

**Comments on Grants at Supp. 75-76**

Assume that O owns Blackacre in fee simple. What interests are created by the following grants? Note: “→” means a grant by a deed; “⇒” means a grant by a devise.

1.     **(a)     O → A and his heirs.**  
       **(b)     O ⇒ A and his heirs. O is alive.**

(a)     A has a fee simple absolute. O has nothing. A’s heirs have nothing; the words, “and his heirs,” are words of limitation, not words of purchase.

(b)     A has nothing. Wills do not become effective until the testator’s death.

2.     **O → the First Baptist Church and its successors and assigns.**

The First Baptist Church has a fee simple interest in Blackacre. Note that the words “successors and assigns” are the words of limitation used for corporate bodies, which do not have “heirs.”

3.     **O → A.**

A has a fee simple absolute and O has nothing. In the older common law, A would have had a life estate and O would have had a reversion following A’s life estate, because words of inheritance — “and his heirs” — were necessary to create a fee simple by grant. (But note that the words “and his heirs” were never necessary to *devise* a fee simple.) This rule has been modified by statute in all jurisdictions, so that a grantor is presumed to have intended to convey a fee simple unless there is a strong indication otherwise.

4.     **O → A and B.**

A and B have a fee simple interest in Blackacre. O has nothing. Note that both “A” and “B” are words of purchase, not words of limitation. That is, they give an interest to A and to B.

5.     **O → A and his heirs on his father’s side.**

A has a fee simple absolute. O has nothing. The courts allow only certain types of interests to be created, and this is not one of them.

6.     **O → A and the heirs of his body.**

At common law, A would have a fee tail. O would have a reversion. Under modern statutes, a fee tail generally cannot be created. In Florida, A would have a life estate, with a contingent remainder in A’s lineal descendants alive (or in gestation) when A died. The statute also provides that if there were no such lineal descendants, O would get the property back. In some other states, A would have a fee simple absolute. In still other states,

A would have a fee tail, and the first of his lineal descendants to take under the grant would have a fee simple. (How different is this from what the Florida statute provides?)

7. **O → A for life.**

A has a life estate. O has a reversion.

8. **O → A for the life of B.**

A has a life estate pur autre vie. O has a reversion.

9. (a) **O → A for so long as B and C are both living.**

(b) **O → A until both B and C are dead.**

(a) A has a life estate pur autre vie — one that will expire when either B or C dies. O has a reversion.

(b) A has a life estate pur autre vie — one that will expire when both B and C have died. O has a reversion.

10. **O → my spendthrift nephew A and his heirs, but if A ever attempts to alienate, then to B and her heirs.**

O has attempted to place a “forfeiture restraint” on A’s fee simple. Forfeiture restraints on fee simples are invalid. Therefore, A has a fee simple absolute. O has nothing. B has nothing. Note, however, that the Restatement would permit some kinds of limited restraints on a fee simple.

11. **O → A and her heirs, but A shall have no power to alienate it.**

O has attempted to place a “disabling restraint” on A’s power to alienate Blackacre. This restraint would be invalid. A has a fee simple absolute. O has nothing. Note, however, that the Restatement would permit some kinds of limited restraints on a fee simple.

12. **O → A for life, but if A ever attempts to sell her life estate, then O shall have the power to reenter the property and take possession of it.**

O has attempted to place a forfeiture restraint on a life estate. Most courts would uphold forfeiture restraints on life estates, but a disabling restraint would not be upheld, either as to a fee simple or a life estate. “Disabling restraints” are considered particularly objectionable because, if enforced, they would prevent conveyance of the property to the owner’s creditors to pay his debts; the owner could thumb his nose at creditors while retaining the property. Forfeiture restraints, in contrast, would give the owner no such benefit. If A attempts to sell Blackacre to X, for example, X will not get ownership of Blackacre, but A will also lose ownership of it to O, so A has an incentive not to try to sell it to X in the first place.

Assuming that the restraint is valid, A has a life estate subject to a condition subsequent. O has a reversion and a right of entry. If the restraint were not valid, A would have a life estate and O would have a reversion.

