CHAPTER 12

Class Gifts

A class gift is a limitation of a property interest to a group of persons intended to take as an entity or unit rather than as specific individuals. When a limitation is to persons specified by their individual names, the grantor or testator may be assumed to have thought of them as separate individuals rather than as an entity, unit, or group. Hence, in the construction of limitations, there is a presumption that a limitation to named individuals is not a class gift.\(^{269}\) Being only a rule of construction, this presumption is overcome by a contrary manifestation of intention.\(^{270}\) When a limitation

\(^{269}\) Hatt v. Green, 180 Mich. 383, 147 N.W. 598 (1914) (to her children, i.e., George, Ellen, Milo, Merwin, Walter, Alfred, Sarah, Wade, and Governor); In re Coots’ Estate, 253 Mich. 208, 234 N.W. 141 (1931), cert. den., Delbridge v. Oldfield, 284 U.S. 665 (1931) (residue to be divided equally among seven named nephews and nieces); Cattell v. Evans, 301 Mich. 708, 4 N.W. (2d) 67 (1942) (residue to seven named persons, each to take an equal undivided one-seventh share).

\(^{270}\) Eyer v. Beck, 70 Mich. 179, 38 N.W. 20 (1888) (my heirs, to wit: John Beck, the children of Christian Beck, Jr., deceased, Elizabeth Eicher, Gottsieb Beck, Peter Beck, Magdalena Eyer); Lariverre v. Rains, 112 Mich. 276, 70 N.W. 583 (1897) (remainder “to her said grandchildren, Joseph and Peter Lariverre, children of the said Joseph, her son, or to his heirs; it being expressly understood that, if her said son Joseph shall have more children at the time of his death, they shall share and share alike the said property”); In re Ives’ Estate, 182 Mich. 699, 148 N.W. 727 (1914) (residue to sister Hattie and brothers Wesley and Dwight, to each an undivided one-third); In re Hunter’s Estate, 212 Mich. 380, 180 N.W. 366 (1920) (residue to my two sisters, viz: Catherine and Ella, share and share alike); Rodcey v. Stotz, 280 Mich. 90, 273 N.W. 404 (1937) (to the following named children of my said nephew, Fred, to wit: Edmund, Mildred, Wilmot and Helma, share and share alike); American Brass Co. v. Hauser, 284 Mich. 194, 278 N.W. 816, 115 A.L.R. 1464 (1938) (to my children. This will is made by me having in mind my children, Frank, Otto, Albert and Charles); Property Restatement, §281 (1940).
is to persons described only by a group designation, such as "children," "grandchildren," "brothers," "nephews," "cousins," "issue," "heirs," or "next of kin," the grantor or testator may be assumed to have thought of them as an entity or unit rather than as separate individuals. Hence, in the construction of limitations, there is a presumption that a limitation to persons described only by a group designation is a class gift. Being only a rule of construction, this presumption is overcome by a contrary manifestation of intention.


272 Strong v. Smith, 84 Mich. 567, 48 N.W. 183 (1891) (to my own brothers and sisters and to the brothers and sisters of my said wife);
As in the case of limitations to individuals, when a future estate is limited to a class, the death of a member of the class before his interest becomes possessory does not defeat it unless it is subject to a condition of survival, express or implied. If Andrew Baker devises land to John Stiles for life, remainder to John's children in fee, and John has three children when Andrew dies, these children take a vested remainder. If one dies before John, his interest passes to his heirs, devisees, or assigns.273 If, however, a class gift is subject to a condition of survival, the effect of nonsurvival is different from that when the gift is to individuals, in that the share of the member of the class who fails to survive ordinarily passes to the surviving members of the class. If Andrew Baker devises land to John Stiles for life, remainder to those children of John who survive him, John has three

children when Andrew dies, and one of these dies before John, the entire remainder passes to the surviving two in the absence of other provisions in Andrew's will.\textsuperscript{274}

