

This is remarkable effort by a student in this year's class (2017), beautifully color-coded, that takes my 1969 set of objective questions and revises the answers according to this year's assumptions about the state of the law. I have added a couple of remarks (in purple).

Instructions. Throughout this Part you are to assume that O has, at the time of the conveyance or devise, a fee simple absolute in certain land, and that the conveyance or devise in each problem adequately describes the land. You should also assume that the Anglo-American common law is in force, including the so-called common law statutes such as Quia Emptores, De Donis, the Statute of Uses, and the Statute of Frauds. You should further assume that a Statute of Wills is in force. All conveyances or devises referred to in the fact situations below may be assumed to operate so as to allow the creation of executory interests without the specific declaration of a use; for example, as a bargain and sale in the case of inter vivos conveyances, or as a devise operating under the Statute of Wills. You should assume that in any conveyance or devise, a fee simple absolute is conveyed unless the language describes a lesser estate. Unless otherwise stated, all persons named in grants are living and no conditions have been fulfilled.

Also assume:

- A Married Women's Property Act is in force;
- A grant or devise to two or more persons creates a tenancy in common unless otherwise specified;
- All future interests are alienable both inter vivos and by will, except beneficial interests in trusts that have a spendthrift clause;
- The doctrine of destructibility of contingent remainders has been abolished;
- The common-law estates of dower and curtesy have been abolished;
- Neither the Rule in Shelley's Case nor the Doctrine of Worthier Title is in effect;

O conveys land "to A for life, remainder to B, C, and D." B, C, and D are A's heirs apparent at law.

1. A has: (a) a life estate (b) a fee simple absolute (c) a fee tail (d) none of the above.

A has (a) a life estate.

2. B, C, and D have: (a) a vested remainder in fee simple (b) a contingent remainder in fee simple (c) nothing (d) none of the above.

B, C, and D have (a) a vested remainder in fee simple.

3. O has: (a) a reversion (b) a possibility of reverter (c) a right of entry (d) none of the above.

O has (d) none of the above. O does not have a reversion following a vested remainder in fee.

After the preceding conveyance, A, a widower, dies suddenly at the age of 91, devising the land "to my mistress, E, for life, remainder to B, C, and D."

4. B, C, and D have: (a) a vested remainder in fee simple (b) a vested remainder in fee tail (c) a contingent remainder (d) none of the above.

B, C, and D have (d) none of the above. They instead have a present estate in fee. All that A could convey was his own life estate, so his interest expired upon his death, at which point the vested remainder in B, C, and D vested in possession to become a fee simple.

5. B, C, and D are or will be: (a) joint tenants (b) coparceners (c) tenants in common (d) tenants by the entirety (e) you can't tell.

B, C, and D will be (c) tenants in common under the modern law presumption for TICs.

6. E has: (a) a life estate (b) dower rights (c) nothing (d) none of the above.

E has (c) nothing. As stated above, all that A could convey was his own life estate, so the life estate he conveyed to E expired upon the end of *his* death, not hers.

7. This problem involves the application of: (a) the Rule in Shelley's Case (b) the Statute of Uses (c) the Statute De Donis (d) the Doctrine of Worthier Title (e) none of the above.

[I assume we do not need to know the answer to this question. You don't, but a word about the wording may be in order. The only item of possible applicability is (a) the Rule in Shelley's Case. The thought-pattern that I was looking for was "you don't apply the Rule in Shelley's Case unless the grant is to the 'heirs', using the word, of the life tenant." The wording proved so confusing, however, that I threw the question out.]

O conveys land "to A for life remainder to A's 21 year old children but if A has no 21 year old children at his death, then to C and his heirs." A has three children D, E, and F, none of whom is 21.

8. D, E, and F have: (a) a vested remainder subject to open (b) an executory interest (c) a contingent remainder (d) a vested remainder subject to complete defeasance (e) nothing (f) none of the above.

D, E, and F have (c) a contingent remainder. The contingency is that they will reach 21 by the time A has died. If at A's death, A has no children who are 21 years old, the alternative contingent remainder in C and his heirs will vest in interest and possession.

9. C has: (a) a vested remainder for life (b) a contingent remainder in fee (c) an executory interest (d) nothing (e) none of the above.

C has (b) a contingent remainder in fee.

10. C's heirs have: (a) a contingent remainder in fee (b) an executory interest (c) nothing (d) none of the above.

C's heirs have (c) nothing, because C is alive and living people do not have heirs. A better reason for reaching the same result is that 'and his/her/their heirs' are always words of limitation not words of purchase. They tell us what kind of interest C takes, not that the heirs have any interest.

11. O has: (a) a remainder (b) a reversion (c) a possibility of reverter (d) nothing (e) none of the above.

O has (b) a reversion. This is because A's life estate is followed by a contingent remainder and an alternative contingent remainder. Since neither future interest is vested, and the possibility of forfeiture remains, the two contingent remainders together do not cover every possible future world.

O grants land "to A for life, remainder to my heirs."

12. O's heirs take: (a) a remainder by descent because it is "worthier" to take an interest by descent (b) no interest at all because the remainder merges with O's reversion (c) a freehold interest (d) none of the above.

