

Chapter 3

Estates and Future Interests

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Student Slides

D. Four Rules

1. The Destructibility of Contingent Remainders Rule (and Merger)
2. The Rule in Shelley's Case
3. The Doctrine of Worthier Title

Destructibility of contingent remainders (and merger) (p.179)

- Rule—Destructibility: A contingent remainder in *real property* is destroyed if it does not vest in interest at or before the termination of the preceding *freehold* estate.

Verify:

Real (not personal) property?

Preceding freehold estate?

Interest is legal (not equitable, as in a trust)?

- Example 24: “To A for life, then to B’s heirs.” A dies while B is still alive.

Destructibility of contingent remainders (and merger) (p.179)

- Rule—Merger: If a life estate and the next *vested* interest in *fee simple* come *into the hands* of the same person, the lesser estate merges into the greater. Merger will destroy any *intervening contingent remainder* unless the LE, C-Rem, and next vested interest were all created by the same instrument.

Verify:

“Come into the hands” (not created by same instrument)?

Next vested interest in fee simple?

Intervening contingent remainder destroyed?

- Example 25: “To A for life, then to ~~B~~ if ~~B~~ turns 21.”
Subsequently, O conveys the reversion to A.

Rule in Shelley's Case (p. 180)

- Rule: If the *same* instrument gives a life estate to A and a remainder to "*A's heirs*" or "the heirs of A's body," then as a rule of law A takes the remainder and the heirs take nothing.

Verify:

Same instrument?

Magic words?

Both estates are legal or both are equitable?

- Example 26: "To A for life, then to A's heirs."

A (LE) + A's heirs (C-rem) *becomes* ...

A (LE) + A's heirs (V-rem) = FSA

Doctrine of Worthier Title (p. 181)

- Rule: If an *inter vivos* conveyance creates a *remainder or an executory interest* in the heirs of the grantor, then the grantor holds a reversion and the heirs take nothing. (The doctrine's "testamentary branch" achieves a similar result for devises by will.)

Verify:

Inter vivos conveyance (or jurisdiction follows testamentary branch)?

Creates remainder or EI in O's heirs?

- Example 27: "To A for life, then to the heirs of O."

A (LE) + O's heirs (C-rem) *becomes* ...

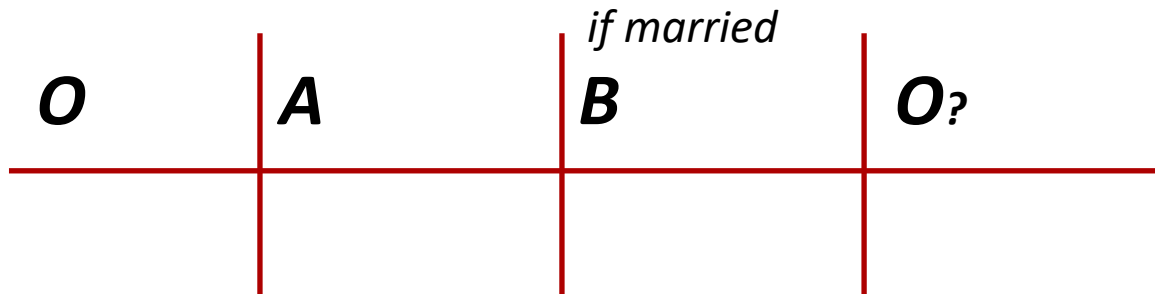
A (LE) + O's heirs (reversion)

