1. **ESTATES GENERALLY**
2. ***Estate*** – an interest in property that is OR may become possessory
   * + 1. A *life estate* IS an *estate* b/c it is possessory 🡪 ***present possessory estate*** (“PPE”)
       2. A *reversion* IS an *estate* b/c it may become possessory (NOT possessory at the moment, BUT right to possess in future) 🡪 ***future possessory interest*** (“FPI”)
       3. An *easement* is NOT an *estate* (never possessory)
3. *PPEs* 🡪 2 categories…
   * + 1. ***Non-Freehold*** (i.e. landlord-tenant)
       2. ***Freehold*** 🡪 2 types…
          1. ***Life Estate***
          2. ***Fee*** (at least potentially infinite) 🡪 3 types…

***Fee Simple Absolute*** (will go on forever)

***Fee Tail*** (will go on until family ends)

***Fee Simple Defeasible*** (can be prematurely cut short) 🡪 3 types…

***Fee Simple Determinable*** (“FSD”)

***Fee Simple Subject to Condition Subsequent*** (“FSSCS”)

***Fee Simple Subject to Executory Interest*** (“FSSEI”)

1. *FPIs* 🡪 2 categories…
   * + 1. *Retained by Transferor* (something kept back) 🡪 3 types…
          1. ***Possibility of Reverter*** (“PR”) (follows *FSD*)
          2. ***Power of Termination*** (“PT”) (follows *FSSCS*)
          3. ***Reversion***
       2. *Created in Transferee*
          1. ***Executory Interest*** (“EI”) (follows *FSSEI*)
          2. ***Remainder***
2. **FEE SIMPLE ABSOLUTE**
3. Language to create *FSA*…
   * + 1. At *common law* 🡪 *“O to A and her heirs and assigns”* (ONLY way to create *FSA*, NO substitutions)
          1. *“and her heirs”* are ***words of inheritance*** (making it clear that estate will last longer than A’s lifetime)
          2. *“and assigns”* are ***words of alienability*** (making it clear that estate is transferable)
       2. At *modern law* 🡪 *“O to A”* (AND various other possibilities)
          1. Presumption of conveying maximum estate possible (*words of inheritance*/ *alienability* NOT necessary)

If *“O to A forever”*, *“A”* is a ***word of purchase*** (describing who is taking)…

… AND, *“forever”* is a ***word of limitation*** (describing whatis taken)

* + - * 1. Ambiguities interpreted in favor of *grantee* (A), NOT *grantor* (O)

1. Transfer of *FSA*…
   * + 1. ***Inter vivos*** (in lifetime)
       2. *In death* 🡪 2 types…
          1. ***In will*** (to *will beneficiary*/*ies*)
          2. ***In testate*** (to *prospective heir*(*s*), NOT covered by valid will)
       3. If A dies w/ NO heirs, title passes to govt. via ***escheat*** (*FSA* does NOT end)
2. ***Encumbrance*** – a non-possessory interest in property that affects title in property
   * + 1. O, as holder of *FSA*, could grant out an *easement*, AND a creditor could have a lien against O’s property…
       2. … BUT, categorically speaking, O still holds 100% of *FSA* (*encumbrances* do NOT change estate)
3. **FEE SIMPLE DEFEASIBLES & RELATED FPIs**
4. Of the 3 *FPIs* that follow a *fee simple defeasible*, ONLY *EI* is subject to the ***Rule Against Perpetuities*** (“RAP”)… AND, *EI* is the ONLY *FPI* following a *fee simple defeasible* which is created in a *transferee*… SO, in order to create a *FPI* in a *transferee*, BUT avoid *RAP* implications…
   * + 1. O to A w/ either a *PR* OR *PT* retained in O…
          1. If ***restriction*** violated by A, then estate would return to O…
          2. … either *automatic* (*PR*) OR *optional* (*PT*)
       2. … then, O could transfer *PR*/*PT* to B…
          1. Essentially, B has an *EI*…
          2. … BUT, b/c it is technically a *PR*/*PT*, *RAP* has NO effect
       3. … although, there IS a jurisdictional split re: transferability of *PR*/*PT*/*EI*
          1. Virtually NO state limits transferability of all 3 *in death* (*in will*/*in testate*)…
          2. … BUT, some states do NOT allow transferability of all 3 *inter vivos* (CA does allow for all 3) 🡪 ways around having to research state law re: *inter vivos* transferability…

O could transfer *FSD*/*FSSCS* to A, then transfer *PR*/*PT* to B *in will* 🡪 accomplishes same outcome as *inter vivos* transfer… AND, O would have more control b/c *PR*/*PT* retained by O until death

O could transfer *FSA* to B, then B could transfer *FSD*/*FSSCS* to A, w/ B retaining *PR*/*PT* 🡪 accomplishes same outcome w/o O having to transfer the *PR*/*PT* itself… though, O has less control (NO guarantee that B will transfer to A, B must be trustworthy)

1. As opposed to jurisdictional split at *modern law*, there is NO *inter vivos* transferability at *common law*
   * + 1. 2 reasons why…
          1. Avoid forfeiture (b/c the law abhors a forfeiture)
          2. Avoid restricting use/development/marketability of property (create a speculative market)
       2. 2 exceptions to *common law* rule re: transferability (which some states still follow, though NOT CA)…
          1. ***Merger*** – transferring *FPI* to holder of *fee simple defeasible* (thereby creating *FSA*)
          2. ***Transfer incidental to reversion*** – transferring *FPI* w/ *reversion* (i.e. O to A for life w/ *PR*/*PT* retained in O 🡪 O could transfer *PR*/*PT* AND *reversion* to B, but NOT one w/o the other)
2. *FPIs* as ***remedial devices*** (remedy for violation of *restriction*)
   * + 1. Generally, 3 purposes that are served by *restriction* 🡪 to *compel*, to *prevent*, to *control*
          1. Grantor has purpose(s)…
          2. … drafts restriction to comply w/ said purpose(s)…
          3. … which includes remedial device for if/when restriction is violated
       2. Basic remedy is *forfeiture*…
          1. Automatically w/ *PR*
          2. Optionally w/ *PT*
          3. Either/or w/ *EI* (though, unlike *PR*/*PT*, subject to *RAP*)
       3. Other promissory remedies are *damages* ($$) OR *injunction* (*specific performance*), which come w/ a ***covenant***/***equitable servitude*** (“C/ES”) (an interest, NOT an estate)
          1. *Covenants* run w/ land, are enforceable at law (strict requirements)…
          2. … whereas, *equitable servitudes* are NOT as strict (more defenses apply)
       4. If NO remedy provided, then deed merely contains a ***declaration of purpose*** (*“no teeth”*/*“learning experience”*)
       5. Overall, 3 issues to consider…
          1. Is there any enforceable remedial device? 🡪 if NO, then dealing w/ *declaration of purpose*
          2. If YES, then what type? 🡪 either *C*/*ES* (*damages*/*injunction*) OR *PR*/*PT*/*EI* (*forfeiture*)
          3. What is the scope? 🡪 i.e. what constitutes a violation (i.e. *“*[\_] *purposes only”*)
3. ***Flag Words*** (for differentiating b/w *remedial devices*)…
   * + 1. For *FSD*/*PR*…
          1. *“O to A…*

*… so long as* [restriction]*”*

*… while* [restricton]*”*

*… during* [restriction]*”*

*… until* [restriction]*”*

* + - * 1. In *FSD*s/*PR*s, there is specific language re: A’s estate, but NO specific language re: O’s future interest 🡪 it is implied that, b/c property must go to someone, it goes to O
      1. For *FSSCS*/*PT*…
         1. *“O to A…*

*… on condition that* [restriction]*… and if* [violation]*… O has the right to reenter”*

*… provided that* [restriction]*… and if* [violation]*… estate may be terminated by O”*

*… but if* [restriction/violation]*… O reserves the power to terminate”*

*… if however* [restriction/violation]*… O can forfeit the estate”*

* + - * 1. In *FSSCS*s/*PT*s, there is specific language re: both A’s estate AND O’s future interest 🡪 w/o the latter, there is NO implication that O would want property back in case of violation
      1. For *C*/*ES* 🡪 *“enjoined”*, *“abated”*

1. As per ***constructional preference*** (to favor grantee over grantor, avoid forfeiture of property/restriction of use), courts will construe ambiguities (i.e. conflicting *flag words*) as to the least harsh remedy
   * + 1. Thus, if ambiguous as to whether O, in transfer to A, wants (in case of violation of restriction) *damages*/*injunction* from A (*C*/*ES*) OR *forfeiture* of property (*PR*/*PT*), courts will favor former (b/c less harsh)…
          1. *C*/*ES* and *PT* are consistent w/ one another, as O has options as to how to proceed against A who violates…
          2. … BUT, *PR* is NOT consistent, as O has no choice but to take property back (in some cases, O may NOT want property back)
       2. … AND, likewise, courts will favor *optional* forfeiture (*PT*) over *automatic* forfeiture (*PR*) (though, if O wants property back, then NO practical difference b/w *PR* and *PT*)…
       3. … BUT, in case of ***adverse possession***, *PR* is actually the less harsh than *PT* (reversal of traditional presumption)
          1. If O possesses *PR*, then SoL begins immediately upon A’s violation (b/c O became owner, AND A became trespasser, at time of violation)…
          2. … BUT, if O possesses *PT*, then SoL does NOT begin until O brings action (SO, A is NOT yet trespasser)

In CA, SoL is 5 yrs.…

… SO, if O brings action 5+ yrs. from date of A’s violation, O would want to argue for *PT* (b/c SoL has NOT yet began)…

… whereas, A would want to argue for *PR* (b/c O would be time-barred)

1. Standing/enforcement…
   * + 1. The party that has the ***benefit*** can enforce *remedial device* against the party that has the ***burden*** (*“good defendant”*)
          1. In *Atkins v. Anderson*, Shepherd grants land to Atkins (*FSSCS*/*PT*), Atkins then grants part of land (*subdivision*) to Anderson (Shepherd’s *PT* still applies to entire lot)…
          2. … Anderson then violates restriction, Atkins sues Anderson (files ***lis pendens***, giving notice of action to 3rd parties)…
          3. … BUT, only Shepherd, as holder of *PT*, can sue Anderson to enforce restriction…

Also, Anderson cured breach after Atkins filed suit, which would’ve been too late at *common law* (Anderson still would’ve lost property)…

… BUT, at *modern law*, Anderson likely would’ve kept property if cure was in good faith…

… AND, if ***notice grace clause***, then D may cure breach within *“reasonable amount of time… so long as acting expeditiously”*

* + - * 1. … thus, when Shepherd granted land to Atkins, Atkins should’ve demanded that Shepherd grant *PT* as well 🡪 Atkins had ONLY the ***“substantial interest”***, but NOT the *remedial device* (needed both)

If purpose is ***land-related*** (i.e. height-limit on residence on Lot 1 to protect view of Lot 2), then grantee has *substantial interest*

Often not practical for grantor (i.e. land developer) to hold *remedial device*, then enforce on grantee’s behalf (time, expenses, liability involved)…

… AND, if multiple grantees (i.e. lot owners), then grantor could transfer *undivided interest* in *remedial device* to all grantees (as *co-tenants*), OR form *organization* (for all grantees to join) to hold *remedial device*

If purpose is ***personal*** (NOT *land-related*, i.e. *“research purposes only”*), then grantor has *substantial interest*

If purpose is ***hybrid*** b/w *land-related* AND *personal* (benefitting both grantor AND grantee), then MAY be enforceable by both

If O donates land to city for purpose of maintaining free public library dedicated to O (w/ O holding *PT* if restriction violated)…

… AND, city wants to build shopping center around library…

… b/c city is committing illegal expenditure/waste/injury to public entity, residential taxpayers have standing to bring *taxpayer lawsuit* (since violating O’s restriction could result in loss of property)

* + - 1. NO ***self-help*** 🡪 even if *forfeiture* has technically occurred (i.e. *PR*), must get court order to recover possessment (action for ***ejectment***)
      2. If holder of *fee simple defeasible* has paid for *improvements*, *forfeiture* is of land AND *improvements* 🡪 holder gets NO reimbursement, w/ 2 exceptions…
         1. Improvement is ***fixture*** (removable by holder)
         2. ***Eminent domain*** (govt. entity condemns land, BUT compensates for $$ put into land)

1. Defenses…
   * + 1. ***Legal defense*** vs. ***equitable defense***
          1. *Legal defenses* (i.e. *adverse possession*/SoL) can be raised against any restriction…
          2. … whereas, in many jurisdictions, *equitable defenses* can ONLY be raised against certain restrictions

Less likely that an *equitable defense* will *“knock out”* *PR*/*PT*/*EI*…

… esp. in Eastern states, where *PR*/*PT*/*EI* are viewed more so as *“estates”* than *“remedial devices”* (as opposed to in more liberal Western states)

