

SAMPLE ANSWERS TO SHORT ANSWER QUESTIONS FROM SPRING 2005 AND
SPRING 2006 EXAMS

Question #4 – Spring 2005:

Gertrude currently holds a Vested Remainder Subject to Open in a Fee Simple Absolute.

Gertrude's interest is in the language "to my grandchildren" at the end of the devise because Gertrude is a grandchild of Otter's, given that Dan, Gertrude's father, is one of Otter's two children.

This interest is a vested remainder subject to open because of the following:

The interest is a remainder because: (1) the interest follows an expirable estate—the life estate in Anitra's children, created by the "for their lives" words of limitation; (2) the interest does not take effect before the expiration of the preceding estate (it is not shifting) due to the "upon the death of Anitra's children" language before the interest; and (3) nor does the interest take effect any time other than immediately upon expiration of the preceding estate (it is not springing) due, again, to the "upon the death of Anitra's children" language.

The remainder is vested because: (1) the remainderman is born and ascertainable—Gertrude is a grandchild of Otter's and is alive at the time of the devise and (2) there are no other condition precedents then the expiration of the previous estate—"upon the death of Anitra's children" which is the termination of the previous life estate in Anitra's children.

The remainder, however, is "subject to open" because the remainder is to a class—Otter's "grandchildren"—and at least one member of that class already qualifies for the remainder—Gertrude, Dan's child, and thus Otter's grandchild.

The interest is in Fee Simple Absolute because this is the modern, presumed, present possessory estate and the lack of any words of limitation does not rebut this presumption.

One question is whether Gertrude's interest is impacted by the common law rule against perpetuities. The interest, a future interest that is a vested remainder subject to open, is subject to the rule. And for the interest to be valid under the common law rule, the class must close not later than twenty-one years after some life in being at the creation of the interest.

Here, Dan or Curtis, whomever lives longer, is the validating life. Both Dan and Curtis are lives in being consider both were alive at the time of devise. And given that Otter is dead at the time of grant (this was his will), Otter will have no more children and Dan and Curtis are the only individuals who can produce grandchildren that could join Gertrude in the vested remainder subject to open. Therefore, during Dan and Curtis's lifetime, all of the grandchildren of Otter's who could join this class will be born. And this is the only limitation that is keeping this class open—the possibility of more grandchildren. We therefore know for certain, at the time of the devise, that all of the grandchildren will be born during Dan or Curtis's lifetime plus 21 years.

A parting point—if more grandchildren are born, Gertrude will be a tenant in common with these grandchildren in the vested remainder subject to open in fee simple absolute. This is the

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default concurrent interest and no language suggests that Otter created a joint tenancy for the grandchildren.

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Question #5 – Spring 2005: (This question involved a concept we did not cover—the Rule in Shelley’s case—and thus seems simpler than it is—you are not responsible for the Rule in Shelley’s case).

Otis’s conveyance created a life estate for Alice.

Otis’s conveyance created a present possessory estate by the language “convey my land to Alice for life.” Alice is the words of purchase and “for life” are the words of limitation. While the modern presumption is that a fee simple absolute is created, the “for life” language rebuts this presumption and creates a life estate. This means that Alice gets the land immediately at the time of conveyance for her lifetime.

The future interest “to Alice’s heirs if Alice survives Wilma” is an interest in Alice’s heirs, not Alice. Accordingly Alice has no interest in this future interest at the time of the grant.

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Question #6 – Spring 2005: (This question involved a concept we did not cover – a Vested Remainder Subject to Divestment. Accordingly, I would not ask a question like this on the exam. I will answer it below as I think you should if I was negligent enough to ask something like this).

Beatrice has a Contingent Remainder in Fee Simple that is contingent upon Albert not putting garden gnomes on the land before Albert’s death.

This interest is a contingent remainder in fee simple because:

The interest is a remainder because: (1) the interest follows an expirable estate—the life estate in Albert, created by the “to Albert for his life” words of limitation; (2) the interest does not take effect before the expiration of the preceding estate (it is not shifting); and (3) nor does the interest take effect any time other than immediately upon expiration of the preceding estate (it is not springing).

The remainder is contingent because while the remainderman is born and ascertainable—Beatrice is alive at the time of the grant—there is a condition other than the expiration of the previous estate—whether “Albert ever puts those ugly garden gnomes on the land.”

The interest is in fee simple absolute because this is the modern, presumed present possessory estate and the lack of any words of limitation does not rebut this presumption.

One question is whether Beatrice’s interest violates the common law rules against perpetuities, still in effect under USRAP, because if the interest does, the 90 year wait-and-see alternative to the rule introduced under USRAP will go into effect. Beatrice’s interest is subject to the rule because it is a contingent remainder.

Here, since the contingency will be triggered, if at all, during Albert’s lifetime, Beatrice’s interest is valid under the common law rule and thus we do not need the USRAP, wait-and-see alternative. Albert is alive at the time grant—and thus a life in being—and the condition—whether Albert puts garden gnomes on the land not—will take place, if at all, during Albert’s lifetime (he needs to be alive to place the gnomes). Albert is therefore the validating life and Beatrice’s interest is thus valid.