**13. O → A and his heirs so long as a Republican is president.**

A has fee simple determinable. O has a possibility of reverter.

**14. O → A for life, so long as she keeps up with her reading in property.**

A has a life estate determinable. O has a reversion and a possibility of reverter.

**15. O → A and his heirs, so long as he remains unmarried.**

O has attempted to create a fee simple determinable in A, reserving a possibility of reverter for himself. But this condition could be held to violate public policy. If it could be shown that the main motive was to provide support until marriage, it might be upheld. How sensible or intelligible is the distinction?

**16. O → A and his heirs, but if a Democrat is elected president, then O and her heirs shall have the right of reentry and repossession.**

A has a fee simple subject to a condition subsequent. O has a right of entry or power of termination.

**17. (a) O → A for life, then to B and his heirs.**

**(b) O → A and his heirs so long as the land is farmed, then to B and his heirs.**

**(c) O → A and his heirs, but if the land ceases to be used as a farm, then B shall have the power to enter and take possession.**

(a) A has a life estate. B has a vested remainder in fee simple. O has nothing.

(b) A has a fee simple subject to an executory limitation (or “fee simple on executory limitation”, or “fee simple subject to an executory interest”). B has an executory interest, which will become possessory when the land is no longer farmed. O has nothing.

Under the common law Rule Against Perpetuities, B’s executory interest is invalid. Most likely, a court would then hold that A has a fee simple determinable, B has nothing, and O has a possibility of reverter.

(c) A has a fee simple subject to an executory limitation (or “fee simple on executory limitation”, or “fee simple subject to an executory interest”). B has an executory interest, which will become possessory when the land is no longer farmed and B attempts to take possession. O has nothing.

Under the common law Rule Against Perpetuities, B's executory interest is invalid. Most likely, a court would then hold that A has a fee simple absolute, and B and O have nothing.

**18. O → A and her heirs so long as A is alive.**

Most likely, a court would say that A has a life estate, and O has a reversion. One could call it a fee simple determinable in A, with a possibility of reverter in O. What practical difference might it make? Very little, if any. At common law, a possibility of reverter could not be alienated, and may not have been devisable, whereas a reversion could be alienated or devised. (Both, like all future interests, were inheritable.) But today future interests generally are alienable and devisable. Some states — Florida is one of the them — limit the duration of a possibility of reverter and “forfeiture” provisions to 21 years. Calling O's interest a reversion might well exempt O from this provision.

**19. O → A for life, then to B for life, then to C for life, then to D and his heirs.**

A has a life estate. B has a vested remainder in a life estate. C has a vested remainder in a life estate. D has a vested remainder in fee simple. Note that none of the future interests violate the Rule Against Perpetuities because they are all vested.

**20. O → A for life, then to A's eldest male lineal descendant for life, then to the eldest male lineal descendant of A's eldest male lineal descendant for life, then to the eldest male lineal descendant of the eldest male lineal descendant of A's eldest male lineal descendant in fee tail.**

There is an initial question of how the court would construe such a grant. In states with statutes that abolish fee tails or effectively limit them to one generation, there is a strong possibility that the court would say that this was an invalid attempt to avoid application of the statute. If so, the court would treat the grant as if it said, “O → A in fee tail,” and then apply the statute abolishing or limiting the fee tail. That would leave A with a fee simple, a life estate, or a modified fee tail, depending on the statute.

If the court did not do that, then A would have a life estate, A's eldest male lineal descendant would have a contingent remainder in a life estate, the eldest male lineal descendant of A's eldest male lineal descendant would have a contingent remainder in a life estate, and the eldest male lineal descendant of the eldest male lineal descendant of A's eldest male lineal descendant would have a contingent remainder in fee tail. O would have a reversion. (The future interests are contingent on the assumption that we wait until A and each succeeding descendant dies to see who the “eldest” descendant in the next generation is. If we were to read it as meaning “first-born” then we would probably call the remainders vested.)

