The Rule Against PerPETuities:
A Rule of Proof

No interest is good unless it must vest, if at all, not later than twenty-one years after some life in being at the creation of the interest.

Three Interests Vulnerable to RAP

• Contingent remainders
• Vested remainders subject to open
• Executory interests
RAP and Future Interests in a Grantor

The rule against perpetuities does not apply to future interests held by a grantor.

Those interests—reversions, possibilities of reverters and rights of entry/powers of termination—are inherently vested.

Validating Life (aka Measuring Life)

A person who allows you to prove that the contingent interest will vest or fail within the life of that person, or at the death of that person, or within 21 years after that person’s death.

This person will be causally connected to the vesting or failing of the contingent interest.
Validating Life Cont’d

Examples

• Preceding life tenant
• Taker or takers of the contingent interest
• Anyone who can affect the identity of the takers
• Anyone who can effect events related to the condition precedent

The Fetus or Gestation Rule

A fetus is considered alive from the time the child is conceived if the child is later born alive.
The Fertile Octogenarian

For purposes of property law, any living person is considered capable of having more children (no matter the person’s age).

When to Determine Compliance with RAP

We determine compliance with the common law RAP prospectively, from the time of creation of the interest, i.e.,

- at the effective date of an inter vivos conveyance or
- at the date of death in the case of a will.

Remember, a will is effective at the moment the testator dies, not when the will is written and signed.
How to Apply the Rule

1. Draw lines to separate interests;
2. Find any future interests in a grantee;
3. Underline any that are either contingent or subject to open;
4. Write down what must happen to cause the interest to vest or close;
5. Find & circle all lives in being;
6. Decide if the interest might still be contingent or open longer than the lifetimes of everyone circled + 21;
7. If so, strike the interest.