I. FREEHOLD POSSESSORY ESTATES

A. Land held tenurially: If a person dies intestate (without a will), her land escheats to the state in which the land is located

   1. Theory of Tenurial Escheat: If a tenant dies without heirs, escheat to the state takes place by way of reversion to the state (*In Re Estate of O’Connor*)

B. Land owned alodialy: If there is no tenure (as in some states) if a person dies intestate without heirs, her lands escheat to the state as an **intestate successor** by virtue of a state statute. Escheat still results.

   1. NOTE: unlike tenure, alodialy owned lands passes forward, e.g. inheritance taxes would apply.

C. The System of Estates

   1. estate: interest in land that is or may become possessory, and is measured by some period of time

   2. types

      a. **fee simple**: an estate that has the potential of enduring forever, i.e. absolute ownership.
         (1) “to A and his heirs”

      b. **fee tail**: estate that has the potential of enduring forever, but will necessarily cease if and when the first fee tail tenant has no lineal descendants to succeed him in possession
         (1) “to A and the heirs of his body”

      c. **life estate**: an estate that will end at the death of a person
         (1) “to A for life”

      d. **leasehold estate**: estates that endure
         (1) for any fixed calendar period (**term of years**), OR
         (2) from period to period until the landlord or tenant gives notice to terminate at the end (**periodic tenancy**), OR
         (3) so long as both the landlord and tenant desire (**tenancy at will**)

3. **Freehold** (has seisin) and **Nonfreehold** (possession, i.e. lease) Estates

   a. **seisin**: holds a 1) freehold estate, and has 2) possession of the land or a tenant holds possession from him
(1) to A for life: freehold and seisin
(2) to A for ten years: nonfreehold, no seisin

D. Creation of Estates

1. **Words of limitation**: describe what type of estate is created
   a. …and his heirs

2. **Words of purchase**: identify the person in whom the estate is created
   a. to A…
   b. remainder to the heirs of B.

E. Possessory Estates and Future Interests

1. **possessory estate**: gives the holder the right to immediate possession
2. **future interest**: does not entitle the owner to present possession, but will or may become a possessory estate in the future.
   a. Remainders

F. No new estates may be created

1. fee simple, fee tail, the life estate, and leasehold estates are the only estates permissible. New types cannot be created
2. if an attempt is made to create a new type, the language of the creating instrument will be construed to create an estate within one of the existing categories

   *Johnson v. Whiton*: devise “to Sarah and her heirs on her father’s side” closest estate match is “to Sarah and her heirs”, which gave Sarah a fee simple.

II. THE FEE SIMPLE ABSOLUTE

A. Characteristics

1. absolute ownership
2. potentially infinite duration
3. no limitations on its inheritability
4. cannot be divested

B. creation of…

1. “to A and his heirs”
2. **Common law**: “and his heirs” were not necessary to create a FS by will. Any words indicating that the testator intended to devise a FS would do.
3. **Modern law**: “and his heirs” words of inheritance in a deed requirement abolished in almost all states.
   a. nowadays, a deed or will is presumed to pass the largest estate the grantor or testator owned

C. **inheritability**

1. if the owner of a FSA dies intestate, FSA inherited by owner’s heirs
   a. **heirs**: those persons who succeed to the real property under the state of intestate succession
      
      (1) **spouse**: if decedent leaves no blood kin, spouse will succeed title
      (2) **ancestors**: if decedent leaves no kin or spouse, parents take

D. **Uniform Probate Code** (adopted in many states)

1. **share of spouse**: takes one half, the other half goes to issue, if none, parents, if none, to the spouse

2. **share of issue** (children, grandchildren, and all further descendents):
   a. **children’s share**: if the decedent leaves a spouse and children, spouse takes half, and children divide half. If no spouse, children take all in equal shares
      
      (1) **per stirpes distribution**: if a child predeceases the decedent, leaving issue, the issue represent the child and takes the child’s portion.
      
      (2) **grandchildren’s share**: grandchildren don’t take if parent is alive. Grandchildren share only under the principle of representation
      
      (3) **example**: O dies intestate, leaving no spouse, a child A, and two sons of a child B who predeceased O. A and the two sons of B are O’s heirs. A takes ½; the two sons of B, representing B, divide the other half.

   b. **adopted children**: treated as a child of the adoptive parent and not as a child of her natural parents

   c. **illegitimate children**: inherits as a child of her mother, and if paternity is established, as a child of her father.
d. **Stepchildren**: do not take. Except for the spouse and adopted children, only blood relatives of the decedent take as heirs.

3. **parents share**: if the decedent leaves issue, parents do not take. If the decedent leaves a spouse and no issue, parents take ½, and the spouse ¼. If no spouse and issue, parents take all.

4. **Devises and legatees**: if a decedent leaves a will, the persons who are devised land are called *devisees*. Persons who are bequeathed personal property are called *legatees*. Both take under will.

III. **Defeasible Fees**: also of potentially infinite duration, but the fee is defeasible on the happening of some event.

A. **Fee simple determinable**: FS so limited that it will automatically revert back to the grantor upon the happening of some specified event. The grantor is left with a *vested remainder* in the form of a *possibility of reverter*.

1. **example**: O conveys BA to “schoolboard so long as the premises are used for school purposes.” “So long as” are *words of limitation* which limit the FS.

2. **creation of a FSD**: to A…
   
   a. “so long as…”
   b. “until…”
   c. “while…”
   d. or language providing that upon the happening of a stated event the land is to *revert* to the grantor.

   **note**: motive or purpose of the grantor DO NOT COUNT, i.e. “upon the understanding that…”

3. **transferability**: FSD may be transferred or inherited in the same manner as a FS, but the FS remains subject to the limitation at all times.

4. **abolition**: CALIFORNIA & KENTUCKY have abolished the FSD; any language that would create a FSD creates a FS subject to condition subsequent (FSCS).

IV. **Fee simple on condition subsequent**: does not automatically terminate but may be *divested* at the grantor’s election by *right of re-entry* or **power of termination** (also a future vested interest in the grantor). The grantor has the option of exercising this power or not.
A. **example**: O conveys BA “to A, but if liquor is ever sold on the premises, the grantor has a right to reenter the premises.” “but if…” are **words of condition**, and are not words limiting the fee simple granted.

B. **creation of a FSCS**: to A,

1. “but if X event happens…”
2. “upon condition that if X event happens…”
3. “provided, however, that if X event happens…”
4. a-c + “the grantor retains a right of entry.”

