Property – Estates and Future Interests, Edwards, 3rd Edition

I. Possessory Estates

Durational Nature:

1. Fee simple – unlimited duration. O to A and his heirs

2. Fee tail – until the line runs out. O to A and theirs of his body.

3. Life estate – until the measuring life dies. O to A for life

4. Term of Years – until the term expires. O to A for 10 years.

Added Limitations

1. Determinable – the limitation uses until, during, so long as, while and is before the punctuation mark.

2. Subject to a condition subsequent – the limitation uses words like but if, however, on condition that, provided that and is placed after the punctuation mark.

II. Future Interests

In grantor

1. Reversion – waits patiently

2. Possibility of reverter – waits patiently but follow a determinable estate

3. Right of entry - interrupts, follows subject to a condition subsequent

In grantee

1. Remainder

Vested remainder, Ascertained taker and no condition precedent

Vested remainder subject to divestment, may be divested before becoming possessory

Contingent Remainder, unascertained taker or condition precedent

2. Executory interest, follows determinable or subject to an executor limitation.

Shifting – follows estate in grantee

Springing – divests in the grantor

III. Definitions

Possessory Estate Grantor’s Future Interest

Fee tail, life estate, or term of years - Reversion

Fee simple determinable - Possibility of Reverter

Fee simple subject to a condition subsequent - Right of entry

Remainder – O to A for life, then to B. A future interest created when a grantor conveys an inherently limited possessory estate and, in the same conveyance, conveys future interest to a second grantee.

Reversion – O to A for life, then to O. A future interest created when a grantor conveys an inherently limited possessory estate and retains the future interest rather than conveying it to a second grantee.

Vested Remainders

1. It is given to an ascertained person and

2. The words creating the remainder do not include a condition precedent (other than the natural termination of the preceding estate).

Contingent Remainders

1. It is given to an unascertained person or

2. The words creating the remainder contain a condition precedent (in addition to the natural termination of the preceding estate).

Ascertained Taker – born and identified

Condition Precedent

An unmet condition that is set out within the description of a particular estate, and, must be satisfied before that estate can become possessory.

Alternative Contingent Remainders

Contingent remainders are “alternative” when they each follow the same estate and when their conditions precedent are the opposite of each other, so that the vesting of one precludes the vesting of the other.

Doctrine of destruction of Contingent Remainders

A contingent remainder is destroyed if it is still contingent when the prior estate ends.

Doctrine of Worthier Title

If:

1. The same intervivos conveyance

2. Conveys an inherently limited estate to a grantee and

3. A remainder or an executor interest to the grantor’s heirs,

Then:

The conveyance to the grantor’s heirs is read as a conveyance to the grantor.

Rule in Shelly’s Case and Merger

1. O to A for life, then to A’s heirs.

The Rule in Shelly’s Case reads the contingent remainder in A’s heirs as a remainder in A

Is the remainder contingent? No, because now the holder of the remainder is ascertained, so the remainder is vested

Does merger apply? Yes, because the remainder is now vested. The merger doctrine merges the life estate into the vested remainder.

2. O to A for life, remainder to A’s heirs if A survives B.

The Rule in Shelley’s Case converts the contingent remainder in A’s heirs into a remainder in A.

Is the remainder in A still contingent? Yes. The holder is now ascertained, but the condition precedent remains.

Does merger apply? No, because the remainder is contingent.

3. O to A for life, then to B for life, then to A’s heirs.

The Rule in Shelley’s Case converts the contingent remainder in A’s heirs into a remainder in A.

Is the remainder in A still contingent? No. Now, the holder of the remainder is ascertained. The remainder is now vested.

Does merger apply? No, because there is an intervening vested estate (B’s life estate).

Destructibility of Contingent Remainders

A remainder is destroyed if it does not vest at or before the termination of the preceding estate. The doctrine does not apply to executor interests.

Mergers:

If

1. A possessory or vested life estate and the next vested estate in fee simple subsequently come into the hands of the same person and

2. These two estates are not separated by another vested estate

Then

3. The estates merge, and

4. Any contingent remainder between them is destroyed.

Contingent Interest

1. The identity of the holder is unascertained, or

2. The interest is subject to a condition precedent (other than the termination of the prior estate.

Vested Interest

1. The holder is ascertained, and

2. The interest is not subject to a condition precedent (other than the termination of the prior estate.

The Three Vulnerable Future Interests

1. Contingent Remainders

2. Vested remainders subject to open

3. Executory interests

Rule Against Perpetuities

A future interest is void the moment it is created if

1. It is in a grantee (a remainder or executor interest;

2. It is either contingent (given to an unascertained taker or subject to a condition precedent or both) or subject to open; and

3. It might still exist and still be contingent or subject to open longer than 21 years after the death of the last person alive at the time of the conveyance.

Rule Against Perpetuities Danger Signs

1. The condition is not personal to someone

2. There is an identified age or time period of more than 21 years.

3. An interest is given to a generation after the next generation (grand children).

4. A conveyance requires that a holder survive someone who is merely described rather than named.

5. An identified event that would normally happen well within 21 years, but might not.

6. The holder won’t be identified until the death of someone merely described rather than named.

Applying Multiple Doctrines

At the time of the conveyance

1. Applying the Rule in Shelly’s Case (and merger, if applicable) to any offending grantee interst.

2. Apply the doctrine of worthier title (and merger, if applicable) to any offending interest given to the grantor’s heirs.

3. Apply the Rule Against Perpetuities to any vulnerable contingent or open grantee interest (keeping in mind that a contingent remainder might be saved if the jurisdiction applies the doctrine of destruction of contingent remainders).

After Subsequent Factual Developments

4. Apply merger to any vested interests that come into the hands of the same person and are not separated by another vested estate.

5. Apply the doctrine of destruction of contingent remainders to any remainder still contingent at the close of the prior estate.