

Volume 4 | Issue 3

---

1953

## Future Interests

Robert N. Cook

Follow this and additional works at: <https://scholarlycommons.law.case.edu/caselrev>



Part of the [Law Commons](#)

---

### Recommended Citation

Robert N. Cook, *Future Interests*, 4 W. Res. L. Rev. 234 (1953)

Available at: <https://scholarlycommons.law.case.edu/caselrev/vol4/iss3/18>

This Article is brought to you for free and open access by the Student Journals at Case Western Reserve University School of Law Scholarly Commons. It has been accepted for inclusion in Case Western Reserve Law Review by an authorized administrator of Case Western Reserve University School of Law Scholarly Commons.

astrological conditions prevailing at the time of the operation; that he had determined that an operation at such time was particularly hazardous; and that he had informed the jury of his conclusions just prior to its vote on the verdict. The trial court overruled the plaintiff's motion. On appeal on questions of law, the court of appeals held that it is against public policy to permit a juror to testify as to his conduct or that of other jurors during the time the jury was deliberating upon its verdict, and that the rule is deemed so basic that it is applicable even in cases where such evidence tends to show that a juror made an independent investigation upon matters which he deemed persuasive in arriving at a verdict.

Although there are cases to the contrary in a few jurisdictions, the holding in the principal case is in line with numerous decisions of the Supreme Court of Ohio.

### **Judicial Notice**

In *Nelson v. Van Horn Construction Co.*<sup>18</sup> the plaintiff appealed from an adverse ruling of the Board of Review of the Ohio Bureau of Unemployment Compensation which held that he had not established his eligibility for unemployment benefits. In reversing this ruling and granting judgment in favor of the plaintiff, the court held that he had actively sought employment but that it was not available on account of economic conditions then prevailing.

It is the general rule that state courts will take judicial notice of administrative rules, regulations and bulletins of considerable notoriety established and published by state and federal boards and commissions, and by state and federal executive departments.<sup>19</sup> Accordingly, the court in the principal case rightly held that the information contained in the *Labor Market Information*, a regular official publication of the Department of Research and Statistics of the State Bureau of Unemployment Compensation, could be judicially noticed by it.

CLINTON DEWITT

## **FUTURE INTERESTS**

In *Corry v. Central Methodist Church of Springfield*<sup>20</sup> a testatrix gave property "to my nieces K and M or the survivor of them." The residuary clause of the testatrix's will provided "in the event that either of my nieces K and M, shall predecease me, then in such event, . the niece so surviving shall have the entire part of my estate. " The court of appeals properly

<sup>18</sup> 102 N.E.2d 57 (Trumbull Com. Pl. 1951).

<sup>19</sup> *Boone v. State*, 109 Ohio St. 1, 141 N.E. 841 (1923)

construed the will as a whole and held that the words "or the survivor of them" meant surviving the testatrix. Consequently upon the death of one of the nieces after the testatrix's death, the property received from testatrix passed under the deceased niece's will.

In *Braun v. Central Trust Co.*<sup>2</sup> a testator provided for a marital trust and a residuary trust in order to obtain the maximum benefits of the marital deduction. The testator used a formula marital deduction clause that required his executor to designate the specific property that would be held under the marital trust. In making this selection the executor was restricted to property which would qualify for a marital deduction under the federal estate tax. Upon a refusal of the executor to bring an action to have the will construed, the testator's two daughters sued to ascertain whether the marital deduction clause violated the Rule against Perpetuities. They contended that the provisions of the will setting up the two trusts violated the Rule against Perpetuities because the selection of the property for the marital trust was a condition precedent to the vesting of the legal title in the trustee. The court of appeals, in affirming the common pleas court's decision,<sup>3</sup> held that the title of the trustee was not subject to a condition precedent; *i.e.*, the executor's selection of the property that would be the subject of the trust. Therefore, the provision of the will providing for the marital trust and the residuary trust did not violate the Rule against Perpetuities.

Ordinarily an interest that is not vested for purposes other than the application of the Rule against Perpetuities is also not vested under the Rule.<sup>4</sup>

Interests such as possibilities of reverter are not vested in the general sense,<sup>5</sup> but they are considered as vested under the Rule against Perpetuities.<sup>6</sup> The decisions holding that possibilities of reverter and rights of entry are vested interests under the Rule against Perpetuities are unsound<sup>7</sup> and do not justify increasing the areas of the law in which interests subject to a condition precedent are considered vested under the Rule against Perpetuities.

An interest in property is clearly subject to a condition precedent when the person who is to have the interest will be ascertained upon the occur-

<sup>1</sup> 104 N.E.2d 73 (Ohio App. 1950).

<sup>2</sup> 92 Ohio App. 110, 109 N.E.2d 476 (1952).

<sup>3</sup> 104 N.E.2d 480 (Hamilton Com. Pl. 1951).

<sup>4</sup> 6 AM. LAW OF PROPERTY §§ 24.18, 24.62 (1952); 1 SIMES, FUTURE INTERESTS § 40 (1936).

<sup>5</sup> "A possibility of reverter is any reversionary interest which is subject to a condition precedent." RESTATEMENT, PROPERTY § 154(3) (1936).

<sup>6</sup> 6 AM. LAW OF PROPERTY § 24.62 (1952); RESTATEMENT, PROPERTY § 372 (1944); 2 SIMES, FUTURE INTERESTS § 507 (1936).

<sup>7</sup> 6 AM. LAW OF PROPERTY § 24.62 (1952).