**Note**: If the words of the instrument may be interpreted that a FSCS was contemplated, the court will imply a ROR. However, a court will not imply a ROR where none is provided in a deed b/c equity will not aid forfeiture.

C. **transferability**: may be transferred or inherited until the transferor is entitled to and does exercise the right of reentry.

D. **FSCS distinguished from a FSD**

1. **construction of ambiguous language**: a FSCS is preferred over a FSD b/c forfeiture is optional at the grantor’s election and not automatic.
   a. general policy of the courts is to avoid forfeiture of estates.
   b. **example**: O conveys “to A so long as X, and if X, O has a right to reenter.” FSCS is preferred although language contains both.
   c. *Oldfield v. Stoeco Homes*: ignored words of the deed, instead looked to intent of the entire circumstances surrounding the transaction. FSD ignored, considered deed a FSCS.

2. **waiver**: a ROR can be waived

3. **Statute of Limitations**:
   a. **example**: O conveys land “to school board so long as used for a school, but if not, O retains the right to reenter.” In 1970, Board ceases to use land for a school, but stays in possession. O does nothing. Statute of Limitations is 20 years.

   (1) **if a FSD**, FS reverts to O in 1970. Board is thereafter in adverse possession, and in 1990, takes title.
(2) if a FSCS, O’s right of action is subject to the condition precedent that she elect to declare a forfeiture; thus, Statute of Limitations has not yet begun to run.

Note: in some modern cases, Statute of L runs from time the condition is broken.

4. **Restraints upon marriage**: struck down as violations of public policy if the restraint is to penalize marriage; however if restraint is to give support until marriage, restraint is valid.

V. **Fee simple subject to an executory limitation**

A. FS, upon happening of stated event, is automatically divested in favor of a 3rd person.

1. **example**: O conveys BA “to A, but if X, then to B.” Forfeiture interest is in another grantee, AKA an **executory interest**.

VI. **the Fee Tail**: “to A and the heirs of his body.”

A. **nature of estate**:

1. lasts as long as the grantee or any of his descendants survive
2. it is inheritable only by the grantee’s descendants.

B. **future interests following FT**:

1. **reversion**: O conveys BA “to A and the heirs of his body.” A has a FT; O has a reversion in FS to become possessory upon expiration of the FT.

2. **remainder**: O conveys BA “to A and the heirs of his body, and if A die without issue, to B and her heirs.” A has a FT; B has a vested remainder in FS to become possessory upon expiration of the FT.

3. **meaning of “die w/o issue”**:

   a. **definite failure of issue**: “if A dies w/o issue” can mean if A has no issue surviving him at his death. The definite time being A’s death.

   b. **indefinite failure of issue**: when A and all his descendants are dead. The event is in the indefinite future.

   Note: English courts generally favor the indefinite failure of issue construction.
Cacomo v. Banning rule: if a remainder were limited to take effect on the death of the preceding FS tenant w/o issue, it converted the preceding FS into a FT (from to A and his heirs, but if A dies w/o issue, to B and her heirs).

C. Characteristics

1. **during tenant’s life:** tenant in FT could do nothing to defeat the rights of the tenants lineal descendants, and had only a LE. **Caveat:** FT tenant could defeat the rights of his lineal descendants by **disentailing.**

   a. **disentailing example:** O conveys BA “to a and the heirs of his body, and if A dies w/o issue, to B and her heirs.” A has a FT, B a vested remainder in FS. Thereafter, A conveys by deed “to C and his heirs.” This deed purports a FS to C, cutting off all rights in A’s issue and in B. C can now convey a FS back to A.

D. Status under Modern Law

1. **FT still exists in a few states:** FT tenant can, at any time, disentail and convey a FSA by deed. Serves only to exclude collateral kindred from inheritance.

2. **FT abolished in most states:** FT language can be interpreted as…

   a. A has a LE, w/ remainder in FS to A’s issue.

   b. A has a FS (large majority):

      (1) **example:** O conveys BA “to A and the heirs of his body, and if A dies w/o issue, to B and her heirs.”

      (a) ½ states, A takes FSA, A’s issue and B take nothing

      (b) other ½ states, A takes FS, A’s issues take nothing, BUT B takes a future interest that will become possessory if at A’s death no issue of A are alive (definite failure of issue)

   c. A has a FSC: in two states, if a child is born to A, A can convey a FS. If a child is not born, A’s estate ends at A’s death.

VII. **the Life Estate:** has potential duration of one or more human lives

A. Types

1. **For life of grantee:** to A for life…
2. **Pur autre vie**: estate is measure by the life of someone other than the owner of the life estate.

   a. **creation by**: a) A, a life tenant, conveys her life estate to B, or b) A conveys to B for the life of C.

   b. **if tenant predeceases measuring life**: under modern law, descends to B’s heirs.

3. **in a class**: “to the children of A for their lives, remainder to B.” Usually, as each tenant dies, remaining share goes to surviving tenants.

   a. **note**: “to the children of A for their lives, and at their respective deaths, to B” means that with each death, B receives the opened share.

4. **defeasible life estates**:

   a. “to A for life, so long as A remains unmarried” A has a LE terminable upon marriage (may violate rule against restraints on alienation)

   b. “to A for life, but if A does not do X, O retains ROR.” A has LE SCS.

   c. “to A for life, but if B returns from Rome during A’s life, to B.” A has LE subject to an executory limitation

5. **construction problems**: usually look to the probable **intent of the grantor**.

   a. to my wife, W, to be used as she shall see fit, for her maintenance and support – majority view: generally a FS with a reason for the gift

6. **alienability of LE**: life tenant ordinarily free to transfer, lease, encumber, or otherwise alienate her estate inter vivos

7. **limited utility of a LE**

   a. cannot borrow money with a LE as security

   b. lease land beyond his death

   c. sell land in FS

   d. **additional powers**: may give life tenant powers to sell property, lease or mortgage it

   e. **equitable LE**: O can devise BA to X in trust for H for life, remainder to O’s children. X, the trustee, owns in FS. H has right to receive all
income or to take possession of it. X is must manage property, and is
eheld accountable for mismanagement.

B. waste: conduct by the life tenant that permanently impairs the value of the
land. Under the assumption that the grantor intends the life tenant to use the
land in a reasonable manner and to pass the land to the owner of the remainder
without change in nature, character, or improvements.

