

July 2021

Trust Drafting Contest

Dicta Editorial Board

Follow this and additional works at: <https://digitalcommons.du.edu/dlr>

Recommended Citation

Trust Drafting Contest, 14 Dicta 195 (1936-1937).

This Article is brought to you for free and open access by the Denver Law Review at Digital Commons @ DU. It has been accepted for inclusion in Denver Law Review by an authorized editor of Digital Commons @ DU. For more information, please contact jennifer.cox@du.edu, dig-commons@du.edu.

TRUST DRAFTING CONTEST

Sponsored by the Trust Department of the Denver
Clearing House Banks

IN OUR April and May issues we outlined the contest plan of the banks and printed the productions of the winning contestants from the Universities of Colorado and Denver, respectively. The winning production of Westminster Law School is now submitted, the judges being Mr. Edward C. King, Trust Officer, International Trust Co., Denver, Mr. Bryan Whitehead, representing Westminster Law School, and Mr. Lewis A. Dick, representing the Denver Bar Association.

Problem for the Contest of 1936-1937

STATEMENT OF FACTS:

You are an attorney engaged in the general practice of law in the City and County of Denver. Mr. Alfred Hunting, a resident of Denver, comes to your office and asks you to draw his will. He gives you the following information with respect to his family, his property, and the disposition which he wishes to make of his property in the event of his death.

His family consists of his wife, Ellen, who is thirty years old and wholly without experience in business matters, a daughter five years old named Mary, and a son eight years old named Robert. Mrs. Hunting has no independent means, but her relatives are all thoroughly capable of supporting themselves. Mr. Hunting's only other relatives are three brothers, all of whom are confirmed bachelors.

Mr. Hunting has been engaged in the business of buying and selling securities for his own account, and he has no downtown office.

Mr. Hunting's property consists of his residence (worth about \$15,000), his household furniture and equipment, an automobile, and miscellaneous personal effects such as clothing, fishing rods, golf clubs, books, and jewelry. None of his personal effects are heirlooms or are of more than ordinary value. He has, in addition to the property above described, stocks listed on the New York Stock Exchange having a market value of \$50,000; miscellaneous corporate bonds

secured by mortgages outside of the State of Colorado having a market value of \$25,000; Denver Special Improvement District bonds having a value of \$25,000, and a bank account then amounting to about \$10,000. He has no insurance, being uninsurable.

Mr. Hunting's chief concern is the welfare of his wife and children, but he would like to make a gift of about one-tenth of his estate to one of the universities or colleges in Colorado or New York for the purpose of making a scientific investigation of the Dow theory. He wants his wife to have the use of the family residence and furniture as long as she wishes. All the rest of his estate he wishes to give to a trustee with directions to pay the income to his wife as long as she lives, and after her death to be held for the children in such manner that income or principal or both can be used for their support and education while they respectively are under the age of twenty-five years. After his daughter reaches the age of twenty-five years he wants the income from her portion to be paid to her as long as she lives and then the corpus of her share to go to her descendants, if any, and, if none, then to his (the testator's) descendants, if any. When his son reaches the age of twenty-five years Mr. Hunting wants his son's portion to be paid to him as his absolute property, but if the son should die before receiving final distribution then his share is to go to the son's heirs at law.

Mr. Hunting says that if the income is insufficient to provide for the needs of his wife and children he wants the trustee to be able to use principal for their relief, and says that if they should all die before the estate is distributed he would want what is left to go to his brothers, or the survivor of them.

He then says: "That, in a general way, is what I want to do, but I know very little about wills and trusts and want your advice. The only thing I have decided definitely is that I should like to have the X Bank and Trust Company, where I have done my banking for the last ten years, act as executor and trustee, but I am not sure whether it would be best to have it act alone or as co-executor and co-trustee with my wife. What I want you to do is to think over my problem, make such changes, adjustments or elaborations as you think best, and draw a will for me just as you think it should be to best accomplish my purpose, and then send it to me with a letter containing any explanations which you think are necessary or pertinent. I am going away next week for a vacation and I want to take the will and letter with me and study them while I am away."

