I think that what’s in the outline for last class about Abbott is enough.

THE RULE AGAINST PERPETUITIES

1. The Rule against Perpetuities — “No interest is good unless it must vest, if at all, within some life or lives in being at the effective date of the instrument plus 21 years.”

   John Chipman Gray, 1886.

   a. it must vest

      i. rvns (also generally p/rvtrs & r/e’s) — they are generally regarded as always vested for purposes of the Rule

      ii. rdr’s — they vest for purposes of the Rule when they vest in interest

      iii. xi’s — they are generally regarded as not vested until they vest in possession. This can make a difference:

         G —> le A —> rdr le A’s children —> rdr B

         G —> le A —> rdr le A’s children —> rdr B one day after the death of A’s last surviving child

         Having said this, I must confess that I know of no recent cases that so hold.

         There’s one exception to the rule that it must become possessory or fail to become possessory, the executory interest following a term of years.

         G —> A 200 yrs. if he should live so long —> rdr B if he obtains a college degree

         Again, I don’t know of any recent cases.

         There are, however, plenty of cases in this form:

         G —> A so long as the land is used for residence purposes —> rdr B

         The problem is not the identification of B but the occurrence of the condition.

         Thus we may reword John Chipman Gray’s classic statement of the Rule as follows: “No interest, except for an interest retained by the grantor/devisor, is good unless it must vest in interest if it is a remainder or vest in possession if it is an executory interest, if at all, within some life or lives in being at the effective date of the instrument plus 21 years.”

   b. “within lives in being plus 21 years” – the measuring lives — implied & express

      G —> le A —> rdr le A’s children —> rdr A’s grandchildren

      i. The remainder in the grandchildren is void. (Note the class gift problem, the so-called “all-or-nothing” rule. Note too that a strict application of the presumption of vesting might save it, if we assume that A’s children are those living at the time of the grant, but normally the presumption does not apply that far.)

      ii. If G is not living, i.e., it’s a devise. It makes no difference, still void, why?

      iii. How do we save this grant:

         G —> le A —> rdr le A’s children living at the effective date of this grant —> rdr A’s grandchildren

         That won’t save it; why? what will?
G—>le my children —>rdr such of my grandchildren as reach the age of 21
D—>le my children —>rdr such of my grandchildren as reach the age of 21
Bottom line: A gift to the grandchildren of a living person is almost always is problematical. A gift to the grandchildren of a dead person is fine.

2. Fantastic Possibilities
   a. The “all or nothing” rule (dealt with in the previous problems)
   b. The “what might happen” approach (p. S251)
      i. D —>le A —>rdr le A’s children —>rdr A’s grandchildren. A is an 80-year old woman. The “fertile octogenarian”
      ii. D —>le A —>rdr le A’s widow —>rdr A’s children who survive both A & his widow. A is an 80-year old man, happily married to a woman of 79. The “unborn widow.”
      iii. D —>to such of my lineal descendants who are alive at the probate of my will. The “administrative contingency”
      iv. D —>le A —>rdr such of A’s grandchildren living at my death or born w/in 5 yrs. thereafter as attain 21 “precocious toddler”
      v. D —>le A —>rdr such of A’s grandchildren as attain 21. Same facts as (i) with a statute removing presumption of fertility. The “fortuitous adoption”
      vi. D —>to my children. The Rule and high-tech procreation: “the fertile decedent.”
   c. the consequence of invalidity: we’ll take this up next time.

3. Perpetuities and trusts – the Rules are surprisingly unclear.
   a. It is generally thought that the perpetuities period does not run on a trust if one or more people have the power to revoke it. It is pretty clear that the perpetuities period does not run on a trust if the grantor has the power to revoke it. If the trust is irrevocable, however, the period of irrevocability is generally thought to be limited to the perpetuities period.
   b. Spendthrift trusts. The reason for the absence of clear authority may be that most such trusts are irrevocable. Hence, the R/Perp on irrevocability probably applies, and that is somewhat clearer.

4. Examples:
   a. G —>trustees to pay income to G for life —> G’s children for their lives —>G’s grandchildren when they reach the age of 21. G retains power to revoke during his lifetime.
   b. G —>trustees to pay income to G for life —> G’s children for their lives —>le G’s grandchildren when they reach the age of 21 —>rdr G’s great grandchildren when they reach 21. G retains power to revoke during his lifetime. G also grants the power to any grandchild life tenant to compel the trustees to distribute to him or her the portion of the capital attributable to him or her.