1. types of waste

a. affirmative (voluntary) waste: life tenant actively causes permanent
injury by destroying buildings or removing natural resources.

(1) note: upgrading land into more valuable commodity generally not
considered waste, i.e. woodland to farmland.

b. permissive (involuntary) waste: land is allowed to fall into disrepair,
or tenant fails to take reasonable measures to protect the land from the
elements.

c. ameliorating waste: when pricipal use of land is substantially
changed – usually by tearing down a building – but the change
increases the value of the land. Actionable if:

(1) grantor intended to pass land w/specific buildings on it to the
holder of the remainder

(2) the building can reasonably be used for the purposes built

note - Melms v. Pabst: If building is located in an area where
it can no longer be used effectively, life tenant can demolish it
provided the value of the property is enhanced.

(3) remedies for waste: owners of remainder may enjoin threatened
waste by the life tenant or recover damages. If the ultimate future
owner of the land is not now ascertained, damages may be
impounded by the court pending determination of the ultimate
takers.

VIII. the Rule Against Restraints on Alienation

A. types of restraints

1. forfeiture restraints: if the grantee attempts to transfer his interest it is
forfeited to another person. Example: O conveys BA “to A and his heirs,
but if A attempts to transfer the property by any means whatsoever, then to B and her heirs.”

2. **disabling restraints**: withholds from the grantee the power of transferring her interest.  *Example:* O conveys BA “to A and her heirs but any transfer hereafter in any manner of an interest in BA shall be null and void.”

3. **Promissory restraint**: provides that the grantee promises not to transfer his interest.  *Example*: O conveys BA “to A and his heirs, and A promises for himself, his heirs, and successors in interest that BA will not be transferred by any means.”

B. **restraints on a FS**

1. **total restraints**: upon a FS is **VOID**. In the preceding examples, A, the grantee, has a FSA, alienable at will.

   a. **rationale**: restrains on alienation take property out of the market, making it unusable for the best use dictated by the market. Tend to make property unmortgageable, and therefore unimprovable, to concentrate wealth in the class already rich, and to prevent creditors from reaching the property to pay the owner’s debts.

2. **partial restraints**: one that purports to restrict the power to transfer to specific persons, or by a specific method, or until a specific time. Mainly held void, but some **exceptions** –

   a. **reasonable restraints doctrine**: partial restraints are valid if reasonable. The restraint must have a reasonable purpose and be limited in duration

3. **co-tenants**: agreement by tenants in common or joint tenants that they will not partition the property is valid if reasonable in purpose and limited in time.

4. **restraint on use**: have almost always been upheld.

   *Mountain Brow Lodge v. Toscano* a restraint that the property can be used only by the grantee has been upheld

5. **racial restraints**: restraints prohibiting the transfer or use of the property to or by a person of a specified racial, religious, or ethnic group are not enforceable, and is forbidden by the Equal Protection Clause of the 14th amendment of the U.S. Constitution.
C. restraints on a LE

a. legal life estate: a restraint on a LE may add little practical inalienability b/c it is not marketable since the life tenant may die at any time.

  (1) Disabling restraints have been struck down,
  (2) BUT, forfeiture and promissory restraints have often been upheld.

IX. FUTURE INTERESTS

A. general advice

  1. two major rules:
    a. pay careful attention to the exact language used in the grant
    b. read and analyze the interests in a grant in sequence

  2. hints
    a. classify the present estate
    b. look at who has the future interest: if it’s the grantor, 3 choices.
    c. Think about how the future interest will become possessory
    d. Determine whether the interest is vested or contingent:
    e. Apply the following rules to contingent interests
      (1) Destructibility of contingent remainders
      (2) the Rule in Shelley’s Case
      (3) the Doctrine of Worthier Title
      (4) the Rule Against Perpetuities

B. Introduction

1. future interest: a nonpossessory interest capable of becoming possessory in the future. A future interest is a present interest, but it is not a presently possessory interest.

2. categories limited: reversion, possibility of reverter, right of reentry, remainder (contingent and vested), and executory interest

3. future interests in the grantor: reversion, POR, ROR.

   a. reversion: future interest left in the grantor after the grantor conveys a vested estate of a lesser quantum than he has.
property outline
becker

b. possibility of reverter: when a grantor creates a determinable estate.

c. right of reentry: when grantor creates a FSCS.

4. future interests in grantees: must be either a remainder or executory interest.

a. remainder: future interest in grantee w/capacity of becoming possessory at the expiration of prior estates, cannot divest prior estates.

b. executory interests: must divest or cut short prior estate, or spring out of grantor at a future date.

(1) shifting executory interest: to A and his heirs, but if B returns from Rome, to B and her heirs. A has FS subject to executory limitation; B has shifting executory interest.

(2) springing executory interest: to my daughter A when she marries B. O retains FS and creates an executory interest in A to spring out of O when A marries B.

5. legal (no trust) or equitable (trust) interests:

C. Reversion

1. definition: if grantor conveys lesser estate than what he has, retains a reversion.

2. Reversions are vested, fully alienable.

D. Possibility of Reverter

1. from a determinable estate.

2. freely alienable, vested interest.

E. Right of Entry

1. from estate subject to condition subsequent.

2. alienable; in other jurisdictions, inalienable. Inheritable.

F. remainder: capable of becoming a present possessory estate upon the expiration of a prior estate created in the same conveyance in which the remainder is created.
1. must have preceding estate from the same instrument
2. must follow a fee tail, life estate, or term of years
3. must be capable of becoming possessory on natural termination of preceding estate.
4. No remainder after FSA

G. Classification of Remainders

1. **contingent**: remainder that is either created in an unascertained person or subject to a condition precedent
   a. **example**: unborn children – to A for life, then to A’s children. A has no children, contingent b/c not ascertained at time of conveyance
   b. **example**: heirs – to A for life, then to B’s heirs. B is alive. Since no one is an heir of the living, takers are not ascertained.