You are to draw a will naming the X Bank and Trust Company executor and trustee, either alone or with the wife as co-executor or co-trustee, or both, as you may consider best. The will should be drawn so that it will carry out Mr. Hunting's wishes, but it should also represent your best judgment as to the manner in which this should be done. The will should confer upon the executor and trustee such power and authority as you think necessary or proper to permit the executor or trustee to administer and invest the estate according to sound business principles, but so that the beneficiaries will receive full benefit of the trustee's skill and experience, and so that the estate will produce the maximum income consistent with safety of the principal.

You should also prepare a letter for Mr. Hunting explaining your reasons for any changes that you have made in the details of his plan, why you think the executor and trustee should be given the power and authority with respect to investments, etc., that the will confers upon it, and explaining any other matters which you think the layman might not understand.

Both substance and style of the will and letter will be considered by the judges in awarding the prizes.

Denver Colorado, January 15, 1937.

MR. ALFRED HUNTING,
Denver, Colorado.

Dear Mr. Hunting:

Pursuant to our conversation of recent date, and your request that I draw your will, I am submitting a tentative draft in accordance with your wishes, with a few suggested changes. I shall attempt to set these changes out and to briefly explain the will by paragraph in the following sections of this letter.

In paragraph "First" I have requested that all just debts, liabilities, and funeral expenses be paid. This is not absolutely necessary, as the law provides for these payments before final distribution can be made, but it is a commendable direction on the part of the testator.

In paragraph "Second" I have made disposition of your household furniture and effects to your wife directly without bringing them into the trust fund. I did this because there is a certain sentimental attachment to household furnishings which have been acquired by you and your wife, and also

another reason for eliminating them is that they would have to be sold at public auction, which as you know would be at a sacrifice in price, and your trustee would immediately have to re-provide your wife with these necessities.

In paragraph "Third" I have provided your wife with an immediate and ready cash fund out of which she may meet her needs during the period of administration and before any income is realized out of the estate.

In paragraph "Fourth, Section One," I have provided a residence for your wife for life, with a right in her to change the same to another one of her choice if she should so desire. I have worded this provision in such a way that it will provide her with a home in which she shall be satisfied and happy, yet with an alternative to take care of unforeseen changes that may take place in the future, in the way of changing residential sections.

In paragraph "Fourth, Section Two," I have taken care of your wish regarding a bequest for the purpose of investigating the Dow Theory. I have made the gift to the University of Denver for the reason that a charitable gift made to a beneficiary outside the State of Colorado would subject your estate to an inheritance tax on the full amount of the gift, while the gift when made to a beneficiary in the State of Colorado is exempt. You will further note that I have made certain limitations and conditions upon the gift in the event that your estate should depreciate prior to your death. This I did in protection to your family.

In paragraph "Fourth, Section Three," I have made the necessary provisions regarding the distribution and payment of the income from your estate during your wife's life and until your children shall have reached the age of twenty-five (25) years. Thereafter, I have made provision for final distribution of your estate as you requested. I do, however, want to particularly call your attention to the fact that there is no provision made for further issue of your body. This can either be taken care of now by writing it in this will or you may wait until such time when there is further issue of your body and then add a codicil to the will. Either method is legal and will accomplish the same result.

In paragraph "Fourth, Section Four," I have provided

for payment of part of the principal if necessary to care for your family. I have, however, limited the amount for any one year and also limited the total amount of principal subject to this use. I did this to save the estate a large inheritance tax. Under the present inheritance tax laws there is a provision that if the principal is subject to this use it is taxable, and from this law the commission take the position that there may be no income from the estate and that all of the principal will be used; therefore, without this limitation the entire estate would be taxed and as I have provided, only Thirty-five Thousand (\$35,000.00) Dollars will be subject to this tax. I further believe that with the limitations on the trustee as we have provided, the above limitations will not impair the future welfare of your family.