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Question #7 – Spring 2005:

Allison has a Fee Simple Subject to an Executory Limitation that, if the limitation is not triggered within 90 years from today, would then become, 90 years from today's date, a Fee Simple Determinable.

To fully understand Allison's interest, we need to also understand Bob's interest.

Allison's interest appears to be a fee simple determinable because of the durational language, "as long as", that is a limitation on Allison's interest—"as long as the mining for gold continues on the lang."

But her interest is followed by an interest in a third party that is an executory interest.

Bob's interest is an executory interest because it: (1) does not follow an expirable interest—fee simple determinables are not expirable and (2) the interest can take effect before the termination of the previous estate (it can shift)—if mining stops, then the land transfers to Bob (or whomever owns the executor interest at the time), cutting the previous estate short. Since Bob's interest violates two of the remainder rules, it must be the other future interest in a third party—an executory interest.

And since Allison's interest is followed by an executory interest, Allison's present possessory interest is a Fee Simple on Executory Limitation.

However, if Bob's interest is invalid under the rule against perpetuities, its destruction could change Allison's interest.

Under USRAP, we first test Bob's interest under the common law rule. Here, Bob's executory interest must become possessory, if at all, not later than twenty-one years after some life in being at the creation of the interest. Otherwise, the interest violates the common law rule and USRAP's alternative, 90 year wait-and-see rule applies.

Here, there is no certainty that Bob's interest will become possessory within some life in being plus 21 years. Olivia, Allison, and Bob, and in fact everyone alive this morning, could die and then more than 21 years later, the land could stopped being mined causing Bob's executory interest to become possessory. There is no validating life, no certainty within the perpetuities period, at the time of grant.

Therefore, the 90 year wait-and-see alternative under USRAP applies. Bob's interest is valid at the time of grant and must be triggered within 90 years from today's date to stay valid. If 90 years passes and the land is still being mined for gold, Bob's interest would be destroyed under USRAP and this destruction would line out the "then to Bob" language.

Without the future interest in a third party, Allison's interest is no longer a fee simple on executory limitation. Instead, it would be a fee simple determinable and the typical, future interest in the grantor would follow—a possibility of reverter owned by Olivia, the grantor.

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Question #8 – Spring 2005: Please refer to the Sample Answer of the writing assignment we did that was very, very similar to this question.

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Question #11 – Spring 2006: (This question involved a concept we did not cover—the Rule in Shelley’s case—and thus seems simpler than it is—you are not responsible for the Rule in Shelley’s case).

Otter’s devise created a life estate for Anitra.

Otter’s devise created a present possessory estate by the language “convey my land to Anitra for life.” Anitra is the words of purchase and “for life” are the words of limitation. While the modern presumption is that a fee simple absolute is created, the “for life” language creates a life estate. This means that Anitra gets the land immediately at the time of conveyance for her lifetime.

The future interest “to her heirs if she never marries a Catholic” is an interest in Anitra’s heirs, not Anitra. Accordingly, Anitra has no interest in this future interest at the time of the grant.

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Question #12 – Spring 2006:

Otis has no interest in the land.

In order to determine if Otis has any interest remaining in the grantor, all of the interests created by the conveyance must be identified to see if there is anything “left over” that would go to Otis.

The language “my land to my friend Alice for life” creates a present, possessory life estate in Alice. Alice is the words of purchase and “for life” are the words of limitation. While the modern presumption is that a fee simple absolute is created, the “for life” language creates a life estate. This means that Alice gets the land immediately at the time of conveyance for her lifetime.

The language “then to her widower for his life” creates a contingent remainder in a life estate for the widower.

This interest is a contingent remainder in a life estate because:

The interest is a remainder because: (1) the interest follows an expirable estate—the life estate in Alice, created by the “to Alice for life” words of limitation; (2) the interest does not take effect before the expiration of the preceding estate (it is not shifting); and (3) nor does the interest take effect any time other than immediately upon expiration of the preceding estate (it is not springing).

The remainder is contingent because while there is no condition preceding the estate other than the expiration of the previous estate (Alice’s death), the remainderman is not currently ascertainable (or necessarily born). We will not know who Alice’s widower is until her death. It may be Burt, but she may divorce Burt and marry someone else before Alice dies.

The interest is a life estate because while the modern presumption is that a fee simple absolute is created, the “for life” language rebuts this presumption and creates a life estate.

One question is whether the widower’s interest violates the common law rule against perpetuities. The interest is subject to the rule because it is a contingent remainder. And for the interest to be valid under the common law rule, the interest must vest, if at all, not later than twenty-one years after some life in being at the creation of the interest.

Here, Alice is the validating life. During Alice’s lifetime (plus 21 years), the interest will vest, if at all, because we will know for certain Alice’s widower and, in turn, resolve the contingency at Alice’s death. And Alice is alive at the time of grant and therefore a life in being.

