).

¹⁵ *Supra* note 1, at 259. "Present value" means at time of payment; In re Estate of Larson, 138 Neb. 544, 293 N.W. 430 (1940).

¹⁶ See Trachtman, *Estate Planning*, PRAC. LAW INST. at 55 (1959), where the author suggests: ". . . Time consumed in discussing the possible consequences of common disasters could be used more profitably in solving problems that are more likely to occur."

- (3) A childless husband may not relish the thought of his wife's family enjoying his wealth shortly after his death.
- (4) A legatee's widow may have her share of the legatee's estate enlarged at the expense of the legatee's children and that thought will trouble even those who highly regard the in-law but are not unmindful of the possibilities of remarriage.
- (5) A testator may want a friend to benefit by the bequest but have no interest in the objects of the friend's bounty.
- (6) In some situations the marital deduction is desired only if the spouse is likely to outlive the testator by many years.
- (7) The marital deduction may be desired even if the spouse survives for but a moment.

A typical common disaster clause which appears frequently is the following:

"If any legatee or devisee and I die as a result of a common disaster (or common accident, common calamity, or during joint illness), the said legatee or devisee shall be deemed to have predeceased me and this will and all its provisions shall be construed upon that assumption and basis."

This type of "horrible" is unsatisfactory in that:

- (1) It frequently gives rise to litigation as to whether the accident or peril or disaster was the cause of both deaths.
- (2) It fails to cover the rather rare case where the deaths occur at about the same time from unrelated causes.
- (3) It may result in leaving titles unsettled for years. Husband and wife are in a motor accident. The husband dies shortly thereafter. The wife, badly crippled, lives on for years without recovering. When, if ever during her life, may the husband's executor safely pay her bequest?¹⁷

D. SIMULTANEOUS DEATH CLAUSE

The simultaneous death clause fixes the order of deaths only when there is insufficient evidence to establish who died first.

¹⁷ *Bowe, Problems in Drafting Wills and Trusts*, 37 NEB. L. REV. 127 (1958).

What the testator intends is to avoid having his property pass through the estate of a legatee who will not live long to enjoy it. Such clauses do not carry out the testator's intention and are unsatisfactory in that:

- (1) They frequently fail to eliminate litigation. Whether there is insufficient evidence to establish who died first is itself a litigable issue.
- (2) They will bring about the very result the testator desired to avoid if his legatee survives him by five minutes.

A typical simultaneous death clause often used, but which should be avoided, reads:

If any legatee or devisee dies simultaneously with me or under such circumstances that there is not sufficient evidence of survivorship, I hereby declare that I shall be deemed to have survived such legatee or devisee and this will and all its provisions shall be construed upon that assumption and basis.¹⁸

E. TIME CLAUSE

The time clause will almost always avoid litigation except for the rare case where the bodies are found after a considerable period of time and hence the time of the testator's death cannot be determined. Such a clause should solve problems of simultaneous death cases and practically all of the common disaster cases.

A suggested form of the time clause is:

For the purpose of this will, a person shall not be deemed to survive me if such person dies within ____ days of my death, nor to survive another if such person dies within ____ days of the death of such other.¹⁹

IV. DRAFTING ERRORS

A. AMBIGUOUS WORDING

Too many drafting errors are purely semantic in that the language may not be too clear or it may be merely incomplete or perhaps otherwise ambiguous, thus failing to state its intent

¹⁸ *Id.* at 128. See also Uniform Simultaneous Death Act, NEB. REV. STAT. §§ 30-121 to -128 (Reissue 1956).

¹⁹ *Supra* note 16, at 56. In order to qualify for the marital deduction the surviving spouse's interest cannot be made to terminate in a time longer than six months following the decedent's death. See INT. REV. CODE of 1954 § 2056 (b) (3).

effectively. The scrivener may have failed to foresee and provide for all contingencies that may arise.

For example: a definite beneficiary of a trust is necessary. A trust can be created in favor of beneficiaries not specifically named in the trust instrument if they are ascertainable from other facts having significance independent of the testamentary disposition.²⁰ However, the description of the beneficiary must be sufficiently definite so the person intended can be identified. In the following illustration, are the beneficiaries too indefinite to be determined?

“. . . to be distributed by my executors as they see fit among my friends.”

Possible solutions to the above illustration would be to list the bequests directly in the will or codicil or incorporate by reference a list described and in existence.

Bad solutions which should not be followed include leaving the property outright to the executors or other named legatees, using precatory, not mandatory, language relating to the desired distribution. Avoid giving property to A “to be held by him in accordance with the instructions which I have given him or will give to him hereafter.”²¹

B. PROBLEMS RAISED BY END-LIMITATIONS

After the will or trust instrument has provided for all of the primary objects of the testator's or settlor's bounty and perhaps after considerable attention has been given to providing alternatives for the various contingencies which have been foreseen, the scrivener often finishes with some limitation such as “. . . to my heirs.” These ending provisions are called “end-limitations.” They are often ambiguous and the cause of bitter law suits because the same care and thought given to the drafting of the will or trust up to this point is not used on the “end-limitation.”

