

Assignment: Nutshell 109-122, Casebook 339-379 (Concurrent Estates) Page 359
Delfino case and page 373 Sampson. Also look at Tennessee Partition Standards TCA
§29-27-101 et seq.

Rule Against Perpetuities Exercises
10/12/04

1. ***To A for life, then to A's children for their lives, and on the death of the last survivor of A's children, to B in fee simple. (At the time of this disposition A has two very young children and is capable of having more children in the future.):***
 - a. *A=life estate, A's children are vested remainders subject to open in a life estate, A's unborn children have an executory interest in a life estate (shifting), and B is a vested remainder. Rule will not apply to any of these interests. Which interest is subject to rule: vested remainder subject to open in A's children but it does not violate rule. Because you will know who are A's children upon A's death. VALID*
2. ***To A for life, then to B, but if at B's death she is not survived by children, then in that event to C:***
 - a. *A has a life estate, B is a vested remainder subject to complete divestment, C has shifting executory interest. Measuring life is B. Question: Will we know with certainty the property will vest upon B's death and 21 years at the time of conveyance? Answer: Yes. (No violation of rule) Property will convey to B. However, since B is a vested remainder, the Rule does not apply...doesn't have to meet the 21 year period. C's executory interest will remain because we will know with certainty that upon the death of B and 21 years the property will vest, if at all, at the time of the conveyance. B will either have surviving children or he won't...we'll know right then. Will we know with certainty that the property will vest, if at all, at the time of conveyance? Yes it will go to B and since B is a vested remainder subject to complete divestment, it is not subject to the rule. C's interest is valid because you will know upon B's death if C's interest will vest. Valid*

3. **To A for life, then to such of A's children as attain the age of 21.**

- a. State of Title: A has a life estate, A's children are **contingent remainders** subject to condition precedent (attaining the age of 21). O would have a reversion. Measuring life is A. Question is: Will we know with certainty the property will vest upon A's death and 21 years at the time of conveyance? Answer: Yes. (No violation of Rule). A's children will reach the age of 21 at or before 21 years of A's death. *Say that A has a child who is 21 at the time of conveyance. B=vested remainder subject to open because the unborn children of A have executory interest. B's interest is applicable to the rule but even if A has a child at death, the children of A will be ascertained in a life in being (A) and their interests will vest within 21 years. VALID*

4. **To A for life, then to such of my nephews and nieces, as attain the age of 21. (The grantor's parents are still alive.):**

- a. State of Title: A has life estate, nephews and nieces are contingent remainders subject to condition precedent (attaining the age of 21), and O has a reversion. Subject to Rule: Measuring life is A. Will we know with certainty that the property will vest in 21 years to the nieces and nephews? Answer: No. (Violates the rule). Nieces and nephews **might die** before A's death. **Therefore, A has life estate, O has reversion.** Nieces and nephews interest is void. Grantor's (O) parents might have more children (grantor's brothers & sisters) and they could have children (grantor's nieces & nephews). Therefore, those interests (the additional nieces and nephews) may not vest in the 21 year period. *We may not know within a life in being and 21 years who the nieces and nephews are. Strikes the voided interest. VIOLATION*
Life in being – O, A, Nieces/nephews, Bros and Sis. Can get more nieces and nephews after grant. No more after creation of interest.
Not on exam

5. **O conveys Blackacre to School so long as used for educational purposes, and when it is no longer used, to A.:**

- a. State of Title: School has fee simple determinable (subject to executory interest); A has executory interest (shifting). Subject to rule: Will we know with certainty that Blackacre will cease to be used for educational purposes after O's death and 21 years from the date of conveyance? Answer: No. (Violates the rule). Blackacre could be used for educational purposes for 150 years before it would cease for such. Thus, A's interest may vest too late. Therefore, School has **fee simple determinable, O has possibility of reverter.** *To save it, you would do a perpetuities savings clause by giving the interest a measuring life. A's interest is void.*
VIOLATION
- b. *If it said Charity instead of A, it would be valid* **Charity to Charity exception**