2. **why is classification important?**
   a. vested favored over contingent
   b. rule of destructibility
   c. rule in Shelley’s case
   d. doctrine of worthier title
   e. Rule against perpetuities

3. **vested**: in an ascertained person and not subject to a condition precedent. Have the right to immediate possession, whenever and however the preceding freehold estates may determine

4. **subclassification of vested remainders**: are not transmissible if it can be divested by a condition subsequent at death, i.e. a survivorship condition
   a. **indefeasibly vested**: certain to acquire
   b. **vested subject to open**: a class of persons
      (1) **class gifts**: either open or closed
(2) class closing rule: rule of convenience – prior to the time it would close physiologically; closes whenever any member can demand possession

(3) transmissible at death: if person takes a vested remainder subject to open, his interest is not divested if he dies before remainder becomes possessory.

c. vested subject to complete divestment:

5. what is not a condition precedent

a. termination of preceding estate

b. surplusage: “to A for life, and on A’s death, to B”

6. condition subsequent: after words giving a vested interest, a clause is added divesting it, the remainder is vested.

a. reversion in O with alternative contingent remainders: “O to A for life, then to B if B survives A, but if B does not survive A to C.” If a life estate terminates prior to life tenant’s death by forfeiture or merger, would revert back to O. Also, if both B and C die simultaneously, neither take.

H. Destructibility of Contingent Remainders: abolished in most states.

1. statement of rule: contingent remainder in land is destroyed if it does not vest at or before the termination of the preceding freehold estate.

a. example: to A for life, remainder to A’s children who reach age 21. When A dies, no child is 21. Remainder is destroyed.

2. rule does not apply to leaseholds.

3. termination of life estate

a. natural termination of life estate

b. artificial termination of life estate:

(1) forfeiture by tortious conveyance

(2) merger: if life estate and a vested remainder or reversion in FS come into the hands of the same person, any intermediate contingent remainders are destroyed. Lesser estate is merged into
the larger (fee simple) and ceases to exist as a separate estate. A life tenant and reversioner can thus conspire to destroy contingent remainders

(a) **example:** to A for life, remainder to B if B survives A. While B is alive, A conveys her life estate to O. Life estate merges into the reversion, and B’s contingent remainder is destroyed. O has a FSA

(b) **exception – fee tail:** Life estates merge into a FS, but fee tails do not. Thus, “to A and the heirs of his body, and if A dies w/o issue, to B and her heirs if B is then living.” A conveys his fee tail to O, the reversioner. B’s remainder is not destroyed. (However, A can destroy B’s remainder by disentailing).

(c) **Exception – simultaneous creation:** if a LE and the next vested estate are created simultaneously, they do not merge at that time to destroy intervening contingent remainders. T to A for life, remainder to A’s children who survive A. A is also T’s heir and inherits the reversion. LE and reversion do not merge; other intent of T would be frustrated. But if A subsequently conveys the LE and reversion to B, estates merge, destroying the contingent remainder.

c. **interests not affected by destructibility rule:**

1. **vested remainders and executory interests**

2. **personal property**

3. **interests in trust**

d. **avoidance of rule**

1. **term of years:** rather than LE, can avoid RD.

2. **trustees:** creating trustees to preserve contingent remainders.

I. **Rule in Shelley’s Case:** abolished in most states, AND does not apply to personal property

1. if (a) one instrument (b) creates a freehold in land in A, and (c) purports to create a remainder in A’s heirs (or in heirs of A’s body) and (d) the estates are both legal and equitable, then the remainder becomes a remainder in FS (or FT) in A
a. **example: remainder to A’s heirs** – to A for life then to A’s heirs.” RIS converts remainder limited to A’s heirs into a remainder in FS in A. THEN the **doctrine of merger** merges A’s life estate and vested remainder, giving A a FSA.

b. **example – remainder to heirs of A’s body**: to A for life, then to the heirs of A’s body. RIS converts remainder into a remainder in fee tail in A. The fee tail is then changed into whatever estate is substituted for aFT under state law, probably a FS.

c. **doctrine of merger**: a life estate in A and a remainder in A will merge unless (1) there is an intervening estate OR (2) the remainder in A is subject to a condition precedent to which his LE is not subject.

2. **operation of the rule**

a. **life estate determinable**: can be determinable or subject to condition subsequent

(1) **example**: to my wife W during widowhood, and upon W’s death or remarriage, remainder to W’s heirs.” RIS applies, giving W FS

b. **life estate is in remainder**: to A for life, B for life, remainder to B’s heirs. B has a remainder in FS.

(1) **subject to condition precedent**: if LE in A is subject to a condition precedent that is also not applicable to remainder to A’s heirs, RIS does not apply (may apply later when condition is met)

(a) **example**: to A for life, then, if B marries C, to B for life, remainder to heirs of B. LE is subject to condition precedent that does not apply to the remainder. RIS does not apply, but if B marries C during A’s life, RIS then applies.

(b) **remainder subject to same condition**: if, in above statement, condition precedent applied to remainder as well, RIS would apply and B would take a remainder in FS subject to condition precedent of marrying C.

(2) **lapse of life estate**: if A is given a LE with remainder to A’s heirs under O’s will, and A predeceases O, A’s life estate LAPSES. RIS should not be applied because the freehold was never created, BUT there is some authority applying the RIS, causing the remainder to A’s heirs to lapse or fail as well.
(3) **joint life estate**: if O conveys to H and W as tenants in common, for their lives, remainder to the heirs of W, authorities are divided.

(a) some say W has entire remainder in FS because W, as a tenant in common with H, was seised of a life estate in the whole, meaning W could enjoy the entire property for life.

(b) **Restatements** says W has a remainder in FS only as to an undivided half. There is a reversion in the other half.

c. **and purports to create a remainder**: Even if there is an intervening estate between the LE and remainder, RIS applies, but the two do not merge

(1) **contingent remainder**: to A for life, then to A’s heirs if A survives B. A has a LE and contingent remainder which DO NOT merge

(a) **compare**: rule DOES NOT apply if LE is subject to condition precedent, but DOES where condition precedent is on the remainder but not the LE.

(2) **executory interest**: applies only where a remainder, not an executory interest, has been created.

(a) **executory limitation**: if both LE and remainder are part of an executory limitation, RIS applies. To A for life, remainder to B, but if B predeceases A, to C for life, remainder to C’s heirs. C’s executory remainder is subject to RIS.

3. **in A’s heirs (or the heirs of A’s body)**: must be given in an indefinite line of succession rather than a specific class of takers. If a specific person(s) are named, RIS does not apply

a. **words meaning indefinite line of succession**: RIS does not apply to A’s children or A’s issue. “heirs” or “heirs of the body” are considered to be an indefinite line of succession unless grantor shows he means otherwise.

b. **example**: to A for life, and after his death to vest in FS in the heirs of his body. A dies childless, leaving a wife as his heir. If RIS applies, A took a LE and remainder in FT, which was converted by the jurisdiction’s fee tail statute.