The first contingent remainder is valid under the Rule Against Perpetuities, because it must vest within 21 years of the life of A (in fact, it would vest at his death). The other contingent remainders could vest, if ever, far in excess of 21 years after the life of A (or O, for that matter.) They are void. That would probably leave A with a life estate, A's

eldest lineal male descendant with a remainder in a life estate, and a reversion in fee simple in O.

**21. O → A for life, then to A's children and their heirs.**

A has a life estate. If A has no children, then there is a contingent remainder in fee simple in A's children, and O has a reversion. Upon the birth of A's first child, that child will have a vested remainder, subject to open, in fee simple, and O will have nothing. (If any child of A were to die while A is alive, what would happen to that child's interest?)

Note: If A were to purchase O's reversion before he had any children, the life estate and the reversion would merge and A would get a fee simple, with A's children being cut out, in a jurisdiction in which the Doctrine of Destructibility of Contingent Remainders is recognized. In a jurisdiction in which the Doctrine of Destructibility of Contingent Remainders has been abolished, the life estate and the reversion would merge into a fee simple on executory limitation, and A's unborn children would have executory interests.

**22. O → A for 10 years.**

There are two ways of looking at this grant. Today we would say that A has an estate for years and O has a reversion. Because of rules pertaining to seisin in the earlier common law, O would have been said to have a fee simple subject to a term of years, and A, an estate for years. It makes no substantive difference today how we look at it.

**23. O ⇔ Son-of-O and the heirs female of his body. (optional)**

Son-of-O has a fee tail female. Who has the reversion? Either O's will specifies who gets it, or else it passes intestate to O's heir. Suppose that O failed to so specify, and son-of-O is O's heir. Then son-of-O also has the reversion. The courts would not apply the doctrine of merger in cases like this, because that would have made it effectively impossible in many cases to leave property in fee tail to one's eldest son, who was the first heir under the common law. Of course, today one would also have to take into account any statute abolishing or limiting fee tails.

**24. O → A for life, then to B and his heirs.**

A has a life estate, and B has a vested remainder in fee simple. O has nothing.

**25. O → A and the heirs of his body, then to B and his heirs.**

A has fee tail, and B has a vested remainder in fee simple. O has nothing.

**26. O → A for life, then to B for life.**

A has a life estate. B has a vested remainder in a life estate. O has a reversion.

**27. O → A for life, and then 1 day after A dies, to B.**

A has a life estate. B has an executory interest, which will become possessory one day after A dies. (It doesn't matter, but the executory interest would be called "springing.") O has a reversion in fee simple on executory limitation, which will give him Blackacre for one day upon A's death. Note that there is no way that this grant can be read as creating a remainder in B.

**28. O → A and his heirs on A's 21st birthday.**

A has a (springing) executory interest in fee simple, which will become possessory on A's 21st birthday. O has a fee simple on executory limitation.

**29. O → A for life, but if B graduates from law school, then to B and his heirs.**

Because of the "but if" language, the courts would likely read this grant as giving A a life estate on executory limitation, with an executory interest in B, and a reversion in O. B's executory interest will become possessory the moment he graduates from law school, whether that is before or after A dies. O will get the property back in one of two circumstances: B dies without graduating, in which case O gets Blackacre in fee simple after A dies; or A dies while B is alive but not yet out of law school, in which case O gets Blackacre in fee simple on executory limitation.

**30. O → A for life, then to B and her heirs if B graduates from law school. [Or: O → A for life, then to B and her heirs if B marries C.]**

There are two ways to look at this, depending on the status of the Doctrine of Destroyability of Contingent Remainders.

1) If the Doctrine is in effect, the courts will apply the rule in *Purefoy v. Rogers* and construe this as creating a contingent remainder. That is, if they possibly can construe an interest as a contingent remainder rather than as an executory interest, they will construe it as a contingent remainder. (Why would they have such a presumption?) Thus, A has a life estate, and B has a contingent remainder, and O has a reversion. If X purchased O's reversion and A's life estate before B married C (or graduated), then X would have a fee simple, and B would have nothing. Or, if A died before B satisfied the condition precedent, the property would go back to O. If B later married C (or graduated), B would get nothing.