* + - 1. In some jurisdictions (i.e. CA), defenses can be brought up by grantee – before actually violating restriction – as initial action to ***quiet title*** (*“knock out”* restriction in advance)
         1. CCP § 1060 (as noted in *Hess*) allows grantee (who possesses land subject to restriction) to obtain such *declaratory relief* (*“pre-breach judgment”*)…
         2. … BUT, some courts do NOT waste time w/ informational judgments (ONLY a “real” dispute)…
         3. … thus, grantee would have to violate restriction (AND thereby risk losing title) to determine whether defense is valid
      2. ***Laches*** vs. ***estoppel***
         1. *Laches* – *“equitable SoL”* (NO specific time limit, BUT within *“reasonable time”*)
         2. *Estoppel* – detrimental reliance

Do NOT need reliance w/ *laches*…

… BUT, do NOT need long period of time w/ *estoppel*

* + - 1. ***Changed conditions*** – purpose of restriction no longer achievable
         1. When facts support *changed conditions* 🡪 3 potential outcomes…

Restriction is gone

Scope of restriction is less narrow (restriction still controls, BUT permissible uses expanded)

Estate is gone (*“return to sender”*)

* + - * 1. In *Bolotin*, lot owner wants *“residential purposes only”*-restriction gone (*outcome #1*), so as to use property for commercial purposes (appraiser claims lot is economically worthless if restricted to residential purposes)… BUT, purposes are much broader than economic benefits

Purpose of restriction was to benefit adjoining land owners (keep subdivision entirely residential)…

… AND, allowing restriction to be gone would go against said purpose (regardless of potential profitability)

If one lot goes commercial, then other lots will want to go commercial as well (*“domino effect”*)…

… thus, owners of perimeter lots in subdivision have duty to fight off adverse influence from neighboring lots bordering the outside of the subdivision (maintain residential lot regardless)

* + - * 1. In *Faus*, city (as grantee) wants to create bus system on lot w/ *“electric passenger railway only”*-restriction, change scope of restriction (*outcome #2*) to allow for *“transportation system only”*-restriction (from *specific* to *general*)

Here, city held *limited use easement*, SO if it argued to have the restriction gone (*outcome #1*), then it would’ve lost easement as well 🡪 thus, city argued for *outcome #2* instead, to make scope of restriction less narrow

Whereas, if city held *FSD*/*FSSCS*, and grantor held *PR*/*PT*, then city would want restriction gone (*outcome #1*) 🡪 thus, city would end up holding *FSA*

* + - * 1. *Changed conditions* may *“knock out”* purpose, but may NOT *“knock out”* restriction b/c it is an *equitable defense* (recall jurisdictional split)

Some such states have adopted statutes enacting artificial limit on length of restriction (i.e. 30 yrs., 40 yrs., 50 yrs.)

Other states have held such statutes to be unconstitutional

CA, which allows *changed conditions* defense, has adopted ***Marketable Record Title Legislation***, which states…

*FSD*/*PR*s are converted into *FSSCS*/*PT*s

*PT*s expire 30 yrs. after recording (though, can be renewed indefinitely)

5-yr. SoL to enforce *PT*

* + - 1. ***Illegality*** of restriction (unenforceable)…
         1. 3 levels of *illegality*…

Constitutional

Statutory

Case decision

* + - * 1. Also, issues of *retroactivity* 🡪 when something was legal when restriction made, BUT becomes illegal thereafter
      1. Other defenses/issues…
         1. *Waiver* as per ***lack of uniform plan/scheme*** – if all lots within subdivision are subject to same restriction, BUT restriction is NOT enforced against all violators (OR, if some, but NOT all, lot owners are voluntarily released from restriction)

If one lot owner can *quiet title* based on *lack of uniform plan/scheme*, then restriction is lost as to all lot owners…

… though, if restriction is left out of certain lots, it MAY not affect *uniform plan/scheme* (*“checker-boarding”*, i.e. if 4 lots w/o restriction make up square)

* + - * 1. ***Unclean hands*** – if grantor violates restriction on own lot, BUT enforces restriction against others

Equitably unfair…

… BUT, if restriction is left out of grantor’s lot, it MAY serve purpose (i.e. if grantor wants own lot to be ONLY lot on subdivision which serves alcohol, prevent competition)

* + - * 1. Grantor can include 2 *remedial devices*, so long as consistent (i.e. *C*/*ES* and *PT*), and make election in the future

Generally, choice is grantor’s, NOT judge’s…

… BUT, if seeking *forfeiture*, MAY be risky to include *C*/*ES* language

* + - * 1. If violations occur consistently (i.e. serving alcohol daily on dry lot)…

As per *constructional preference* against restricting land use, court will more likely view as a *single continuous breach* (such that SoL begins at initial breach, potential for *adverse possession* w/ *PR*)…

… as opposed to viewing as *multiple consecutive breaches* (such that SoL began w/ latest breach)

* + - * 1. In *community interest developments* (i.e. condominiums, anything w/ common area), *C*/*ES*s are enforceable, unless unreasonable (as per *Nahrstedt*)… and, NOT unreasonable to bind original parties and successors

1. *Eminent domain* gives govt. power to take one’s property in exchange for *just compensation*
   * + 1. ONLY a *property interest* is subject to such protection/compensability 🡪 up to state to define *“property interest”* (jurisdictional split re: whether a *restriction* is a *property interest*)
       2. Property may be *“taken”*/*“damaged”* regardless of whether a ***physical taking*** OR ***regulatory taking*** (NOT physically taken, BUT prevented from certain use, i.e. height limit on owner’s building due to nearby airport runway)
       3. *Just compensation* typically interpreted to mean ***fair market value*** 🡪 price that property would bring on open market, from a *“ready, willing and able”* seller to a *“ready, willing and able”* buyer (*appraisal*)
          1. Burden of proof re: *fair market value* is on landowner
          2. Landowner entitled to value of land to landowner (NOT to public)

O conveys land to A for church purposes ONLY (*FSSCS*/*PT*, *personal* restriction), land w/ church on it valued at $600K ($900K w/o church), city condemns land…

A entitled to $600K (even though comparable piece of property would cost $900K)

O likely gets $0 (*PT* too remote/speculative)

O conveys land to A w/ height-limit restriction to protect O’s view (*FSSCS*/*PT*, *land-related* restriction), A’s land worth $250K w/ restriction ($300K w/o), O’s land worth $900K w/ legally-protected view ($600K w/o), city condemns A’s land…

A entitled to $250K

O would want $300K for *PT* b/c of decrease in value of O’s land… whereas, govt. would rather give O $50K b/c O’s land was NOT condemned (*“pie theory”*)

* + - 1. ***Inverse condemnation*** 🡪 if govt. takes property w/ NO notification, and individual deprived of property initiates action
         1. In *Faus*, if city used its *eminent domain* power to create bus system (rather than reliance on *changed conditions* to change scope of restriction), then grantor would’ve sued city for *just compensation*…
         2. … in which case, city would’ve denied having *taken* property (b/c *restriction* is NOT *property interest*)…
         3. … OR, that grantor’s *just compensation* is $0 (b/c *restriction* was NOT violated)
      2. In CA, as per CCP § 1265.410, holder of *PR*/*PT*/*EI* on property which is *taken* by *eminent domain* is entitled to *just compensation* if violation of *PR*/*PT*/*EI* was *“reasonably imminent”*
         1. In *Palm Springs*, woman transfers land to city for desert wildlife reserve ONLY (*FSSEI*/*EI*, LDR as *transferee*), city takes immediate possession (via court order) to build golf course…
         2. … city then brings *eminent domain* action against LDR (to change *FSSEI* into *FSA*), claiming that golf course was consistent w/ desert wildlife reserve (*Faus*-type argument)…
         3. … BUT, b/c restriction was violated, AND violation was *reasonably imminent*, LDR is compensated (given value of *FSA*)

1. Applying *RAP*…
   * + 1. *EI*, which is created in *transferee*, is subject to *RAP*, meaning that it may NOT have ***perpetual duration*** (NO cut-off point)…
          1. … thus, any *remedial device* other than *EI* may have *perpetual duration*…
          2. … AND, *EI*s are exempt from *RAP* if from charity-to-charity (***charitable exception***)… but, NOT if charity-to-noncharity OR noncharity-to-charity
       2. Recall *transferor*’s/grantor’s drafting options to avoid *RAP* 🡪 retaining *PR*/*PT* and subsequently transferring to *transferee* (*inter vivos* depending on jurisdiction, *in death* everywhere) –OR– transfering *FSA* to *transferee* to subsequently be transferred elsewhere (w/ *PR*/*PT* retained by *transferee*)
       3. When *EI* is void under *RAP* (i.e. O conveys *FSSEI* to A, subsequently-voided *EI* held by B)…
          1. 2 alternative outcomes…

If original language conveying *EI* is *optional* 🡪 A holds *FSA* (w/ NO restriction)

If original language conveying *EI* is *automatic* 🡪 A holds *FSD*, O holds *PR*

* + - * 1. 2 underlying theories (expressing same idea in different ways)…

Termination of language (*automatic* language stays, *optional* language goes)…

*“O to A so long as [\_]~~… if not, then to B~~”* 🡪 *FSD*/*PR*

*“O to A ~~on condition that [\_]… if not, then to B~~”* 🡪 *FSA*

Under *FSD*/*PR*, possessory estate ends *automatically* (upon violation of restriction), and since it can’t go to *transferee* (as per voided *EI*), it must go to *transferor*… whereas, under *FSSCS*/*PT*, ONLY *transferee* had *option* to terminate possessory estate, and subsequently lost said option (as per voided *EI*)

* + - 1. In *Walker*, W conveys portion of land to RR, reserving portion for self as *FSSEI* (RR holds *EI*)…
         1. … BUT, *EI* is void under *RAP*, AND original language is *automatic*…

SO, *FSSEI* becomes *FSD*, AND *EI* (formerly in RR) becomes *PR* (now in W)…

… thus, W, as holder of *FSD* AND *PR*, becomes holder of *FSA* as to reserved portion (as per *merger*)

* + - * 1. … and, even if original language were *optional*, then W would still end up w/ *FSA*
        2. If RR had been given *easement* instead (which is NOT an *estate*), then NO *RAP* issues
      1. In *Noble*, LAT transfers *FSSEI* to Hospital, w/ *EI* in LAT’s *residuary estate* 🡪 void under *RAP*
         1. LAT and LAT’s *residuary estate* are separate entities 🡪 former is *transferor*, latter is *transferee* (thus, NOT a *PR*/*PT*)
         2. LAT’s *residuary estate* ends up consisting of 3 charities… AND, Hospital is also a charity…

… BUT, under *RAP*, *EI* is void from the very beginning…

… thus, if LAT had named the 3 charities at the time of conveyance, then *charity-to-charity* exemption would’ve applied (and *EI* would NOT have been *void*)

* + - 1. In *Fletcher*, F transfers to Lodge w/ *FPI* in F’s heirs… then, F dies, naming F’s wife in will… thus, F’s heirs AND F’s wife in litigation 🡪 2 different interpretations, BUT F’s wife wins either way
         1. If *FPI* was *retained by transferor* (*PR*/*PT*), then F devised said *FPI* to F’s wife in will (*“F’s heirs”* as *words of limitation*)
         2. If *FPI* was *created in transferee* (*EI*), then *EI* is void under *RAP*… in which case, *PR* (created as per original language being *automatic*) was devised to F’s wife in will

1. Ethical considerations…
   * + 1. Narrow *scope* of *restriction* 🡪 description as precise as possible (the broader the scope, the more likely to viewed unfavorably in court)
       2. Narrow *duration* of *restriction* 🡪 usually, NO reason to be perpetual
       3. Understanding of *remedial device* 🡪 get “fight” over w/ before transaction is set in stone
2. ***Title insurance*** provides a *guaranteed title search* 🡪 anyone can do own title search… BUT, no one wants to
   * + 1. Sometimes, violation of *restriction* does NOT show up in record (i.e. notice of violation NOT recorded, SoL has NOT run)…
       2. … thus, purchaser still faces potential litigation from holder of *FPI*…
       3. … BUT, some *title insurance* policies will cover such a situation (for extra $$)
3. **FEE TAIL**
4. Original purpose of *fee tail*, in early England, was ***primogeniture*** (perpetuate $$/power by locking land into family)… BUT, abolished in U.S. b/c contrary to basic concepts of property ownership (i.e. free marketability, best use)
5. *Fee tail* in U.S. is NOT void 🡪 rather, *converted* into either…
   * + 1. *FSA* in first grantee
       2. *Life estate* in first grantee w/ *FPI* in life tenant’s children (***“one-generation lock-up”***)
6. **LIFE ESTATE**
7. 2 kinds of *life estate*…
   * + 1. Created by *grant*
          1. *“O to A for life”* 🡪 *life estate* granted to A, O has *reversion*
          2. *“O to A for life, then to B”* 🡪 *life estate* granted to A, B has *remainder*
       2. Created by *reservation* (*“O for life, then to A”* 🡪 *life estate* reserved in O, A has *EI*)
8. *Life estate* ***pur autre vie*** is measured by another’s life
   * + 1. *“O to A for life of B”* 🡪 *life estate* ends when B dies, NOT when A dies…
       2. … rather, when A dies, *life estate* continues in A’s *will beneficiaries* OR *testate*/*heirs* (until B’s death)
9. Life tenant has obligation to make reasonable repairs, but NOT *improvements*
   * + 1. ***Volunteer rule*** – life tenant who makes *improvements* has NO right to entitlement (*“O to A for life, then to B”* 🡪 if A makes *improvements*, then B gets benefit thereof, A gets *learning experience*)
       2. Exception to *volunteer rule*…
          1. If improvement is required by *legal*/*economic necessity*…

*Legal necessity* 🡪 if city tells life tenant to either make improvement OR vacate premises

*Economic necessity* 🡪 ??