The language “then to my niece Wilma and her heirs if she survives until age 21” creates a vested remainder in fee simple absolute for Wilma because of the following:

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The interest is a remainder because: (1) the interest follows an expirable estate—the life estate in the widower; (2) the interest does not take effect before the expiration of the preceding estate (it is not shifting); and (3) nor does the interest take effect any time other than immediately upon expiration of the preceding estate (it is not springing).

The remainder is vested because: (a) the remainderman is both born and ascertainable—Wilma is alive at the time of grant and (b) there is no condition preceding the estate other than the expiration of the previous estate (the widower's death), because the initial condition—that Wilma survive to 21—has already been met. She is 22 at the time of the grant.

Since this is a vested remainder, the common rule against perpetuities does not apply.

Accordingly, with all of these interest, there is no gap or contingency that Otis needs to fill in with a reversion in his name. He has no interest.

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Question #13 – Spring 2006:

David and Earl may have an executory interest in the land that depends on which of them, or perhaps a future grandchild of Oscar's, reaching 21 first.

The interest created, the devise "to the first of my grandchildren to survive to age 21," is an executory interest in fee simple absolute.

This interest is an executory interest because it violates two of the remainder rules. (1) The interest does not follow an expirable interest—at the time of the devise, no one is ready to take the interest (no grandchild is 21 yet) and thus Oscar has a remainder to fill the gap and a remainder is not an expirable estate. (2) The interest does not take effect immediately upon the termination of the previous estate (it spring's) because once Oscar dies, we must wait to see which grandchild reaches 21 first.

The interest is in fee simple absolute because this is the modern, presumed present possessory estate and the lack of any words of limitation does not rebut this presumption.

However, if the interest is invalid under the rule against perpetuities, it may be destroyed

Under USRAP, we first test the interest under the common law rule. Here, the executory interest must become possessory, if at all, not later than twenty-one years after some life in being at the creation of the interest. Otherwise, the interest violates the common law rule and USRAP's alternative, 90 year wait-and-see rule applies.

Here, there is absolute certainty that the interest will become possessory, if at all, within Albert's lifetime plus 21 years. Albert is alive at the time of grant and thus a life in being. And given that Oscar is dead at the time of grant (this is his will), Oscar will have no more children and Albert is the only individual who can produce grandchildren for Oscar that could turn 21 first. Therefore, during Albert's lifetime plus 21 years, Oscar will have a grandchild turn 21, if at all.

The interest is thus valid under the common law rule and we have no need for the 90 year wait-and-see alternative under USRAP.

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Question #14 – Spring 2006:

Cecil (IT'S A TYPO!) has a possibility of possessing an executory interest in fee simple in the land, but only if he passes the bar within 90 years from today—the time of the grant.

The interest, by the conveyance “to the first of Allison’s children to pass a bar examination,” initially creates an executory interest in fee simple absolute.

This interest is an executory interest because it violates two of the remainder rules. (1) The interest does not follow an expirable interest—at the time of the devise, no one is ready to take the interest (no grandchild is 21 yet) and thus Olivia has a remainder to fill the gap and a remainder is not an expirable estate. (2) The interest does not take effect right upon the termination of the previous estate (it spring’s)—we must wait to see which grandchild reaches 21 first.

The interest is in fee simple absolute because this is the modern, presumed present possessory estate and the lack of any words of limitation does not rebut this presumption.

However, if the interest is invalid under the rule against perpetuities, it may be destroyed

Under USRAP, we first test the interest under the common law rule. Here, the executory interest must become possessory, if at all, not later than twenty-one years after some life in being at the creation of the interest. Otherwise, the interest violates the common law rule and USRAP’s alternative, 90 year wait-and-see rule applies.

Here, there is NO absolute certainty that the interest will become possessory, if at all, within Olivia, Allison, Barry, or Cecil’s lifetime plus 21 years. All of these individuals are alive at the time of grant, and thus are lives in being. However, we cannot say with any certainty that during their lifetime, or anyone who is alive this morning, a child of Allison’s will pass the bar. First, the child may be someone other than Cecil, and the passing could occur for this other child more than 21 years after Cecil’s death.

And Allison may have the child that eventually passes the bar after the grant—next year for example. She may die of complications during the birth and the child, who is not a life in being, will likely take more than 21 years to even become eligible to pass the bar, let alone pass it. And Olivia and Barry could also die more than 21 years before this newly born child passes the bar.

Therefore, there is no validating life under the common law rule and, in turn, the 90 year wait-and-see alternative under USRAP applies. The child’s, which may be Cecil’s, interest is valid at the time of grant and must be triggered within 90 years from today’s date to stay valid. If 90 years passes and (a) none of Allison’s children have passed the bar yet and (b) either Allison is still alive and/or some of her children are still alive, the interest would be destroyed under USRAP and Olivia would keep the land.