(1) If the FT was converted into a remainder in FS, it passes to the wife
(2) If the RIS does not apply, reversioner takes the land b/c A died w/o bodily heirs.

4. **and the estates are both legal or both equitable:** one of each doesn’t count
   
   a. **example:** to X in trust for the life of A to pay A the income and profits, remainder to the heirs of A. X has a legal LE PAV, A has an equitable LE and A’s heirs have a legal remainder in FS. RIS does not apply.

5. **the rule is a rule of law:** therefore expressions of grantor’s intent are irrelevant

6. **avoidance of the rule:** to A for 100 years if A so long live, then to A’s heirs.

7. **Modern status:** abolished in most states.
   
   a. **effect where abolished:** if RIS is abolished, a conveyance to A for life, then to A’s heirs creates a LE in A, and a contingent remainder in A’s heirs.

J. **Executory Interests**

1. **springing interest:** future interest in a grantee that springs out of the grantor at a date subsequent to the granting of the interest, divesting the grantor
   
   a. **example:** to A and her heirs when A marries.
   
   b. **Example:** to A for life, and one day after A’s death, to B and her heirs. B has a springing executory interest. After death of A, reverts to O for one day, and then springs to B.

2. **shifting interest:** future interest in a grantee that divests a preceding estate in another grantee prior to its natural termination.
   
   a. **example:** to A and his heirs, but if B returns from Rome, to B and his heirs. A has a FS subject to an executory interest. B has an executory interest.
   
   b. **Example:** to A for life, and on A’s death, to B and his heirs, but if B does not survive A, to C and his heirs. C has a shifting executory interest.

3. **effect on destructibility of contingent remainders:** NO EFFECT because no gap in seisin can ever precede these interests
a. example: O to A and his heirs, but if A dies leaving a widow and children, to his widow for life, remainder to A’s children who survive him, and if none survive him title shall revert to the grantor. If A had a LE, O and A could destroy the contingent remainders by O conveying the reversion to A. BUT, A has a FS, and his widow and child have an executory interest.

K. the Rule Against Perpetuities: *No interest is good unless it must vest, if at all, not later than 21 years after some life in being at the creation of the interest.*

1. interests subject to the rule: contingent remainders and executory interests. Does NOT apply to vested remainders or to future interest in the grantor.

2. What-Might-Happen-Is test: if there is any possibility that a contingent interest will vest too remotely, the contingent interest is void from the outset.

   a. example: O conveys to the first child of A who becomes a lawyer. A has a daughter in law school. VOID. Possible that daughter may die. A has another daughter, and dies a year later. The 2nd daughter doesn’t become lawyer for 25 years. This exceeds 21 years, and there are NO lives in being.

   b. rule is a rule of proof: A MUST be able to prove that his 2nd daughter will become a lawyer in 21 years. This is not possible.

3. lives in being: look at all the relevant lives (persons who can affect the vesting) in searching for a validing life.

   a. lives in being when interest is created: relevant persons must be persons alive at the creation of the interest. If by will, persons alive at the testator’s death. If by intervivos transfer, persons alive at the date of the transfer.

      (1) too many persons: To A’s issue after the death of the last person now alive is void b/c it is impossible to say when the perpetuities period expires.

      (2) periods of gestation: are included within the permissible perpetuities period.

4. validating life: interest valid under the rule if it will vest or fail during the lifetime of a relevant life, at the death of a relevant life, or within 21 years.
of the death of the relevant life. To A’s first child to reach age 21, the two contingencies must happen, if at all, within A’s lifetime plus a period of gestation and 21 years thereafter.

a. example: to A for life, remainder to A’s first child who reaches age 25. A has no child at the time of conveyance. INVALID. If A has a child, and then dies the next day, will not vest in 21 years. Even if she did have a child at the time of conveyance, child could die before her mother also.

b. Example: Professor gives $1000 to be divided among all members of her property class who are admitted to the bar. VALID. All members are defined and are validating lives, and must vest or fail within their lives.

5. “vested” interests

a. exception – class gift: is not vested in any member of the class until the interests of all members have vested, i.e. until the class has closed and all condition precedent have been satisfied, a.k.a. the all or nothing rule

(1) example: O conveys to A for life, then to A’s children for life, then to A’s grandchildren in FS. Gift to A’s children will vest, if at all, at A’s death. If A has a grandchild B alive at the time of conveyance, remainder is vested in B subject to open, BUT IT IS NOT VESTED under the RAP. Remainder is a class gift and will not vest until all takers are identified. Because gift to children is also open, A may have an afterborn child. Therefore, if all grandchildren and children die, and the afterborn child has a child, but is more than 21 years after the expiration of the relevant lives. INVALID.

b. executory interest: vests only when the condition happens and it becomes a possessorial estate.

6. application to defeasible fees

a. determinable fee: POR is exempt from the rule, but executory interests are not. If an EI violates RAP, it is struck, leaving a determinable fee

(1) example: to school board so long as used for school purposes, and if land shall cease to be used for X, to A and his heirs. A’s interest void against RAP, and is struck, leaving a POR in the grantor.
(2) **exception – gift over from one charity to another charity:** to school board so long as used for school purposes, then to the Red Cross is valid.

b. **fee simple subject to an executory limitation:** to the school board, ut if it shall cease to be used for school purposes to A and his heirs. Executory interest is struck out, leaving a conveyance in FS to the school board.

c. **fee simple determinable created by will:** POR is retained by testator’s heirs if the determinable fee is created by a will. A POR cannot be created in a grantee nor devisee. Hence, if a testator creates a determinable fee by will, followed by a void executory interest in a devisee, **testator’s heirs have a POR.**

(1) **example:** T to Church so long as used for church purposes, then to A. All the rest and remainder I devise to B. A’s executory interest violates RAP and is struck, leaving church w/a determinable fee. T’s heirs, AND NOT B, have a POR. If B, the residuary devisee, were given the interest as a residuary devisee, it would be an executory interest and be void.

7. **remote cases**

a. **the fertile octogenarian:** a person can have kids so long as the person is alive. A person’s age or surgical procedures is irrelevant.

