

PROPERTY 2002 SECOND MIDTERM EXAM GRADING OUTLINE

QUESTION 1: T devises Blackacre “To A for life, then to B for life, then to B’s children.” What if at the time of T’s death B has no children? What if at the time of T’s death B has one child, C?

2 A has a life estate (“for life”) and B has a remainder (follows a LE, a finite estate) in LE (“for life”).

2 B’s remainder is vested because he is ascertained and there is no stated condition precedent; he has an interest for as long as he lives. B’s children have a remainder (follows a LE, a finite estate) in FSA (no stated condition or limitation).

2 If B has no children, the remainder is contingent (none ascertained). T’s heirs have a reversion in FSA (follows a contingent remainder in FSA) in FSA (what T started with).

2 If B has a child, C, then C has the remainder and it is vested subject to open because C is ascertained and ready to take but B may have more children.

2 Both contingent remainders and vested remainders subject to open are subject to the RAP. A and B are lives in being and this will be resolved when the last of them dies. CK&C: create a new child for B, kill everyone off and the child’s interest immediately vests alone (B has no children) or along with C’s (C has been born).

QUESTION #2: O conveys Greenacre “To A and her heirs so long as A uses Greenacre as a wild life preserve, and if A fails to use Greenacre as a wild life preserve then to B and his heirs so long as B uses Greenacre as a wild life preserve.”

2 A has a fee simple (“and her heirs”) subject to an executory limitation (condition subsequent that will cut the possessory fee simple short with the future interest in one other than the grantor).

2 B has a shifting executory interest (follows a FSSEL) in FSD (condition subsequent that will cut the possessory fee simple short with the future interest in the grantor).

2 B's EI is valid under the RAP because it is tied to a life in being (A has to use as a wild life preserve) or if you CK&C then A's devisees or heirs have FSA (because A may no longer violate the limitation).

2 Grantor has a possibility of reverter (follows B's FSD) in FSA (what she started with). Possibilities of reverter are not subject to the RAP.

QUESTION 3: O conveys Redacre "To A for life, then to such of A's grandchildren as attain the age of 21." What if at the time of the conveyance A has three grandchildren alive whose ages are 12, 16, and 20? What if at the time of the conveyance A has three grandchildren alive whose ages are 17, 19 and 23?

2 A has a life estate ("for life") and A's grandchildren have a remainder (follows a LE, a finite estate) in FSA (no conditions or limitations).

2 Any grandchild under 21 has a contingent remainder (condition precedent of reaching 21). If there is a grandchild 21 years of age or older you could say that grandchildren under 21 have shifting executory interests (will partially divest the older grandchild's vested interest). O has a reversion (follows a contingent remainder in FSA) in FSA (what O started with).

2 The 23 year old has the remainder subject to open. She has met the condition precedent and definitely will take when A dies, but she may have to share with the other grandchildren.

2 If no grandchild is 21 or older when O conveys and the remainder is contingent, then it is void by the RAP and O has the reversion. A is the life in being and we cannot say this will be resolved within 21 years of when he dies. CK&C: create a new child for A, kill everyone else, and no grandchild may even be born during the next 21 years.

2 If there is a 23 year old grandchild when O conveys, then the RAP is no problem because when A dies we know one member of the class is entitled to possession. Therefore upon the death of A, a live in being, the Rule of Convenience will close the class on the then living persons who are 21, or who will reach, or fail to reach, 21 within 21 years of A's death. CK&C: create a new child, kill everyone off and the 23 year old's devisees or heirs get it.

QUESTION 4: O conveys Whiteacre "To A for life, then to B and her heirs, but if A and B marry, then to C and his heirs."

2 A has a life estate ("for life") that is subject to an executory limitation (the condition that if A and B marry then it goes to C, a third party). If the student says it is an unlimited LE then the student must explain why the condition does not apply to A's LE.

2 B has a remainder (follows a LE, a finite estate) in fee simple ("and her heirs") which is absolute and not subject to an executory limitation (the condition that if A and B marry then it goes to C, a third party) because if A dies without marrying B then B will have a possessory FSA (A and B can't marry if A is dead, and A being dead is the only way B can get possession).

2 B's remainder is vested (he is ascertained and there is no stated condition precedent) but it is subject to complete divestment (A and B marry) while it is a remainder.

2 C has an executory interest (third party divesting a present estate and a vested remainder) in FSA ("and his heirs").

2 RAP applies to C's EI. This will be resolved during the life of A (or earlier if B dies before A), and A and B are both lives in being. CK&C: create a child for someone and kill everyone off and it is resolved (B's heirs or devisees take the FSA).