

Real Property I (& Future Interests)

New York and Multistate Usually the same. Avoid Complex Analysis - "Don't Think"
Read question, then stop, visualize answer, then look at choices. When narrowed down to 2 choices, one is right and very factually specific (but irrelevant) and one is a very gross oversimplification of General rule - that is the right answer

The Estate - POSSESSION

Freehold Estates (developed under feudal system):

1) Fee Simple Absolute - (Don't need special language "To A & his heirs") - every estate presumed to be fee simple unless words to contrary

Every fee simple contains: a) Potentially unlimited duration, and b) fully alienable & inheritable.

A DIRECT RESTRAINT ON SOMEONE'S ALIENABILITY OF A FEE SIMPLE IS ABSOLUTELY VOID - can limit right to use but never right to transfer

2) DEFEASIBLE FEES:

a) Fee Simple Determinable - "so long as" or "until"-words of duration-estate automatically terminates on condition, O retains poss. of reverter

b) Fee Simple Subject to a Condition Subsequent - "if," "provided that," or "on condition that" - estate does not automatically terminate,

O or his heirs merely have the option to enter the estate & terminate - O has right of reentry.

c) Fee Simple subject to an Executory Limitation - If event occurs, estate goes to a 3rd party - "but if then to" - 3rd party holds the future interest (executory limitation)

When MBE creates ambiguity, make fee simple subject to a condition subsequent - avoids forfeiture

3) Fee Tail - "to A and the heirs of his body" - ABOLISHED - becomes fee simple absolute.

Was only valid under COMMON LAW

4) Life Estate - The key is "LIFE," never measured by time

a) Express creation - "To A for life" or "To A until Death" or "To A for life of B"

b) Implied life estate - "To B after death of A," A got an implied life estate

c) Legal life estate - created automatically by law (ONLY common law dower - widow got 1/3 of estate for life after death of H, as long as property owned any time during their marriage. Could not be divested

Waste - Life tenant must maintain estate - minimum and maximum of life tenant's duties

a) Ameliorative waste - can't make an unauthorized physical change, even if increases land value

Exception: Added to value of property, AND conditions changed rendering property relatively valueless.

b) Voluntary Waste - Any affirmative action on the land beyond the right of maintenance (pumping oil from farmland) - change in use

c) Permissive Waste - decay - only duty to patch roof, etc, prevent decay to rest of property

FUTURE INTERESTS

When future interest held by O, reversion following natural termination.
 When future interest held by another, they have a remainder.

PRESENT ESTATE
 FUTURE INTEREST

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Fee Simple Absolute |None

Fee Simple Determinable (So long as, Until) |Possibility of
 Reverter (automatically arises in O upon event)

Fee Simple Subject to Condition Subsequent (If, provided, on condition that) |Right
 of reentry(power of term.) follows decision to terminate

Fee Simple Subject to an Executory Limitation |Executory
 Limitation (Automatic transfer to 3rd party upon event
 Shiting: but if then to B Springing: To b if marries C (springs out of O)

Fee Tail & Life Estate |Reversion - follows natural
 termination

Fee Tail & Life Estate |Remainder - estate given
 over to 3rd party following natural
 termination. Remainder either vested or contingent remainder
 remainderman, AND
 without condition?
 remainder, else contingent
 remainder
 are they? Contingent
 Common Law Technical rules governing Future interests (designed to implement taxes)
 There was previously an inheritance tax but not a gift tax
 a) Rule in Shelley's case: "To A for life, remainder to A's Heirs" - remainder is to A,
 A pays estate tax on death
 Test: 1) Same Instrument? 2) Same Character? 3) Same estate?
REMEMBER, ABOLISHED TODAY
 b) Destructability in Contingent Remainders: O conveys to A for life, then 1st child of A
 to reach 21 - Creates a life estate in A, Contingent remainder in O. To destroy
 remainder at common law:
 1) A dies leaving underage child - destroyed, estate reverts to O (because minor
 couldn't afford to pay land taxes)
 2) O sells reversion to A - Child is minor, A now has both life estate and reversion,
 they merge and remainder is destroyed
**ONLY DESTROY A CONTINGENT REMAINDER IF THE QUESTION ASKS, "AT COMMON
 LAW"**
 c) Doctrine of Worthier Title: A for life, remainder to O's heirs - treated as reversion to O,

not remainder to O's heirs

Survives in majority of jurisdictions, BUT NOT IN NY

RULE AGAINST PERPETUITIES - No contingent interest in property unless will CERTAINLY vest within lives in being + 21 years

1) Identify when there is a perp question - only potentially subject to contingent remainder, & subject to executory limitation

(Almost always violates rule for shifting interest "until factory built" ALWAYS "after will probated"

Class Gifts - fits to children with age contingency beyond 21 - "O devises to children of X who reach the age 30" - RED FLAG - All or nothing rule to class gifts - if bad as to one it is bad as to all - gift must vest to each and every member of class or it is void as to all.