The meaning of “heirs” is ambiguous in that the word has a primary and a secondary meaning. Using the primary meaning the “heirs” are computed as of the date of the testator's death. Under the secondary meaning the “heirs” are computed other

²⁰ SCOTT, TRUSTS § 54.2 (2d ed. 1956); BOGERT, TRUSTS AND TRUSTEES § 106 at 495 (1935); *Restatement (Second) Trusts* § 54 d.

²¹ SCOTT, TRUSTS §§ 52, 164.1 (1939); Cf. *Restatement (Second), Trusts* §§ 40, 40.1, 112.

than at the time of the testator's death, normally at the termination of a life estate.

The testator usually intends the secondary meaning under most fact situations where the question arises, but the orthodox rule of law gives "heirs" the primary meaning. Litigation has often resulted because too little attention is paid to this section of the will.

In the case of *In re Estate of Pfost*,²² a fund of 12,000 dollars was required to:

. . . be divided equally, in equal shares, share and share alike between my son Hugh Pfost, and my twelve (12) grandchildren being the eight (8) children of my daughter Iva L. Foss, and the four (4) children of my son Hugh Pfost. [Emphasis added]

The litigation was concerned with whether the fund should be divided into thirteen equal parts, or into two equal parts with one share going to Hugh Pfost and the other share being divided equally among the twelve grandchildren. The court gave the preposition "between" its literal and grammatical meaning and awarded half to Hugh Pfost and the other half to the grandchildren.

And in *Kramer v. Larson*,²³ a will recited:

All the rest, residue and remainder of my estate, both real and personal, wheresoever situated, I give, devise and bequeath to my heirs at law and next of kin, share and share alike, . . .

The problem in this case was whether the residuary estate should be divided per stirpes (seven parts) or per capita (twenty-five parts). It was held that the phrase "to my heirs at law" designated the residuary beneficiaries and the words "share and share alike" prescribed the manner in which the beneficiaries should take. The case held the heirs took per capita even though related in different degrees of consanguinity to the testator. The brothers, sisters, neices and nephews were treated as constituting but one class of devisees, since by the will, they had not been separated into different classes, and the will showed no contrary intent.

In a third situation, the problem arose as to the time for determining who were the "heirs" described in the following language:²⁴

If Christina C. Dunlap shall die before I do and there shall be no heirs born to me, then and in that case all of my property

²² 139 Neb. 784, 298 N.W. 739 (1941).

²³ 158 Neb. 404, 63 N.W.2d 349 (1954).

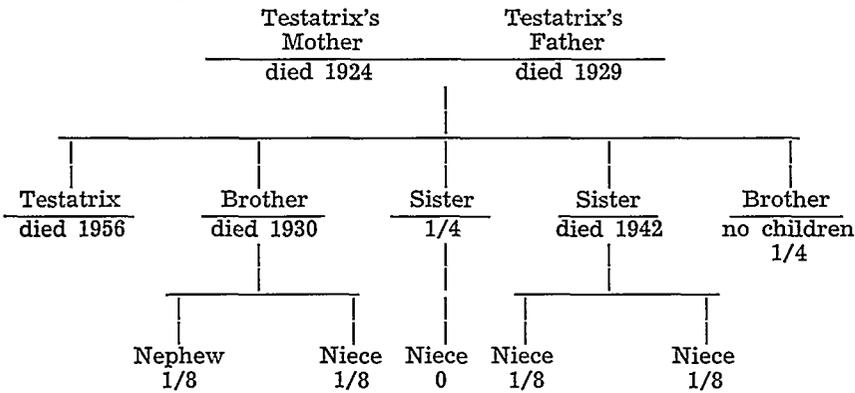
²⁴ *Dunlap v. Lynn*, 166 Neb. 342, 89 N.W.2d 58 (1958).

above described and all other property, both real and personal which shall belong to me at my demise shall descend to the heirs of Christina C. Dunlap share and share alike, and should there be grandchildren of the said Christina C. Dunlap they shall share and share alike of the share falling to their parent, under this will.

The available solutions for computing the time were:

- (1) 1913, the date the will was executed;
- (2) 1924, the date the testatrix's mother died;
- (3) or, 1956, the date that the testatrix died.

