

PROPERTY PRACTICE QUESTIONS

ANSWER 11G

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1. G: “I give to my daughter, Sandra Stewart for life my tract of land in Johnston County, North Carolina and then to Meta Stewart’s children and their heirs.” Meta Stewart is alive and has no children.

A. Sandra has an indefeasible life estate

- Life estate → “for life” words
- Indefeasible → not subject to any conditions or limitations

B. Meta’s children have a contingent remainder unborn scenario

- Remainder → does not divest Sandra’s estate
- Contingent, unborn scenario → Meta’s children are not born yet, we don’t know who they are

C. G has reversion

- The estate will revert back to O if Meta still has no children at the time of Sandra’s death

2. G: “To A for 10 years and then to the children of C and their heirs unless C’s children ever gamble.” C is living and has one child.

A. A has an indefeasible term of years

- Indefeasible → no conditions imposed
- Term of years → specified term of years

B. C’s children have a vested remainder in fee simple subject to partial divestment / subject to open *and* subject to total divestment by the grantor’s reversion

- Vested remainder → one child is born and ascertained and interest is not subject to a condition precedent
- In fee simple → “their heirs” language
- Subject to partial divestment / subject to open → C is alive and may have more children

- Subject to total divestment → C’s children could gamble

C. G has a reversion

- G gets the property back if C’s children ever gamble.

D. If at the time of grant C was not living, C’s child would have a vested remainder subject to total divestment

- C’s child could lose the interest by gambling.

3. G: “To A for life, then to B’s heirs.” (B is still alive)

A. A has life estate

- “For life” language

B. B has nothing

- Nothing has been granted

C. B’s heirs have a contingent remainder unascertained scenario

- B is still alive. We don’t know who the living’s heirs will be

D. G has a reversion

- B could die without heirs.

4. G: “To A for life, then to B for 10 years.”

A. A has a life estate

- Words “for life”

B. B has an indefeasibly vested remainder in the term of years

- Indefeasibly vested → B is born and ascertained; nothing can divest B of his estate
- Term of years → grant states “for 10 years”

C. G has reversion

- The estate reverts back to G after B’s term of years expires

5. G: “I give to my wife, Agnes Webb for a period of her natural life all of my real property of every kind and nature and then to my daughter Gina and her heirs if she runs for Senator before Agnes’ death.”

A. Agnes has life estate

- “for a period of her natural life”

B. Gina has a contingent remainder in fee simple subject to a condition precedent

- Contingent remainder subject to a condition precedent → Gina MUST run for Senator before Agnes' death to receive the grant. Condition precedent must occur.
- Fee simple → “her heirs” language

C. G has reversion

- The estate will revert back to G if at the time of Agnes' death Gina has not run for Senator

6. G: “To A for life, then to B’s children for life but if B’s children stop visiting their grandmother, then to C and her heirs.” B has one child.

A. A has a life estate

- “for life” words

B. B’s children have a vested remainder in life estate subject to total or partial divestment

- Vested remainder → B’s child is born and ascertained; his interest is not subject to a condition precedent
- Subject to total divestment → The grant gives B’s children an interest, but a condition subsequent takes it away. When a vested remainder is subject to a condition subsequent it is a vested remainder subject to total divestment
- Subject to partial divestment → Assuming B is alive, B could have additional children who would partially divest the interest of B’s existing children.
- In life estate → words “for life”

C. C has a shifting executory interest

- Executory interest → not a remainder and passes to the third party, not the grantor
- Not a remainder because divests/shortens a prior estate
- Shifting → shifts from and divests another grantee, does not spring from the grantor

D. G has reversion

- G can get his reversion either after B’s children’s life estate (provided they have not stopped visiting their grandmother)
- If the condition occurs (i.e. B’s children stop visiting their grandmother), then the estate will pass to see in fee simple absolute (and his heirs) and G will end up with nothing

7. G: “To A for life, then to A’s heirs if A opens his own insurance business.”

A. If rule in Shelly’s case *applies*, A has a contingent remainder

- Rule in Shelly’s case → A has a life estate and a contingent remainder
- Once A opens his own business he will have a fee simple absolute because of the merger doctrine

B. If rule in Shelly’s case *does not apply*, A has a life estate

- “for life words” and no merger

C. If Rule in Shelly’s case *applies*, A’s heirs have nothing

- Their interest merges in with A

D. If rule in Shelly’s case *does not apply*, A’s heirs have a contingent remainder subject to a condition precedent

- A’s heirs’ inheritance is contingent upon A opening up his business

E. If rule in Shelly’s case *applies*, G has reversion

- Estate reverts back to the grantor if the condition does not occur and A does not get a fee simple absolute by merger

F. If rule in Shelly’s case *does not apply*, G has reversion

- The estate reverts back to the grantor if at the time of termination of A’s life estate the condition has not occurred and A’s heirs can’t get their remainder interest

8. G: “To A for life, remainder to B and her heirs if B completes her Master’s degree.” At the time of A’s death, B has not completed her master’s degree.