6. **To A for life, then to such of A's children as live to attain the age of 25. At the time of this disposition, A has two children: X (age 12) and Y (age 9).:**
 - a. State of Title: A has a life estate, A's children, X & Y, are contingent remainders. Measuring life is A. Will we know with certainty that upon A's death and 21 years if the property will vest, if at all from the date of conveyance? Answer: No. (Violates the rule). A could have more children, Z. Z may not attain the age of 25 21 years after A's death. Alternatively, A's children may not survive A or **might** die prior to age 25. **Thus, A has a life estate, O has reversion.** If the Rule is violated for any member of the class, it's violated for the entire class. All class members' interest must be vest when the class closes or no one's interest will vest. Class will not close until A's death. **"then to such of A's children as live to attain the age of 25," is removed and void.** If changed to 21 it is valid. TN "wait & see" law: baby Z is born but dies before the period of perpetuities 21 years still violates the rules. What is bad to one is bad to the whole class. VIOLATION
7. **Suppose, in the preceding example, X and Y were age 24 and 22, respectively, and A was a 60 year old woman:**
 - a. State of Title is the same. X or Y or both might die before A. A might be pregnant and deliver a child before her death. (Called the case of the fertile octogenarian). Additionally, A could adopt a child before her death. **If one was 25 then he would have a vested remainder and the others would be contingent. VIOLATION**
8. **To A for life, then to his widow for life and on the death of A's widow, to such of A's descendants as are then living.:**
 - a. State of Title: A has a life estate, Widow (B) has a life estate, A's descendants (C) are contingent remainders. Measuring life is B. Will we know with certainty that upon B's death and 21 years if property will vest, if at all, at the time of conveyance? Answer: No. (Violates the Rule). We will not know upon B's death if any of A's descendants are alive; some are unascertained. Thus, the rule applies as does the doctrine of destructibility of contingent remainders. Thus, upon B's death, property reverts (reversion) back to O and his heirs. **The case of the unborn widow. In the above example, I assumed B would be A's widow. On the contrary, B may die before A and A marries someone else (K) and K becomes A's widow. K may not even be born yet. A & K may have children. Answer: A life estate, A's widow has contingent remainder in a life estate, A's descendants have contingent remainders in fee simple absolute. Which interests are potentially subject to the rule? Contingent remainders. Widow...violate rule? No, b/c you will know within a life in being and 21 years whom that is. A's descendants...violate rule? Void b/c widow may be unborn. O has a reversion. VIOLATION** Strike the "and on the death of A's widow..."
 - b. Not on exam

9. ***A is a subdivision developer, and gives B an option to purchase a lot in the subdivision “[t]o be exercised within 60 days after the City Council grants approval for the filing of a subdivision plat.”:***
- a. *State of Title: Subject to Rule Against Perpetuities: Will we know with certainty that upon City Council’s grant approval and 21 years if the property will vest, if at all, at the time of conveyance? Answer: No. (Violation). 60 days is well within the 21 year period. Question: verbs say there is a violation because B may not purchase the lot within the 21 year period. I read that the option is to be exercised within 60 days after the grant. Meaning that at the 61st day, the option was voided? Answer: Options are subject to rule, and this one violates the rule because the City Council may not grant the approval until well after 21 years. Savings clause: in any event the option must be exercised within 21 years of the last surviving member of current city council. VIOLATION*

10. **To A for life, then to such of A’s children as live to attain the age of 35. At the time of this disposition, A has two children, X (age 38) and Y (age 33).**
- a. A has a life estate. X is a vested remainder subject to open and Y is a executory interest. **(Remember, once there is a vested remainder, then all other potential remainders have executory interests.)** Now, if no one had reached the age of 35 at the time of conveyance, then remainders would be contingent. A’s unborn children (remember to assume A can have kids till death, (even at 90 years old) are contingent remainders. Will we know with certainty (must vest) that upon A’s death, the property will vest, if at all, at the time of the conveyance? Answer: No. (Violates the Rule). Property must vest to all members of the class. If it leaves out one member of the class, it leaves them all out. Y could die before A. X could die before A but he is already vested. Thus, his interest will go to his heirs. **VIOLATION- GIFT problem all bad**

11. **To A for life, then to A’s children for their lives, and on the death of the last survivor of A’s children, to A’s grandchildren in fee.**
- a. Estates and interests are: A has a life estate, all of A’s children have contingent remainder in a life estate subject to open b/c none are born yet. A’s grandchildren are contingent remainders in a fee simple absolute. Measuring life: A’s last surviving child. Will we know with certainty that upon A’s last surviving child and 21 years if the property will vest, if at all, at the time of conveyance? Answer: No. (Violates the Rule). **Answer in verbs: Life estate in A’s children is valid because A’s children are going to be ascertained within a life in being (A). The gift to A’s grandchildren is invalid because there could be unborn children to A, thus, unborn grandchildren. So it wouldn’t necessarily happen within a life in being, and 21 years. VIOLATION**