

## Perpetuities Review Problems

by Donald Kochan, Tue, 11/26/2002 12:53:47 PM EST

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PROPERTY  
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### Rule Against Perpetuities ("RAP") Review:

Lives in Being Plus 21 years: At common law, no estate in property shall be valid unless it must vest, if at all, not later than 21 years after one or more lives in being (LIB) at the creation of the estate and any period of gestation involved.

The best way to handle the rule is to view it as a rule of proof. The party claiming that an interest is valid has met the "absolute certainty of vesting" test. He must be able to show that regardless of what might happen, his interest will vest, if it does vest, within that persons lifetime (i.e., someone who was alive at the time the interest was created) or within 21 years after that person's death. If the claimant can show that his Interest will vest, if at all, during the lifetime of (or 21 years after the death of) a measuring life, his interest is valid. It only takes one "life in being" to make it work. If the claimant cannot meet that proof test -- if there is any possibility, however remote or fanciful, that his interest could vest more than 21 years after the death of any person alive when the interest was created -- his interest is void.

If there is, or may be, a perpetuities problem, the key is to identify the vesting period -- the time period in which the interest will vest (if it does vest).

### EXAMPLES

1.0 conveys land "to A and his heirs for so long as no liquor is sold or consumed on the premises; and if liquor is ever sold or consumed on the premises, title shall pass to B and his heirs."

Step 1: Classify the Interests as though there were no rule

A: determinable fee subject to executory interest

B: executory interest

O: zero (absent a RAP problem)

Step 2: Analyze Validity under RAP ("what might happen")

Not valid -- B's interest might vest remotely so its void from day 1

Result:

A: fee simple determinable

B: void

O: possibility of reverter

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2"to A and his heirs for so long as no liquor is consumed on the premises; and

if liquor is sold or consumed on the premises during the next 20 years, title shall pass to B and his heirs."

A: fee simple determinable subject to executory interest

B: executory interest

O: Possibility of Reverter

Valid under RAP because B's interest will vest, if at all, within 20 years.

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3."to A and his heirs for so long as no liquor is sold or consumed on the premises; and if liquor is sold or consumed on the premises during the next 30 years, title shall pass to B and his heirs."

B's interest is void under RAP

B could have B, Jr.; everyone but Jr. could die; then at year 25, liquor is sold (Interest vests) and at that time might vest remotely so void.

4.O conveys "To church for so long as the premises are used for church purposes; and if they shall ever cease to be so used, to N, his heirs and assigns."

Church: Fee simple determinable subject to executory interest

O: Possibility of reverter

But, N's interest violates RAP so strike executory interest and "subject to"

5. O conveys land "to A and his heirs; provided, however, and on the express condition that if liquor is ever sold or consumed on the premises, B and his heirs shall have the right to reenter and retake the premises."

A: fee simple subject to condition precedent~ [NY: fee on condition]

B: executory interest

(cannot be a right of entry because that only arises in a grantor)

O: zero

B's interest is not valid under RAP ("ever") so, A has fee simple absolute and O has zero

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6. O conveys "to N, as long as no liquor is sold or consumed on the premises; and if liquor is ever sold or consumed on premises, to Church."

N: fee simple determinable

Church: executory interest

O: possibility of reverter

Church's Interest invalid under RAP so, N has fee simple determinable and O has POR.

In Question 6, the limitation is tied to the gift to N. When you strike the void gift to Church, the limitation is still tied to the gift to N. In Question 5, the condition, expressed as a condition subsequent, is tied to the gift over to B. When you strike the gift to B, you also strike the condition that triggers it, leaving A with a fee simple. The grantor has no right of entry because no right of entry was expressly raised in the conveyance.

7. Dad's will devises Briarwood "to my son S and his heirs; but If S shall attempt to sell, convey or otherwise transfer any interest in Briarwood during his lifetime, his title shall cease, and title to Briarwood shall pass to my son H and his heirs. What interests are created?

Choices:

- a. S has a fee simple subject to a remainder, and H has a remainder in fee simple.
- b. S has a fee simple subject to an executory interest; H has an executory interest.
- c. S has a fee simple because H's interest violates RAP
- d. S has a fee simple absolute because the restriction on transferability violates the rule against restraints on alienation.

Answer: D is correct. A is incorrect because it cannot be a remainder because it doesn't follow a life estate. B would be the answer, except for D. C is incorrect because language of "during his lifetime" means H's interest will vest, if at all, within a life in being plus 21 years.

8. In 1990, Ollie conveys Redacre "to First Baptist Church, its successors and assigns, for so long as the land is used for church purposes." A chapel is built on the land, and services are held every Sunday. In 1998, oil is discovered in the vicinity, and a well drilled on Redacre 200 feet from the chapel. The well produces oil in substantial quantities. Ollie brings an action to enjoin the further removal of oil and to recover title to the land. If the church prevails in the action, it will be because:

- a. The church is a charity, meaning that it's not subject to RAP
- b. The provision restricting the use of the land for church purpose; violates the rule against restraints on alienation
- c. The church's interest, although defeasible, is a fee.
- d. Production of oil is controlled by government regulation, not individual regulation, and Ollie has no standing to enjoin production.

First, identify the interests. Church has a fee simple determinable and Ollie has a possibility of reverter.