A. A has life estate

- “for life” language

B. At common law B had nothing

- Because B did not satisfy the condition and complete her degree by the time of termination of A’s life estate

C. Under modern law, B has an executory interest

- B’s interest is preserved, and if the condition occurs, B will divest grantor of his fee simple and get it back

D. We don’t know

- Texas has not had a case on this point yet

E. At Common law G has fee simple absolute

- Grantor gets it all back, remainder is destructed

F. Under modern law G has fee simple subject to an executory limitation

- B can still complete her master's degree and divest the grantor

9. G: "I grant blackacre to A and his heirs for so long as A continues to farm, then to my heirs."

A. A has a fee simple determinable

- "so long as" determinable language

B. A's heirs have nothing

- Words of limitation only

C. If the doctrine of worthier title *applies*, G's heirs have nothing

- Under doctrine of worthier title, future interest in the heirs of the grantor was void

D. If the doctrine of worthier title *does not apply*, G's heirs have a shifting executory interest

- It would cut short A's fee simple. The interest would pass from a third party (A) and not the grantor. If A stops farming and the grantor is still alive (and thus does not have heirs), the grantor would regain the property with the heirs having a contingent remainder.

E. If doctrine of worthier title *applies*, G would have possibility of reverter

- This is what grantor gets after granting a determinable interest. Under the doctrine of worthier title A's heirs' interest is void

F. If the doctrine of worthier title *does not apply*, G would have nothing

- A's heirs' interest would remain valid, and the future interest stick would go to them

10. G: "To A for life, but if B becomes pregnant, then to B and her heirs."

A. A has a life estate subject to an executory limitation

- Life estate → "for life" words
- Subject to an executory limitation → if the condition occurs, it will divest A of A's life estate before it would naturally terminate

B. B has a shifting executory interest

- Executory limitation → not a remainder because divests/shortens a prior estate

- Shifting → shifts from and divests another transferee, not the grantor

C. G has reversion

- If B never becomes pregnant, at the end of A’s life estate, the interest will revert back to G

11. G: “To A for life of B, and one year after B’s death to C and her heirs.”

A. A has a life estate *pur autre vie*

- Life estate → words “for life”
- *Pur autre vie* → for the life of another; for B’s life

B. B has nothing

- B’s life is just a measuring life for A’s life estate

C. C has a springing executory interest

- Executory interest → in favor of another transferee; not a remainder, because does not become possessory immediately upon the termination of the prior estate (there is one year gap after A’s life estate terminates and C’s fee simple begins)
- Springing → springs from the grantor, not from another grantee

D. Fee simple subject to an executory limitation

- After the estate reverts back to G, G will have a fee simple for a year, until C’s interest cuts short and divests him of this estate

12. “To A for life, and upon A’s death to A’s children who have attained the age of 27.”

A. A has life estate

- Words “for life”

B. A’s children have a contingent remainder subject to a condition precedent

- Contingent on the condition that the children attain the age of 27

C. Yes, RAP analysis is applicable to A’s children who have a contingent remainder.

- Because it is not a vested but a contingent remainder. RAP does not apply to present or future vested interests.

D. RAP is violated

- Interest must vest within the life in being at the time of the creation of the instrument + 21 years + 9 months
- Life in being at the time of the creation of instrument is A
- It is possible that A gives birth to the child at the time of grant and dies when the child is two years old.
- Thus A's child's interest will vest (if at all) in *more than 21 years + 9 months after the death of A (the life in being)*

13. G: “I grant this land to my daughter Shelly for her life, then to Shelly’s children for their lives, and when Shelly’s last child dies to my grandchildren and their heirs.” Shelly has 5 children.

A. Shelly has a life estate

- Words “for life”

B. Shelly’s children have an vested remainder in life estate subject to partial divestment

- Shelly might have more children

C. Grantor’s grandchildren have a contingent remainder in fee simple subject to a condition precedent

- In order for grandchildren to take, Shelly’s last living child must die first

D. Shelly’s children’s and Grantor’s grandchildren’s interest is subject to RAP analysis

- Because neither one of them is fully vested

E. Shelly’s children’s interest does not violate RAP

- Shelly’s children’s estate will become vested immediately after Shelly’s death. Don’t need to wait 21 years + 9 months

Grantor’s grandchildren’s interest violates RAP

- If immediately after the grant Shelly gives birth to a new child, we don’t know if that child is going to live longer than the current lives in being + 21 years + the period of gestation. So it may take more than the period of a current life in being + 21 years + the period of gestation for Grantor’s grandchildren to take their interest.

14. G: “To A for 10 years, then to B and her heirs but if B predeceases A, then to C and his heirs.”

A. A has a term of years

- Words “for 10 years”

B. B has a vested remainder subject to total divestment

- Remainder → B’s interest does not cut short A’s interest
- Vested → there is no condition precedent that must occur for B to take
- Subject to total divestment → subject to a condition subsequent “but if B predeceases A” words; grant gives, condition subsequent takes away

C. C has a shifting executory interest

- Executory interest → prematurely cuts short B’s estate
- Shifting → shifts from another transferee, does not spring from the grantor

D. G has nothing

- G gave away his present and future sticks. Whether or not the condition occurs, the future interest passes to a third party and does not revert back to the grantor

**15. G: “To A for life then to B and his heirs if B graduates from law school.”
(Use common law approach)**

A. A has a life estate

- Words “for life”

B. B has a contingent remainder subject to a condition precedent

- In order for B to take, B must graduate from law school first

C. G has a reversion if B does not graduate from law school

- If B does graduate from law school by the time A’s life estate ends, the estate will pass to him in fee simple and nothing will revert to G

D. Under modern law approach towards destructibility of contingent remainders, if at the time A died B had not yet graduated from law school, the estate would revert back to G.

G would have a fee simple subject to an executory limitation

- Once B graduated from law school, he would divest G of his fee simple

B would have a springing executory interest

- Once B graduated from law school, his interest would prematurely divest the grantor's and not another transferee's estate