A Place to Start Three (of Four) Rules

	Destructibility	Shelley's Case	Worthier Title
Rule	(1) C-Rem destroyed if not vested in interest at/before end of preceding freehold estate (2) Intervening C-Rem destroyed by merger if LE and next vested interest in FS <i>come into the hands of the same person</i>	If same instrument gives a LE to A and a Rem to A's heirs or the heirs of A's body, then A takes the Rem and the heirs take nothing	If inter vivos conveyance gives a Rem or EI to O's heirs, then O has a reversion and the heirs have nothing
Exceptions	No merger if all three interests created by same instrument	Applies only if both estates are legal, or both are equitable	Testamentary branch of doctrine also existed at common law
Vulnerable future interests	<ul style="list-style-type: none"> C-Rem 	<ul style="list-style-type: none"> C-Rem 	<ul style="list-style-type: none"> C-Rem EI
Timing	Wait until end of preceding freehold estate to determine validity of C-Rem	Interest void <i>ab initio</i>	Interest void <i>ab initio</i>
Rule of law?	Yes	Yes	Yes (historically)
Majority status	Abolished	Abolished (sometimes prospectively)	<ul style="list-style-type: none"> Inter vivos branch abolished in most states (or treated as a rule of construction) Testamentary branch abolished
Examples	<ul style="list-style-type: none"> To A for life, then to B's heirs (heirs' C-Rem destroyed if not vested by A's death) To A for life, then to B if B turns 21 (B's C-Rem destroyed if O's reversion comes into A's hands) 	To A for life, then to A's heirs	To A for life, then to O's heirs

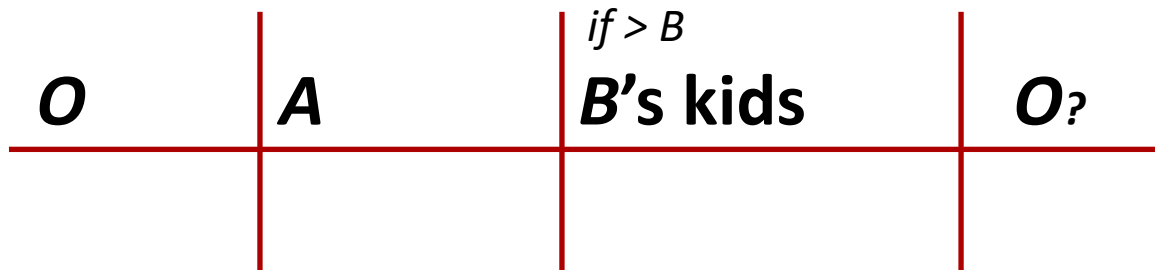
Test Your Understanding (p. 182)

- Problem 1: “To A for life, then to B if B gets married.” (*B* is single at A’s death.)



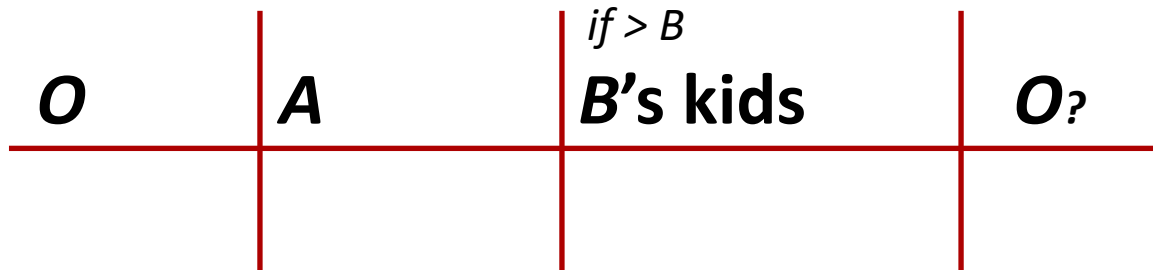
Test Your Understanding (p. 182)

- Problem 2(a): “To A for 10 years, then in fee simple to B’s children who survive B.” (*B* dies in 5 years, leaving children *C* and *D*. Then, the 10-year period expires.)



