Essay Questions

- For each of Winterfell, King’s Landing, and South of the Wall, please identify the relevant issues, state the applicable rules, engage in an analysis that includes claims and counterclaims, as well as possible defenses, and offer a reasoned conclusion.

- Winterfell Sansa Stark inherited Winterfell from her father, Ned, upon his beheading twenty years ago. When her friend, Petyr Baelish, tells her he’s looking for a place to rouse and train an army in order to conquer the Seven Kingdoms, she offers him the use of Winterfell. Petyr arrives at Winterfell to discover Daenerys Targaryen already there. When confronted, Daenerys tells Petyr that she first broke into the north tower on a particularly brutal winter day over twenty years ago. By the time the weather cleared, she had decided that she quite liked it at Winterfell, and so she stuck around, planting crops in the northern field, and raising a herd of cattle in the western field. She refuses when Petyr tells her, on Sansa’s account, to leave. Fed up with both of them, Petyr drains the wine cellar, gathers his rag tag band of soldiers and tells them they will march at dawn.
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Issues:

(1) Whether Sansa has good title to Winterfell
   - Conveyance from Ned Stark to Sansa: fee simple absolute b/c vested, no conditions; therefore, not subject to RAP

(2) What property right Petyr has
   - License – Sansa conveyed a right to *use*
   - Not an easement or lease b/c not in writing
   - Not a bailment b/c bailments are for personal property

(3) Does Daenerys have AP?
   - Argument for AP: Over 20 years (SOL satisfied); AP was open and notorious b/c Sansa would have known about Daenerys' possession had Sansa tended to her land
   - Arguments against AP: Non-exclusive (Bran* + Daenerys); not open and notorious b/c Sansa was not present; Daenerys took possession in bad faith (most jurisdictions look badly on bad faith possession
(4) Did Sansa abandon the land?
- No, because –
  - Poconos – you cannot abandon perfectly good title w/o a sale or divestment of the property b/c this may leave the community w/o a tax base
  - Abandonment requires intent and some action that indicates an intent to abandon

(5) Can Sansa use self-help to evict the tenants?
- Self help may lead to violence, so judicial proceedings are preferred
- Marching w/ an army will most likely breach the peace
- Law is protective of homestead and people that occupy a place, so judicial action is probably the best way
Back at King’s Landing, Varys hires Podrick to deliver a secret handwritten message to Tyrion Lannister, who is locked in a cell beneath the castle. Varys tells Podrick that he must deliver the message before sunset. On his way to the castle, Podrick is distracted by a lively joust between a man the size of a mountain, and a man dressed as a snake. By the time he remembers his mission, the sun is setting, so he turns and sprints to the castle gates. As he approaches, he sees a figure standing near the entrance, and presses the message into the figure’s outstretched palm just in time. Unfortunately, the figure is Cersei, who reads all about Varys’ and Tyrion’s plot to overthrow her.
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Meanwhile, just south of the wall, Samwell Tarly comes upon a tent and campground that Mance Rayder and the free folk have left behind on their march North. He moves his stuff in, and a week later sells the tent and grounds to a limping Sandor Clegane in exchange for a horse. Back at the Night’s Watch, it is discovered that a single lock of Jon Snow’s hair defends against the zombie-like creatures known as White Walkers. The maester who discovered this power claims the right to sell the hair, while Jon Snow insists that he alone has the right to sell (or not) his own hair.
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Question 2: Ever since the Wildings won the 1000-year-battle for control of the Seven Kingdoms, there has been a problem with wooly mammoths trampling homes (and people) all willy nilly. Being Wildings, they currently have no laws regulating the mammoths. A town hall meeting is called to consider what to do.

