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Property; Estates in Property

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Existing law states that the custodian has complete authority to collect, hold, manage, invest, and reinvest the custodial property until the minor dies or attains the age of eighteen years, whichever occurs earlier.⁶ To carry out these powers, the custodian may execute and deliver any written instruments.⁷ Chapter 10 specifies that, with respect to any interest in real property, the custodian may perform any acts that an adult could perform including all acts that a trustee would be authorized to perform.⁸

6. *Id.* §167.050(1), (4) (amended by 1983 Nev. Stat. c. 10, §4, at 12).

7. *Id.* §167.050(6) (amended by 1983 Nev. Stat. c. 10, §4(6), at 13).

8. *Id.*

Property; estates in property

NEV. REV. STAT. §111.— (new).

SB 438 (Committee on Judiciary); 1983 STAT. Ch 388

Chapter 388 reforms the common law of estates in property by abolishing the Rule in Shelley's Case¹ and the doctrine of the destructibility of contingent remainders.² In addition, Chapter 388 modifies the rule against perpetuities.³

The Rule in Shelley's Case

At common law, if a person received a life estate by grant or devise and the person's heirs were granted or devised the remainder in the same written instrument,⁴ the Rule in Shelley's Case resulted in the ancestor taking both the lifelong interest and the remainder in fee simple.⁵ This prevented the heirs of the ancestor from receiving any interest through the grant or devise⁶ and resulted in property passing to the heirs, if at all, by descent.⁷

1. See 1983 Nev. Stat. c. 388, §2, at 927-28.

2. See *id.* c. 388, §3, at 928.

3. See *id.* c. 388, §4, at 928.

4. Before the Rule in Shelley's Case is found to apply, there must be (1) a freehold estate in the ancestor and (2) a remainder in the heirs; and the interests must (3) have been created by the same instrument and (4) both be either legal or equitable. See C.J. MOYNIHAN, INTRODUCTION TO THE LAW OF REAL PROPERTY 143 (1962).

5. R.E. BOYER, SURVEY OF THE LAW OF PROPERTY 146 (3rd ed. 1981) (definition of the Rule in Shelley's Case).

6. *Id.* at 146.

7. See MOYNIHAN, *supra* note 4, at 140. For a discussion on abolishing the Rule in Shelley's Case, see *id.* See also MOYNIHAN, *supra* note 4, at 148-49.

Chapter 388 abolishes the Rule in Shelley's Case by providing that (1) a life estate vests in the person receiving a grant or devise of a life-long interest,⁸ and (2) the heirs are to take the remainder pursuant to the grant or devise.⁹ Furthermore, Chapter 388 provides that this result will occur regardless of the expressed language in the grant or devise.¹⁰

Doctrine of Destructibility

Under the common law doctrine of the destructibility of contingent remainders, contingent remainders are destroyed when a prior freehold estate terminates before the remainder vests.¹¹ Existing law¹² provides, however, that contingent remainders to children or issue born posthumously after the termination of a prior estate are not destroyed,¹³ even if alternative future interests dependent upon the contingency or death of a person without heirs or issue are defeated.¹⁴

Chapter 388 supplements existing law¹⁵ by preventing the destruction of *any* contingent remainders dependent upon a condition left unsatisfied at the termination of a prior estate.¹⁶ Consequently, instead of being destroyed, the remainder takes effect in the same manner as a springing or shifting executory interest once the condition is satisfied.¹⁷

The Rule Against Perpetuities

The Nevada Constitution incorporates the rule against perpetuities into state law.¹⁸ In cases involving the rule against perpetuities, Nevada courts have relied upon the traditional common law statement,¹⁹ "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."²⁰

Chapter 388 appears to combine principles of *cy pres*²¹ and the "wait and see" doctrine,²² thereby limiting the uncertainty created by modi-

8. 1983 Nev. Stat. c. 388, §2, at 927-28.

9. *Id.*

10. *Id.*

11. See MOYNIHAN, *supra* note 4, at 129.

12. The common law was revised by statute. See NEV. REV. STAT. §§111.080, 111.085.

13. *Id.* §111.085.

14. *Id.* §111.080.

15. *Id.* §§111.080, 111.085.

16. 1983 Nev. Stat. c. 388, §3, at 928.

17. *See id.*

18. See NEV. CONST. art. XV, §4 "No perpetuities shall be allowed except for eleemosynary purposes."

19. See *Sarrazin v. First Nat'l Bank of Nevada*, 60 Nev. 414, 418, 111 P.2d 49, 53 (1941) Nevada lacks a statute defining the rule against perpetuities.

20. J.C. GRAY, *THE RULE AGAINST PERPETUITIES* 191 (4th ed. 1942).

21. See Note, *Property—Perpetuities—Texas Enacts Cy Pres Statute*, *Tex. Rev. Civ. Stat. Ann. art. 1291b (Supp. 1969)*, 49 TEX. L. REV. 181, 184 (Dec. 1970) (definition of the *cy pres* doctrine).

22. See 1983 Nev. Stat. c. 388, §4(1), at 928. See Case Comment, *Property Law—Rule*

fyng the rule against perpetuities.²³ Under the “wait and see” aspect of Chapter 388,²⁴ possible violations of the rule against perpetuities are narrowed to situations where *actual* events have shown that the interest did not vest within the required period of time, rather than invalidating the interest because of the possibility that it will not vest within the required time period.²⁵ Chapter 388 also requires the period to be measured by a lifespan that has a causal effect on the vesting or failure of the interest,²⁶ further reducing any uncertainty created.²⁷

Moreover, the provisions of Chapter 388 that apparently are based upon the cy pres doctrine²⁸ provide that an interest found to violate the rule against perpetuities will be reformed by a court to comply with the rule against perpetuities.²⁹ Any reformation made by a court must follow as closely as possible the original intent of the creator of the interest.³⁰

Against Perpetuities—Use of Cy Pres Doctrine to Reform Testamentary Trust Violating the Rule Against Perpetuities—In re Chun Quan Yee Hop, 469 P.2d 183 (Hawaii 1970), 84 HARV. L. REV. 738, 744 (Jan. 1971) (definition of the “wait and see” doctrine).

23. See Case Comment, *supra* note 22, at 742 n.15 (less uncertainty may be created by using a combination statute); see also note, *supra* note 21, at 182 (for reasons to modify the rule against perpetuities).

24. See 1983 Nev. Stat. c. 388, §4, at 928.

25. *Id.*

26. *Id.*

27. See Case Comment, *supra* note 22, at 744 n.27 (discussion of additional modifications of the rule against perpetuities used in statutes to reduce the uncertainty created).

28. See 1983 Nev. Stat. c. 388, §4(2), at 928.

29. *Id.*

30. *Id.*