A is incorrect because RAP not involved (and even if it was, the exception recognized in some jurisdictions only covers charity to charity transfers, not individual to charity transfers).

B is incorrect because only restrictions on transferability are affected by the rule against restraints on alienation.

D is just incorrect.

C is correct because its true and church has all the rights of a fee simple owner. If the church had a life estate, it could not drill because such action would constitute waste.

9. Terry dies in 1980, leaving a will that devises land "to my son A for life, and on his death to my grandson B. B dies in 1995 survived by A, his wife W, and his son S. B leaves a will that devises "all my property to W". A dies in 1997.

A: life estate

B: Indefeasibly vested remainder (there's no contingency to B's taking other than A's death)

T's estate: zero

Who owns the land after A's death?

B's successor by will or inheritance (W)

10. O dies in 1984, leaving a will that devises land "to my son A for life, and on A's death to his children in equal shares." At the time of O's death, A has three children -- V, W, & X. In 1987 another child, Y, is born to A. V dies in 1995. A dies in 1998. 6 months later A's wife gives birth to another child, E. Who owns the land after A's death in 1998?

Answer: 1/5 shares to V's estate, W, X, Y, and E

In 1984, V, W & X: had vested remainders subject to open (remainder was to class); its also called a vested remainder subject to partial divestment. The class hasn't closed because disposition to "children" is not yet necessary.

On Y's birth in 1987: Class opened and now 4 kids each have 1/4 shares

On V's death in 1995: his share of remainder passes to successors

E: gestation principle allows E to be a class member and takes share as a posthumous child.

Class gifts rule (surviving class members take) in wills didn't apply when V died because V was alive in 1984 when T's will took effect -- rule only applies if a class member predeceases T.

11. "To A for life, and on A's death then B; but if at B's death B is not survived by issue, on B's death to C."

A: life estate

B: vested remainder subject to total divestment

C: executory interest

C. EXECUTORY INTEREST

O: zero -- its a total conveyance of fee simple title

Valid under RAP -- can point to B and meet proof test and C's interest will vest, if at all, at the death of B (an LIB)

12. In 1980, O conveys "to A for life, and on A's death to B and his heirs if B attains the age of 30." B is 5 years old at the time of this conveyance.

A: life estate

B: contingent remainder

O: reversion (because B may not make it to age 30)

Valid under RAP because B can point to himself as an LIB and B will make it to age 30 or die within his own lifetime.

Assume A dies ten years after this conveyance; B is 15 years old.

B: executory interest

O: fee simple subject to executory interest (because if B dies before 30, O will get full fee simple because A's dead)

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13. Teddy dies leaving a will that devises his residuary estate "to my son John for life, then to such of John's children as live to attain the age of 30." At Teddy's death, John has 3 children: Tommy (age 12); Dickie (age 8) and Harry (age 5).

Step 1: Classify the Interests as though there were no rule  
John's children as live to attain 30: contingent remainder (age 30 is condition precedent)  
Teddy's estate: reversion (none may make it to 30)

Step 2: Analyze Validity under RAP ("what might happen")  
The remainder in John's children is void because its an open class and thus might vest remotely (an age contingency beyond 21 in an open class).

After Teddy's death, John could have another child Z (not an LIB because not alive at T's death). Before Z has his 9th birthday, everyone now on the scene might die. More than 21 years later (after LIB's die), Z attains age 30 at which time the remainder vests.

Same facts except that John predeceased T:

Now gift is valid because its a closed class. Because John is dead, there cannot be any more children and remaining kids will make it to 30 in their own lifetime (all are alive at T's death).

Same facts except that T's will devises his residuary estate "to my daughter Mary for life, and on her death remainder to such of Mary's children as attain age 30." At T's death, Mary is 59 years old and had a hysterectomy.

Step 1: Classify the Interests as though there were no rule contingent remainder in Marv's

children; Mary has life estate

Step 2: Analyze Validity under RAP ("what might happen")

Remainder is void -- fertile octagenarian problem

14. Tammy dies leaving a will that creates a trust: "income to my daughter D for life, and on her death income to D's children, Sammy and Susie, for their lives; and on the death of the survivor of Sammy and Susie, principal to D's then living grandchildren."

Step 1: Classify the Interests as though there were no rule

Donna: life estate

Sammy and Susie: remainder life estates

Donna's grandchildren: contingent remainder in fee simple ("then living")

Tammy's estate: reversion

Step 2: Analyze Validity under RAP ("what might happen")

Valid, will vest at death of Sam and Sue and they're LIB's

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15. T dies leaving his residuary estate in trust: "To my son J for life, then to J's widow for life, then to such of J's descendants as are living on the death of his widow." J is happily married to S and has 2 children.

Step 1: Classify the Interests as though there were no rule

J: life estate

S: zero

J's widow: contingent remainder life estate

J's descendants then living: contingent remainder in fee simple

T's estate: reversion

Step 2: Analyze Validity under RAP ("what might happen")

Remainder in J's descendants invalid because w/n vest until death of widow and widow might not be born at T's death. After T's death, S may divorce or die; J marries L, a woman not alive at T's death; J has child Z by new bride; everyone alive at T's death dies; More than 21 years later, L dies; Z is a descendant and not a LIB.

Life estate in J's widow valid under RAP -- J is LIB and will vest at his death and we'll know who his widow is at his death.

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