

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 than 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. We didn't cover the rule against perpetuities this semester.

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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, and we didn’t cover the rule against perpetuities this semester.

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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. Yet we didn't cover the rule against perpetuities this semester.

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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.

SAMPLE ANSWERS TO SHORT ANSWER QUESTIONS FROM SPRING 2005 AND
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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. But we didn’t cover that this semester.

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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 – yet we didn't cover the rule against perpetuities this semester.

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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 – yet we didn’t cover that topic this semester.