Program from the Eighth Thomas M. Cooley Lectures

University of Michigan Law School

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The
Thomas M. Cooley
Lectures

Eighth Series

Public Policy and the Dead Hand

LEWIS M. SIMES

Floyd R. Mechem Professor of Law, the University of Michigan

4:15 P.M.
FEBRUARY 7, 8, 9, 14, AND 15, 1955
Hutchins Hall, Room 120 — Ann Arbor, Michigan
**THOMAS M. COOLEY LECTURES**

Thomas M. Cooley was one of the three members of the first faculty of the University of Michigan Law School, when it was organized in 1859. In 1864 he became a justice of the Supreme Court of Michigan, and held that office until 1885, continuing also as a member of the Law Faculty. In 1871 he became Dean of the Law School. In addition to his duties on the bench and in the class room, he made many important contributions to legal literature. His treatises on "Constitutional Limitations" and on "Torts" were among the legal classics of his day and were known and read throughout the United States. At the time of his death in 1898, it may fairly be said that he was the most distinguished legal scholar that the State of Michigan had produced.

For the purpose of stimulating research and presenting its results in the form of public lectures, the faculty of the University of Michigan Law School established the Thomas M. Cooley Lectureship in honor of its first great legal scholar. This was made possible through the William W. Cook Endowment for Legal Research.

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**THOMAS M. COOLEY LECTURES**

By Lewis M. Simis

**Public Policy and the Dead Hand**

**LECTURE I**

*Should the Dead Hand Distribute: Free Will vs. Family*

1. Introduction to the problem of freedom of testation.
2. Restraints on testation on the continent of Europe.
3. Does complete freedom of testation exist in England and America?
4. What policy should determine the extent of freedom of testation in America?

**LECTURE II**

*The Policy Against Perpetuities: Dead Hand vs. Alienability*

1. The original policy of the Rule: alienability to secure productivity.
2. This is no longer a sound reason for the rule.
   a. Future interests are commonly equitable interests in trusts, with power of alienation in the trustee.
   b. The subject matter of future interests may be corporate shares, with a power in the corporation to alienate its property.
   c. American law recognizes a power of judicial sale of property affected with future interests, where an emergency exists.
   d. English legislation of 1925 provides for a power of sale in practically all situations involving future interests.
   e. In the welfare state property can be put to more productive uses in connection with administrative procedures.
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Lecture III

The Policy Against Perpetuities: Dead Hand vs. Living Hand

1. The true rationale of the rule.
   a. It strikes a fair balance between the desires of the living and of the dead.
   b. It is socially desirable that property be controlled by the living.
2. Is the rule satisfactory? Six essential aspects criticized.
3. How should the rule be amended?
   a. A broader rule of construction.
   b. Rules to dispose of particular situations: cy pres
   c. Restrictive legislation for possibilities of reverter and rights of entry.
   d. Should the distinction between vested and contingent interests be eliminated from the rule?

Lecture IV

Should the Dead Hand Increase Its Grasp: The Policy Against Accumulations

1. The rise of a separate rule against accumulations.
2. The American common law rule.
3. Social policies against accumulations.
4. What legal restrictions should be imposed on accumulations?

Lecture V

The Dead Hand Achieves Immortality: Gifts to Charity

1. Exceptions to rules restricting dead hand control when charities are involved.
2. Is the perpetual trust for charity desirable?
   a. Various questions of policy involved.
   b. The trust with a narrow or eccentric purpose.
   c. The tendency of charitable purposes to become obsolescent.
   d. Is the cy pres doctrine sufficient to counteract obsolescence?
3. Should the perpetual charitable trust be further restricted? If so, how?
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