* + - * 1. … AND, improvement is made as by *reasonably prudent person* (NOT more than necessary)…
        2. … then, there will be *equitable apportionment of cost* b/w life tenant and holder of *FPI*

1. Reassessment of property value occurs when *life estate* ends (AND holder of *FPI* takes possession)
   * + 1. *Property taxes* = *assessed value* X *tax rate*
       2. *Assessed value* can be modified by…
          1. Cost of living adjustment
          2. Improvements made to property
          3. Changes of ownership
2. **REVERSION**
3. *Reversion* is a more patient *FPI* 🡪 *PR*/*PT* requires property to be immediately returned to grantor (when *FSD*/*FSSCS* is prematurely cut short)… whereas, *reversion* waits for property to come back to grantor (when *life estate* naturally expires)
   * + 1. Freely transferable (NO jurisdictional split)
       2. NOT subject to *RAP*
       3. Arises automatically (NO special language)
4. *“O to A for life”* 🡪 O owns *reversion*, ***possessory size*** is *FSA*
   * + 1. Assume A then leases to B for 5 yrs. 🡪 A now has *reversion* (in addition to O’s), *possessory size* is *life estate*
          1. If A dies during B’s 5-yr. lease, then B’s lease ends automatically (reverts back to O)…
          2. … b/c it was carved out of A’s *life estate*
       2. Assume B then subleases to C for 2 yrs. 🡪 B now has *reversion* (in addition to O’s and A’s), *possessory size* is *estate for yrs.*
5. **REMAINDER & EXECUTORY INTEREST**
6. *Remainder* – a *FPI* created in a transferee that can become possessory immediately upon the natural expiration of a prior (freehold?) estate in another transferee created by the same instrument
   * + 1. 2 (4?) types of *remainder*…
          1. ***Vested remainder*** (“VR”) – a *remainder* in existing, ascertained transferee(s), and NO condition precedent (as opposed to *condition subsequent*) 🡪 3 types…

***Absolutely VR*** (“AVR”)

***VR Subject to Partial Divestment*** (“VRSPD”)

***VR Subject to Complete Divestment*** (“VRSCD”)

* + - * 1. If transferee is NOT existing/ascertained, and/or there is a condition precedent 🡪 ***contingent remainder*** (“CR”)
      1. Jurisdictional splits…
         1. Whether prior estate must be *freehold* (required at *common law*)
         2. Transferability of *CR*s

1. Analytical path…
   * + 1. Is *FPI* at issue a *remainder*? 🡪 if NO, then *FPI* is an *EI*… if YES…
       2. Is *remainder* in an existing and ascertained transferee, w/ NO condition precedent? 🡪 if NO (to any of the 3), then a *CR*… if YES (to all 3)…
       3. Is it divestable? 🡪 if YES, a *AVR*… if NO…
       4. Is it all OR only partially divestable? 🡪 if the former, then a *VRSCD*… if the latter, then a *VRSPD*
2. *Condition precedent* vs. *condition subsequent* 🡪 3 tests, none of which work consistently (though, 3rd test works most often)…
   * + 1. If worded in the *affirmative*, then likely *condition precedent*… whereas, if worded in the *negative*, then like *condition subsequent*
       2. If wording comes before *“to B”*, then likely *condition precedent*… whereas, if wording comes after *“to B”*, then likely *condition subsequent*
       3. Pretend that *life estate* has ended, BUT life tenant is still alive… can *remainderman* take possession? 🡪 if NO, then likely *condition precedent* (*CR*)… if YES, then likely *condition subsequent* (*VR*)
3. Notable hypos…
   * + 1. *“O to A for life, then to B for life, then to C”*
          1. A 🡪 *life estate*
          2. B 🡪 *AVR* (*possessory size* is *life estate*)

B is existing and ascertained…

… AND, NO condition precedent (B outliving A is NOT a *condition precedent*)

* + - * 1. C 🡪 *AVR* (*possessory size* if *FSA*)
      1. *“O to A for life, then to O”*
         1. A 🡪 *life estate*
         2. O 🡪 *reversion*

NOT a *remainder* b/c O is the *transferor*, NOT a *transferee*…

… thus, essentially the same as *“O to A for life”*

* + - 1. *“O to O for life, then to A”*
         1. O 🡪 *life estate*
         2. A 🡪 *EI*

NOT a *remainder* b/c prior estate is in O, who is the *transferor* (NOT a *transferee*)…

… thus, O (*transferor*) may NOT create *remainder* in O, OR in *transferee* following *reservation* to O

* + - 1. *“O to A for life, then 1 yr. after A’s death, to B”*
         1. A 🡪 *life estate*
         2. B 🡪 *EI*

NOT a *remainder* b/c will NOT become possessory *immediately* upon A’s death (*natural expiration* of A’s *life estate*)…

… thus, estate reverts to O for the ***mandatory gap*** (here, 1 yr.) b/w A’s death and B’s taking possession

* + - 1. *“O to A for 40 yrs., then to B”*
         1. 40-yr. lease (*estate for yrs.*) is NOT *freehold*…
         2. … thus, depending on jurisdiction, B MAY have *remainder* OR *EI*
      2. *“O to A for life, then to B”*… B dies during A’s life, leaving C as *heir*
         1. B had *AVR*, possessory size is *FSA*…
         2. … thus, C, as B’s *heir*, takes what B had as per *in death transfer*…
         3. … therefore, if *possessory size* of B’s *AVR* was instead ONLY *life estate* (i.e. *“… then to B for life”*), then C would get nothing (*reversion* in O)
      3. *“O to A for life, then to B for life if B survives A”*
         1. B has *AVR*, *possessory size* is *life estate* (*“if B survives A”* is unnecessary language, NOT a *condition precedent*)…
         2. … whereas, if *possessory size* was *FSA* (i.e. *“… then to B if B survives A”*), then B would have *CR* (*“if B survives A”* IS a *condition precedent*)…
         3. … b/c, if B does NOT survive A, then B (more specifically, B’s *heirs*) would get nothing
      4. *“O to A’s children”*… at time of conveyance, A has 2 children (B and C)… later, A has 3rd child (D)
         1. Under ***rule of convenience***, assets are distributed to existing members of class upon ***first point of distribution*** (which is when class closes)…
         2. … AND, b/c O has directly conveyed interest to A’s children, A’s children (B and C) are entitled to possession immediately…
         3. … SO, B and C have *FSA*, D has nothing
      5. *“O to A for life, then to A’s children”*… at O’s death, A has 2 children (B and C)… later, A has 3rd child (D)
         1. B and C have *VRSPD* (since A can have more children)…
         2. … BUT, unlike above hypo, class does NOT close immediately (rather, class closes upon A’s death, which is *first point of distribution*)…
         3. … thus, B, C and D all have *VRSPD*, entitling each to 1/3rd of *FSA* (although, D arguably has *EI*, since B’s/C’s prior estate does NOT naturally expire)

Before A had children, O had *reversion*, AND A’s children (who did NOT exist) had *CR*…

… BUT, upon A having children, A’s children’s *FPI* became a *VRSPD*, and O no longer had *reversion*

* + - 1. *“O to A for life, then to B’s children”*… at O’s death, B has one child (C)… after A’s death, B has another child (D)
         1. As per *rule of convenience*, class closes upon A’s death (which is *first point of distribution*)…
         2. … thus, C has *VRSPD* (since B could still have children before A’s death)…
         3. … BUT, b/c B does NOT have more children before A’s death, C’s *VR* does NOT divest, and C entitled to entire *FSA* (D gets nothing)
      2. *“O to A for life, then to B, but if B dies without surviving children, then to C”*
         1. B 🡪 *VRSCD* (*possessory size* is *FSSEI*)
         2. C 🡪 *EI*
      3. *“O to A for life, then to such persons as A appoints, and in default of appointment, to B”*
         1. A 🡪 *life estate* AND ***power of appointment***

A has ***general power of appointment***, and thus can appoint anyone (***permissible appointees*** unlimited), including self…

… whereas, if A had ***special power of appointment*** (i.e. *“… to such of A’s children as A appoints”*), then *permissible appointees* limited (control upon A’s discretion)

* + - * 1. B 🡪 *VRSCD* OR *VRSPD*

Default of *power of appointment* is NOT *condition precedent* (so, NOT *CR*)… rather, exercise of *power of appointment* is *condition subsequent* (so, *VR*)…

… AND, since A could realistically appoint B, unclear whether B could entire w/ all, part, OR none of *FSA*

* + - 1. *“O to A for life, then to B, on the express condition that if the premises are used for other than single family residence, O has power to terminate and reenter”* 🡪 ambiguous as to when *restriction* applies...
         1. If *restriction* applies at all times…

A 🡪 *life estate defeasible* (b/c could be prematurely cut short)

B 🡪 *VRSCD* (possessory size is *FSSCS*, which also could be prematurely cut short)

O 🡪 *PT*

* + - * 1. If *restriction* applies ONLY during A’s *life estate*…

A 🡪 *life estate defeasible*

B 🡪 *VRSCD* (possessory size is *FSA*)

* + - * 1. If *restriction* applies ONLY after A’s *life estate*…

A 🡪 *life estate*

B 🡪 *AVR* (possessory size is *FSSCS*)

If *restriction* applies during A’s *life estate*, then possible then B’s *VR* will NOT divest (since A could violate *restriction*, thereby allowing O to enforce *PT*)…

… BUT, if *restriction* applies after A’s *life estate*, then B’s *VR* will absolutely divest (after which point, B could violate *restriction*, thereby allowing O to enforce *PT*)

* + - 1. *“O to A for life, then to B when B reaches 21”*
         1. B 🡪 *CR*
         2. O 🡪 *reversion*

Pretend *life estate* ended, BUT A still alive 🡪 B could NOT move in (unless B were 21)…

… thus, *condition precedent*

* + - 1. *“O to A for life, then to B, but if B dies under 21, then to C”*
         1. B 🡪 *VRSCD* (*possessory size* is *FSSEI*)
         2. C 🡪 *EI*

Pretend *life estate* ended, BUT A still alive 🡪 B could move in (though, would lose estate if dead before 21)…