The family tree of the testatrix is as follows:



The heirs were computed as of the date of the testator's death, which was the secondary meaning of heirs. The primary meaning would have computed the time as of the date of the ancestor's (mother's) death. If the court had taken the latter meaning, the husband would have received 1/3d of the estate and the grandchildren, including the testatrix, each would have received 2/15. The court, however, distributed the estate giving an undivided 1/4th each to the son and daughter of Christina C. Dunlap and an undivided 1/8th each to one grandson and three granddaughters. See the family tree above.

The moral of the story is that all gifts to heirs or issue should declare at what time or times heirs are to be determined and whether distribution is to be made on a stirpital or per capita basis.

In *Abbott v. Continental National Bank*,²⁵ the controversy was over the following clause in a will.

In the event my daughter Elizabeth Margaret Woodward shall predecease my wife without issue then living, then and in that

²⁵ 169 Neb. 147, 98 N.W.2d 804 (1959).

event I order and direct my trustees to pay the income of such trust fund to my wife, Zula E. Woodward during her natural life, and upon her death to pay the principal thereof to my legal heirs.

The surviving wife of the testator and the surviving husband of Elizabeth Margaret Woodward contended that they held the remainder interest in the trust estate as the legal heirs of the testator. The court held the phrase "to my legal heirs" to mean the heirs who would take if no disposition of the property had been made under the will. Therefore, the plaintiff wife had no right in the remainder interest of the trust property and that such remainder interest, upon the termination of the trust, was in the heirs of the testator computed as of the date of the termination of the trust.

C. GIFT IN TRUST TO USE THE INCOME

A gift in trust to use income for nieces, nephews and "such other of my relatives" was involved in *Applegate v. Brown*.²⁶ The court said here the language "my relatives" meant relations of the blood of the testator and did not mean relatives by affinity, and that such relation included the mother, brothers and sisters, nieces and nephews of the testator. The court applied the common law rule of convenience to close the class to after born persons as of the date of the testator's death.

It is difficult to tell whether the court failed to realize that the rule of convenience would not normally be so applied to a gift of income as distinguished from a gift of corpus, or whether the court failed to articulate its reasoning that the ordinary rules of construction will yield so as to make a gift valid rather than invalid under the rule against perpetuities.²⁷

D. A DEVISE TO A, AND HER DECENDANTS—RULE IN WILD'S CASE

In a suit to obtain specific performance of a contract for the sale of real estate the controversy involved whether the language,

²⁶ 168 Neb. 190, 95 N.W.2d 341 (1959).

²⁷ In the motion for rehearing, which was denied, the plaintiff, Applegate, contended that in its decision the court misapplied the "Rule of Convenience" pointing out that all prior authority had held the rule inapplicable to gifts of income. Cases supporting this view are: *In re Wenmoth's Estate*, 32 Ch. D. 266 (1887); *In re Letcher's Estate*, 302 Ky. 448, 194 S.W.2d 984 (1946); *Vickery v. Maryland Trust Co.*, 188 Md. 178, 52 A.2d 100 (1947); *In re Earle's Estate*, 369 Pa. 52, 85 A.2d 90 (1951).

"To my daughter, Polly Anna Ludlow, and her descendants" vested a fee simple title in Polly or a life estate only, with a remainder in her descendants.²⁸ The court held that the language was controlled by the Uniform Property Act²⁹ and that a devise to a person and "to his descendants" created only a life estate in that person and a contingent remainder in his descendants as a class. This made Polly's title unmarketable and specific performance under the contract was denied.

V. CONCLUSION

Drafting "horribles" can be avoided if the scrivener carefully constructs a complete check list and uses his check list conscientiously.³⁰ The conscientious scrivener should make an outline of all possible contingencies that may arise before starting to draft the instrument. While composing, he should check and double check his work to insure correctness and exactness. Once the instrument is drafted, let it cool off and then always, when possible, have an assistant or an associate check the drafting thoroughly. Remember a will clause may prove to be a "horrible" either because of its extreme brevity or because of its overspecificity and if it is neither too short nor too long it may nevertheless be ambiguous because of semantic considerations or technical legal rules of construction. Oftentimes the most frequently used expressions become unclear.

²⁸ *Ellingrod v. Trombla*, 168 Neb. 64, 95 N.W.2d 635 (1959).

²⁹ NEB. REV. STAT. §§ 76-101 to -123 (Reissue 1958).

³⁰ See check list suggested in 85 TRUSTS AND ESTATES 15 (1947); 2 P-H WILLS, ESTATES AND TRUST SERVICE ¶¶ 20,108 to 113, 20,403, 20,404; WORMSER, THEORY AND PRACTICE OF ESTATE PLANNING 168-82 (1948); WORMSER, PERSONAL ESTATE PLANNING IN A CHANGING WORLD 293-300 (1948). The check lists cited take distinctly different approaches to the form of the check list and the best results probably would be obtained by using some combination of these different lists.