In paragraph "Fifth" I have provided for the appointment of your executor and trustee as you requested. I have provided for the bank to act alone as executor and trustee because I believe that the best interests of your estate will be served in this manner. It will save your wife much worry and bother, and will expedite the administration, as it is often hard to get two executors together in court at the same time. It will also be a saving of time without being detrimental to the estate, as the bank is both bonded and accountable to the probate court. I have also given the bank wide powers regarding investments. This I have done to avoid the limited scope of investments allowable under the Colorado law. By so investing outside of Colorado legal investments, the estate will profit through income and still not be subjected to any greater hazard. I have also directed that the "Trading Account" be closed out immediately upon your death, as a trading account is very unwieldy in the hands of a trustee and often the cause of loss of the estate.

In paragraph "Sixth" I have provided for a limit on the liability of others dealing with the executor and trustee. By so limiting the liability a better market is created without jeopardizing the estate. This is because that people are more willing to deal when they are not charged with a responsibility as to where the proceeds are to be applied.

This, in my opinion, is the proper way to handle your estate and provide for your family in the future.

LAST WILL AND TESTAMENT OF ALFRED HUNTING

I, ALFRED HUNTING, of the City and County of Denver, State of Colorado, being of sound and disposing mind and memory, do make, publish, and declare this instrument to be my Last Will and Testament, dated this 15th day of January, 1937, hereby revoking any and all other Wills and Codicils heretofore made by me.

First: I direct that all my just debts, liabilities and funeral expenses be paid out of my estate as soon as can be done with reasonable diligence, and without material injury to my estate.

Second: I give, devise and bequeath to my loving wife, Ellen Hunting, absolutely, and in no way burdened with a trust of any kind whatsoever, all the household furniture and effects and other contents of my residence, grounds, and other buildings and erections used in connection with my residence, and all chattel property used and enjoyed in connection with my residence, together with the family automobiles and all of my personal effects, such as clothing, fishing rods, golf clubs, books and jewelry, to be hers absolutely, with power to dispose of the same as she may see fit.

Third: I give, devise and bequeath to my loving wife, Ellen Hunting, the sum of Five Thousand (\$5,000.00) Dollars, to be paid to her within one month after my death; that she may be furnished with funds during the administration of my estate.

Fourth: I give, devise and bequeath all the rest, residue and remainder of my property and estate, both real and personal, of whatsoever nature or wheresoever situated, to which I shall be in any way entitled at the time of my death, and including all property which I have hereinbefore disposed of in this Will, that shall by reason of lapse or other cause, fail to take effect, to my executor and trustee hereinafter named, for the following uses and trust, to-wit:

1. To hold the residence which I may own and be using as a home at the time of my death, for the use of my said wife, Ellen, for life, or so long as she desires to reside therein, free of rent. Provided, however, that should she at any time prefer to reside elsewhere, and notify my executor and trustee of such preference, in writing, I authorize and direct my executor and trustee to expend a sum not exceeding Fifteen Thousand (\$15,000.00) Dollars for another residence of her choice in which she shall have a similar estate for her life, or if she does not desire to have another residence purchased, to expend a sum not to exceed One Hundred and Fifty (\$150.00) Dollars per month to rent and pay the rent for such residence or apartment as she may desire. All taxes, insurance, repairs and other charges, including expense of upkeep on such residence as I shall own at the time of my death or that my trustee shall hereafter purchase for my wife, shall be paid out of the principal estate. If, at any time, my wife should no longer require the use of such residence, or upon her death, said property shall fall into the residue of my estate.

2. I direct that my trustee shall pay to the Trustees of the University of Denver, in the City and County of Denver, to be held and used by said Trustees of the University as they may direct, for the use and purpose of making a scientific investigation of the Dow Theory, the sum of Ten Thousand (\$10,000.00) Dollars, provided, however, that at the time of my death, if my estate, after paying the just debts and the specific bequest mentioned in paragraph three, shall be less than One Hundred Thousand (\$100,000.00) Dollars but more than Seventy Thousand (\$70,000.00) Dollars, said bequest shall not exceed one tenth (1/10) of the total value of the entire estate taken by the trustees, and provided further, that in the event my total estate is less than Seventy Thousand (\$70,000.00) Dollars at the time of my death this bequest shall abate altogether, and the said University of Denver shall take nothing under this Will.