… thus, *condition subsequent*

* + - 1. *“O to A for life, then to such of A’s children as survive A”*… A has one child at the time (C)
         1. C has *CR* (NOT *VRSPD*)…
         2. … b/c, even though C is *existing* and *ascertained*, survivorship is *condition precedent* (C could NOT move in if A were still alive)
      2. *“O to A for life, then to A’s children, but if none survive A, then to B”*… A has one child at the time (C)
         1. Unlike above hypo, survivorship is *condition subsequent* (b/c C could move in even if A were still alive)…
         2. … thus, C has both *VRSCD* (b/c C could lose estate by not surviving A) AND *VRSPD* (b/c A could have more children)
      3. *“O to A for life, then to B when B reaches 21, but if B dies under 21, then to C”* 🡪 2 possibilities…
         1. B and C have ***alternate CR***s (B reaching 21 as *condition precedent*, thereby modifying B’s *FPI*)
         2. B has *VRSCD*, C has *EI* (when ambiguous, *VR* preferred over *CR*… thus, court could knock out *condition precedent*)
      4. *“O to A for life, then on A’s death to his surviving children, then to B”*
         1. Survivorship is an implied *condition precedent* (poor drafting)…
         2. … thus, A’s surviving children and B have *alternate CR*s
      5. *“O to A for life, then to B or his children”* 🡪 ambiguous b/c of *“or”*…
         1. Always analyze first interest in sequence (here, B’s)…
         2. … thus, either B and B’s children have *alternate CR*s (w/ survivorship as implied *condition precedent*)…
         3. … OR, B has *VRSCD* and B’s children have *EI* (w/ survivorship as implied *condition subsequent*)
      6. *“O to A for life, then to A’s widow for life, then to B”*… A is married to W at the time
         1. A’s widow 🡪 *CR* (won’t be *ascertained* until A’s death)
         2. B 🡪 *AVR* (if A dies w/ NO widow, then prior CR is crossed out)
      7. *“O to A for life, then to oldest child of B”*… when A dies, B has NO children, BUT has child 1 yr. later
         1. Since B had NO children at time of conveyance (A’s death), B’s (non-existent) children have *CR*…
         2. … BUT, in jurisdiction w/ ***destructability rule***, *CR* would be destroyed b/c, at the *natural expiration* of A’s *life estate*, there was NO one to whom estate could vest…
         3. … thus, reverts back to O (*destructability rule* applies ONLY to *CR*s)
      8. *“O to A for life, then to A’s first child”*… A dies leaving pregnant wife, who gives birth to A’s first child 6 mos. later
         1. A’s first child has *CR* (b/c NOT existing at time)…
         2. … AND, *destructability rule* does NOT apply to conceived-but-unborn child (so, NOT destroyed)
      9. *“O to A for life, then to A”*
         1. A has *FSA* as per *merger* of A’s *life estate* AND A’s *VR*...
         2. … thus, essentially the same as *“O to A for life”*, followed by O transferring *reversion* to A
      10. *“O to A for life, then to B for life, then to A”*
          1. B 🡪 *AVR*
          2. A 🡪 *life estate* AND *AVR* (NO *merger* b/c B’s interest intervenes)
      11. *“O to A for life, then to B for life if B marries”*… before B marries, O transfers *reversion* to A
          1. A has *FSA* as per *merger* of *life estate* AND *reversion*…
          2. … AND, *merger* destroys B’s *CR* (***merger* *destructability***)
      12. *“O to A for life, then to B for life if B marries, then to A”*
          1. Exception to *merger destructability* 🡪 A’s interests (which would otherwise merge) AND B’s *CR* (which would otherwise be destroyed) were created in same document
          2. Thus, B’s *CR* is NOT destroyed (AND, consequently, A’s *life estate* AND *VR* do NOT merge)
      13. *“O to A for life, then to B for life if B marries, then to A”*… later, A transfers interests (*life estate* AND *reversion*) to C
          1. Exception-to-the-exception to *merger destructability* 🡪 A’s interests created in same document as B’s *CR*… BUT, then transferred to C
          2. Thus, B’s *CR* IS destroyed (AND, consequently, C’s *life estate* AND *reversion* merge into *FSA*)
      14. *“O to A for life, but if A becomes bankrupt, then to B”*
          1. A 🡪 *life estate defeasible*
          2. B 🡪 *EI* (if A becomes bankrupt)
          3. O 🡪 *reversion* (if A does NOT become bankrupt)
      15. *“O to A for life, then to A’s children who reach 21* [**\***]*, but if A becomes bankrupt, A’s estate shall become void and the property shall pass to A’s children who reach 21”*… A has 10-yr.-old child
          1. Before **\***, A’s child has *CR*… AND, after **\***, A’s child has *EI*…
          2. … thus, A’s child can get estate in 1 of 2 ways
      16. *“O to A, but if during A’s life the property is used for other than a single family residence, then to B”*
          1. A has *FSSEI*, NOT *life estate*…
          2. … b/c ONLY *restriction* lasts for A’s life (NO *natural expiration* of estate)
      17. *“O to A for 99 yrs., but if A fails to live that long, to A’s first child to reach 21”*… A dies w/ 10-yr.-old child
          1. A’s child has *EI*, NOT *CR*

NOT a *remainder* b/c prior estate (lease/*estate for yrs.*) is NOT *freehold* (recall jurisdictional split)…

… AND, if in jurisdiction that allows *remainder* following *non-freehold*, also NOT *remainder* b/c won’t expire naturally

A won’t live for 99 yrs.…

… AND, if A somehow does live for 99 yrs., then would revert to O

* + - * 1. Avoid *destructability rule* by giving A’s child an *EI* instead of a *CR* (could also use *mandatory gap*)
      1. *“O to A for life, then to B and C, but if either B or C dies without issue, then to the survivor, and if both die without issue, then to D and E, but if either D or E dies without issue, then to the survivor, and if both die without issue, then to F”*
         1. B 🡪 *VRSCD* (completely divested from B if B dies w/o *issue*)
         2. C, D, E and F 🡪 all *EI*s (everything following *VRSCD* is an *EI*)

1. *Houston*…
   * + 1. Henry’s *will*/*trust* contains this clause 🡪 *“On the death of my last surviving child I direct that the whole of the principle of the trust estate shall be distributed in equal portions to and among my grand-children, the children of any deceased grand-child taking their deceased parents share.”*
       2. Henry has **12** grand-children 🡪 upon the death of Henry’s *“last surviving child”*…
          1. **8** of Henry’s grand-children are living (A-H)
          2. **1** of Henry’s grand-children (T. Charleton) is dead, leaving 2 great grand-children (D1 and D2)
          3. **3** of Henry’s grand-children (Henry H., H.H., Gert Jr.) are dead, leaving NO great grand-children, BUT 1 heir each (X, Y, Z)
       3. Majority determines that *FPI* is *VRSCD*/*VRSPD* 🡪 divided into **12** shares
          1. NO *condition precedent* 🡪 Henry created *vested* interest, but NOT distributed until death of *“last surviving child”*
          2. Thus, A-H each get 1 share (**8**), D1 and D2 split T. Charleton’s share (**1**), and X, Y and Z each get 1 share (**3**)
          3. Majority’s 3 regrets…

Henry H., H.H. and Gert Jr. are all long dead

X, Y and Z are NOT even blood relatives

All transfers along heirs are taxable

* + - 1. Dissent determines that *FPI* is *CR* 🡪 divided into **9** shares
         1. YES *condition precedent* 🡪 interest NOT *vested* until death of *“last surviving child”*
         2. Thus, A-H each get 1 share (**8**), and D1 and D2 split T. Charleton’s share (**1**)… BUT, nothing for X, Y and Z (b/c Henry H., H.H. and Gert Jr. all died before Henry’s *“last surviving child”*)

1. *Bailey*…
   * + 1. Husband’s will 🡪 *“… to wife* [W] *for life, then to daughter* [D] *to take possession after the death of W. In case of D’s death before that time, the land shall pass to son* [S]*.”*
          1. D gives S *quitclaim deed*…
          2. … then, W dies…
          3. … then, D dies, leaving X as *heir*
       2. X’s argument (loser) 🡪 D and S had *alternate CR*s…
          1. … AND, depending on jurisdiction, D’s *CR* may NOT have been transferable, thereby making *quitclaim deed* an ineffective transfer…
          2. … thus, D retained *CR*, which would’ve become *vested* at W’s death, and passed on to X (as D’s *heir*)…
          3. … BUT, D outliving W is NOT a *condition precedent* (so, NOT a *CR*)
       3. S’s argument (winner) 🡪 D had *VRSCD*, S had *EI*… thus, D effectively transferred *VRSCD* to S
2. *Kropp*…
   * + 1. H reserves *life estate*, *FPI* ambiguous 🡪 2 possible interpretations…
          1. *“… then to wife* [W] *if she survives H. If not, then to the Personal Representative of H’s estate* [PRE]*.”* 🡪 *alternate CR*s
          2. *“… then to W. If W dies before H, then to PRE.”* 🡪 *VRSCD*/*EI*
       2. W dies (leaving S as heir) before H
          1. Assuming W had *alternate CR* 🡪 W did NOT survive H, SO *condition precedent* did NOT occur… thus, b/c W’s *CR* did NOT *vest*, PRE takes estate
          2. Assuming W had *VRSCD* 🡪 W’s *VRSCD* did *vest*… BUT, b/c W died before H, *condition subsequent* did occur… thus, W’s *VRSCD* divested to PRE
       3. Thus, doesn’t matter whether W had *CR* (w/ *condition precedent*) OR *VR* (w/ *condition subsequent*) 🡪 W loses either way
3. *Jensen*…
   * + 1. M’s will devises parcel of real property 🡪 *“It shall go to H upon payment of $1,160, which shall be divided among M’s 5 sons* [one of which is H]*.”*
          1. After M’s death, H waives right to parcel, such that parcel shared equally among M’s 5 sons…
          2. … W (owed $$ by H) claims that waiver was a transfer in fraud of creditors (b/c H could’ve used parcel to pay debt to W), such that W may void it
       2. Regardless of whether *condition precedent* OR *condition subsequent*, this is *FSSEI*/*EI* 🡪 BUT, distinction nonetheless makes difference…
          1. If payment of $1,160 was a *condition precedent*, then M’s 5 sons had *FSSEI*, w/ EI in *H* 🡪 thus, H never received parcel, AND, as such, never transferred parcel
          2. If non-payment of $1,160 was a *condition subsequent*, then H had *FSSEI*, w/ *EI* in M’s 5 sons 🡪 thus, H had received parcel, AND, as such, transferred parcel in violation of W’s rights
4. **POWERS OF APPOINTMENT**
5. If O grants to A for life w/ *power of appointment*, and then to B in ***default of appointment***…
   * + 1. O is ***donor***
       2. A is ***donee***
       3. Those to whom A may appoint are *permissible appointees*
       4. B is ***default taker*** (if power NOT exercised, OR if exercised wrongfully)
6. Discretion/scope (mix-and-match)…
   * + 1. *General power of appointment* allows A to appoint anyone (group of *permissible appointees* very broad)… whereas, *special power of appointment* limits who A may appoint (group of *permissible appointees* very narrow)
          1. For tax purposes, A is treated as owner of *general power*…
          2. … whereas, O is treated as owner of *special power*
       2. ***Inter vivos***/***presently exercisable*** power may be exercised whenever A choose… whereas, ***testamentary*** power may ONLY be exercised by will (NO choice)
7. **WASTE DOCTRINE**
8. ***Waste*** – an injury of lasting character committed by the holder of a *PPE* which affects a *FPI*, OR concurrent interest, OR security interest
   * + 1. *Injury* is NOT necessarily physical or economic, BUT much broader (i.e. change in character of property, boundary lines)
       2. *Lasting* is NOT necessarily permanent, BUT more than temporary
       3. ***Trespass*** is committed by one w/ NO right to be on property… thus, action against holder of *PPE* is for *waste* (NOT *trespass*)
       4. *Waste* action may be brought against holder of *PPE* by…
          1. Holder of *FPI*
          2. Co-tenant (2(+) people w/ simultaneous right of possession)
          3. Lender (if/when borrower trashes property upon default/foreclosure)
9. Types of *waste*…
   * + 1. ***Active waste*** – holder actively doing something NOT entitled
       2. ***Passive waste*** – holder failing to fulfill duty to do something (*inactive*)
       3. ***Ameliorating waste*** – change in character of property that benefits property
10. Grantor MAY expressly state whether or not holder of *PPE* may make changes to property…
    * + 1. … BUT, if grantor’s intent is NOT clear, then factual analysis is required…
        2. … thus, if A (holding *PPE*) wants to make change, and B (holding *FPI*) wants to block change 🡪 factors to consider…
           1. Length of time (i.e. 99-yr. lease vs. 1-yr. lease)
           2. Certainty of possession of *FPI* (i.e. *reversion* vs. *CR*)
           3. Changes in area AND impact
           4. Cause of changes
           5. Time b/w grantor’s conveyance and A’s desire to make change
11. Remedies…
    * + 1. B learning of A’s desire to make change MAY obtain *injunction*…
        2. … BUT, if B is unable to enjoin A, then MAY bring suit for…
           1. ***Diminution in value***/*economic damages* (though, MAY not be available w/ *ameliorating waste*)
           2. *Specific performance* (replace *waste*, though unlikely as remedy)
           3. *Punitive damages* (secondary remedy when *economic damages* not available)
           4. *Forfeiture* (*common law* remedy for *waste*… though, grantor MAY make estate *defeasible* upon commission of *waste*)
12. *House of Isaac*…
    * + 1. Isaac gives residence to wife for life (OR upon remarriage), then to George for life, then to George’s then-living children (daughter) OR Isaac’s surviving children (Howie, Irv, Elvira)
           1. George 🡪 *VR* (upon *natural termination* of wife’s *life estate defeasible*, i.e. wife’s death) AND *EI* (upon *premature termination* of wife’s *life estate defeasible*, i.e. wife’s remarriage)
           2. George’s daughter AND Howie/Irv/Elvira 🡪 *alternate CR*s
        2. George wants to demolish residence, build 13-story apartment complex (make $$, leave something for daughter)…
           1. … BUT, Howie/Irv/Elvira object (own neighboring lots w/ restrictions preventing them from doing the same, and do NOT want 13-story apartment complex towering over their lots)…
           2. … AND, Howie/Irv/Elvira win 🡪 George (as life tenant) may NOT exercise act of ownership, but ONLY what is required for general use/ enjoyment of estate as received

