

# 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
4. The Rule Against Perpetuities (RAP)

# Rule Against Perpetuities (RAP)

- Rule: No interest is good unless it must vest, if at all, not later than 21 years after some life in being at the creation of the interest.

# Rule Against Perpetuities (RAP)

- Rule: No *interest* is good unless it must vest, if at all, not later than 21 years after some life in being at the creation of the interest.

The rule makes vulnerable three future interests:

- Contingent Remainders
- Executory Interests
- Vested Remainders Subject to Open



# Rule Against Perpetuities (RAP)

- Rule: No interest is good unless it must *vest*, if at all, not later than 21 years after some life in being at the creation of the interest.

“Vesting” under the rule (vesting *in interest*):

- C-Rem: Taker ascertained + no unsatisfied conditions precedent
- EI: When possessory
- V-Rem/Open + other class gifts: Class closes + every member satisfies all conditions (*all or nothing rule*)

# Rule Against Perpetuities (RAP)

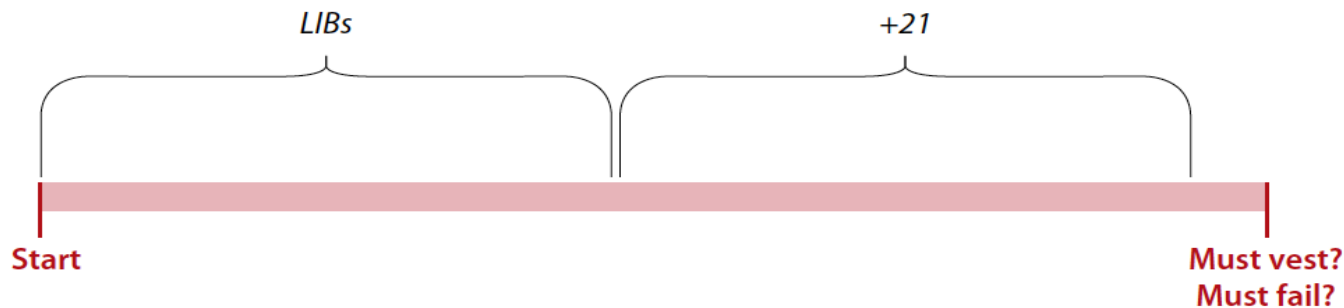
- Rule: No interest is good unless it must vest, if at all, not later than *21 years after some life in being* at the creation of the interest.

Perpetuities measuring stick: LIB + 21

- Start: When *O* makes irrevocable transfer *or* Testator dies
- End: When interest must vest *or* must fail
- Lives in being: Those who can potentially affect vesting of interest

# Rule Against Perpetuities (RAP)

- Rule: No interest is good unless it must vest, if at all, not later than 21 years after some life in being at the creation of the interest.



## Perpetuities Period Begins

- Grantor: When *O* makes Irrevocable inter vivos conveyance
- Testator: When *T* dies

## RAP Vesting (in interest)

- Contingent Remainder  
Taker ascertained +  
No unsatisfied conditions
- Executory Interest  
Interest becomes possessory
- V-rem/Open + other class gifts:  
Class closes +
  - Natural: Ancestor(s) dies
  - Convenience:  $\geq 1$  member entitled to possessionEach member satisfies all conditions (*all or nothing rule*)

# Natural Class Closing Rule (p. 184)

- Rule: The class closes when it is physiologically impossible for more children to join in the class (when the ancestor dies).
  - Assume ancestors can bear children throughout their lives
  - Members include children born or conceived prior to ancestor's death
- Example 28 (p. 185): "To A for life, then to A's children and their heirs." (A has one child, B, at the time of the conveyance.)
  - **Class closes**: At ancestor A's death
  - **Maximum membership**: B and any siblings born/conceived before A's death
  - **Members' remainders vest in interest**: When born (no conditions here)
  - **Uncertainty remains**: Throughout A's life