O's heirs take (d) none of the above. They have nothing, because O is alive (we know this from the word "grant") and living people do not have heirs. The proposed reason for the answer is logically possible, but is not the way we normally put it. Normally, what we say when a remainder is limited to a class that does not yet have any members (like "the children of A" when A doesn't yet have any children) is that they have a contingent remainder. So too with the heirs of O, who cannot be identified until O is dead. If I were answering this question under modern law, I would pick (c). It's a freehold in as yet unidentified people. At common law, because of the Doctrine of Worthier Title, the remainder in O's heirs was regarded as a nullity, leaving O with a reversion. It is possible, though I think unlikely, that a modern court could reach the same result by interpretation taking "remainder to my heirs" as being the same thing as saying "with a reversion to me."

O conveys land "to A and his heirs. If, however, the land is used for other than agricultural purposes, the land shall go to B and his heirs."

13. A has: (a) a fee simple determinable (b) a fee simple absolute (c) a fee simple subject to a right of entry (d) none of the above.

A has either (b) a fee simple absolute or (d) none of the above. This is because the FSXI that O conveyed to A is void for violating the RAP; the land may be used for agricultural purposes, but then be used for something else well after all lives in being plus 21 years. The court may expand A's interest into an FSA or imply a reversion to O. On this wording, I think it far more common to expand the A's interest to a FSA than to employ 'infectious invalidity' and remake the whole conveyance and give the property back to O. The reason why I gave credit for (d), even though it was not the answer that I

was looking for is that one can say that A has a fee simple subject to an (invalid) executory interest, which is “none of the above.”

14. B has: (a) a right of entry (b) a reversion (c) an executory interest (d) a possibility of reverter (e) nothing.

B has (e) nothing. The executory interest in B is void for violating the RAP.

15. O has: (a) a right of entry (b) a reversion (c) an executory interest (d) a possibility of reverter (e) nothing.

O has (e) nothing. This is the best *available* answer, although not the only *possible* one. O gets nothing if the court expands A's interest into an FSA. If the court instead voided the entire conveyance to A, O would retain his original FSA.

O conveys land “to H and W, as husband and wife, and their heirs.”

16. H and W have: (a) estates for life (b) a fee simple (c) an estate as joint tenants (d) an estate by the entirety.

H and W have (d) an estate by the entirety (in most states). They also have (b), a fee simple. The rules of this test allowed multiple correct answers.

After the preceding conveyance, H conveys his entire interest in the land to X and then dies the next day.

17. X: (a) is a tenant in common (b) is a joint tenant (c) is sole owner in fee simple (d) has nothing.

X has (d) nothing. This is the best *available* answer. It assumes an interpretation of the MWPA prohibits either partner from conveying his or her interest acting alone. In some states, the MWPA is instead interpreted to allow either spouse to convey his or her interest, but each can only convey what she or he has: one-half of the interest in the land. The answer is correct; I am uncomfortable with the explanation. It is quite correct that many states which have the tenancy by entireties do not allow either spouse to convey without the consent of the other. Some do, however, but what the spouse can convey is no more than s/he has, in effect a life estate for their joint lives plus a contingent remainder, contingent on the conveying spouse surviving. This spouse did not survive, so X lost the bet and has nothing under either scenario. Under modern law, however, we have to consider the possibility that the tenancy by the entireties does not exist in the particular jurisdiction. In such jurisdictions, grant 16 will almost certainly be interpreted as a joint tenancy. H's conveyance severed the tenancy, so X gets a half.

O conveys land “to A for life, remainder one day after A's death to the first son of A living at the time of this grant to attain a college degree for life, remainder to E.” A has three sons at the time of the grant B, C, and D.

18. B, C, and D have: (a) a vested remainder (b) a contingent remainder (c) an executory interest (d) nothing (e) none of the above.

B, C, and D have (c) an executory interest. The interest is not a contingent remainder, but an executory interest, because it cuts off O's one-day reversion.

19. O has: (a) a reversion (b) a possibility of reverter (c) a right of entry (d) nothing (e) none of the above.

O has (a) a reversion, because there is a one-day gap in seisin between A's life estate and the executory interest in B, C, and D.

20. A has: (a) a life estate (b) a fee simple absolute (c) a base or qualified fee (d) a fee simple subject to an executory limitation (e) none of the above.

A has (a) a life estate. [Query 1: What does E have? Answer 1: The logic (though the authorities aren't clear) suggests that it must be an executory interest, since it will follow a gap in seisin. Query 2: Is the contingent interest in B, C and D good? Answer 2: Yes, because they are living persons at the time of the grant.]

A and E now convey all their right title and interest in the land to C. B attains a college degree, the first of the three brothers to do so. A dies. What is the state of the title two days after A's death?

21. O has: (a) a reversion (b) a possibility of reverter (c) a right of entry (d) nothing (e) none of the above.

O has (d) nothing. B's interest was an executory interest, so once it vested in possession, O's reversion was cut short.

22. B has: (a) a life estate (b) a fee simple absolute (c) a base or qualified fee (d) a fee simple subject to an executory limitation (e) none of the above.

B has (a) a life estate.

23. D has: (a) a vested remainder (b) a contingent remainder (c) an executory interest (d) nothing (e) none of the above.

D has (d) nothing.