Test Your Understanding (p. 182)

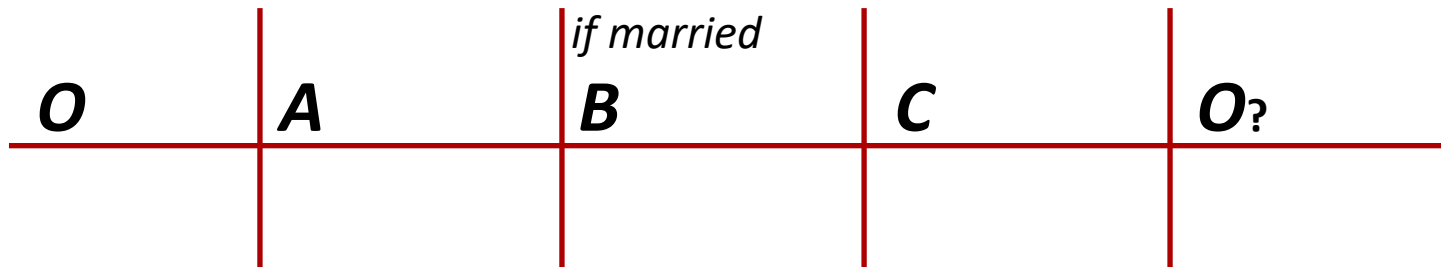
- Problem 2(b): “To A for 10 years, then in fee simple to B’s children who survive B.” (Assume instead that B is still alive after 10 years, with children C and D.)



- *Are all requirements of the destructibility rule satisfied here?*
- *If the children’s remainder survives, who holds the present estate after A’s term expires?*

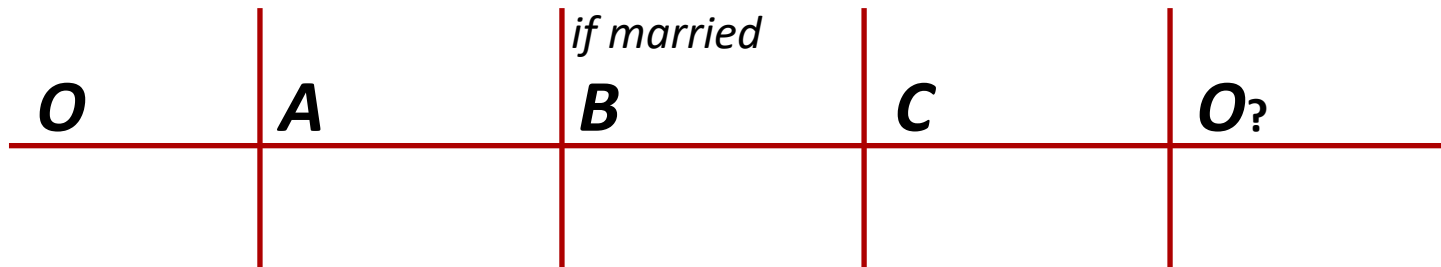
Test Your Understanding (p. 182)

- Problem 3: “To *A* for life, then to *B* for life if *B* is married, then to *C*.” (*B* is single at the time of the conveyance.)



Test Your Understanding (p. 182)

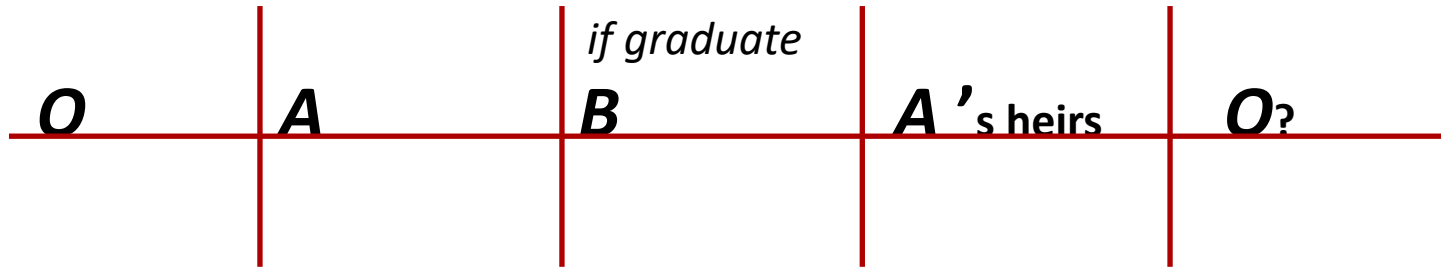
- Problem 3(a): “To A for life, then to B for life if B is married, then to C.” (Later, A conveys her interest to C.)