Drawing upon the various theoretical approaches that we have studied, please draft a brief memo to the King of the Wildings, Mance Rayder, with possible options for preventing wooly mammoth tramlings, and the pros and cons of each.
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Topics for today

- Divisions by time; present possessory interests; future interests
- Conservation of Estates
- Numerus Clausus
- Restraints on Alienation & the Rule Against Perpetuities
- Conflicts Between Co-Owners (didn’t get to this today, will review during the next session on 3/28)
Divisions by Time; Present Possessory Interests;

- Present Possessory Interests
  - Fee Simple
    - Absolute,
    - Determinable,
    - Subject to Condition Subsequent,
    - or Subject to Executory Limitation
- Life Estate
- Fee Tail
- Term of Years
Present Possessory Estates and Future Interests

- **Estate** – Type of property right, measures a person’s interest (present possessory or future interest) in the land in terms of duration
- **Present Possessory Estate** – A person who has a possessory estate owns the right to possess the land now, in the present
- **Future Interest** – A person has a future interest if they own the right to possess the land in the future, and they are allowed to take possession when a future event occurs
- **Devise** – to convey in a will
Present Possessory Estates – O to A

- **Fee Simple** – The Largest Estate – no inherent ending. Owner A can keep the estate forever, sell it, or give it to someone else who can keep it forever, or can devise it (give it away in a will) to someone who can keep it forever.
  - “O to A and her heirs” or “O to A”

- **Fee Tail** – This estate cannot be sold. The land passes to A’s descendants (lineal descendants are also called “issue”) regardless of whether A has a will. The estate is considered limited and ends when the last descendant dies.
  - “O to A and the heirs of [his/her/their] body.”

- **Life Estate** – The owner of a life estate cannot sell, give, or devise the right to possess the land after they die. The estate end when the owner dies.
  - “O to A for life.”

- **Term of Years** – Also known as a lease, allows the grantee (A) to use the land for a set period of time.
  - “O to A for 10 years.” [or another measurement of time]
Present Possessory Estates

- **“Fee Simple”** – The Largest Estate – no inherent ending. Owner A can keep the estate forever, sell it, or give it to someone else who can keep it forever, or can devise it (give it away in a will) to someone who can keep it forever.
  - “O to A and her heirs”

- **Fee Simple Absolute** – No natural end

- **Fee Simple Determinable** (a defeasible fee) – Ends automatically upon the occurrence of a named event – possibility of reverter
  - O to A “so long as,” “as long as,” “while,” “during,” “until” (No comma in these words of purchase/limitation, generally) – Think TIME-related prepositions (“term” from de-term-able)

- **Fee Simple Subject to Condition Subsequent** (a defeasible fee) – doesn’t end automatically, but when the named condition happens, the owner can take the estate back (by self-help or lawsuit) – right of entry/power of termination
  - **Note the Comma:** O to A, but/if/but if…; O to A, provided that/however…; O to A, on the condition that…
Present Possessory Estates

- **Fee Simple Subject to Executory Limitation** (defeasible) – If the defeasible fee is followed by an interest not reserved to the grantor, it’s called a defeasible fee subject to executory limitation
  - “O to A as long as _____, then to B”
  - “O to A, but if ________, then to B.”

- **Life Estate Per Autre Vie** (Life Estate “for another life” in French) – O to A during the life of B
## Future Interests

<table>
<thead>
<tr>
<th>Possessory Estate</th>
<th>Future Interest</th>
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<tbody>
<tr>
<td>Nature</td>
<td>Added Limitation</td>
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<tr>
<td>Fee Simple</td>
<td>Next estate in grantor</td>
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<tr>
<td>Fee Tail</td>
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<tr>
<td>Life Estate</td>
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<td>Term of Years</td>
<td>Condition Subsequent</td>
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<td>Next Estate in 2nd grantee</td>
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### Fee Simple
- Next estate in grantor
- Will end naturally →
- Determinable →
- Condition Subsequent

### Fee Tail
- Next estate in grantor
- Will end naturally →
- Determinable →
- Condition Subsequent

### Life Estate
- Next estate in grantor
- Will end naturally →
- Determinable →
- Condition Subsequent

### Term of Years
- Next estate in grantor
- Will end naturally →
- Determinable →
- Condition Subsequent

### Possessory Estate
- Next estate in grantor
- Will end naturally →
- Determinable →
- Condition Subsequent

### Future Interest
- In grantor
- In grantee
- Remainder (contingent or vested)
- Executory interest (shifting or springing)
- Executory Interest (shifting or springing)
Future Interests Back to the Grantor

