Real Property
Prof. Belle
Midterm Examination –December 2016
Answer Outlines -- Essay Qs

Q1 (AEO's letter to Leonard) ➔ *based on RAP problem #3 (p.263) + 10/13/16 in-class exercise*

• **AEO wants:** "To MD for life, then to YD for life, then to DL; but if a commercial gambling hall is ever operated on the property before DL takes possession, then to Blaze."

• 4 interests created:
: MD has life estate
: YD has a contingent remainder (CR) for life
: DL has a vested remainder subject to total divestment (VRSTD) in fee simple absolute (FSA). DL's VRSTD is not indefeasibly vested, because the divestment can happen before DL ever takes possession, with the right to present possession (in the future) shifting to Blaze.
: Blaze has a shifting executory interest (EI) in FSA.

• RAP testing ➔ Only YD's CR and Blaze's shifting EI are subject to the RAP.
: YD's CR does not violate RAP because it must either vest or fail during MD's lifetime, i.e., MD is the validating life for this CR.
: Blaze's shifting EI does not violate RAP because it must either vest or fail during DL's lifetime, i.e., DL is the validating life for this EI.

• If, after the grant, YD is born: YD is not a "life in being" for purposes of RAP testing; but DL's taking present possession will be delayed until after YD dies.

• **Variation:** "To MD for life, then to YD for life, then to DL; but if a commercial gambling hall is ever operated on the property before DL or DL's estate takes possession, then to Blaze."

• 4 interests created:
: MD, YD, Blaze ➔ same as above
: DL or DL's estate has a vested remainder subject to total divestment (VRSTD) in FSA. The divestment can happen before DL or DL's estate ever takes possession, with the right to present possession (in the future) shifting to Blaze.

• RAP testing ➔ Only YD's CR and Blaze's shifting EI are subject to the RAP.
: YD's CR ➔ same analysis as above
: Blaze's shifting EI now violates RAP because it may vest or may fail during the lifetime or within 21 years after the death of all "lives in being," i.e., all persons who are alive at the time of the grant when the perpetuities period began.
: If DL dies before YD dies, then DL's VRSTD would pass to DL's estate, so DL cannot be the validating life for Blaze's EI (EI could still be in limbo at DL's death)

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Q1 (AEO's letter to Leonard) (cont.)

: We cannot know if Blaze's EI will vest or fail until either (a) a commercial gambling hall is operated on the property while YD is still alive, or (b) YD dies and no commercial gambling hall has ever been operated on the property.
: What happens during YD's life (until YD's death) determines the vesting or failing of Blaze's EI; but YD is not a "life in being" under the RAP.
: Blaze, who is a "life in being," cannot be the validating life for Blaze's own EI, because if Blaze dies, the EI is not extinguished; it passes to Blaze's estate and remains in limbo as an "unvested" EI.

: Strike the invalid part ➔ "To MD for life, then to YD for life, then to DL~~; but if a commercial gambling hall is ever operated on the property before DL or DL's estate takes possession, then to Blaze~~."

: Result ➔ MD has a life estate; YD has a CR for life; but now DL has an indefeasibly vested remainder in FSA. This clearly violates AEO's intent, so Leonard's advice should be to go with the first option above ("AEO wants…").

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Q2 (the 6 events) ➔ *based on 10/20/16 in-class exercise*

(1) AEO (who has fee simple absolute) conveys Blackacre "to A, B, and C in fee simple"
- Conveyance creates a joint tenancy with right of survivorship in A & B & C
- (This is assuming the jurisdiction follows the common law presumption in favor of joint tenancy.)

(2) A conveys "all my interest in Blackacre to X and her heirs"
- Conveyance severs the joint tenancy as between A on the one hand and B & C on the other hand.
- B & C are still joint tenants as to each other; but X is a tenant in common with B & C.

(3) B dies with a valid will leaving "all my real property to Y"
- When B dies, all of his interest in Blackacre passes to C; the survivorship feature of the joint tenancy governs over B's will. So C owns an undivided 2/3 interest as tenant in common with X, who owns an undivided 1/3 interest.

➔ If the jurisdiction permits tenancy by the entirety…

(4) C conveys "all my interest in Blackacre to Blaze and Starr, husband and wife"
- Blaze and Starr own as tenants by the entirety, an undivided 2/3 interest; as to X, they own their 2/3 interest as "a" tenant in common.

(5) Blaze conveys "all my interest in Blackacre to SAV"
- This conveyance is void; the tenancy by the entirety is not severed.

(6) Blaze dies, survived by Starr (and no children)
- Blaze's interest passes to Starr.
- **Final result:** Starr & X are tenants in common; Starr owns an undivided 2/3 interest, and X owns an undivided 1/3 interest.

➔ If the jurisdiction does <u>not</u> permit tenancy by the entirety…

(4) C conveys "all my interest in Blackacre to Blaze and Starr, husband and wife"
- Some jurisdictions would deem this a joint tenancy, because it more closely approximates a tenancy by the entirety. If so, then Blaze and Starr own as joint tenants, an undivided 2/3 interest; as to X, they own their 2/3 interest as "a" tenant in common.

(5) Blaze conveys "all my interest in Blackacre to SAV"
- The joint tenancy is severed. So now Starr & X & SAV are tenants in common, each with an undivided 1/3 interest.

(6) Blaze dies, survived by Starr (and no children)
- There is no change.
- **Final result:** Starr & X & SAV are tenants in common, each with an undivided 1/3 interest.
- Final result if (4) created a tenancy in common in Blaze and Starr is the same, i.e., this would "collapse" the effects of events (4) and (5).

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