Similar facts in *Melms v. Pabst* (mansion torn down, business erected)…

… BUT, different outcome (complete change of conditions, property no longer desirable for residence)

1. *Baker v. Weedon*…
   * + 1. John gives Anna *life estate*, *CR* in Anna’s children (Anna has NO children at time of conveyance), *alternate CR* in John’s grandchildren from prior marriage
       2. Anna (now an old woman stuck w/ *life estate*) in need of immediate economic relief, asks for *judicial sale* of property and investment of proceeds in trust… BUT, b/c value of property increasing, remaindermen stand to suffer great financial loss 🡪 trial court holds for Anna, BUT appellate court remands
2. **DOCTRINE OF WORTHIER TITLE**
3. *Doctrine of worthier title* (“DWT”) converts *FPI* in *transferee* into *FPI* in *transferor*…
   * + 1. *“O to A for life, then to O’s heirs”* 🡪 *CR* in O’s heirs becomes *reversion* in O
       2. *“O for life, then to O’s heirs”* 🡪 *EI* in O’s heirs becomes *FSA* in O
4. Reasons for *DWT*…
   * + 1. At *common law*, when *FPI* in O’s heirs is converted into *FPI* in O (inheritance by O’s heirs), then it becomes taxable (*feudal incidence*)…
       2. … BUT, today, 2 purposes served…
          1. Clear title (since *heirs* NOT ascertained until death of *transferor*)
          2. *Probable intent* (thus, can be avoided through drafting)
5. *Doctor v. Hughes*…
   * + 1. O reserves *life estate*, *EI* to O’s heirs… O has 2 daughters (O still alive)… daughter1 in debt to creditor…
       2. … BUT, as per *DWT*, O has FSA… thus, creditor out of luck
          1. If daughter1 had *remainder*, then creditor would’ve been able to seize interest…
          2. … BUT, if O wanted to create a *remainder* in O’s heirs, then O would’ve drafted differently 🡪 express intent to avoid *DWT* (*DWT* a ***rule of construction***)
6. To trigger *DWT*, must use *“heirs”* (OR functional equivalent)
   * + 1. In *Levy*, when mother’s *life estate* ends, then to Levy for life, then *FPI* exists in Levy’s*“lawful surviving issue”* OR mother’s *“lawful surviving issue”*…
       2. … AND, mother dies w/ Levy as ONLY child… thus, Levy is mother’s *“lawful surviving issue”*…
       3. … BUT, *“lawful surviving issue”* is NOT the same as *“heirs”*… thus, Levy cannot trigger *DWT* to give self *FSA* (rather, stuck w/ *life estate* w/ *FPI* in his *“lawful surviving issue”*)
          1. A *trust* is automatically revocable, unless it is expressly unrevocable…
          2. … AND, even if expressly unrevocable, MAY still be revoked if *trustor* is also *sole beneficiary*…
          3. … BUT, in *Levy*, Levy became *trustor* upon mother’s death, but NOT *sole beneficiary* (b/c, again, *“lawful surviving issue”* is NOT the same as *“heirs”*)
7. Rebuttal of *DWT* must come in original, NOT susequent, document
   * + 1. If O reserves *life estate*, w/ *EI* in O’s heirs (O has 2 children)…
       2. … then, O wills estate to A, including clause stating *“Having amply provided for my 2 children…”*…
          1. If *DWT* applies, then *EI* in O’s heirs converted to *FSA* in O, which was then transferred to A in will
          2. If *DWT* does NOT apply, then O’s heirs get estate (since what O transferred to A did NOT include *EI*)
8. While *DWT* creates a *FPI* in *transferor*’s heirs, ***Rule in Shelley’s Case*** creates *FPI* in *transferee*’s heirs (though, abolished in most states, including CA)
   * + 1. *“O to A for life, then to A’s heirs”* 🡪 A has *FSA* (O’s *reversion* destroyed)
       2. Notable considerations re: *Rule in Shelley’s Case*…
          1. Applies to real property ONLY (whereas, *DWT* applies to real AND personal property)
          2. *FPI* must be *remainder* (whereas, *DWT* applies to *EI*s as well)
          3. *“Heirs”* (OR functional equivalent) must be used
          4. *Rule of law* (NOT *rule of construction*, so NO consideration of intent)
9. **DESTRUCTABILITY RULE**
10. As per *destructability rule*, *CR* is destroyed when…
    * + 1. ... prior estate ends AND *CR* can’t *vest*
        2. … 2 interests in same person are separated ONLY by *CR*
           1. Avoid *destructability rule* by NOT creating *CR* (i.e. *EI* w/ *mandatory gap*)…
           2. … OR, by putting *CR* in a *trust*…
           3. … BUT, *RAP* would still apply either way
11. If subject to *destructability rule*, then (likely) NOT subject to *RAP*… BUT, if NOT subject to *destructability rule*, then subject to *RAP* (*Abbiss*)
    * + 1. *“O to A for life, then to first son of A to reach 25”*… at the time, A has 10-yr.-old son
           1. Under *destructability rule*, *CR* is destroyed if, when A dies, A’s first son is NOT 25
           2. Under *RAP*, *CR* is void b/c it is possible that *CR* would vest 21 yrs. after A’s death (i.e. if A’s first son dies, A has second son, A dies, and A’s second son does NOT reach 25 within 21 yrs. of A’s death)
        2. Thus, *CR* could be voided by either/or…
           1. … BUT, *destructability rule* at least allows for opportunity for *CR* to *vest*…
           2. … whereas, *RAP* voids *CR* from the very beginning
12. *Destructability rule* w/ *alternate CR*s (*Festing*)…
    * + 1. *“O to A for life, then to children of A who reach 21, but if none of A’s children reach 21, then to B”*…
        2. … if A dies w/ child(ren) under 21, then both *alternate CR*s are destroyed
           1. First *CR* is destroyed b/c NO children of A reached 21 before A died (thus, no one in whom *CR* could *vest*)
           2. Second *CR* is destroyed b/c A’s children still MAY reach 21 (thus, *CR* may NOT *vest* in B b/c *condition precedent* did NOT occur)
13. *CR* in *trust* is NOT subject to *destructability rule*… BUT, *CR* in *mortgage*? (*Astley*)
    * + 1. In ***title theory*** jurisdiction, lender holds *title* as security until borrower pays off loan 🡪 thus, since lender is essentially a *trustee*, *CR* is NOT destroyed… at least, NOT until loan paid off
        2. In ***lien theory*** jurisdiction, lender holds *lien* as security 🡪 thus, since borrower retains title, lender is NOT a trustee… and, thus, *CR* IS destroyed
14. Like *DWT*, purpose of *destructability rule* stems from *common law* (*“smooth flow of seisin”*, NOT *“in abeyance”*)… BUT, still useful today to clear title
15. **RULE AGAINST PERPETUITIES**
16. In order for a contingent future interest (i.e. *CR*/*EI*) to remain valid, it must *vest* (if ever) before the end of the ***RAP period*** 🡪 ***life/lives in being*** (at time that interest is created) **+** 21 yrs.
    * + 1. Deal w/ actual facts as of that time that interest is created (*RAP period* begins)…
        2. … during *RAP period*, imagine possibilities…
        3. … if there is any possibility that interest will *vest* outside of *RAP period*, then it is void
           1. Choose a ***measuring life*** (a *life in being*)…
           2. … if there is NO way that *CR*/*EI* would *vest* 21 yrs. after that the death of that *measuring life*, then *CR*/*EI* is valid (*measuring life* “works”)…
           3. … BUT, if it is possible that *CR*/*EI* would vest 21 yrs. after the death of that *measuring life*, then *CR*/*EI* is void (*measuring life* does NOT “work”)…
           4. … unless another *measuring life* would “work”
17. Theories behind *RAP*…
    * + 1. Don’t want vesting to take place too far into future…
        2. … AND, don’t want power of alienation to be suspended too far into future (though, some states allow transferability of *CR*s/*EI*s)
           1. *RAP* is *rule of law*, NOT *rule of construction* (can’t avoid through drafting)…
           2. … though, in case of ambiguity, MAY be interpreted so as to avoid *RAP*…
           3. … AND, in seldom cases, court MAY rewrite document so as to avoid *RAP* (***equitable approximation***)
18. Notable hypos…
    * + 1. *“A by will to B for life, then to such of A’s lineal descendants as are alive 50 yrs. after the date of B’s death”*… at A’s death, A has 1 child (C)
           1. A’s lineal descendants have *EI* (as per 50-yr. *gap*)… SO, subject to *RAP*…

A (dead) is NOT a *life is being*

B may be used as a *measuring life*… BUT, *EI* could NOT *vest* within 21 yrs. after B’s death (again, as per 50-yr. *gap*)… thus, B does NOT “work” as measuring life

C may be used as a *measuring life*… BUT, lineal descendants could go on infinitely (i.e. if C has child, then C dies 21+ yrs. before end of 50-yr. *gap*)… thus, C does NOT “work” as *measuring life*

* + - * 1. … thus, *EI* is void under *RAP*

Though, some states have adopted ***alternate period in gross*** within which *CR*/*EI* must *vest* or be void (i.e. flat 60 yrs. in CA)…

… thus, even though *EI* is void under *common law RAP*, MAY be valid under such a statutory variation

* + - 1. *“A to B so long as used for single family residence, then to C”*
         1. B has *FSSEI*, C has *EI*…
         2. … AND, b/c estate could cease to be used for single family residence 21+ yrs. after the death of any *measuring life* (A, B OR C), *EI* is void under *RAP*…

The mere possibility that estate could cease to be used as such after *RAP period* is enough to void under *RAP*…

… thus, irrevelant if/when estate ever actually does cease to be used for single family residence

* + - * 1. … thus, size of B’s estate depends on whether original language is…

*Automatic* (as it is here) 🡪 *FSD* (w/ *PR* in A)

*Optional* (i.e. *“but if”*) 🡪 *FSA* (w/ NO restriction)

* + - 1. *“A to B for life, then to the first child of B, whenever born, who becomes a lawyer”*
         1. If B is alive w/ 3 children, none of whom are lawyers 🡪 void (possible that *CR* could *vest* beyond *RAP period*… even if B’s 3 children are used as *measuring lives*, still possible for B to have 4th child, who could become a lawyer 21+ yrs. after children #1-3 die)
         2. If one of B’s children is already a lawyer at time of creation 🡪 valid (*AVR* in B’s child who is already a lawyer)
         3. If one of B’s children has graduated from law school and awaiting bar exam results 🡪 void (*CR* could still *vest* beyond *RAP period*… consider possibilities, NOT probabilities)
         4. If B is dead w/ 1 child who is NOT a lawyer 🡪 valid (B’s child may act as own *measuring life*… thus, since B’s child is ONLY *potential taker*, *CR* could NOT *vest* 21+ yrs. after B’s child’s death, rather must *vest* in B’s child’s lifetime)
      2. *“A to B for life, remainder to first son of B to reach 25”*… B is alive w/ 10-yr.-old and 12-yr.-old
         1. Both 10- AND 12-yr.-old would reach 25 within 21 yrs. of any *measuring life*…
         2. … BUT, since it is still possible for B to have 3rd child AND for all *measuring lives* to die immediately thereafter (such that B’s 3rd child would NOT reach 25 with *RAP period*), *CR* is void

Recall that in *destructability rule* jurisdiction, *CR* would remain valid until B’s death…

… at which point, it will either *vest* (to B’s first child to reach 25) OR be destroyed (if B has NO 25-yr.-old children)…

… thus, sometimes MAY be beneficial to NOT place *CR* in *trust* (since placing in *trust* would avoid *destructability rule*)

* + - 1. *“A by will to B for life, remainder to children of B that reach 21”*… at A’s death, B is alive w/ 10-yr.-old and 12-yr.-old
         1. Both 10- AND 12-yr.-old would reach 21 within 21 yrs. of any *measuring life*…
         2. … AND, even if B has 3rd child AND all *measuring lives* die, 3rd child would still turn 21 within *RAP period* (even if B’s 3rd child is ONLY 1 day over 21-yrs.-old at culmination of *RAP period*)…
         3. … thus, *CR* is valid (need ONLY 1 *measuring life* to “work”)
      2. *“A by will to B’s grandchildren who reach 21”*
         1. If B is alive w/ children, NO grandchildren 🡪 void (since it is possible for B to have another child AND for all *measuring lives* to die, *EI* could *vest* beyond *RAP period*)
         2. If B is dead w/ children, NO grandchildren 🡪 valid (B NOT a *life in being*, can’t have another child… AND, grandchildren will have reached 21 within 21 yrs. of B’s children’s *measuring lives*)
         3. If B is dead w/ NO (living) children, 1 grandchild 🡪 valid (grandchild as own *measuring life*)
      3. *“Creation in will of interest to vest and be possessory in the person who is A’s youngest lineal descendant at expiration of 20 yrs. from the day of death of the last survivor of all lineal descendants of M. Hubbard, who shall be living at the time of A’s death”*… M. Hubbard is a famous person w/ many lineal descendants
         1. Use of ***savings clause*** creates starting point from which 20 yrs. will run (important that M. Hubbard is famous b/c the death of her lineal descendant will be easily tracked)…
         2. … thus, at A’s death, using M. Hubbard’s living lineal descendants as *measuring lives*, EI will *vest* within 21 yrs.… thus, *EI* is valid