- **Possibility of Reverter** – A grantor’s future interest following a determinable estate
  - $O \rightarrow A$ (so long as..) $\rightarrow$ reverted to $O$
  - $O$’s future interest: $O$ has a possibility of reverter
  - A possibility of reverter is speculative (not certain)

- **Reversion** – A grantor’s future interest after a naturally ending estate (life estate per autre vie, life estate, fee tail, term of years)
  - $O \rightarrow A$ (for the life of/for ___ years, etc.) $\rightarrow O$
  - $O$’s future interest: $O$’s reversion “waits patiently” until $A$’s possessory estate “ends naturally.”
  - A reversion is not speculative

- **Right of Entry** – follows an estate subject to condition subsequent – doesn’t automatically “revert,” but the grantor has a right to take action to enforce the right to re-take possession of the estate.
  - $O \rightarrow A$, but... $\rightarrow O$
  - $O$’s future interest: $O$ has a right of entry.
Future Interests to a Third Party

- **Remainder** – O grants a limited estate to A, then to B after it ends.
  - O to A for life, then to B (Life estate w/remainder)
  - O to A for ___ years, then to B (Term of years w/remainder)

- **Vested Remainder** – Certain to become possessor
  - E.g., O to A for life, then to B

- **Contingent Remainder** – May not become possessor
  - E.g., O to A for life, then to B if B has reached 25 years old.
Future Interests: Executory Interests

- **Shifting Executory Interest** – Follows an estate in a grantee; shifting executory interests “wait patiently”
  - O conveyed to A (for life), then to B
  - O to A, but if A ceases using the land for a church, then to B.

- **Springing Executory Interests** – Divests an estate in the grantor (terminates the grantor’s property rights); interrupts O’s estate
  - O conveyed to A, then B’s interest divests O (the grantor)
  - O to A for life, then to B five years after A’s death
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Conservation of Estates

- **Conservation of Estates** – The principle that all pieces of the estate are accounted for
  - If a fee simple is conveyed, all of the conveyances of a piece of the estate and the remainders must add up to a fee simple.

- *Williams v. Estate of Williams* (Tenn. 1993): “At my death, I want [my three daughters]... to have my home farm...to have and to hold during their lives, and not to be sold during their lifetime.”
  - Rule: A person who receives a joint lifetime interest in property under a will has a life estate, rather than a fee-simple interest, after the deaths of the other interest holders.
  - Why?
Conservation of Estates

- City of Klamath v. Bell (Or. Ct. App. 1971): A corporation conveyed land to the city of Klamath Falls. The deed stated that the city should hold the land “so long as” it complied with the condition that it use the land for a city library, and that it would be passed to the grantors if the land ceased to be used for that purpose.

- Rule: The rule against perpetuities will void an attempt to create a remainder interest when the vesting of the remainder depends on a condition of use which can last indefinitely.
Numerus Clausus Principle: There is a limited, finite set of property rights parties can use in conveyancing

There are only four types of estates (plus their defeasible versions):

1. Fee simple
2. Life estate
3. Term of Years
4. Fee tail

Unlike contract law, you can’t customize estates as you see fit.
Johnson v. Whiton (Mass. 1893)

- Facts: Whiton left some land to his grandchildren in his will. The will stated that 1/3 of the estate would go to his granddaughter Sarah, and her "heirs on her fathers' side." The other grandchildren were left the remainder. The grandchildren together contracted with Johnson to sell the land and executed a deed on the ground that Sara did NOT have a fee simple interest.

- Claim: Johnson sued to recover the deposit paid under the purchase agreement

- Issue: Can a landowner convey land to an individual and her "heirs on her father's side?"

