Answers to First Rule Against Perpetuities (“RAP”) Worksheet

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.” (A has 2 very young children and is capable of having more)

State of Title - A has a life estate; the 2 young children have a vested remainder (subject to open) for life; and B has a vested remainder in fee simple absolute.

What interest must be analyzed under RAP – vested remainder subject to open for life

Lives in Being at time of conveyance – O, A, B and 2 young children.

Answer - The vested remainder (subject to open) held by the 2 young children is valid under RAP because the class will close and all members of the class will be ascertained upon the death of A. A is validating life.

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.”

State of Title - A has a life estate; B has a vested remainder subject to complete divestment (ie. Subject to an executory limitation); C has a shifting executory interest in fee simple.

What interest must be analyzed under RAP – C’ shifting executory interest.

Lives in Being at time of conveyance – O, A, B, C.

Answer – B’s shifting executory interest is valid under RAP because we will know at B’s death whether C’s shifting executory interest will vest (b/c B is not survived by children) or fails (b/c B is survived by children). B is validating life.

3. “To A for life, then to such of A’s children as attain the age of 21”

State of Title - A has a life estate; A’s children have a contingent remainder in fee simple absolute; O has a reversion in fee simple absolute.

What interest must be analyzed under RAP – contingent remainder of A’s children.

Lives in Being at time of conveyance – O, A

Answer – The contingent remainder in A’s children is valid under RAP b/c the class will close on the death of A and we know the contingent remainder will either vest or fail within 21 years after the life of A.

4. “To A for life, then to such of my nephews and nieces as attain the age of 21.” (Grantor’s parents are still alive). Grantor has 6 brothers and 2 sisters at time of grant.

State of Title - A has a life estate; O nieces and nephews have a contingent remainder in fee simple. O has a reversion.

What interest must be analyzed under RAP – contingent remainder of O’s nieces and nephews.

Lives in Being at time of conveyance – O, A, 6 brothers and 2 sisters of O, and O’s parents.

Answer – The contingent remainder in the nieces and nephews violates RAP. O’s parents could have another child (call her “AC” for afterborn child) immediately following the conveyance. Then, all the lives in being at time of the grant could die – O, A, 6 brothers and 2 sisters of O, and O’s parents). AC more than 21 years after the death of O, A, 6 brothers and 2 sisters, could have a child (call her AN, afterborn niece). Therefore, it is possible that the contingent remainder in the nieces and nephews will still be contingent more than 21 years after the last life in being at the time of the creation of the interest. Therefore, the contingent remainder violates RAP and is void. The resulting state of title is A has a life estate, and O has a reversion in fee simple absolute.

5. O conveys blackacre “to School so long as used for educational purposes, and when it is no longer so used, to A”

State of Title: School has a fee simple subject to an executory limitation; A has a shifting executory interest.

What interest must be analyzed under RAP. A’s shifting executory interest.

Answer – A’s shifting executory interest violates RAP and void. A’s shifting executory interest may still be contingent more than 21 years after the death of everyone alive at the time of the conveyance. There is no validating life. Accordingly, the state of title is “to School so long as used for educational purposes” which is a fee simple determinable. O has a possibility of reverter.

6. “To A for life, then to such of A’s children as live to attain the age of 25.” At time of disposition A has two (2) children: X (age 12) and Y (age 9).

 State of Title - A has a life estate; X and Y have a contingent remainder in fee simple absolute; O has a reversion.

What interest must be analyzed under RAP. Contingent remainder in A’s children.

Lives in Being at time of conveyance – O, A, X and Y.

Answer – The contingent remainder in A’s children violates RAP. A could have a child after the date of conveyance (an afterborn child called “AC”). Then O, A, X and Y could all die, and AC’s interest could remain contingent more than 21 years after the death of everyone alive at the time of conveyance. The contingent remainder could vest too remotely and therefore violates RAP. Once the contingent remainder is stricken from the conveyance, A has a life estate and O has a reversion in fee simple absolute.