A class gift differs from a limitation to individuals in that a class may open to admit new members after the effective date of the instrument containing the limitation. If Andrew Baker devises land to John Stiles for life, remainder to John's sons Henry and William in fee, a third son of John, born after the death of Andrew, will not take under the devise. If however, Andrew Baker devises land to John Stiles for life, remainder to the children of John, not only John's children in being at the death of Andrew but those born thereafter will share the remainder.\textsuperscript{275} A well-settled rule of construction, known as the "Rule of Convenience," prescribes that, in the absence of a manifestation of some other intention, a class closes when any member of it is entitled to possession of a share in the property. This means that the class will


not open to admit persons who come into being after this time. If Andrew Baker devises land to Lucy Baker for life, remainder to the children of John Stiles, children of John who are in being when Andrew dies or who come into being before Lucy dies constitute the class; children of John who come into being after the death of Lucy are not entitled to shares.\textsuperscript{276} Similarly, if Andrew Baker bequeaths property to the children of John Stiles who attain the age of twenty-one, children of John who come into being after a child of John has attained that age do not take.\textsuperscript{277}

The Rule of Convenience has an important exception. If there is no member of the designated class in being at the time when, under the terms of the limitation, the interest of the class or some of its members would otherwise become possessory, the class does not close so long as it is possible for persons included within the class description to come into being. If Andrew Baker devises land to Lucy Baker for life, remainder to the children of John Stiles, and John has no children when Lucy

\textsuperscript{276} Baldwin v. Karver, 1 Cowp. 309, 98 Eng. Rep. 1102 (1775); Cheever v. Washtenaw Circuit Judge, 45 Mich. 6, 7 N.W. 186 (1880) (devise to daughter for life, remainder to her children and grandchildren); McLain v. Howald, 120 Mich. 274, 79 N.W. 182 (1899) (bequest to widow for life, remainder to children of daughter Mary Ann; child of Mary Ann en ventre sa mere when the widow died entitled to share); Rozell v. Rozell, 217 Mich. 324, 186 N.W. 489 (1922). Property Restatement, §295 (1940); 2 Simes, Law of Future Interests, §378 (1936); Casner, "Class Gifts," 5 American Law of Property, §§22.40-22.46 (1952). Being only a rule of construction, the Rule of Convenience does not apply if a contrary intent is manifested. Thus in Lariverre v. Rains, 112 Mich. 112, 112 N.W. 583 (1897), Part Two, note 270 supra, the Court recognized that the language used expressly included members of the class who came into being after the remainder limited to it became possessory. This language is quoted in the text, Part One, note 264 supra.

dies, all children of John, whenever born, will take. The first child of John will take the whole remainder subject to open, that is, to partial defeasance in favor of children of John born later.\textsuperscript{278}

Chapters 9, 10, and 11 have made it evident that if the interest of any member of a class may possibly vest at a time beyond the period of the Rule Against Perpetuities, that interest is void, and, hence, if the interests of all members of the class may possibly vest at a time beyond the period of the Rule, the entire class gift is void. This is well settled in Michigan.\textsuperscript{279} The English cases and all American decisions involving the question go beyond this by holding that, for purposes of the Rule Against Perpetuities, a class gift stands or falls as a unit. If the interest of any member of the class may possibly vest at any time beyond the period of the Rule, the entire class gift is void, even though the interests of some members are presently vested or will certainly vest within the period.\textsuperscript{280}

If Andrew Baker bequeaths property to James


Thorpe upon trust to pay the income to John Stiles for life and then to transfer the principal to those children of John who reach the age of twenty-five, the entire class gift to the children of John is void, even if John has two children who are twenty-five and three under twenty-five when Andrew dies. Considered alone, the interests of the two children who are already twenty-five would vest at once upon the death of Andrew, and those of the three under twenty-five would certainly vest or fail within their own lives, but John may have more children, born within four years of his death, who would reach twenty-five more than twenty-one years after John's death. The Rule of Convenience does not save such a gift because, under it, the class would not close against persons not in being until John's death.