*Perpetuity savings clause* is NOT properly used if created in deed (since M. Hubbard could have more lineal descendants before A’s death, who would NOT be *lives in being*, BUT would delay ability of *EI* to *vest*)…

… OR, if missing *“who shall be living at the time of A’s death”*

* + - 1. *“A devises to his grandchildren who reach 21”*… A dies w/ NO children… BUT, 7 mos. later, A’s widow has A’s child (B)… B lives to 60 and dies w/o children, BUT B’s widow has B’s child (C) 7 mos. later
         1. Under ***gestation rule***, B may be used as *measuring life*, even though (technically) NOT a *life is being* when interest created (B’s 7-month *gestation period* added on)…
         2. … AND, likewise, even though (technically) *EI* will *vest* in C more than 21 yrs. after B’s death, C’s 7-month *gestation period* also added on…
         3. … thus, *EI* is valid
      2. *“A by will to such of A’s descendants that are living 21 yrs., 9 mos. after B’s death”*… A leaves 1 lineal descendant, B
         1. *Gestation rule* ONLY applies to actual gestation…
         2. … thus, *EI* is void
      3. *“A devises to B for life, then to B’s children for their lives, then remainder to B’s grandchildren”*… at A’s death, B is 75 yrs. old w/ 1 child
         1. Under ***fertile octagenarian rule***, B can still have children, regardless of age or physical condition…
         2. … thus, since it is possible for B to have 2nd child, then for all *measuring lives* to die, AND then for 2nd child to have child (B’s grandchild) 21+ yrs. later, *CR* is void
      4. *“A by will to B for life… then to B’s children, who are living at A’s death, for their lives… then to B’s grandchildren through said children”*… at A’s death, B is 75 yrs. old w/ 2 children
         1. Granted, B can still have children (as per *fertile octagenarian rule*)…
         2. … BUT, b/c *CR* in B’s children is limited to those living at A’s death, *CR* in B’s grandchildren is valid (whether B has 3rd child is irrelevant b/c *CR* could NOT *vest* in 3rd child, anyway)
      5. *“A devises to son B for life, then to B’s widow for her life, then remainder to B’s then-living children”*… at A’s death, B is married to W
         1. Under ***unborn widow rule***, it is possible for B and W to divorce, AND for B to then marry W2 (who was NOT born when interest created, so NOT a *life in being*)…
         2. … thus, since it is possible for W2 to die 21+ yrs. after all *measuring lives* die, *CR* is *void*

CA has done away w/ *unborn widow rule* (CC § 715.7), conclusively presumes that unborn widow is a *life in being* (regardless of when actually born)…

… thus, *CR* would be valid in CA

* + - 1. *“A to his descendants who are born within 21 yrs. of A’s death”*
         1. If by deed/inter vivos transfer, then *EI* is valid (using A as *measuring life*)…
         2. … AND, if by will, then *EI* is also valid (interest created upon A’s death AND may NOT *vest* after 21 yrs.)
      2. *“A devises the residue of his estate to the Officers of his Elks Lodge who are in office at time of distribution of his estate”*
         1. Interest in Officers is created upon A’s death…
         2. … BUT, b/c distribution of A’s estate could theoretically be delayed 21+ yrs. (***distribution contingency***), *EI* is void…
         3. … though, *EI* would be valid if interest created in Officers who survive distribution (Officers that survive distribution as own *measuring lives*)
      3. *“A leases to B for 10 yrs., the term to commence upon completion of a building, commencement and completion of which is to be prosecuted with due diligence”* 🡪 conflicting authority…
         1. Void under *Haggerty* b/c a *distribution contingency* problem (since completion of building could occur 21+ yrs. after interest created)
         2. Valid under *Wong* if circumstances show that building is to be completed within a reasonable time which is less than 21 yrs.
      4. *“A to B alone the option to purchase for $50K at any time”*
         1. Some contracts are subject to *RAP*, including ***options to purchase*** (*option* “vests” when exercised)…
         2. … thus, using B as *measuring life*, *option* could NOT *vest* after B’s death, making *option* valid…
         3. … BUT, if *option* were *“to B”* (and NOT *“to B alone”*), *option* is presumed to be transferable AND could *vest* beyond *RAP period*, making *option* void
      5. *“A to B, subject to option in A to repurchase for $50K”*
         1. ***Option to repurchase*** is likely treated as an *option to purchase*, which, in this case, would be void under *RAP* (since presumed transferable)…
         2. … BUT, *option to repurchase* could arguably be considered a *PT* (retained in A, the *transferor*), which would NOT be subject to *RAP* (and, thus, valid)
      6. *“A leases to B for 65 yrs., with option to purchase for $50K during the term”*
         1. Granted, *option to purchase* could *vest* beyond *RAP period*…
         2. … BUT, b/c *option* can ONLY *vest* within during lease term, it is NOT subject to *RAP* as per ***lease option exception***
      7. *“A to B and assigns under an installment land sale contract… A retains legal title until paid in full”*
         1. *Installment land sale contract* IS subject to *RAP*… AND, b/c contract could be paid off beyond *RAP period*, would be void…
         2. … BUT, arguable that A’s retention of legal title is a *security interest*, which is NOT subject to *RAP*
      8. *“A in trust, income to A for life, then income to A’s children, then principal to A’s grandchildren, reserving to A the power to revoke the trust”*
         1. *RAP period* does NOT start until A’s *power to revoke* is exercised/given up…
         2. … thus, if A dies w/o exercising *power to revoke*, then interest is valid…
         3. … BUT, if A revokes trust before death (OR, if A never had *power to revoke*), then interest is void
      9. *“A to B Charity, but if cease use for hospital purposes, to C Charity”*
         1. As per *charitable exception*, b/c *EI* would shift from charity-to-charity, it is valid (exempt from *RAP*)…
         2. … BUT, if either B or C was NOT a charity (AND, city/govt. constitutes charity), then *charitable exception* does NOT apply, regardless of possible charitable purpose
      10. *“A devised to B for life, then to B’s children for their lives, then principal to such of B’s grandchildren as the oldest child of B shall appoint”*… B had NO children at A’s death… B’s oldest child appoints during B’s life to X (a grandchild of B)
          1. *Powers of appointment* are subject to *RAP* 🡪 analysis…

If a *general power presently exercisable* 🡪 *RAP period* does NOT begin until power is exercised (more favorable)

If *“anything else”* (*general power testamentary* OR either type of *special power*) 🡪 *RAP period* begins when power is created (less favorable)

* + - * 1. B’s oldest child has a *special power* (*permissible appointees* limited to B’s grandchildren), created at A’s death… thus, b/c power could be exercised beyond *RAP period*, power is void

Granted, there is NO limitation on when B’s oldest child may exercise *special power*… thus, it is presumed to be *presently exercisable* (ONLY *testamentary* when specified as such)…

… BUT, b/c NOT a *general power*, then NOT entitled to delayed commencement of *RAP period*

* + - 1. *“A devised to B for life, then to B’s children for their lives, then principal to such person(s) as oldest child of B shall appoint”*… B had NO children at A’s death
         1. B’s oldest child has a *general power presently exercisable* (NO limitation on *permissible appointees* OR on when exercisable)…
         2. … thus, b/c B’s oldest child would acquire power within *RAP period* (B as *measuring life*), AND could exercise power within *RAP period* as well (within 21 yrs. after B’s death), power is valid
      2. *“A devised to B for life, remainder to issue of B such as B might appoint”*… C, child of B, is born after A’s death… appointment to C for life, remainder to C’s children
         1. B has a *special power*, which is created upon A’s death… thus, since B could exercise power within *RAP period*, power is valid (as is appointment to C)…
         2. … BUT, b/c C is NOT a *life is being* (born after A’s death, which was when *RAP period* began), *CR* in C’s children is void

If B had a *general power presently exercisable*, then *CR* in C’s children would’ve been valid (since *RAP period* would’ve began upon B exercising power, at which point C was alive)…

… likewise, *CR* would’ve been valid if C was alive when A died (b/c, again, C would’ve then been a *life in being*)

* + - 1. W devised to H a *general power testamentary*… H dies 3 mos. after W… H’s will exercises the power as follows 🡪 *“In trust, income to H’s children for life, the trust to terminate on the death of last survivor of children and grandchildren living at the time of H’s death, and distribution per capita to H’s great-grandchildren”*… all children and grandchildren that were alive at H’s death are alive at W’s death
         1. H’s *general power testamentary* was created at W’s death… AND, b/c power could’ve been exercised beyond *RAP period* (21+ yrs. after W’s death), power would be void…
         2. … BUT, as per ***after-developed facts doctrine***, b/c NO further children/ grandchildren were born b/w W’s death (when power created) and H’s death (when power exercised), power is valid (saved by *after-developed facts*)

*After-developed facts doctrine* does NOT apply to *general power presently exercisable*…

… BUT, applies to *“anything else”*

* + - 1. *“A devised to B for life, then to B’s children for their lives, the principal to B’s grandchildren”*… C1 was born to B before A’s death… C2 was born to B after A’s death
         1. Technically, B’s children have a *VRSPD* (since C1 already born)… AND, *VR*s are NOT subject to *RAP*…
         2. … BUT, a ***class gift*** IS subject to *RAP* (exception)

*Class gift* to B’s children is valid 🡪 will *vest* within *RAP period* (immediately upon B’s death)

*Class gift* to B’s grandchildren is void 🡪 C2 (NOT a *life in being*) could produce a child (B’s grandchild) 21+ yrs. after C1 (a *life in being*) dies

* + - 1. *“A devised to B for life, then to B’s children who reach 25”*… 4 children of B, all under 25, were living at A’s death
         1. Since it is possible for B to have 5th child AND for all *measuring lives* to die immediately thereafter (such that 5th child would reach 25 beyond *RAP period*), *class gift* is void…
         2. … AND, as per ***all-or-nothing rule***, *class gift* is void as to all 4 of B’s children (*class gift* must be entirely valid OR entirely void)
      2. *“A devised $1K to each child of B who reaches 25”*… 4 children of B, all under 25, were living at A’s death
         1. Since each child of B is entitled to a ***specific amount***, this is NOT a *class gift*… thus, each *gift*’s validity is analyzed separately…
         2. … AND, using each of B’s 4 children as their own *measuring lives*, each child’s *gift* is valid
      3. *“A devised to son B for life, then to B’s children (A’s grandchildren) for life, and at death of each of B’s children, his/her respective share was to pass to his/her issue (primarily great-grandchildren) forever”*… B has 2 children before A’s death, AND 2 children after
         1. By severing into *respective shares* (***per stirpes***/***right of representation***), each *gift* is analyzed separately (***sub-classes***)…

*Gift* in A’s grandchildren born before A’s death is valid

*Gift* in A’s grandchildren born after A’s death is void

* + - * 1. If, instead, *gift* was in *equal shares* (***per capita***) to A’s grandchildren, then *gift* would be void as per *all-or-nothing rule* (class NOT severable)
      1. *“A devises to such children of B as reach 25”*… at A’s death…
         1. If B is alive w/ 3 children (25, 10 and 5) 🡪 valid (b/c 25-yr.-old can take possession now, class is closed to after-born children as per *rule of convenience*… 10- and 5-yr.-old as own *measuring lives*)
         2. If B is dead w/ 2 children (5 and 1) 🡪 valid (class closed b/c B can have NO more children… 5- and 1-yr.-old as own *measuring lives*)
         3. If B is alive w/ 2 children (10 and 5) 🡪 void (class still open, SO possible for B to have more children)
      2. *“A devises to B for life, then to such children of C as reach 25”*… at A’s death, B and C are alive, and one of C’s children is 25
         1. C’s 25-yr.-old child has a *VRSPD*…
         2. … BUT, as to C’s other children (born AND unborn), *CR* is void b/c B is still alive (*rule of convenience* does NOT apply, class NOT closed)

1. ***Uniform Statutory RAP*** (*USRAP*)…
   * + 1. Adopted in CA in 1992… BUT, beforehand…
          1. In 1963, CA passed CCP § 715.8, which defined *“vested”* by whether there were people in existence who could come together and convey *FSA*

Thus, if party holding *EI* and party holding *FSSEI* could come together, then *EI* did NOT violate *RAP*…

… BUT, this conflicted w/ *common law RAP*, which was adopted in CA Const.