7. Same conveyance except that A is 60 years old and X is 24 and Y is 22. [The answer is the same as in number 6. Law presumes that anyone, no matter how old or young, could have a child].

8. O conveys “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.”

\*\* Assume A is presently married to B and A has one child C.

State of Title - A has a life estate; A’s widow has a contingent remainder for life; A’s descendants then living have a contingent remainder in fee simple absolute; and O has a reversion.

What interest must be analyzed under RAP (i) contingent remainder of A’s widow; and (ii) contingent remainder of A’s descendants then living.

Lives in Being at time of conveyance – O, A, B and C.

Answer – The contingent remainder in A’s widow is valid under RAP because the contingent remainder held by A’s widow will either vest or fail upon the death of A. A is the validating life.

The contingent remainder held by A’s descendants violates the RAP because the interest may be contingent more than 21 years after the death of everyone alive at the time of the conveyance. There is no validating life. What could happen is that O and B could get a divorce (or B could die) and O could later marry someone who was not alive at the time of the conveyance (call her AW, for after-born widow). A and AW could have a child (call her AC) and then almost immediately A, O, B and C could die (and everyone else alive at the time of the conveyance could die) and then AW could live more than 21 years and the contingent remainder of the descendants would still be contingent (we wouldn’t know whether AC would outlive AW). After you strike the contingent remainder in A’s descendants, you are left with A having a life estate, A’s widow having a contingent remainder for life, and O having a reversion in fee simple absolute.

9. A is a subdivision developer, and gives B an option to purchase a lot in the subdivision “to be exercised within 60 days after the City Council grants approval for the filing of a subdivision plat.”

Answer – The option violates RAP. It is possible that the City Council may approve the subdivision plat more than 21 years after the death of A, B, and everyone else alive at the time of the grant of the option.

10. To A for life, then to such of A’s children who reach age 35.” [at the time of this disposition A has two children -- X (age 38), and Y (age 33)]

State of Title: A has a life estate, X has a vested remainder (subject to open/subject to partial divestment); Y and any unborn children have a shifting executory interest (but I’ll also take contingent remainder).

What interest must be analyzed under RAP – vested remainder subject to open of X.

Lives in being – O, A, X and Y.

Answer – X’ vested remainder (subject to open) violates RAP. What could happen is that after the date of the conveyance A could have a child (call her AC, after born child) and A could die (along with X, Y and O), the class would close but it would close with the interest of a child, AC, whose interest would remain contingent for more than 21 years after the death of all lives in being at the time of the creation of the interest Therefore the vesting is too remote, and violates RAP – this is what the authors call the “all or nothing rule” - “bad as to one, bad as to all”. After you strike the interest of A’s children, A has a life estate, and O has a reversion in fee simple absolute.

11. “To A for life, then to A’s children for life, and then on the death of the last survivor of A’s children, to A’s grandchildren in fee.”

State of Title – A has a life estate; A’s children have a contingent remainder for life; A’s grandchildren have a contingent remainder in fee simple.

What interest must be analyzed under RAP – (i) contingent remainder of A’s children; and (ii) contingent remainder of A’s grandchildren.

Lives in being – A, O.

Answer – The contingent remainder in A’s children is valid under RAP because it will either vest or fail upon the death of A. A is the validating life.

The contingent remainder A’s grandchildren violates RAP. Immediately after the conveyance, A could have a child (call her AC) and then O, A and everyone else alive at the time of the conveyance could die. AC could live more than 21 years and then have a child AG. Thus the contingent remainder of A’s grandchildren could remain contingent beyond the RAP period (or if you want to think of it as class of grandchild remain open beyond the RAP period that is fine as well). The contingent remainder of the grandchild violates the RAP and is stricken. A has a life estate, A’s children have a contingent remainder for life, and O has a reversion in fee simple.