(1) **example:** to Mary, and if Mary’s line of descendants ever runs out, to the daughters the living of Elizabeth Jee (80). T is survived by Mary, Elizabeth and her 4 daughters. The death of Mary and all her descendants may happen centuries hence. Is the gift to the daughters valid? NO, b/c there is not relevant life. Mary may have an afterborn child who dies unmarried 50 years after Mary’s death. Mary’s bloodline would then expire. Nor will condition precedent happen at Elizabeth’s death, b/c gift will not vest, if at all, within the lifetimes of the Jee daughters living at T’s death. The will said to the daughters “then living” which requires the takers to be alive when Mary’s bloodline runs out. Gift is void because it includes afterborn daughters. Elizabeth can have another daughter and this daughter may be alive when Mary’s bloodline expires and may claim the gift, and may thus vest in an afterborn daughter more than 21 years after the deaths of Elizabeth, Mary and the 4 living daughters.
b. **the unborn widow**: a person’s surviving spouse might turn out to be a person not now alive, i.e. a man’s present wife may die or be divorced, and the man may marry a woman not now alive.

(1) **example**: T devises property to my son A for his life, then to my son’s widow for her life, then to my son’s issue who survive my son and his widow. LE in son’s widow is valid b/c it will necessarily vest or fail at the son’s death. Remainder to son’s issue is void b/c it will not vest until after the death of son’s widow, and she may not be a person not now alive.

8. **application to options**: creates in the optionee a specifically enforceable right to purchase property on the terms provided in the option, and is regarded as an equitable interest in property. It is void if it can be exercised more than 21 years after some life in being at its creation, w/a rationale that an option outlasting the owner will not improve the land, and no one else will likely purchase it. Options make land unimprovable and inalienable.

a. **example**: to Co. an option to purchase Blackacre, which option must be exercised w/1 120 days after the city acquires the right of way to widening a street in front of Blackacre. VOID. Right may occur many years from now.

b. **preemptive options**: gives optionee right of first refusal (optioner’s acceptance of an offer contingent on optionee’s refusal to pay). Some courts hold it void as against RAP b/c after a period of time ascertaining and locating the owners of the preemptive option, who may be heirs of heirs of the original optionee, would be an unreasonable task.

c. **Modern trend**: allow optioners to escape bad bargains by claiming RAP violations. Plus commercial options should be outside of RAP. Courts sometimes imply a provision in the option agreement that the option will be exercised within a reasonable period of time.

9. **Wait and See Doctrine**: validity of interests is judged by actual events as they happen, and not by possible events that might happen. About ½ the states have adopted it.

a. **wait and see for the perpetuities period**: wait out the common law perpetuities period before declaring the interest void.

(1) **example**: O conveys Blackacre to A for life, remainder to A’s children who reach 25. Remainder is void under the what might happen test. Under the wait and see approach, see what happens
during the perpetuities period (lives of A and children + 21 years). Gift is good if **ALL** children reach 25 within the period. If they do not, gift is bad as to all of A’s children, including those who are 25+, under the class gifts rule. May then be reformed under a **cy pres** power to reduce the age contingency.

**Example:** to school board, but if Blackacre is not used as a school, to A and his heirs. Only relevant life is A, so wait out A’s life + 21 years. If it does, A’s interest is good. If not, gift fails and Board has a FS.

**wait and see for 90 years:** Uniform Statutory Rule Against Perpetuities rejects waiting for the common law perpetuities period and calls for waiting for 90 years. If a contingent interest satisfies the what might happen test of the common law, or actually vests within 90 years, it is valid under the Uniform Statute.

**criticisms:**

1. not knowing whether an interest is valid/void may prove inconvenient

2. doctrine results in dead hand control and of more wealth being tied up in trust

10. **cy pres doctrine:** second reform of RAP, an invalid interest is reformed, within the limits of the RAP, to approximate most close the intention of the grantor. Courts can reduce age contingencies to 21 years or make some other appropriate change to reform the invalid interest.

a. **example:** to A for life, remainder to A’s children who reach 25. Remainder is initially void, but a court may reduce the age contingency to 21.

b. **cy pres coupled with wait and see:** large majority of states adopting wait and see also provide for judicial reformation of any disposition that does not in fact vest within the wait and see period. Hence, reformation is postponed until the end of the wait and see period.

**VI. LANDLORD/TENANT**

A. Leases

1. both a conveyance of an estate in land and a contract containing promises

2. tenant has bought an estate in land and assumes the risks of caring for the estate
3. covenants deemed to be mutually dependent; if L does not do what L promises to do, T can refuse to do what T promises to do.

B. Types of Tenancies and Their Creation

1. Tenancy for Years

   a. definition: estate that lasts for some fixed period of time or for a period of time computable by a formula that results in fixing calendar dates for beginning and ending

   b. CANNOT BE TERMINATED PRIOR TO AN EVENT FIXING TERMINATION

   c. Term of years determinable: terminable upon some event or subject to condition subsequent, i.e. L to T for ten years so long as used for a sawmill.

   d. Termination of tenancy for years: lease begins on the earliest moment of the beginning day and ends immediately before midnight on the date set for termination. Can end without either party giving prior notice.

2. Periodic tenancy

   a. definition: tenancy for a period of some fixed duration that continues for succeeding periods until either landlord or tenant gives notice of termination, i.e. “to T from month to month”, or “to T from year to year.” If notice of termination is not given, automatically extended for another period

      (1) all conditions and terms of the tenancy are carried over and applicable in each subsequent period, unless express provision are made to the contrary.

   b. creation of periodic tenancies:

      (1) creation by agreement only as to rent period: arises by implication where land is leased with no set date for termination, but provision is made for payment of rent monthly, quarterly, etc. Tenant as periodic tenancy measured by rental periods

      (a) annual rent payable monthly: where lease provides for this, at common law, if an annual rent is specified, the estate is from year to year, even though rent is paid monthly.
1) **minority view:** payment of rent on a monthly basis makes tenancy one from month to month; usually applied only to leases of *dwellings* and not agricultural land.

2) **why it matters?** Because a lease from year to year requires 6 months notice, whereas a tenancy from month to month requires a month’s notice.

(2) **creation by operation of law:**

   (a) **where tenant holds over after expiration of the term:** L may elect to consent to T’s staying over and hold T liable for further rent as a periodic tenant for an additional term.

   (b) **where tenant takes possession under an invalid lease:** if L leases to T for 10 years at $500/month, but the lease is unenforceable or void (due to lack of formalities under the SOF), but T goes into possession under an invalid lease, T creates a tenancy at will. THEN the periodic payment of rent converts the TAW into a tenancy from period to period.

c. **requirement of notice of termination:** continues until proper notice is given (can be oral or written).