2) If the Doctrine is not in effect, the courts will be free to treat this grant as creating an executory interest or a contingent remainder. It makes no substantive difference what labels are put on it. Thus, instead of using the contingent remainder terminology as in (i), we could say that A would have a life estate with an executory interest in B that would become possessory either on A's death (if B has already satisfied the condition) or after A's death, upon B's graduation/getting married. O would have a reversion. On the other hand, it is possible that a court would conclude that O meant that when A died, B would get it only she had graduated (or gotten married) by that time; even then, it wouldn't matter whether we called B's interest a contingent remainder or an executory interest. In ei-

ther case, if X purchased O's reversion and A's life estate, X would get a fee simple subject to an executory limitation, and B would have an executory interest.

**31. O → A for life, then to B's heir.**

A has a life estate. There is a contingent remainder in B's heir, an unascertained person. O has a reversion, because the remainder in B's heir might be destructible (depending on the law of the jurisdiction). Note that if the doctrine of destructibility of contingent remainders has been eliminated, a court might read the grant to provide that if B dies after A dies, then Blackacre should go to B's heir when B dies; in such a case, one would have to say that O has a reversion in fee simple on executory limitation.

**32. O → A for life, then if B marries C to B and his heirs, but if B doesn't marry C, then to D and his heirs.**

A has a life estate. There are alternative contingent remainders in B and D. In a jurisdiction that recognizes the Doctrine of Destructibility of Contingent Remainders, O has a reversion.

**33. O → A for life, remainder to B if B survives A.**

A has a life estate. B has contingent remainder. Note once again the difference between jurisdictions that recognize the Doctrine of Destructibility of Contingent Remainders and those that do not.

**34. O → X for life, then to A's children and their heirs. (optional)**

X has a life estate. If A has children, they have a vested remainder, subject to open, in fee simple. If A has no children, there is a contingent remainder in fee simple in the unborn children. O has a reversion, if the remainder is contingent.

When X dies, if A has any children, those children will be entitled to take possession. At that point, the class will close under the rule that it closes when any one member is entitled to possession. Any later-born children will not have an interest in the property. If A has no children when X dies, then what happens depends on whether the jurisdiction recognizes the Doctrine of Destructibility of Contingent Remainders. (Can you see why?)

If, on the other hand, A dies before X, the class closes for a different reason: A can have no more children after he dies. (If A is a male then any children born 9 months later would be treated as if born before he died.) If A never had any children, the contingent remainder fails — because the condition precedent was not met, *not* because of the Doctrine of Destructibility of Contingent Remainders. Because O has a reversion, he will get Blackacre when X dies. If A did have children, their vested remainder, subject to open, in fee simple, will become a vested remainder in fee simple.

**35. O → A for life, then to B and her heirs, but if B forgets property, then to C and her heirs.**

A has a life estate.

B has a vested remainder, subject to divestment, in fee simple on executory limitation.

C has a shifting executory interest that will become possessory if A is dead and B forgets property.

Note: Why is B's remainder "vested"? Courts would probably read it as vested because the grant starts out, "O → A for life, then to B and her heirs," so it's written as if there's no condition to B taking (other than A's death), and B is an ascertainable person. But then there's the "but if" phrase. What does that phrase mean? There are two possible meanings:

1. B is going to get Blackacre when A dies, no matter what. But once B gets it, B better not forget property, because forgetting property will mean ownership of Blackacre will shift to C. This is a way of saying that when A dies, B is certain to get Blackacre in fee simple subject to an executory interest (C's executory interest).
2. B better not forget property while A is alive, because if B does, then when A dies, B won't get Blackacre. It'll go straight to C. If B does remember property while A is alive, then when A dies, B will get Blackacre, but hold it subject to C's executory interest.

Which one makes more sense? Probably 2, though it's a question of O's intent. If O is so focused on B not forgetting property, it'd be odd not to make it a condition of B taking Blackacre in the first place, as well as making a condition of holding onto it.