

# RAP – What is a “measuring life”?

→ A conveys Blackacre to B and her heirs so long as marijuana is not grown on the property. But if marijuana is ever grown on the property, then to C and his heirs.

Possible measuring lives here include:

- A
- B
- C
- Any of the heirs of B alive\* at the time the interest is created
- Any of the heirs of C alive\* at the time the interest is created
- Literally any random person alive\* at the time the interest is created

\* Where “alive” includes conceived, but not yet born, persons.

Does this grant violate the RAP?

Yes. It is possible that marijuana could be grown on Blackacre 200 years from now. For this reason, we do not know FOR CERTAIN that the interest ABSOLUTELY MUST vest 21 years after the expiration of some life in being.

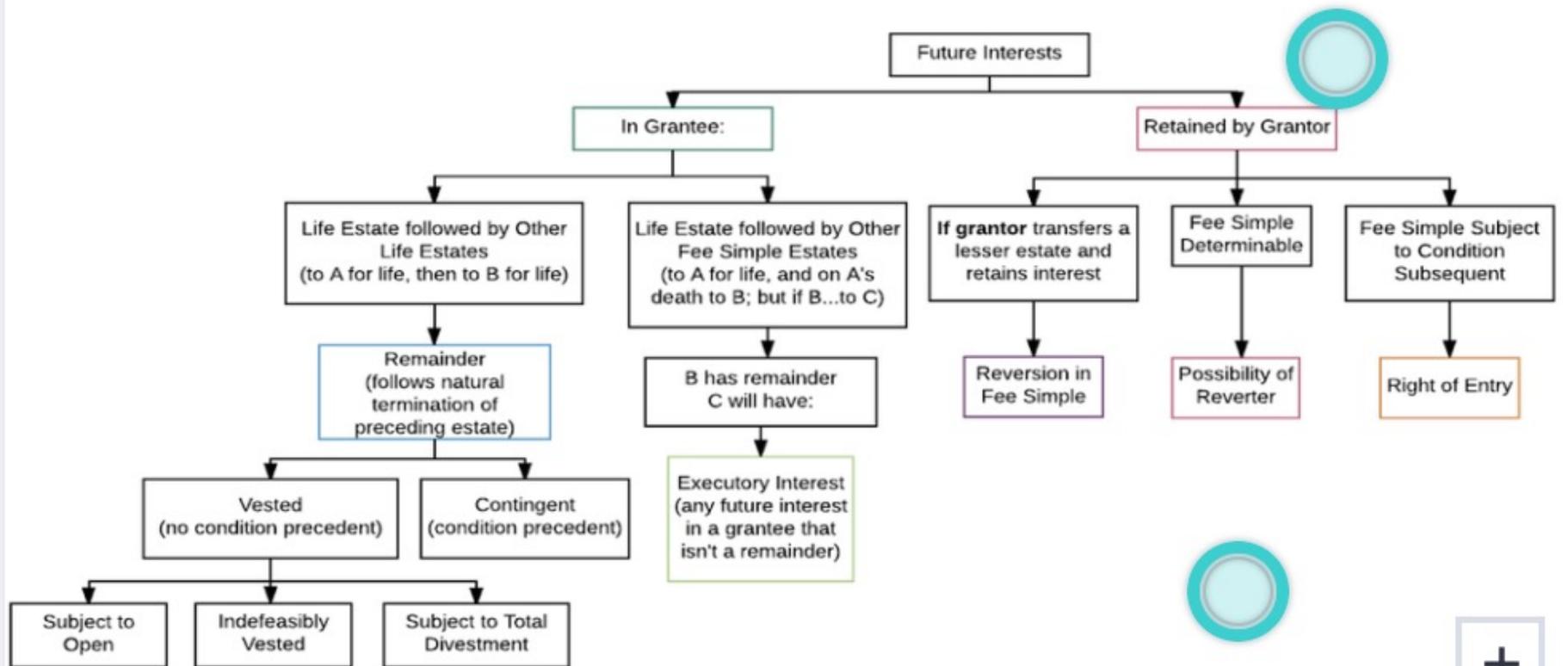
Sometimes students get fixated on “gaming” the measuring life. That’s not really the game. The point is to ask whether the interest MUST not vest TOO remotely in the future. Since humans have a relatively limited lifespan, even conceived lives in being get, let’s say, 80 years. Then you add 21 years, and we’re at or around 100 years on the far end. That is another way to think of the RAP – is this interest absolutely going to vest in more or less 100 years? If it could possibly vest later, it violates the RAP.