   (1) **how much notice?** Notice must be equal to length of the period w/the exception of a tenancy from year to year where 6 months notice is required. Parties, by agreement, may shorten this.

   (2) **notice must specify last day of period:**

   (3) **when notice must be given:** so that T or L will receive the required amount of notice prior to the expiration of the current term. Majority of courts hold that an ineffective notice given late or specifying the wrong date will be ineffective, and that PROPER notice must still be given.

   (a) **restatements position:** if the date stated in the notice for termination is not the end of a period or is too short a time before the end of a period, the notice will be effective to terminate the lease at the earliest possible date after the date stated.

   (4) **statutory modifications:** statutes in many states reduce the 6 months’ notice to terminate a year to year tenancy to one month.

3. **tenancy at will**
a. definition: of no stated duration that endures only so long as both L and T desire. Either can terminate at any time. Can arise expressly, or by operation of law when the intended tenancy fails for some reason.

(1) tenant’s possessory rights: T can maintain action for trespass

(2) tenancy terminable by only one party: is NOT a TAW. First, must ascertain whether power to terminate is affixed to a term of years or periodic tenancy

(a) lease for certain duration terminable by one party: if grafted onto a term of years or a periodic tenancy, creates a determinable tenancy, not TAW.

1) example: L leases a house to T for one year, w/a proviso that L can terminate at any time. Determinable term of years at the will of L

2) example: L leases land “to T from year to year for use as storage space. T has right to terminate at any time.” L can terminate only in accordance w/law respecting periodic tenancies. T can terminate at any time

(b) lease for no certain duration: if leasehold has no certain duration, but is terminable at will by one party, courts are split

1) tenancy at will: Some courts imply a power of termination in the other party, since there is no duration.

a) example: to T for and during the pleasure of L. TAW, and both can terminate at any time.

b) termination by tenant only: L leases land to T “for as many years as T desires” at a yearly rent of $300. This creates TAW and L also can terminate at any time (Foley v. Gamester)

2) determinable LE: if agreement does not create a term of years or periodic tenancy, but tenancy is to continue so long as T wills, T has LE determinable.

a) example: L leases land to T “so long as T should wish.” This creates a LE in T, determinable on his death or prior relinquishment of possession. (Garner v. Gerrish)
b. **termination:**

   (1) **by acts of the parties:** if either L or T manifest an intention that estate come to an end, this terminates TAW. Usually, L gives notice to quit, or T abandons the premises or gives notice

   a) **notice not required at common law:**
   b) **statutes require notice:** most states have statutes that require some sort of notice, but is often imposed on L not T for 30 days

   (2) **termination by operation of law:** sale of the property, death of either L or T, or statutory provisions for notice

4. **Statute of Frauds:** if no written instrument, certain problems arise

   a. **short term lease exception:** an oral lease for more than one year (or whatever period measures the short term lease exception) creates a TAW only.

   b. **entry and paying rent under an invalid lease:** entry by a tenant under an oral lease creates a TAW, and as soon as tenant pays rent, a **periodic tenancy** is created. To determine what periodic tenancy is created:

   (1) **year to year tenancy:** majority view is that this is created, regardless of how rent is calculated in the void lease

   (2) **how rent is calculated:** If rent is calculated on an annual basis, even though payable monthly, a year to year periodic tenancy will be created.

      (a) **example:** T enters under a written 10 year lease, not signed by L or T and therefore invalid. Lease is to end 1/31/92. T makes rent payments specified in the lease, which are calculated on an annual basis though payable monthly. T is a year to year tenant, thus both need to give 6 months notice

5. **hold over tenant:** when a tenant rightfully in possession wrongfully remains after termination of the tenancy, he is a tenant at sufferance, which lasts until L **evicts** T or elects to hold the tenant to another term.

   a. **excuses:** none accepted. Liable for another term regardless of…

      (1) **example:** T’s 1 year lease expires October 1. T begins moving on September 26, but is taken sick. T’s clerks continue moving, but
do not finish until October 11. T dies on October 6. L elects to hold T’s estate to another term of a year. T’s illness is no excuse, and T’s estate is liable for another year’s rent (Mason v. Wierengo’s Estate).

(2) modern law: give tenant relief where tenant does not intend to hold over but is forced to do so by circumstances beyond T’s control. L cannot hold T to another term if T vacates ASAP in light of the circumstances, i.e. when moving is a near impossibility and beyond T’s control (Commonwealth Bldg. Corp. v. Hirschfield).

b. length of new term: in most jurisdictions, holding over gives rise to a periodic tenancy; in the rest, a term of years. Some courts hold it is the way rent is reserved in the original lease, and other courts hold it is the length of the original term or period – but the maximum length in each case is limited to ONE YEAR.

(1) restatements: holding over results in periodic tenancy measured by the way rent is computed, up to maximum period of one year

(2) example: L leases to T for 5 years, ending on 11/4/92, reserving a yearly rent of $7000. T holds over, surrendering possession on 11/27/92. L is entitled to elect to hold T over as tenant for another year (If T does not abandoning property but stays on and L accepts rent, T is a periodic tenant from year to year – Fetting v. Waltz).

d. provision of new term: except w/respect to length, new tennacy governed by provisions of old lease
1. FEE SIMPLE

- words of limitation requirement?
- any limitations?

2. FEE TAIL

- possible statutory conversions? “to A and the heirs of his body, and if A dies w/o issue, to B and his heirs”

  a. A takes FSA, A’s issue and possible remainder take nothing

  b. A takes FS, A’s issue take nothing, BUT B takes a future interest that will become possessory if at A’s death no issue of A are alive (definite failure of issue)

  c. A takes LE, remainder in FS to issue.

  d. A has a FSC, where if a child is born to A, A can convey a FS. If a child is not born, A’s estate ends at A’s death.

- failure of issue construction? “to A and his heirs, but if A dies w/o issue, then to O’s heirs.” Can read both ways.
• disentailed?

• Recheck Rule in Shelley’s Case

3. FEE SIMPLE DETERMINABLE

• proper words of limitation?

• intent to end estate/possibility of reverter expressed in language?

• Possibility of FSD abolished (Kentucky, California) leaving a FSCS?

• Possibility of reverter alienable?

• Statute of limitations? When does it apply (at creation, or at breach)?

4. FEE SIMPLE ON CONDITION SUBSEQUENT

• preferred over FSD b/c forfeiture is optional at grantor’s election, and allows other party to raise equitable defenses.

• Right of reentry subject to statute of limitations? expired? Short time.