3. I direct my trustee to pay the income of the said trust moneys, and investments, as well before as after the sale, conversion and investment thereof, to my wife, Ellen, during her life, in quarterly installments, and after her death to stand possessed thereof, in trust for the use, support and maintenance of my children until they shall attain the age of twenty-five (25) years. Upon my son, Robert Hunting, attaining the age of twenty-five (25) years, and after the death of my wife, Ellen, I direct my trustee to pay one half ($\frac{1}{2}$) of the entire estate to him as his absolute property and in no way burdened with a trust; provided, however, that if my son should die before reaching the age of twenty-five (25) years, then his share of my estate shall be paid to his heirs at law, said heirs to be determined by the law then in force. The other one half ($\frac{1}{2}$) of my estate remaining after the death of my wife, Ellen, to be held in trust for and the income and proceeds therefrom paid to my daughter, Mary Hunting, for life, and upon her death the remainder of the trust is to be paid to her descendants, free from any and all burdens of trust. Provided, however, that if there are no descendants of Mary Hunting, her surviving, then the remaining one half of my estate held in trust by my trustee, to be paid over to my descendants, free from any and all burdens of trust. Provided, further, that upon the death of my wife, Ellen, if I have neither sons nor daughters nor heirs nor descendants of sons or daughters surviving them, then the entire estate remaining in the hands of the trustee to be paid over to my three brothers, John Hunting, of Denver, Colorado, Jack Hunting, also of Denver, Colorado, and Joe Hunting, of Chicago, Illinois, or the survivor of them, in equal shares, free and clear of all trust burdens. It is my wish that my original executor and trustee hereinafter named shall act at all times both as trustee for my estate during the life of my wife, Ellen, and also as trustee for my daughter, Mary Hunting, during her life.

4. I hereby further direct that if at any future period after my death, circumstances shall exist which shall cause the income from said trust estate to be insufficient for the proper maintenance and care of my wife and children, then I authorize and direct my trustee to use such

part of the principal as shall be necessary when added to the income from said trust estate to provide my wife and children or my children, if my wife shall not be living and my children shall be under the age of twenty-five years, with an annual income of Three Thousand Six Hundred (\$3,600.00) Dollars per year. Provided, however, that the maximum amount of principal subject to use under this clause shall not exceed Thirty-five Thousand (\$35,000.00) Dollars.

Fifth: I hereby nominate, constitute and appoint the X Bank and Trust Company as Executor and Trustee of this, my Last Will and Testament. I further authorize my executor and trustee to use its uncontrolled discretion in the realization and investment of my estate, and in doing so to postpone calling in and converting any part thereof for such length of time as it may deem advisable and in the best interest of my estate, and to sell or convert any part of my estate on such terms and for such prices as in its uncontrolled discretion it may consider advisable. I authorize and empower it to retain any investments or securities held by me at the time of my death as investments for my estate, notwithstanding that they may not be in the form of legal executor or trustee investments. I further authorize it to invest any funds in such bonds and other stocks or modes of investments as to it may seem best; with full power at all times and from time to time to alter, change and vary the investments thereof, whether existing at my death or made afterwards, and I declare that the said trustee shall not be limited to investments in the State of Colorado alone. I further direct that immediately after my death, my executor and trustee shall close out any and all trading accounts that I may have open at the time of my death. I further direct that my trustee shall not be held responsible for any loss that may occur to my estate through a bona fide exercise of their discretion, either as to realization or investments.

Sixth: I direct that no person paying money or other thing in its stead to my executor or trustee, upon such executor and trustee's receipt, shall be liable to see to the application or be answerable for the misapplication, or new application of the same; and further, that any payment by the executor or trustee of any bequest or annuity shall, upon proper receipt of such payment, be fully discharged as to that payment, and shall not be charged with a duty or responsibility as to the proper application of such payment. It is further my desire that, upon the death of my wife, Ellen, my trustee shall pay the income from my estate direct to my children and accept their personal receipt in full satisfaction, without the intervention of their guardian, provided said children shall have attained the age of eighteen (18) years; if not, then payment shall be made through the guardian until they shall attain the age of eighteen years.

IN TESTIMONY WHEREOF, I, ALFRED HUNTING, have set my hand and affixed my seal to this, my Last Will and Testament, containing seven (7) sheets of paper, including this sheet, upon each of which I have also written my name, at Denver, Colorado, this 15th day of January, 1937.