The unit or "all or nothing" rule, that a class gift is void in toto if the interest of any possible member of the class violates the Rule Against Perpetuities, has two exceptions. First, when a fixed sum is given to each member of the class, the gifts to those members whose interests will certainly vest within the period of the Rule are valid even though the interests of other members violate the Rule and so are void. If Andrew Baker be-

statute then in force forbade the limitation of successive estates for life to persons not in being (Chapter 19, infra). It was held that the entire limitation to the children of the son failed because the class would not close until the death of the son and so might include persons not in being at the death of the testator. And see Part Three, notes 78, 79, 81, infra.

queaths property to James Thorpe upon trust to pay the income to John Stiles for life, and then to transfer $1,000 of the principal to each of those children of John who reach twenty-five, the interests of those children of John who are in being when Andrew dies are valid. The second exception is related to the first. When a class gift is made to a class consisting of several separated subclasses, the gifts to some subclasses may be valid although others fail. If Andrew Baker bequeaths property to James Thorpe upon trust to pay the income to John Stiles for life, then to pay the income to John’s children for their lives and upon the death of any child of John to pay the principal upon which that child was receiving income to the issue of that child, the limitations to such issue are valid as to the issue of any child of John who was in being when Andrew died, although void as to issue of any child of John who came into being after Andrew’s death.283

The interrelations between the Rule of Convenience and its exception and the unit or “all or nothing” rule and its two exceptions are perhaps best illustrated by a series of examples. If Andrew Baker bequeaths property to John Stiles for life and then to the grandchildren of John, the class gift is valid if John has a grandchild living when Andrew dies.284 That grandchild takes a vested

284 In Cheever v. Washtenaw Circuit Judge, 45 Mich. 6, 7 N.W. 186 (1880), there was a bequest to testator’s daughter Escalala for life, then to her children and grandchildren in equal shares. Escalala had children but no grandchildren when the testator died. The remainder to the class was correctly treated as valid. The living children took vested interests which would entitle them or their estates to possession of shares on their mother’s death. This, under the Rule of Convenience, would close the class to afterborn grand-
interest which will entitle him or his estate to possession of a share when John dies. Under the Rule of Convenience, the class will close on the death of John and, therefore, all its members will be ascertained and their interests vested at the end of a life in being. If, on the other hand, John has no grandchild when Andrew dies, the class gift is void. John’s grandchildren may be born after his death to children of John not in being when Andrew died. The Rule of Convenience is not certain to close the class at John’s death because he may have no grandchildren at that time. Since it is possible that the interests of all of the members of the class may vest too remotely, they would all be void even if there were no unit or “all or nothing” rule.

If Andrew Baker bequeaths property “to my brothers and sisters for life, remainder to their children,” the remainder is valid whether or not Andrew’s parents are alive and whether or not there are children of his brothers and sisters in being at the time of his death. The brothers and sisters in being at his death will be entitled to possession at that time; therefore the Rule

children at the death of Escalala. As the Court held, grandchildren who came into being after the death of Escalala (the only ones whose interests might violate the Rule Against Perpetuities) would be excluded by the Rule of Convenience.

If there is no precedent estate, that is, if Andrew Baker bequeaths property “to the grandchildren of John Stiles,” the result is the same as in the case of the postponed gifts described in the text. If John has grandchildren living when Andrew dies, they are entitled to immediate possession. Hence the Rule of Convenience closes the class at once and the gift is valid. If John has no grandchildren in being when Andrew dies, the class gift is void. John’s only grandchildren may be children of his as yet unborn children, born after his death.