* + - * 1. In 1970, CA repealed CCP § 715.8, AND amended CA Const. to repeal constitutional provision re: *RAP*… instead, enact RAP statutorily
      1. *USRAP* in CA has 3 components 🡪 must comply w/ one…
         1. *Common law RAP*
         2. *90-yr. wait-and-see*
         3. *Equitable approximation*

Best for draft document that complies w/ *common law RAP*…

… BUT, if NOT complying w/ *common law RAP*, may still wait upwards of 90 yrs. for interest to *vest* OR void (during which time title is screwed up, so NO title insurance obtainable)…

… OR, if *“necessary”*, go to court to seek reformation of document

* + - 1. ***Potential Posthumous Birth Disregarded*** 🡪 covered under *USRAP*/CA, but NOT *common law RAP*
         1. *“A to B for life, then to B’s children that reach 21”*… B dies leaving pregnant wife, who gives birth several months later (such that B’s child will turn 21 beyond *RAP period*)…

Under *common law RAP*, *gestation rule* adds *gestation period* to B’s *life in being*, thereby making *CR* valid…

… BUT, under *USRAP*/CA, the fact that B’s child was born after B’s death ignored, thereby making *CR* valid (same outcome, different method)

* + - * 1. … now, assume that B’s sperm was frozen, and B has child well after B’s death…

Under *common law RAP*, *CR* is void b/c B’s child was NOT the product of *gestation period*

Under *USRAP*/CA, *CR* is valid

1. **RESTRAINTS ON ALIENATION**
2. Validity of restaint at *common law* depends on…
   * + 1. Type of estate being restrained…
          1. *Fee* (being potentially infinite) is most likely to be protected from a restraint on alienability…
          2. … AND, w/ *estate for yrs.* (landlord/tenant), any restraint is OK…
          3. … whereas, *life estate* falls in b/w (likely for restraint to be justified)
       2. Type of restraint…
          1. *Disabling* 🡪 any attempt to transfer is void
          2. *Promissory* 🡪 if transferred, then suit for *damages*/*injunction*

If suit leads to *injunction*, then essentially a *disabling* restraint…

… BUT, possibility of *damages* makes *promissory* restraint less harsh

* + - * 1. *Forfeiture* 🡪 if transferred, then forfeited

*Forfeiture* is least disliked restraint b/c, either way, party that attempted to transfer is left w/o property…

… BUT, instead of property going to transferee, property returns to original grantor

1. In CA, restraints on alienation are void when *“repugnant”* (CC § 711) 🡪 examples…
   * + 1. *Due on transfer clause* 🡪 if transferred, then entire loan to be paid back (economic/indirect restraint, NOT absolute/direct restraint)
          1. NOT void…
          2. … BUT, subject to balancing (*Wellenkamp*) 🡪 justification/rationale for restraint vs. quantum of restraint
       2. *Assignment*/*sublease* 🡪 consent of landlord for tenant to transfer
          1. NOT void…
          2. … BUT, subject to *Wellenkamp* balancing (*Kendall*)
       3. *Options to purchase*
          1. If option to purchase for property for $100K… BUT, value of property has risen to $2M (such that no one would purchase property on market for more than $100K)

MAY be void under *RAP*…

… if not, then MAY be void as restraint on alienation…

… AND, if neither, then MAY just be stuck w/ bad deal

* + - * 1. NOT to be confused w/ *first right of refusal* (in which party that elects to sell must first make offer to holder of right)
      1. Resale restrictions on low-income housing programs
         1. To prevent recipient of low-income housing from getting greater return…
         2. … MAY restrict sale to ONLY program-qualified buyers

**REMAINDERS**

Is *FPI* a *remainder*?

* If *FPI* is created in a *transferee* –**AND**– *FPI* follows a *life estate* (OR *estate for yrs.*, if jurisdiction allows for *remainder* to follow *non-freehold estate*) which is created in another *transferee* –**AND**– *FPI* becomes possessory immediately upon *natural expiration* of *life estate* –**AND**– *FPI* created in same instrument as *life estate* 🡪 YES
* If NOT all above conditions met 🡪 NO

|  |  |  |
| --- | --- | --- |
| **Language** | ***Remainder*?** | **Why?** |
| *“O to A for life, then to B”* | YES | All conditions met |
| *“O to A for life, then to O”* | NO (*reversion* in O) | *FPI* NOT created in *transferee* |
| *“O to O for life, then to A”* | NO (*EI* in A) | *FPI* IS created in *transferee*… BUT, *life estate* is NOT (created by *reservation*, NOT by *grant*) |
| *“O to A for life, then 1 day after A’s death, to B”* | NO (*EI* in B, 1-day *reversion* in O) | *FPI* does NOT become possessory immediately upon *natural expiration* of *life estate* (A’s death) b/c of *mandatory gap* |
| *“O to A for 40 yrs., then to B”* | MAYBE (*remainder* in some jurisdictions, BUT *EI* in others) | *Estate for yrs.* is *non-freehold* |

If a *remainder*, is it *vested* (*VR*) OR *contingent* (*CR*)?

* If *remainder* is created in *transferee* that is *existing* –**AND**– *ascertained* –**AND**– there is NO *condition precedent* (as opposed to *condition subsequent*) 🡪 *VR*
  + If *VR* is NOT *divestable*, then an *absolutely vested remainder* (*AVR*)
  + If *VR* IS *divestable*, then either a *VR subject to partial divestment* (*VRSPD*) OR *VR subject to complete divestment* (*VRSCD*)
* If NOT all above conditions met 🡪 *CR*

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| --- | --- | --- |
| **Language** | ***VR* OR *CR*?** | **Why?** |
| *“O to A for life, then to B”* | *AVR* in B (*possessory size* is *FSA*) | B is *existing*/*ascertained*, AND NO *condition precedent* 🡪 if B dies before A, then B’s *heir*(s) inherits *FSA* (NO *reversion* in O) |
| *“O to A for life, then to B if B survives A”* | *CR* in B (*possessory size* is *FSA*) | *“if B survives A”* IS a *condition precedent* 🡪 B must survive A in order for *CR* to *vest*… if B dies before A, then B’s *heir*(s) get nothing (*reversion* in O) |
| *“O to A for life, then to B for life if B survives A”* | *AVR* in B (*possessory size* is *life estate*… thus, *reversion* in O) | *“if B survives A”* is NOT a *condition precedent* 🡪 unnecessary language (same as *“O to A for life, then to B for life”*) |
| *“O to A for life, then to A’s children”* | *VRSPD* in A’s children born before O’s death… *VRSPD* (OR *EI*, depending on interpretation) in A’s children born after O’s death | *“A’s children”* have *CR* until A has 1st child… upon having child(ren), *CR* becomes *VR*… though, # of children born shall interpret divestment (2 children get ½ each, BUT if/when 3rd child born, then 3 children get 1/3rd each) |

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| **Language** | ***VR* OR *CR*?** | **Why?** |
| *“O to A for life, then to B when B turns 21”* | *CR* in B (*possessory size* is *FSA*) | *“when B turns 21”* IS a *condition precedent* 🡪 B must turn 21 in order for *CR* to *vest* |
| *“O to A for life, then to B, but if B dies under 21, then to C”* | *VRSCD* in B (*possessory size* is *FSSEI*)… *EI* in C | *Remainder* will *vest* upon A’s death… BUT, if B thereafter dies under 21 (*condition subsequent*), then lost to C |
| *“O to A for life, then to A’s children, but if none survive A, then to B”* | *VRSCD*/*VRSPD* in A’s children (*possessory size* is *FSSEI*)… *EI* in B | *VRSCD* b/c of survivorship as *condition subsequent*… AND, *VRSPD* b/c A could have more children |
| *“O to A for life, then to B when B turns 21, but if B dies under 21, then to C”* | *Alternate CR*s in B and C –OR– *VRSCD* in B (*possessory size* is *FSSEI*) and *EI* in C | *“when B turns 21”* IS a *condition precedent*… BUT, when ambiguous, court prefers *VR*s to *CR*s |
| *“O to A for life, then to A’s widow for life, then to B”* | *CR* in A’s widow (*possessory size* is *life estate*)… *AVR* in B | A’s widow won’t be *ascertained* until A dies… BUT, whether or not A leaves widow, B’s *remainder* will *vest* |

If *CR*, is it destroyed?

* If jurisdiction follows *destructability rule*, AND *CR* cannot *vest* upon *natural expiration* of *life estate* 🡪 YES…
  + … unless, *CR* is to *vest* to conceived-but-unborn child (NOT destroyed)
* If *reversion* is transferred to holder of *life estate* 🡪 YES (*CR* destroyed as per *merger* of *life estate* and *reversion* into *FSA*)…
  + … but, NOT if *life estate*, *CR* AND *reversion*/*AVR* are all created in the same document… though, if *transferee* then transfers both *life estate* AND *reversion*/*AVR* to another *transferee*, then intervening *CR* would be destroyed

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| **Language** | ***CR* Destroyed?** |
| *“O to A for life, then to A’s first child”* (in *destructability rule* jurisdiction) | If A dies w/ NO children, then YES… BUT, if A dies w/ pregnant wife, then NO |
| *“O to A for life, then to B if B marries”* | If O transfers *reversion* to A, then YES |
| *“O to A for life, then to B if B marries, then to A”* | NO (b/c A’s *life estate*, B’s *CR*, and A’s *AVR* all created in same document)… BUT, if A transfers *life estate* AND *AVR* to C, then YES |

**REMEDIAL DEVICES**

O (transferor/grantor) conveys to A (transferee/grantee) w/ restriction…

**Language**

*Forfeiture* as remedy 🡪 *PR*/*PT* if to O, *EI* if to 3rd party

*Damages*/*injunction* as remedy 🡪 *covenant*/*equitable servitude*

NO remedy 🡪 *declaration of purpose*

**Differentiating b/w *PR* and *PT***

Language re: A’s estate, but NO language re: O’s future interest 🡪 PR (*automatic forfeiture*)

Language re: A’s estate AND O’s future interest 🡪 *PT* (*optional forfeiture*)

Ambiguous 🡪 constructional preference for A

* Whichever is less harsh for A (*damages*/*injunction* **<<<** *optional forfeiture* **<<<** *automatic forfeiture*)…
* … unless, multiple remedies are consistent (*C*/*ES* consistent w/ *PT*, but NOT w/ *PR*) 🡪 in which case, O MAY choose

|  |  |
| --- | --- |
| ***PR* Flag Words** 🡪 *“O to A…* | ***PT* Flag Words** 🡪 *“O to A…* |
| *… so long as…”* | *… on condition that… and if… O has the right to reenter”* |
| *… while…”* | *… provided that… and if… estate may be terminated by O”* |
| *… during…”* | *… but if… O reserves the power to terminate”* |
| *… until…”* | *… if however… O can forfeit the estate”* |

***EI* Void as per *RAP***

If original language (of now-voided *EI*) is *automatic* 🡪 A has *FSD*, O has *PR*

* A’s estate must be lost upon violation 🡪 since it can’t go to 3rd party, it must go to O

If original language (of now-voided *EI*) is *optional* 🡪 A has *FSA* (w/ NO restriction)

* A’s estate would be lost ONLY if 3rd party exercised option 🡪 BUT, 3rd party has lost option

**Enforcement of *Remedial Device***

Party w/ *benefit* (*substantial interest* AND *remedial device*) may enforce against party w/ *burden*

* O has *substantial interest* if purpose is *personal* (i.e. *“for research purposes only”*)…
* … BUT, O may NOT have *substantial interest* if purpose is *land-related* (i.e. *“for single family residence only”* 🡪 if O is land-developer, then O would rather transfer *remedial device* to neighboring lots)

**Defenses**

*Legal defenses* always work… BUT, *equitable defenses* MAY not *“knock out”* a *PR*/*PT*/*EI* (if state views as more an *“estate”* than a *“remedial device”*)

* In CA, A MAY bring action for *quiet title*/*declaratory relief* (as per CCP § 1060) w/o violating restriction (*“pre-breach judgment”*)…
* … BUT, other states may require violation of restriction before action may be brought 🡪 thus, A risks losing title to determine whether defense is valid

|  |  |  |
| --- | --- | --- |
| *Adverse possession* (SoL) | *Marketable Record Title Legislation* (statutory time limit) | *Changed conditions* |
| *Estoppel* (detrimental reliance, but NO specific period of time required) | *Laches* (beyond *“reasonable time”*, but NO reliance required) | *Waiver* as per *lack of uniform plan/scheme* |
| *Unclean hands* | Illegality | Single continuous breach vs. multiple consecutive breaches |

**RULE AGAINST PERPETUITIES**

Is *CR*/*EI* valid OR void under *RAP*?

