

## Future Interest Review Problems

by Donald Kochan, Tue, 11/26/2002 12:20:28 PM EST

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Some useful Future Interest Review problems:

**In the following problems, assume that A owns Blackacre in fee simple absolute. Assume the common law scheme of estates applies including: The Rule in Shelley's Case, The Doctrine of Worthier Title, The Rule of Destructibility, The Statute of Uses, The Statute of Wills, The Doctrine of Merger but that the phrase "and his heirs" is not necessary to create a fee simple estate.**

**In each of the following problems, determine the type of interest given to or retained by each of the parties.**

**Question 1. A conveys to B for life, remainder to C for life.**

**Answer. Life estate in B, vested remainder in C for life, reversion in A, the grantor C's life estate is vested because all life estates in born or ascertained persons are vested even though the interest is not possessory. A has the reversion because he failed to convey his entire fee simple absolute estate.**

**Question 2. A conveys to the X church forever, provided that if the land shall ever cease to be used for church purposes, the conveyance shall be null and void.**

**Answer. Probably, X church has a fee simple determinable. A has a possibility of reverter. Ordinarily the words "provided that" suggest the grantee has a fee simple**

**on condition subsequent. Mitigating against such construction are the facts that (1) no right of reentry was expressly reserved, a fact which in some states would be fatal**

**to A's rights and would vest the grantee with a fee simple absolute, and (2) the conveyance stated that the grantee's estate would be null and void. The use of the words "null and void" lend strength to the analysis that X church has a determinable fee since the words suggest that the estate will end of its own natural**

**force. However, this analysis fails to take into account a constructional preference for the fee simple on condition subsequent, which when coupled with the grantor's failure to expressly retain a right of entry for condition broken, results in the holding that the grantee has a fee simple absolute on the theory the court will not imply a forfeiture when none is expressly reserved.**

**Question 3. A conveys to B for life, remainder to B's surviving children.**

**Answer. If B has no children, the state of the title is life estate in B, contingent remainder in B's surviving children, reversion in A. The remainder is contingent because it is limited to unborn persons. On B's death, if no children survive, A would have fee simple absolute.**

**If B has children, the state of the title is life estate in B, contingent remainder in B's surviving children, reversion**

in A. The remainder is contingent because the childrens'" interest is subject to a condition precedent, i.e., surviving B.

**Question 4.** A conveys to B for life, remainder to the children of B.

**Answer.** If B has no children, the state of the title is life estate in B, contingent remainder in B's children, reversion in A. The remainder is contingent because it is

limited to unborn persons. Upon the birth of a child to B, however, the remainder ripens into a vested remainder subject to open and A no longer has the reversion.

If B has children at the time of the conveyance, the state of the title is life estate in B, vested remainder subject to open in B's children. Each child's interest may be diminished by the birth of more children but it cannot be totally divested since no words condition any child's interest on surviving B. In other words, while new members may join the class, no member (child of B) can fall out of the class.

**Question 5.** A conveys to B for life, remainder to such of B's children as attain 21.

Two years later B dies survived by 3 children, none of whom has attained 21.

**Answer.** At the time of the conveyance B's children had a contingent remainder condition on attaining age 21. If at the time of B's death the rule of destructibility applies and no child of B had yet attained age 21, A has fee simple absolute since the remainder to B's children is destroyed because it was not ready to become a possessory estate at B's death.

If the destructibility rule does not apply, the state of the title at B's death is fee simple in A subject to a springing executory interest in B's children who reach 21.

**Question 6.** A conveys to B for life, remainder to B's surviving children but if B should die without leaving any children him surviving, remainder to C.

Consider the following possibilities:

(a) B has no children.

**Answer.** Life estate in B, contingent remainder in B's surviving children, alternative contingent remainder in C, reversion in A. Both the interests of B's children and C are subject to a condition precedent. A has a reversion in theory only, since at B's death either his children or C will take. However, because at common law, B's life estate might have terminated before his death by a forfeiture or tortious feoffment in which case the reminders would be destroyed, A had the reversion.

(b) B has six children living at the time of the conveyance.

Answer. Same as above since the interest of B's children is subject to a condition precedent, i.e., surviving B.

(c) B dies without leaving any children him surviving.

Answer. C has a fee simple absolute.

(d) B dies leaving six children him surviving.

Answer. B's children take as tenants in common. At common law, B's children would hold as joint tenants with right of survivorship.

Question 7. A conveys to B for life, then to the children of B but if any child of B dies under 21, that child's share to C.

Answer. If B has no children at the time of the conveyance, the state of the title is life estate in B, contingent remainder in B's children, alternative contingent remainder in C, reversion in A. The interest of B's children is contingent because it is a remainder limited to unborn persons. Thus, the condition precedent is birth. A has the reversion because of the reasons stated in the answer to Problem 6(a) above.

If B has children at the time of the conveyance, the state of the title is life estate in B, vested remainder subject to open B's children and complete divestment on failure to reach 21 and shifting executory interest in C. Since B has living children, their interest is not subject to any condition precedent. Their interest, however, is subject to a condition subsequent.

Question 8. A conveys to B for life, remainder to the children of C, but if C dies without children him surviving, then to the children of D.

(a) Neither C nor D has children.

Answer. Life estate in B, alternative contingent remainders in the children of C and D, reversion in A. See Problem 6(a).

(b) C gives birth to a child, E.

Answer. E has a vested remainder subject to open and complete divestment and the

children of D have a shifting executory interest. See, answer to Problem 7 (second paragraph).

(c) E being still alive, D dies without ever having had any children.

Answer. In this case the executory interest in D's children can never take effect. At this point a court might say that E has a vested remainder subject to open which cannot be divested since no right of entry was reserved and

a court that disfavors forfeitures would be reluctant to imply one. On the other hand, a court might imply a right of re-entry in A since A clearly intended that only those children of C who survive C would take.

(d) E being still alive and D having died as stated, C gives birth to a second child, F.

Answer. E and F have the vested remainder subject to open. See, balance of answer under Problem 8(c).

(e) E and F predecease C, both dying intestate; B dies, then C dies intestate.

Answer. If A had no right of entry for condition broken, the property passes through the estates of E and F to their successors. If A had a right of entry for condition broken, A would have fee simple absolute upon exercise of the right.

9. A conveys to B for life, remainder to A's heirs. A later conveys to X, all his "right, title, and interest" in Blackacre. Thereafter both A and B die intestate.

Answer. If the inter vivos branch of the doctrine of worthier title applies, X has fee simple absolute. The remainder to A's heirs was void under the rule. At the time of the conveyance the state of the title was life estate in B, reversion in A. A's reversion is alienable, devisable and descendible. X took the reversion by alienation.

If the doctrine of worthier title is inapplicable, then on A's death A's heirs acquired a vested remainder if B were then living and on B's death, they would have a fee simple absolute. X, the grantee of A, would have nothing since could have no greater rights than A had.

On the other hand, if B predeceased A, A's heirs would only have fee simple absolute following A's later death, if the destructibility doctrine did not apply. X (A's grantee) would have a fee simple subject to a springing executory interest until A died. If the rule of destructibility applies, however, on B's death the remainder is destroyed since living persons (A) have no heirs and on B's death, X has fee simple absolute.

10. A conveys to B and his heirs but if B should die without issue, remainder to C and his heirs.

Answer. At common law, B has a fee tail, vested remainder in C. Dying without issue was functionally the same as B's heirs of the body becoming extinct.

Today, if the applicable jurisdiction abolishes the fee tail and follows the definite failure of issue construction B has a fee simple subject to an executory interest in C.