• RAP Cont’d
  • *The Symphony Space, Inc. v. Pergola Properties, Inc*
  • Concurrent Interests
    • Introduction
    • *Riddle v. Harmon*

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• How should we characterize an option for RAP purposes?

• Three arguments why the RAP should not invalidate the option.
  • Commercial Options
  • Savings Statute
  • Wait and See Approach

• Remedies
Commercial Options

- Sophisticated parties
- Legislative intent and precedent
- Distinguishable from a preemptive right or right of first refusal (Daniels v. Anderson)

Savings Statute

- July 2003 is 24 years after the creation of the option
- No “contrary intention appears”
- EPTL 9-1.2 (reducing the age contingency to 21), p. 258
Wait and See Approach

- **Wait and See**: “an interest is valid if it actually vests during the perpetuities period, irrespective of what might have happened”

Versus

- **Statute**: “an interest is invalid ‘unless it must vest, if at all, not later than twenty-one years after one or more lives in being”

Remedies Against Public Policy

- Allowing rescission due to *mutual mistake* would give effect to the option.
- An award of damages would give effect to option.
- Reliance interest not frustrated because decision follows existing law.
- Unjust enrichment?
- Malpractice?
Common Law Concurrent Interests

• Tenancy in Common
• Joint Tenancy
• Tenancy by the Entirety
• The Four Unities (T-Tip)

The Four Unities (T-TIP)

• **Time:** the interest must be acquired or vest at the same time.
• **Title:** must acquire title by the same instrument or by joint adverse possession.
• **Interest:** must have equal undivided shares and identical interests measured by duration.
• **Possession:** must have right to possession of the whole.
Riddle v. Harmon,

Severance of Joint Tenancies

- Straw person necessary to create?
- Straw person necessary to sever?

- “The purpose of this Grant Deed is to terminate those joint tenancies formerly existing between the Grantor, Frances P. Riddle, and Jack C. Riddle, her husband.”

- Rejection of precedent.

Riddle v. Harmon Cont’d

- Should there be any requirements for unilateral severance?
  - Notice to the joint tenant?
  - Notice to a third party?
  - Notarized?
  - Recordation?