----- (SEAL)

Testator.

Signed, sealed and declared by the Testator, Alfred Hunting, as and for his Last Will and Testament, containing seven (7) sheets of paper, including this sheet, upon each of which we, and each of us, have written our names, in the presence of us, who at his request, and in his presence, and in the presence of each other, have hereunto subscribed our names as witnesses at Denver, Colorado, this 15th day of January, 1937.

Witnesses.

Duke University Will Offer a New Course

Durham, N. C.—A study of the many legal problems arising under the Wagner labor relations bill, whose constitutionality was passed upon by the U. S. Supreme Court, will form a portion of the new course in labor law to be offered at the Duke law school next year. The announcement of the course is contained in the spring bulletin of the law school recently published.

Other problems which will be studied in the course include consideration of the organization of labor groups and of interference with labor relations between employers and employees. The various forms of pressure used in industrial disputes will be examined, such as the lockout, the boycott, and the strike. The new problems arising out of the sit-down strikes will be taken up in this connection. Special attention will be directed to injunctions in labor disputes and state as well as federal intervention in the labor field.

The Norris-La Guardia act, and its counterparts in some states in which it is attempted to limit the use of injunctions against strikers, will furnish the material for part of this investigation. It is expected that the question of federal intervention will be amplified and clarified with the rendering of new decisions by the national labor relations board and the U. S. Supreme Court concerning the Wagner bill and other legislation dealing with labor disputes.

The nature of the course will require to a large extent the use of current materials not collected in any book.

The Reconstruction Finance Corporation is composed of seven divisions—Investment in Bank Securities, Railroads, Industrial Loans, Preferred Stock, Self Liquidation and Mining, Drainage and Irrigation, and The RFC Mortgage Company, each of which has a legal staff directly responsible to James B. Alley, General Counsel of the Corporation.

DISTRICT COURT LIBRARY NOTES

Mr. Frank L. Grant has presented to the library three volumes of documentary history of the Constitution.

Williston on Contracts is now available.

SPECIAL REPORT OF THE GRIEVANCE COMMITTEE

To the Bar of Denver:

The Grievance Committee of the Denver Bar Association has, during the past six months, considered and acted upon several cases concerning the use by local lawyers of circular letters, newspapers and other similar mediums as a means of communicating to the public at large or to selected groups thereof, some change or status pertaining to the professional life of those lawyers. In every instance the Committee endeavored to consider and pass upon the proprieties involved with careful discrimination and observance of its duty to both the Bar and the individual. In no instance, however, did the Committee determine the reasons and explanations of the individual to be a justification. Every case disclosed that Canon No. 27 of the Canons of Ethics prescribed by our Supreme Court was either unknown to or misconstrued by the individual. We suggest that members of the Bar should acquaint themselves with it. Adherence to its spirit, as well as its letter, may save embarrassment or criticism, or both, and if in doubt about the proprieties of some contemplated act, the opinion of the officers or Committee of the Association should be procured.

Respectfully,

GRIEVANCE COMMITTEE OF THE
DENVER BAR ASSOCIATION.

CANON NO. 27—"Advertising, Direct or Indirect.—The most worthy and effective advertisement possible, even for a young lawyer, and especially with his brother lawyers, is the establishment of a well-merited reputation for professional capacity and fidelity to trust. This cannot be forced, but must be the outcome of character and conduct. The publication or circulation of ordinary simple business cards, being a matter of personal taste or local custom, and sometimes of convenience, is not per se improper. But solicitation of business by circulars or advertisements, or by personal communications or interviews, not warranted by personal relations, is unprofessional. It is equally unprofessional to procure business by indirection through touters of any kind, whether allied real estate firms or trust companies advertising to secure the drawing of deeds or wills or offering retainers in exchange for executorships or trusteeships to be influenced by the lawyer. Indirect advertisement for business by furnishing or inspiring newspaper comments concerning causes in which the lawyer has been or is engaged, or concerning the manner of their conduct, the magnitude of the interests involved, the importance of the lawyer's positions, and all other like self-laudation, defy the traditions and lower the tone of our high calling, and are intolerable."