Defeasible Estates

- So far, we’ve studied one kind of fee simple.
  - Absolute
- Today we discuss another type.
  - Defeasible

Defeasible Estates

Two/Three Defeasible Fees Simple

1. Determinable
2. Subject to Condition Subsequent
3. Subject to Executory Limitation

NB: A life estate may also be defeasible.
“O to A for life, so long as . . . .”
Defeasible Estates

Fee Simple Determinable

- “O to A and his heirs so long as the land is used for residential purposes”
- It will end automatically when an event occurs. The grantor is conveying a fee simple only until an event happens.
- It uses words of duration, such as “so long as” “while used for”, and “until”.

Defeasible Estates

Fee Simple Determinable Cont’d

- The future interest created is a possibility of reverter.
- The future interest may be expressly retained by the grantor or it may arise by operation of law.
Defeasible Estates

Fee Simple Subject to Condition Subsequent

• “O to A and his heirs; however, if the land is not used as a library, then to O”
• It may be cut short or divested at the transferor’s election when a condition occurs.
• It uses words such as “but if”, “provided, however”, and “on condition that”.

Defeasible Estates

Fee Simple Subject to Condition Subsequent Cont’d

• The future interest created is a right of entry or a power of termination for the grantor.
• The fee simple continues unless and until the right of entry is exercised.
Defeasible Estates

Fee Simple Subject to Executory Limitation

• “O to A and her heirs until B marries, then to B”
• “O to A and her heirs, however if B marries, then to B”
• The future interest created when a grantor creates either a fee simple determinable or a fee simple subject to condition subsequent and rather than retaining a future interest in himself, creates one instead in a third party.

Mahrenholz v. County Board of School Trustees, 417 N.E. 2d 138 (Ill. 1981), Casebook, p. 208

Defeasible Estates

“this land to be used for school purpose only; otherwise to revert to Grantors herein”

• Type of defeasible interest created?
• Alienability
• Effect of subsequent deeds
**Mahrenholz Cont’d**

**Precedent Cited by the Defendants**

  - “their successor and assigns **forever**, for the uses and purposes hereinafter mentioned and for **NONE** other”

- *McElvain v. Dorris*
  - “This tract of land is to be used for mill purposes, and **if not used** for mill purposes the title **reverts** back to the former owner.”

**Precedent Cited by the Court**

- The Law of Future Interests
- *North v. Graham*
  - “said tract of land above described to **revert** back to the party of the first part **whenever it ceases** to be used or occupied for a meeting house or church”
**Mahrenholz Cont'd**

**Was the Condition Breached?**

- Use of the land still furthering educational goal?
- Equitable deviation/change of conditions doctrine for defeasible fees to non-profits.

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**Future Interests**

**Two Types of Interests**

1. In the Transferor
2. In the Transferee
Future Interests in the Transferor

Three Types of Interests

1. Reversion
2. Possibility of Reverter (NOT a possibility of reversion)
3. Right of Entry/Power of Termination

Future Interests in the Transferee

Two Types of Interests

- Remainder
  - Vested
  - Contingent
- Executory Interest
### Present and Future Interests

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### Vested Remainders

- If given to an **ascertained** person **AND**
- Not subject to a condition **precedent** (other than the natural termination of the preceding estate)
  - Precedent: (pri-**seed**-[ə]nt) preceding in time or order; **contingent upon some event occurring**
  - Note: Not subject to the rule against perpetuities
Types of Vested Remainders (2)

1. Indefeasibly vested remainders
   • Certain to become possessory in the future
   • Cannot be divested

Types of Vested Remainders (2) Cont’d

2. Remainders subject to open/remainders vested subject to partial divestment
   • Remainder is created in a class of persons (such as A’s children)
   • One member of the class is ascertainable and no condition precedent
   • Later-born members of the class are entitled to share in the gift
Contingent Remainders

- If given to an unascertained person OR
- Subject to a condition precedent (other than the natural termination of the preceding estate)
- Note: Subject to the rule against perpetuities

Alternative Contingent Remainders

Contingent remainders are “alternative” when they each follow the same estate and when their conditions precedent are the opposite of each other, so that the vesting of one precludes the vesting of the other.

See Example 7, p. 230
Executory Interests of Old

• **Shifting** Executory Interest
  • If in order to become possessory, the future interest must *divest* or *cut short* some interest in another transferee.

• **Springing** Executory Interest
  • If in order to become possessory, the future interest must *divest* the transferor in the future.

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Defeasible Estates
And
The Rule Against Perpetuities

The rule against perpetuities does **not** apply to the future interests created by defeasible estates because reversions, possibilities of reverters, and rights of entry/powers of termination are inherently **vested**.