• Right of reentry acted upon within a reasonable amount of time?
• **Restraint upon marriage?** If penalizes marriage, against public policy. If to give support, restraint valid.

• **ROR alienable intervivos?** Aliened, destroyed or simply stays with grantor?

• **Was the property sold w/o mentioning the ROR?** Usually, ROR passes with the reversion

5. **FEE SIMPLE SUBJECT TO AN EXECUTORY LIMITATION**

• executory interest alienable, inheritable, devisable?

6. Life estate

• **defeasible life estate?**

• **additional powers given?**

• **Committed waste?**

7. **Tenancy for years**

• **definite beginning and end date provided?**

• **What type of periodic consideration, if any?**
• Power to terminate? If so, see periodic or tenancy at will

• Was there a writing? Under Statute of Frauds, may merely create an estate at will.

8. Periodic tenancy

• Was there periodic consideration paid?

• tenant or landlord can terminate? How?

• Indefinite length of time?

• Did tenant holdover and did landlord accept rent? If so, periodic implied.

• Was annual rent specified, even though payment monthly? Can be either.

9. Tenancy at will

• indefinite length of time?

• either party can terminate w/o notice? W/notice (30 days, anytime)?

• Was there monthly payment of rent? If so, converted to periodic tenancy (majority: year to year, OR how rent is calculated).
• Can only one party terminate at any time for a lease of a certain duration? If so, determinable tenancy.

• Can only one party terminate when leasehold is of no certain duration? If so, may be tenancy at will (imply power in other party), or determinable LE (if T can terminate at will).

• Not subject to holdovers, nor implied warranty of habitability

10. Tenancy at sufferance

• subject to all provision in the lease, including double rent, etc.

11. Curtsey

• did the couple have children? If no, no curtsey.

12. Dower

• 1/3 LE in all lands seized by the husband during their marriage.

• compare: modern law, subject to conditions and only lands at husband’s death
• Did wife sign away land with the husband? If so, no right to 1/3 possession

13. Destructibility of contingent remainders

• is it a leasehold or personal property? If so, doesn’t apply.

• artificial termination of LE by merger? Exception by fee tail and simultaneous creation (T to A for life, remainder to A’s children who survive)

14. Rule in Shelley’s case

• were the words heirs or bodily heirs used? If children or issue, doesn’t apply

• is there a life estate determinable, remainder to heirs? If so, RIS applies.

• Is LE subject to condition precedent? If so, RIS doesn’t apply until vested.

• Is remainder to heirs subject to condition precedent? If so, RIS applies, A has contingent remainder.

• Is there a joint life estate, remainder to one joint tenant’s heirs? If so, RIS applies (either ½ or whole FS)
- Is RIS abolished? If so, A has LE, A’s heirs have contingent remainder.

15. Worthier title

16. Restraint on alienation

- restraint on a FS (void)?

- reasonable restraints doctrine (for partial restraints)?

- Restraint on use? Usually upheld.

- Racial restraint? Forbidden by 14th amendment of U.S. Constitution

- On a LE? Disabling has been struck down, but forfeiture and promissory often upheld.

17. Rule against perpetuities

- Is it a vested remainder? If so, RAP doesn’t apply

- “what might happen test” applies?

- “wait and see test” applies?
• “wait and see for 90 years”? If contingent interest satisfies what might happen test, OR actually vests within 90 years, valid under Uniform Statute (criticized for dead hand control, inconvenience or validity/void)

• Cy Pres doctrine applies?

• Gift class closed or open?

• Gift over from one charity to another charity? If so, RAP doesn’t apply.

• Executory interest struck by RAP? If so, compare determinable fee (so long as…then to B = POR in grantor), FSCS and executory interest (but if A ceases…then to B = FS in A).

• Fee simple determinable created by will? If so, B (residuary devisee) does not get POR that is created when RAP strikes executory interest.

• Option to buy? Subject to RAP unless in a lease. Some courts disagree, b/c allows optioners to escape bad bargains, commercial options may be different, usually use “reasonable time” instead.

• No interest is good unless it must vest, if at all, not later than 21 years after some life in being at the creation of the interest.
18. Joint tenancy

- **Right of survivorship mentioned?**  If not, may be tenancy in common

- made by single instrument at the same time?

- **Was it severed (i.e. by conveying interest to a 3rd party)?**

- How many joint tenants are there?

19. Tenancy by the Entirety

- Usually abolished.

- **Not subject to severance. Note:** can convey interest, such that possession dependent on who dies first.

- **Was there a divorce?**  If so, usually tenancy in common. Sometimes joint tenancy created.

20. Tenancy in Common

- no right of survivorship and unequal shares allowed, presumption in favor of...

- **How many heirs were at the death of A?**  Heirs can take as tenants in common
21. Failure of issue construction

22. Quiet enjoyment

- can there be a constructive eviction (enjoyment of property substantially impaired)?

23. Implied warranty of habitability

- reduction in rent due to run-down portions of the property?

- withhold rent?

- **Was there a waiver of known pre-existing defects?** If T knew, then…

- **Was it commercial property?** If so, may not apply.

- **Was there a waiver in the lease?** Usually not effective unless T promises, in separate writing, to effect repairs for consideration of lower rent

- **Was there a retaliatory eviction in response to T’s complaints?**
24. Holdover

- **Did T abandon premises?** If so, L can accept a surrender, re-let on T’s behalf, or leave premises vacant and sue for rent as it comes due.

- **Either considered a term for years or a periodic tenancy if held over.**

25. Waste

- **What type of waste?**

- **was there a waiver/knowledge of the conditions?**

- **Is the cost to repair greater than value derived from the land?**
What type of interests?

1. reversion
2. right of reentry
   a. alienable inter-vivos?
   b. Statute of limitations?
   c. Exercised within a reasonable time?
3. possibility of reverter
4. contingent remainder
   a. unascertained person?
   b. Rule of destructibility applies?
   c. Rule against perpetuities applies?
   d. Transferable intervivos? Not in all states
5. vested remainder (subj. to divestment)
   a. is there a survivorship condition? If so, not transmissible
   b. subject to open? If dies before possession, interest is not divested.
6. executory interest (springing and shifting)
   a. if violates the RAP, vests the defeasible fee in FS.

Questions
1. alienable? devisable? inheritable?
2. Destructible?
3. Time limitations?
4. What can each party possibly have/take?
5. Could it go either way?
6. Circle questionable language