

PROPERTY

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CLASS 16(A): RESTRAINTS ON ALIENATION & THE RULE AGAINST
PERPETUITIES

Class Outline

- Dead hand control
- Restraints on alienation
- The rule against perpetuities (RAP)

Restraints on Alienation

In a grant that reads: “to A in fee simple, on the understanding that A has no power to sell”

The restraint on alienation will be stricken: “to A in fee simple, ~~on the understanding that A has no power to sell~~”

And the conveyance will be interpreted to be simply: “to A in fee simple.”

The Rule Against Perpetuities (RAP)

“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.”

The Rule Against Perpetuities (cont.)

In other words...

The RAP prohibits the creation of contingent interests that are not certain to vest within a prescribed time period.

Future Interests Potentially Subject to the RAP

Vesting means the elimination of the “suspense” element:

(i) for a contingent remainder it means the ascertainment of the identity of the taker and the satisfaction of all conditions precedent;

(ii) for a remainder subject to open, it means the closing of the class.

(iii) for an executory interest it means the taking of possession (i.e., the cutting short *actually happens*) or the conversion into a vested remainder;

Interests retained by the grantor are considered vested upon creation regardless of who holds later.

RAP Sample Problem #1

Bequest “to my grandchildren who shall reach the age of 21.”

This is valid because all T’s grandchildren must be born within the lives of T’s children and T’s children’s lives must be lives in being at T’s death (we adopt the legal fiction that only live people have children here).

A child who is born after T’s death is deemed to be in being at conception if the child is later born alive. (A “life in being” begins at conception, says RAP.)

The measuring lives do not have to be those of people mentioned in the instrument and need have no special connection to the property.

RAP Sample Problem #2

Inter vivos trust for “my grandchildren who shall reach the age of 21.”

This is invalid. All the existing children of T may die but T then has more children, one of whom has a grandchild who reaches 21 after the period. No other measuring lives can be found to make this satisfy the rule.

Note that this illustrates the importance of starting with the time of the creation of the interest.

RAP Sample Problem #3

Bequest “to A’s grandchildren who shall reach the age of 21.” A is alive at the time of the testator’s death.

This is invalid for reasons similar to those in Sample Problem 2. A can have more children (permitting them to then have children who may reach the age of 21 AFTER the time period.)

So the problem is not the bequest versus *inter vivos* transfer, but rather whether there can be more children or not.