- *At what point in time would the basic destructibility rule apply?*
- *At what point in time would the related doctrine of merger apply?*

Test Your Understanding (p. 182)

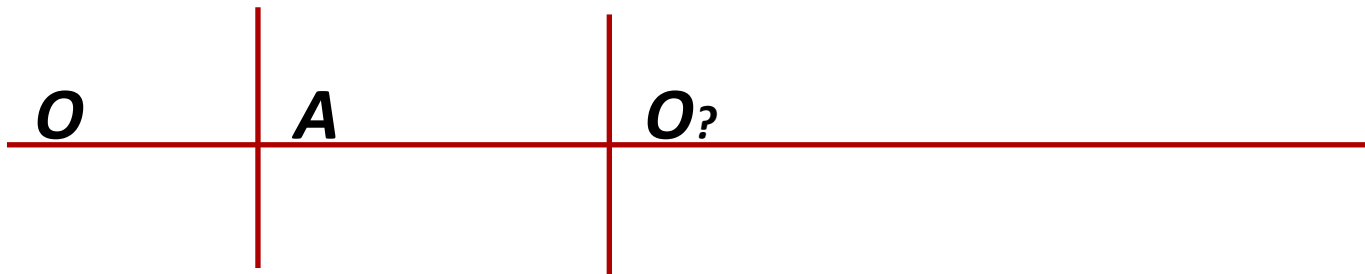
- Problem 4: “To A for life, then to B for life if B graduates from law school, then to A’s heirs.”



- Rule 1: *Is the interest in A's heirs valid? If not, who holds that interest instead?*
- Rule 2: *Does a second common law rule also apply if the heirs' interest "comes into the hands" of someone else?*

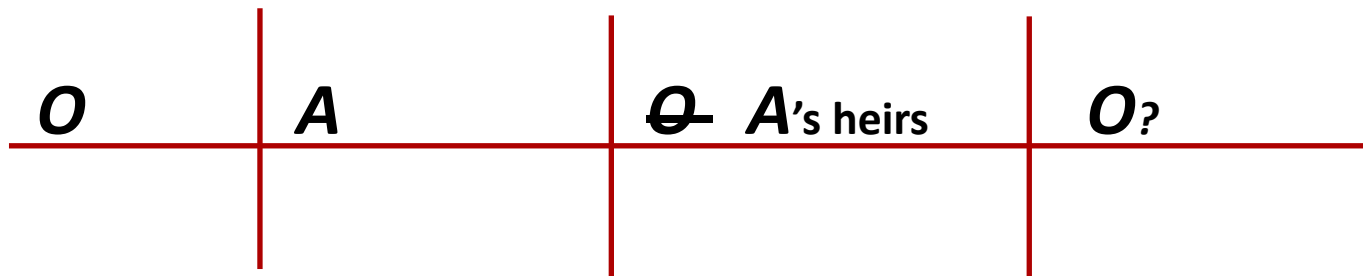
Test Your Understanding (p. 182)

- Problem 5: “To A for life.”



Test Your Understanding (p. 182)

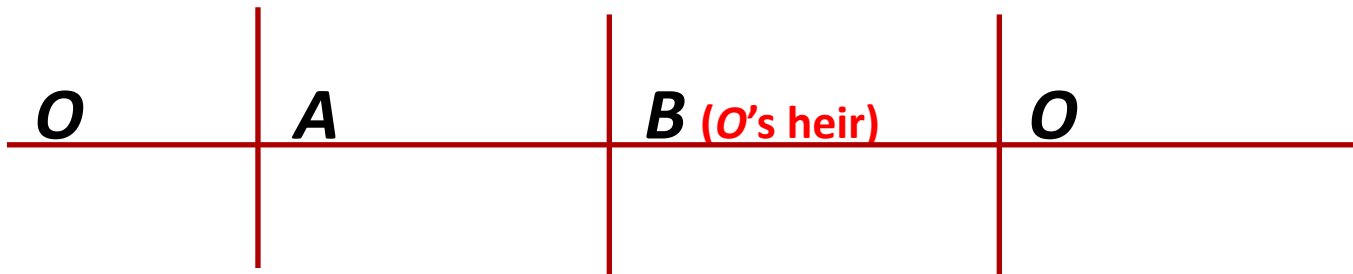
- Problem 5(a): “To A for life.” (Later, during A’s life, O devises the reversion “to A’s heirs.”)