* If there is NO way that *CR*/*EI* could *vest* beyond the *RAP period* (21 yrs. after the death of any *measuring life*/*life in being*) 🡪 valid
* If it is possible for *CR*/*EI* to *vest* beyond the *RAP period* 🡪 void
  + Consider 🡪 actual facts at time that interest is created (and *RAP period* begins) AND possibilities during *RAP period*

Notable consideration #1 🡪 whether [\_] can have more children AND whether [\_]’s child(ren) is a *life in being* (AND, thus, could be used as own *measuring life*)…

|  |  |  |
| --- | --- | --- |
| **Language** | **Void OR Valid?** | **Why?** |
| *“A to B for life, then to the first child of B who becomes a lawyer”*… B is alive w/ 1 child (C) who is NOT a lawyer | VOID | Possible that C could become lawyer 21+ yrs. after B’s death… AND, also possible that B has 2nd child who becomes a lawyer 21+ yrs. after all *measuring lives* die |
| *“A to B for life, then to the first child of B who becomes a lawyer”*… B is dead w/ 1 child (C) who is NOT a lawyer | VALID | C may serve as own *measuring life*, AND *CR* could NOT vest 21+ yrs. after C’s death… AND, b/c B is dead, there is NO other child who become a lawyer 21+ yrs. after C’s death |

Notable consideration #2 🡪 specified age in *condition precedent*…

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| --- | --- | --- |
| **Language** | **Void OR Valid?** | **Why?** |
| *“A to B for life, then to the first child of B to reach 25”*… B is alive w/ 10-yr.-old child (C) and 12-yr.-old child (D) | VOID | Possible that B could have 3rd child, who could reach 25 21+ yrs. after all *measuring lives* die |
| *“A to B for life, then to the first child of B to reach 21”*… B is alive w/ 10-yr.-old child (C) and 12-yr.-old child (D) | VALID | Even if B has 3rd child, B’s 3rd child would reach 21 before 21+ yrs. after all *measuring lives* die |

Notable consideration #3 🡪 use of (proper) *savings clause*…

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| --- | --- | --- |
| **Language** | **Void OR Valid?** | **Why?** |
| *“Creation in will of interest to vest and be possessory in the person who is A’s youngest lineal descendant at expiration of 20 yrs. from the day of the death of all lineal descendants of* [famous person]*, who shall be living at the time of A’s death”* | VALID | At A’s death, famous person’s living lineal descendants used as *measuring lives*… thus, *EI* would vest 20 yrs. after all *measuring lives* die |
| *“Creation in deed of interest… all lineal descendants of* [famous person]*, who shall be living at the time of A’s death”* | VOID | A is still alive at time of creation of interest (when *RAP period* begins)… thus, famous person could have more lineal descendants that would NOT be *lives in being*, BUT that could live beyond 21+ yrs. of *RAP period* |
| *“Creation in will of interest… all lineal descendants of* [famous person]*”* | VOID | *RAP period* would begin at A’s death… BUT, b/c of missing language, famous person’s lineal descendants born after A’s death could live beyond 21+ yrs. of *RAP period* |

Notable consideration #4 🡪 *gestation rule*…

|  |  |  |
| --- | --- | --- |
| **Language** | **Void OR Valid?** | **Why?** |
| *“A to his grandchildren who reach 21”*… A dies w/ NO children, BUT A’s widow gives birth to A’s child (B) 7 mos. later… then, B dies w/ NO children, BUT B’s widow gives birth to B’s child (C) 7 mos. later | VALID | Technically, B is NOT *life in being* (born after interest is created)… BUT, as per *gestation rule*, 7-month *gestation period* is added on (SO, B IS *life in being*)… AND, likewise, even though C would reach 21 beyond *RAP period* (7 mos. after B’s death), as per *gestation rule*, *gestation period* is added on (SO, *EI* is valid) |

Notable consideration #5 🡪 *fertile octagenarian rule*…

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| --- | --- | --- |
| **Language** | **Void OR Valid?** | **Why?** |
| *“A to B for life, then to B’s children for their lives, then to B’s grandchildren”*… at A’s death, B is 75 yrs. old w/ 1 child | VOID | Regardless of B’s age/physical condition, B can still have children… thus, possible that B has 2nd child, who then has grandchild 21+ yrs. after all *measuring lives* die |
| *“A to B for life, then to B’s children who are living at A’s death for their lives, then to B’s grandchildren through said children”*… at A’s death, B is 75 yrs. old w/ 1 child | VALID | Granted, possible that B has 2nd child… BUT, said 2nd child would NOT have been living at A’s death… thus, *CR* could ONLY *vest* in grandchildren through B’s 1st child (AND, could NOT *vest* 21+ yrs. after B’s 1st child’s death) |

Notable consideration #6 🡪 *unborn widow rule*…

|  |  |  |
| --- | --- | --- |
| **Language** | **Void OR Valid?** | **Why?** |
| *“A to B for life, then to B’s widow for her life, then to B’s then-living children”*… at A’s death, B is married to W | VOID under common law, VALID in CA | Possible that B could divorce W, marry new wife that was NOT born at A’s death… thus, new wife could still be living 21+ yrs. after all *measuring lives* die… BUT, in CA, there is conclusive presumption that unborn widow is life in being (regardless of when actually born) |

Notable consideration #7 🡪 *distribution contingency*…

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| --- | --- | --- |
| **Language** | **Void OR Valid?** | **Why?** |
| *“A devises the residue of his estate to the Officers of his Elks Lodge who are in office at time of distribution of his estate”* | VOID | Possible that distribution of A’s estate could occur 21+ yrs. after all *measuring lives* die… BUT, if interest created ONLY in those who survive distribution, then would be valid (survivors as own *measuring lives*) |
| *“A leases to B for 10 yrs., the term to commence upon completion of a building, commencement and completion of which is to be prosecuted with due diligence”* | Conflicting authority | Possible that completion could occur 21+ yrs. after all *measuring lives* die… unless circumstances show that building is to be completed within reasonable time (which is less than 21 yrs.) |

Notable consideration #8 🡪 *option to purchase*/*lease option exception*…

|  |  |  |
| --- | --- | --- |
| **Language** | **Void OR Valid?** | **Why?** |
| *“A to B alone the option to purchase for $50K at any time”* | VALID | If ONLY to B, then would be void (b/c B could transfer to non-*life in being*, who could then exercise option 21+ yrs. after all *measuring lives* die)… BUT, OK here b/c to B *“alone”* (thus, NOT presumed transferable) |
| *“A to B, subject to option in A to repurchase for $50K”* | Likely VOID | NOT to A *“alone”*, so presumed transferable… BUT, arguably a *PT* (*retained by transferor*), which is NOT subject to *RAP* |
| *“A to B for 65 yrs., with option to purchase for $50K during the term”* | VALID | Granted, option could be exercised 21+ yrs. all *measuring lives* die… BUT, OK under *lease option exception* b/c ONLY exercisable during lease term |

Notable consideration #9 🡪 *installment land sale contract*…

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| **Language** | **Void OR Valid?** | **Why?** |
| *“A to B and assigns under an installment land sale contract, A retains legal title until paid in full”* | Likely VOID | Possible that contract NOT paid in full until 21+ yrs. after all *measuring lives* die… BUT, arguably a *security interest*, which is NOT subject to *RAP* |

Notable consideration #10 🡪 *power to revoke trust*…

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| --- | --- | --- |
| **Language** | **Void OR Valid?** | **Why?** |
| *“A in trust, income to A for life, then income to A’s children, then principal to A’s grandchildren, reserving to A the power to revoke the trust”* | Depends | *RAP period* begins upon A exercising *power to revoke trust*… SO, if A exercises power (OR never had power), then possible that interest will NOT *vest* until 21+ yrs. later… BUT, if A does NOT exercise power, then *RAP period* begins when A dies, AND interest in A’s grandchildren would NOT *vest* 21+ yrs. after A’s children (*measuring lives*) die |

Notable consideration #11 🡪 *charitable exception*…

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| --- | --- | --- |
| **Language** | **Void OR Valid?** | **Why?** |
| *“A to B Charity, but if cease use for hospital purposes, to C Charity”* | VALID | Granted, possible that cease of use for hospital purposes will occur 21+ yrs. after all *measuring lives* die… BUT, b/c from charity-to-charity, exempt from *RAP* (void if either *transferee* is NOT a charity) |

Notable consideration #12 🡪 *powers of appointment*/*after-developed facts doctrine*…

* If a *general power presently exercisable* 🡪 *RAP period* does NOT begin until power exercised
* If *“anything else”* (*general power testamentary*, *special power presently exercisable* OR *special power testamentary*) 🡪 *RAP period* begins when power created…
  + … BUT, *after-developed facts doctrine* may apply

|  |  |  |
| --- | --- | --- |
| **Language** | **Void OR Valid?** | **Why?** |
| *“A to B for life, then to B’s children for their lives, then principal to such of B’s grandchildren as the oldest child of B shall appoint”*… at A’s death, B has NO children | VOID | B’s oldest child has *special power presently exercisable*, which was created at A’s death (*RAP period* begins)… thus, possible that power will be exercised 21+ yrs. after all *measuring lives* die |
| *“A to B for life, then to B’s children for their lives, then principal to such person(s) as oldest child of B shall appoint”*… at A’s death, B has NO children | VALID | B’s oldest child has *general power presently exercisable*… thus, B’s oldest child will acquire power at B’s death (B as *measuring life*), AND possible that power will be exercised within 21 yrs. of B’s death |
| W devises *general power testamentary* to H… H dies 3 mos. later… H’s will exercises power (*“In trust, income to H’s children for life, the trust to terminate on the death of the last survivor of children and grandchildren living at the time of H’s death, and distribution per capita to H’s great-grandchildren”*)… all children and grandchildren alive at W’s death are alive at H’s death | VALID | *General power testamentary* was created at W’s death, SO power would be void (since H could have exercised beyond *RAP period*)… BUT, as per *after-developed facts doctrine*, NO further children/ grandchildren were born b/w time that power was created (W’s death) AND time that power was exercised (H’s death) |

Notable consideration #13 🡪 *class gift*/*all-or-nothing rule*…

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| **Language** | **Void OR Valid?** | **Why?** |
| *“A to B for life, then to B’s children for their lives, the principal to B’s grandchildren”*… C1 born before A’s death, C2 born after A’s death | VALID for B’s children, VOID for B’s grandchildren | *VRSPD* in B’s children will NOT *vest* 21+ yrs. after B’s death… BUT, C2 (NOT a *life in being*) could produce child (B’s grandchild) 21+ yrs. after death of C1 (*life in being*) |
| *“A to B for life, then to B’s children who reach 25”*… at A’s death, B has 4 children, all under 25 | VOID | Possible that B could have 5th child, who could reach 25 21+ yrs. after all *measuring lives* die |
| *“A devised $1K to each child of B who reaches 25”*… at A’s death, B has 4 children, all under 25 | VALID | NOT a *class gift* b/c *specific amount*… thus, analyze each gift separately (each of B’s children as own *measuring lives*) |
| *“A to B for life, then to B’s children for life, and at death of each of B’s children, his/her respective share was to pass to his/her issue forever”*… B has child (C1) before A’s death, and child (C2) after A’s death | VALID for C1’s grandchild(ren), VOID for C2’s grandchild(ren) | *Class gift* in *respective shares* (*per stripes*/ *right of representation*), NOT *equal shares* (*per capita*)… thus, analyzed separately |

Notable consideration #14 🡪 *rule of convenience*/*class-closing rule*…

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| **Language** | **Void OR Valid?** | **Why?** |
| *“A to B’s children who reach 25”*… at A’s death, B is alive w/ 3 children (25, 10, 5) | VALID as to 3 children | 25-yr.-old is entitled to possession now… thus, class is closed, even though B still alive (as per *rule of convenience*/*class-closing rule*)… 10-yr.-old and 5-yr.-old as own *measuring lives* |
| *“A to B for life, then to C’s children who reach 25”*… at A’s death, B and C alive, and one of C’s children is 25 | VALID as to 25-yr.-old ONLY | 25-yr.-old is entitled to possession upon B’s death… BUT, b/c B is still alive, class is NOT closed (C can have more children who would NOT be *lives in being*) |

Notable consideration #15 🡪 *potential posthumous birth disregarded* (CA ONLY)…

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| **Language** | **Void OR Valid?** | **Why?** |
| *“A to B for life, then to B’s children that reach 21”*… B dies w/ NO children, BUT B’s widow gives birth to B’s child 7 mos. later | VALID under common law (as per *gestation rule*), VALID in CA (as per *potential posthumous birth disregarded*) | Common law adds *gestation period* to *RAP period* (thus, *CR* valid even though B’s child will NOT reach 21 until 21+ yrs. after B’s death)… BUT, CA ignores fact that B’s child was born after B’s death |
| *“A to B for life, then to B’s children that reach 21”*… B dies w/ NO children, BUT B’s sperm frozen… B’s child born several yrs. later | VOID under common law, VALID in CA | Under common law, *CR* void b/c B’s child NOT the product of *gestation*… BUT, in CA, irrelevant whether or not B’s child the product of *gestation* |