- Holding: No. This is NOT one of the four recognized categories

  - In Whiton’s will, he devised 1/3 of his estate to Sarah Whiton and her heirs on her father’s side. This is an unrecognized kind of inheritance. As such, the words “on her father’s side” are rejected, leaving Sarah Whiton with a fee simple estate that she is entitled to convey.

  - The court construes the conveyance as the most similar established type of estate

(Massachusetts) Rule against Creation of New Estates: If there is an ineffective conveyance, the court may modify it to make it into an already-existing kind of inheritance.
Garner v. Gerrish (N.Y. 1984): Donovan leased a house to Gerrish, with a provision stating that “Lou Gerrish has the privilege of termination [sic] this agreement at a date of his own choice.” After Donovan died, his executor attempted to evict Gerrish from the property through a lawsuit.

Holding: A lease that grants the lessee the right to terminate the tenancy does not grant the same right to the lessor unless expressly stated in the document.
The Rule Against Perpetuities is a restraint on alienation. The Traditional **Rule Against Perpetuities** – “No interest is good unless it must vest, if at all, not later than 21 years after the death of some life in being at the creation of the interest” – Professor John Chipman Gray

Key: Policy position that while the system of conveyancing is meant to honor the grantor’s intent to convey their property to generations to come, this doesn’t last forever. The law wants to **ensure that there isn't too much dead hand control** and land isn't too locked up with one family.
The Traditional **Rule Against Perpetuities** – “No interest is good unless it must *vest*, if at all, not later than 21 years after the death of some *life in being* at the *creation of the interest*” – Professor John Chipman Gray

- "*Vest*" = become certain to become possessory or fail
  - When condition or contingency occurs.
  - "O to A for life, then to B if B graduates from law school

- "*Lives in being*" = Persons named in the conveyance or intervening generations (measuring lives or validating life)
  - perpetuities period = 21 years after death of a life in being

- "*Creation of the [future] interest*"
  - Created by conveyance = moment of the conveyance
  - And by will = moment testator dies
Symphony Space, Inc. v. Pergola Properties, Inc. (N.Y. 1996): In 1978, Symphony Space (Non-profit) bought a building from Broadwest Realty Corp. for a below-market price ($10,010), leasing the income-producing commercial property for $1 per year. Issue: As a condition of the sale, Symphony granted Broadwest an option to repurchase the building for consideration of $10 with a closing date falling in the year 1987, 1993, 1998, or 2003.

Broadwest later transferred its interests to defendants Pergola Properties, Swett, Casadium and Darenth. Pergola and Swett attempted to exercise their options to repurchase in 1985, and Symphony sought a declaratory judgment against the defendants, claiming that the agreement violated the NY RAP.

The court held that the repurchasing option was unenforceable.

Rule: A property interest must vest within twenty-one years after a life in being at the time of the creation of the estate, or else the interest is void. In NY, RAP applies to commercial transactions as well. (The court declined to exempt commercial transactions from the statutory RAP in NY). This case invalidated remote vesting of option to purchase in NY.
Analyzing the Rule Against Perpetuities:

The question is not whether the interest might vest and close within the time period but *whether there is any possibility the interest might not vest within the time period*

Test the contingent or open interest or executory interest and if it reveals a possibility that it won’t vest or fail in the LIB (lives in being) + 21 years \( \rightarrow \) Fails RAP

Four-Step Test:

1. State the title (e.g., A has a fee simple determinable)
2. Does the RAP potentially apply to this conveyance? (Is there a future interest?)
3. If yes, is the RAP violated? [Test the contingent or open interest or executory interest and if it reveals a possibility that it won’t vest or fail in the LIB (lives in being) + 21 years \( \rightarrow \) Fails RAP]
4. If yes \( \rightarrow \) Remedy? [Remedy is to strike the future interest back to a conveyance that doesn’t violate the rule and that you can recognizing fitting in with our rules]
Questions?
Lingering Questions…? Reach out!

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- Email: Veronica.Gonzalez@edu