

CLASS OUTLINE 16 – ANSWERS

Problem 1a.

G has nothing. A has a present life estate. B has a vested remainder in fee simple absolute. B's remainder is vested in interest, though it may not become vested in possession for some time. If B dies before A, her interest passes to her heirs or to whomever she devises it.

Problem 1b.

A has a present life estate. A's children have a remainder in fee simple. If A has no children, the unborn children have a contingent remainder in fee simple, because any remainder that references someone by description rather than by name is contingent on there being someone who meets that description. If A has no children, G has a reversion. If A has one or more children, s/he/they have a vested remainder in fee simple subject to open (also known as subject to partial defeasance/divestment). A is assumed capable of having more children at any time during his/her lifetime. If one or more of A's children predecease A, his/her/their remainder passes to his/her/their heirs, but remains subject to open. Once A has a child G's reversion disappears.

Problem 1c.

A has a present life estate. B has a contingent remainder in fee simple absolute, the precedent condition being the one stated, that she survive A. G has a reversion to take effect if B does not survive A. If, as some of you asked, G dies, the reversion passes to his/her heirs or devisees. If that heir or devisee happens to be B, the reversion and the remainder will merge, and the condition will be eliminated.

Problem 1d.

A has a present life estate. B has a contingent remainder in fee simple absolute, the precedent condition being the one stated, that she reach the age of 21. C has an alternative contingent remainder in fee simple absolute, the precedent condition being that B fails to reach the age of 21. There is an ambiguity in the precedent condition because it does not say when B has to reach the age of 21. At common law it was a rule of law that if B had not fulfilled the condition by the time of A's death, the remainder was destroyed, and C took. Under modern law the same result is frequently reached as a matter of construction, but need not be so reached if the totality of the grant indicates the contrary intention.

Problem 1e.

This language resolves the ambiguity in favor of the interpretation that B must be 21 when A dies.

Problem 1f.

This language resolves the ambiguity in favor of the interpretation that B takes whenever she reaches the age of 21. This would not have the desired effect at common law if A dies before B reaches the age of 21. Under modern law if B is alive but not 21 when A dies, the reversion in G falls in, subject to being defeased when B reaches 21 or dies before she reaches 21. In this situation, the contingent remainders in B and C turn into executory interests.

In all three cases, G has a reversion during A's lifetime because A may forfeit his estate prior to his death.

In all three cases if B becomes 21 during A's lifetime, her contingent remainder turns into a vested remainder in fee simple absolute, C's remainder is destroyed, and G's reversion disappears.

Problem 1g

A has a present life estate. B has a vested remainder in fee simple subject to an executory interest. C has an executory interest in fee simple absolute. If A dies when B is 19, she takes, but

subject to the executory interest. (The same happens if A forfeits.) If B reaches 21, whether before or after the death of A, C's executory interest is destroyed. If B dies before she reaches 21, C's interest becomes a vested remainder in fee simple absolute if A is still alive and a present fee simple absolute if A is dead. G at no point has a reversion. There is no difference in this problem between common law and modern law.

Problem 3a.

A has a present life estate. B has nothing in his/her own right. B's children (grant 12) have a contingent remainder, the precedent condition being that someone be identified as a child of B. B's children (grant 13) have a contingent remainder, the precedent conditions being that someone be identified as a child of B and that s/he/they survive someone, it being ambiguous whom they are supposed to survive. Both A and B are real possibilities; it is less likely that it would be interpreted to mean surviving G. G has a reversion. If B dies childless during A's lifetime (3ai), G's reversion falls in, and the ambiguity makes no difference. If A dies during B's lifetime (B still being childless) (3aii), the ambiguity makes no difference at common law because at common law all precedent conditions must be fulfilled no later than the expiration of the preceding life estate. At common law the reversion would fall in, and B's potential children are out of luck. Under modern law, the situation is more complicated. Without any other guidance in the instrument (because this is a matter of construction not a rule of law), a modern court would probably give the reversion to G subject to an executory interest in B's unborn children, which means that final settlement of the title would have to wait until B is dead (see below). Grant 13 adds the additional problem of surviving whom. Here, a modern court would probably interpret it as meaning surviving A and would then struggle with the problem of whether an afterborn child could be regarded as having 'survived' someone who died before s/he was born.

Problem 3b.

A has a present life estate. B has nothing in his/her own right. C (grant 12) has a vested remainder subject to open by B having more children. C (grant 13) has a contingent remainder, contingent on his/her surviving whomever it is s/he is supposed to survive. At common law (3bi) vested remainders are alienable and devisable, so C's conveyance to D (grant 12) is good, but is, of course, still subject to open. At common law, contingent remainders are inalienable, so C's conveyance to D is void (grant 13). Under modern law, as a general matter, contingent remainders are alienable (the one major jurisdiction in which they are still inalienable, Illinois, has found ways to make them, in effect, alienable). Hence, under modern law C's conveyance to D is good for what it is, a conveyance of a contingent remainder subject to C's surviving whomever s/he is supposed to survive. If B dies during A's lifetime and without having further children (3bii, grant 12), C has a vested remainder in fee simple absolute, under both common law and modern law. If B dies during A's lifetime and without having further children (3bii, grant 13), C has either a vested remainder in fee simple absolute if 'surviving' is interpreted as meaning surviving B or a contingent remainder if 'surviving' is interpreted as meaning surviving A. Under both common law and modern law, the result is the same. If A dies during B's lifetime (3biii, grant 12), C has a present fee simple absolute under common law. Under modern law, if A dies during B's lifetime (3biii, grant 12), C has either a present fee simple subject to partial divestment by B having more children or a fee simple absolute, depending on whether the court chooses to close the class upon the death of B (as many but not all courts will under these circumstances). If A dies during B's lifetime (3biii, grant 13), C has a present fee simple absolute under common law or nothing depending on whether the court interprets 'surviving' as meaning surviving A (C gets a fee simple absolute) or surviving B (C gets nothing because s/he failed to fulfill the condition prior to the expiration of life estate). Under modern law the court has more options in addition to the options that it has under grant 12. If it interprets 'surviving' as meaning surviving A and if it determines that 'surviving' can mean 'born after the death of', it could give

C a fee simple subject to partial divestment by B's having additional children. If it interprets 'surviving' as meaning surviving B, it will probably keep the class open until the death of B, because there is currently no one who fulfills all the class conditions.

Problem 3c and 3d.

These simply give the constructional preferences that are generally followed by modern courts in the absence of evidence to the contrary. The justification for these results is that if there is one or more members who have currently fulfilled the conditions of class membership, we should settle the title to the property now. (This is a variant on the general preference for early vesting.) If, on the other hand, we have to wait to see if anyone fulfills the conditions, then we might as well wait until all possibility that some one or more will fulfill the conditions has been eliminated. In the case of the problem at hand, that will mean in both grants 12 and 13 that we will have to wait until B is dead.