Can be saved at common law if:

1) Class is closed by death - O is dead at time interest is created and survived by 20 year old son

2) X is alive by survived by 2 children, one 20 and one 33 - valid as to the 2 living children because one member is ready to take, close the class around living members

3) Per Capita Gift Exception: Specific bequest - \$1,000 to each child of X who reaches age of 30, one living 20 year old - valid t 20 year old, and void as to unborn because share of living members can be determined now

NY DISTINCTION: Anytime it would be invalid because the age contingency is beyond 21, rewrite contingency to 21

Gifts to Charity: To A until war ends, then to Charity - war could be 300 years, violates rule because of executory limitation

To Charity1 until war ends, then to Charity2 - still has executory limitation, but a gift from one charity to another does not need to vest within rule

Look for modern reform statutes - this gift would be saved if located in a state with:

1) Solve the problem statute (NY)

2) Wait & see reform (wait until end of life in being)

3) Uniform statutory rule - adopts an alternative vesting period - ok if survives common law rule OR w/in stat. period - wait & see 90 years

Concurrent ownership of estates

1) Joint tenancy - Need 4 unities: 1) time 2) title 3) interest 4) possession

Common law - O conveys to A & B equally in same instrument, share and share alike

Today: Statute - Joint tenancy requires unities, AND O's intent to create joint tenancy need be expressed "To A & B as joint tenants"

Common Law - JOINT TENANTS OWN BY THE WHOLE and ALSO BY THE PART. If A & B are joint tenants & A dies, B survives and owns entire estate

ALL FORMS OF CO-TENANCY, AS LONG AS RELATIONSHIP EXISTS, EACH ONE HAS RIGHT TO POSSESS THE ENTIRE PROPERTY, SUBJECT TO THE OTHER'S RIGHT TO THE SAME

Each co-tenant also has right to partition - once joint tenancy created, can be destroyed by partition, or involuntarily anytime the unity of A & B are disturbed,

creating a tenancy in common

1) Sale of the interest - A sells to X, X & B now hold as tenants in common. IF A, B, & C are joint, A sells to X, X is tenant in common, B & C are joint tenants of their 2/3 interest

2) Creditor's sale - A's interest is subject to his creditor's interest. The severance only occurs on the sale - if A dies before sale, A's interest is removed, B keeps estate free and clear of A's creditors

3) Mortgage - MAY sever the joint tenancy - severance if state follows Title theory of Mortgages - NY Lien theory, doesn't sever

4) Contract to sell - A contract to sell to X a year from now, as long as contract in writing, severance as of signing, title passes to X

2) Tenancy by the entirety (limited to legally married husband and wife) - OWN BY THE WHOLE, NOT BY THE PART

Common Law (Same as NY) Conveyance to husband and wife is tenancy in common

Multistate only: Only if intent is clear, otherwise it is a tenancy in common

With a tenancy by the entirety, there is survivorship but no partition - no individual right to sever, partition, or sever their interests

can only sever by action of both, or divorce.

Common Law: property so held is immune to individual claims of creditors of Husband or Wife - can be reached by creditors of both

NY - Can be reached by creditors, but other spouse's right of survivorship can't be impaired. If Husband dies, spouse gets property free and clear of husband's creditors

Incidents of coownership

1) Accountability for rents and profits. If A & B Joint tenants, A away, B in exclusive possession of land, B collects all the profits from the land

Accounting: B need not account to A, A has no remedy against B, because each tenant has right to full possession unless B did something wrong

Exception: Statute of Anne - Anytime B take more than her JUST SHARE of rents and profits, must account to A

1) Lease to 3rd party - if more than just share, must give A 1/2

2) Depletion of resources - must give A 1/2 value of resources removed

Contribution - flipside of Accounting - A comes back, B complains because had to add to property (expenses from mainting, taxes, new house)

A does NOT have to contribute, and B's actions are those of a volunteer, even if B makes "necessary" repairs

Exception to common law rule:

3rd party involuntarily charges taxes, sewer assessment, charges levied against land, A must pay fair share