As to the validity of a bequest “to James Thorpe upon trust to pay the income semi-annually to my brothers and sisters for their lives and on the death of the survivor to transfer the corpus to their children in equal shares,” see Casner, “Class Gifts,” 5 American Law of Property, §22.46 (1952).
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of Convenience closes the class "brothers and sisters" to afterborn children of his parents. The children of the brothers and sisters must necessarily be born or conceived within their parents' lifetimes. If, on the other hand, Andrew Baker bequeaths property "to my brothers and sisters for life, remainder to my nephews and nieces in equal shares," the remainder is void unless Andrew's parents predecease him or he has a nephew or niece in being at the time of his death. His only nephews and nieces might be the children of brothers and sisters born after his death and might not come into being until after the deaths of those brothers and sisters who were alive when Andrew died. Here again, the gift would be void even if there were no unit or "all or nothing rule." If, in the last example, Andrew's parents predeceased him, the remainder will be valid because no more brothers and sisters can be born. Hence, all of Andrew's nieces and nephews must necessarily come into existence within lives in being. If there is a nephew or niece in being when Andrew dies, the remainder will also be valid. The class "brothers and sisters" will close under the Rule of Convenience on the death of Andrew. The nephew or niece in being when Andrew dies will take a vested right to possession of a share on the death of the living brothers and sisters. Hence, the class "nieces and nephews" will close at the end of a life in being.

If Andrew Baker bequeaths property to John Stiles for life and then to such of John's children as reach the age of twenty-five, and John has no children when Andrew dies, the remainder is void because all of John's children who reach twenty-five may be born within four years of John's death and so their interests would not vest until more than twenty-one years after a life in be-
As has been seen, such a gift is also void in toto under the unit or "all or nothing" rule, even though John has children who have reached twenty-five when Andrew dies. The class will not close until John's death; children born within four years of his death will be included in it and, because reaching twenty-five is a condition precedent to their interests, those interests may not vest until more than twenty-one years after the death of John and those of his children who are living when Andrew dies. On the other hand, if Andrew Baker bequeaths property to John Stiles for life and then to John's children "but if any child of John dies before reaching twenty-five, his share shall pass to his issue," the class gift to the children is valid whether or not John has children when Andrew dies. Here the provisions as to age is not a condition precedent but one for defeasance. All of John's children must necessarily come into being during his lifetime, and their interests will vest as soon as they do, subject to defeasance on death before twenty-five. The provisions for defeasance are valid as to the shares of children of John


288 Part Two, note 281 supra. In this situation, if there is no precedent estate, that is, if Andrew Baker bequeaths property "to such of the children of John Stiles as reach the age of twenty-five years," the gift is valid if John has children who have reached twenty-five when Andrew dies. These children will be entitled to immediate possession of shares. Hence the class will close at once under the Rule of Convenience and afterborn children of John will take no interest. Gray, Rule Against Perpetuities, 3rd ed., §379 (1915).

289 Gray, Rule Against Perpetuities, 3rd ed., §372 (1915); Property Restatement, §§384, Ill. 2 (1944).
in being when Andrew dies but void as to the other shares.\textsuperscript{290}

If Andrew Baker bequeaths property to John Stiles for life, remainder to the grandchildren of John, payable at their respective ages of twenty-five, the class gift is valid if John has a grandchild who has reached the age of four when Andrew dies.\textsuperscript{291} The age provision is neither a condition precedent nor a provision for defeasance. Hence the grandchild who is four or his estate will certainly be entitled to possession of a share when twenty-five years after his birth have elapsed and John has died. This must happen within a life in being and twenty-one years, and, when it does, the class will close and all members of it, the grandchildren of John who come into being before the class closes, will have vested interests.

\textsuperscript{290} Part Two, note 283 \textit{supra}; \textsc{Property Restatement}, §384, \textit{Ili.} 2 (1944).

\textsuperscript{291} \textsc{Gray, Rule Against Perpetuities}, 3rd ed., §639aa. (1915); \textsc{Leach and Tudor, “The Common Law Rule Against Perpetuities,” 6 American Law of Property, §24.25, Case 40. (1952).}