Most jurisdictions think of it as even a little shorter (hence the flat “90 years from creation of the interest” rule in the Uniform RAP).

# Demsetz

- The “problem” is externalities (positive and negative) that aren’t internalized by those perpetrating them.
- We can internalize these externalities by assigning property rights (i.e., responsibility) to someone.
- In other words, externalities often arise due to unclear property rights.

Present Possessory Interest	Corresponding Future Interest
Life Estate	Reversion ----- Remainder - Vested/Contingent
Fee Simple Determinable	Possibility of Reverter
Fee Simple Subject to a Condition Subsequent	Right of Entry
Fee Simple Subject to an Executory Limitation	Executory Interest
Fee Tail	Reversion



Natural Flow Theory: The water must be allowed to flow naturally (no diversion without permission of downstream affected) ← UK approach, a fit for very wet jurisdictions because there's plenty of water for everyone

Reasonable Use Theory: Upstream user can divert for “reasonable uses” (with a preference for natural > artificial wants, categories vary by jurisdiction ← popular US approach, appropriate for drier jurisdictions where not everyone will have their needs met if all uses are accommodated (and perhaps not even anyway))

# Fixtures

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- Seller/purchaser: A sells Blackacre to B. A dispute arises as to what is included in the sale and what A can remove.
- Tenant/landlord. C leases Blackacre from D. At the end of the term, a dispute arises as to what is part of the freehold and what C can remove.
- Mortgagor/mortgagee. E borrows money from F secured by a mortgage on Blackacre. When E defaults, a dispute arises as to what is included in A's security interest and what E can remove.

# Fixture “Tests”

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- Generic class/Custom: Would some sort of item of this generic class would be included in any house in the same general price level (light fixtures).
- Attachment: Or “bolted to the wall.” If a thing is bolted to the wall (or the ground), it is a fixture. If it can be removed without unbolting or unscrewing from the wall, it is personal property. (Mirrors in the living room but not the mirror in the powder room, which the Greens get to keep.)
- Specially fitted: Is the item custom built or otherwise a unusual strong complement for the surroundings. (Venetian blinds – not appealed)

# Coase Theorem

Initial property entitlements don't matter. Legislators can give initial entitlement to either party. In a world with zero transaction costs, they will negotiate to get the property into the hands of the party who values it more (i.e., who will put it to its highest and best use).

# Vested Remainder Subject to Divestment v. Contingent Remainders

- A contingent remainder is either held by an unascertained person (“whoever B shall marry”), or its possession is dependent upon the satisfaction of some condition precedent (“to B if she graduates law school”, or both (“to whoever B shall marry, if that person graduates law school”))
- A vested remainder subject to complete divestment is a remainder held by a person who is either known or ascertainable and who has satisfied all conditions precedent to possession, but whose remainder is nonetheless subject to being taken away – i.e., divested, if some subsequent event happens. E.g., “to A for life, then to B, but if B should become a lawyer, to C.” Here, B has the vested remainder subject to complete divestment; C has an executory interest.

→ In the case of a contingent remainder, the only person who can cut off the rights holder is the rights holder themselves (by, e.g., not graduating from law school).

→ In the case of a vested remainder subject to divestment, the person who can cut off the rights holder is a third party (i.e., the executor).