- *Should we call the heirs’ interest a “remainder,” even though it was not conveyed simultaneously with the LE in A? (review definition of remainder on p. 170 and reversion on p. 169)*
- *Does this problem involve one or two instruments? Does that affect whether the heirs’ interest survives the common law rules?*

Test Your Understanding (p. 182)

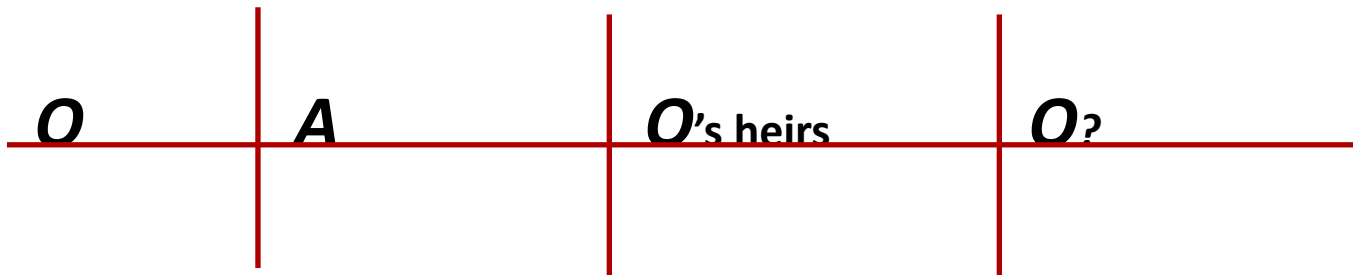
- Problem 6: “To A for life, then to O’s daughter, B.” (Then O dies, leaving B as his only heir.)



- *Did O convey a future interest to his own heirs?*

Test Your Understanding (p. 182)

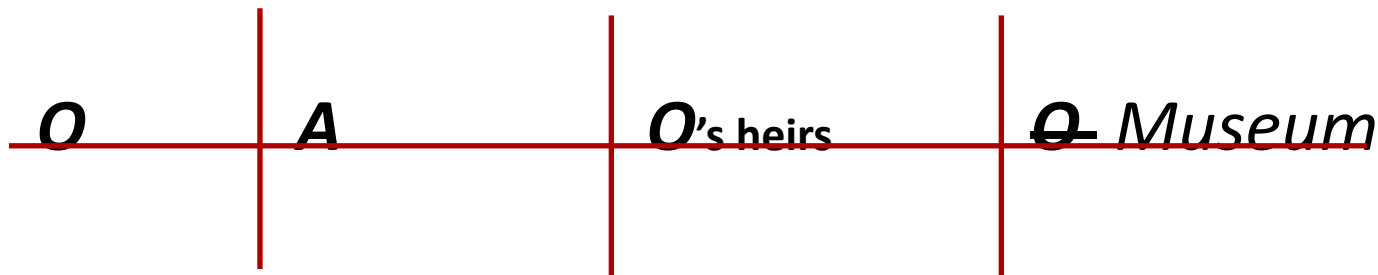
- Problem 7: “To A for life, then to the heirs of O.”



- *Does any common law rule destroy the heirs' interest?*

Test Your Understanding (p. 182)

- Problem 7: “To A for life, then to the heirs of O.” (O dies while A is still alive, devising her property to the art museum. Then, A dies.)



- *Does any common law rule destroy the heirs' interest?*
- *When O died, did her heirs or the Museum take the future interest?*
- *When A died, who took the property?*