# Natural Class Closing Rule (p. 184)

- Example 29 (p. 185): “To *A* for life, then to *B*’s children and their heirs who reach 21.” (At *A*’s death, *B* has 2 children: *C* = 21 and *D* = 11)
  - **Class closes:** At ancestor *B*’s death
  - **Maximum membership:** *C*, *D*, and any later-born children of *B*
  - **Members’ remainders vest *in interest*:** Upon turning 21
  - **Uncertainty remains:** Throughout the lives of *B* and *B*’s children (until they reach 21 or sooner die). At *A*’s death, *C* takes a fee simple that remains partially defeasible throughout that time.

*B*’s children who reach 21  
Maximum class membership

✓ ***C* = 21**  
? *D* = 11  
? *After-born*

# Rule of Convenience (p. 185)

- Rule: The class closes when at least one member is entitled to possession.
  - No remaining present possessory estates, *and*
  - At least one member has satisfied any conditions precedent
- Example 28 (p. 185): “To A for life, then to A’s children and their heirs.” (A has one child, B, at the time of the conveyance.)
  - **Class closes**: At A’s death (present estate expired and at least one member (B) is then entitled to possession)
  - **Maximum membership**: B and any siblings born/conceived prior to A’s death
  - **Members’ interests vest**: At A’s death
  - **Uncertainty remains**: Throughout A’s life

# Rule of Convenience (p. 185)

- Example 29 (p. 185): “To A for life, then to B’s children and their heirs who reach 21.” (At A’s death, B has 2 children: C = 21 and D = 11)
  - **Class closes:** At A’s death
  - **Maximum membership:** C and D (*note: D is a potential member!*)
  - **Members’ interests vest:** Upon turning 21
  - **Uncertainty remains:** Throughout D’s life. At A’s death, C takes a fee simple that remains partially defeasible throughout D’s life, to be shared if D reaches 21. (*Compare* longer period of uncertainty under natural closing.)

B’s children who reach 21  
Maximum class membership

✓ C = 21

? D = 11

*After-born* (excluded from class)

# Class Gifts—*All or Nothing Rule* (p. 186)

- Rule: A class gift is void in every member if the interest of even one member violates the Rule Against Perpetuities.



## A Place to Start **The Rule Against Perpetuities**

<b>Rule</b>	No interest is good unless it must vest, if at all, within LIB + 21
<b>Vulnerable future interests</b>	<ul style="list-style-type: none"> <li>• C-Rem</li> <li>• EI</li> <li>• V-Rem/Open</li> </ul>
<b>Perpetuities period begins</b>	<ul style="list-style-type: none"> <li>• <i>Inter vivos conveyances</i>: When <i>O</i> makes an irrevocable transfer</li> <li>• <i>Devises</i>: When <i>T</i> dies</li> </ul>
<b>"Vesting" under RAP</b>	<ul style="list-style-type: none"> <li>• <i>C-Rem</i>: Vests when taker ascertained and no unsatisfied conditions precedent (The destructibility rule sometimes "saves" contingent remainders from the RAP, as shown by Example 31 below)</li> <li>• <i>EI</i>: Vests upon becoming possessory</li> <li>• <i>V-Rem/Open</i> (and other class gifts): Vests when (1) class closes, and (2) every member satisfies conditions precedent (if any) under the <i>all or nothing</i> rule</li> </ul>
<b>Class closing rules</b>	<ul style="list-style-type: none"> <li>• <i>Natural closing</i>: Class closes when it is physiologically impossible for more members to be born (or conceived)</li> <li>• <i>Rule of convenience</i>: Class closes when (1) all prior possessory estates have ended, and (2) at least one member has satisfied all conditions precedent (if any) and is entitled to possession. This rule sometimes "saves" interests from the RAP, as shown by Example 35 below.</li> </ul>
<b>Timing</b>	Interest void <i>ab initio</i>
<b>Rule of law?</b>	Yes
<b>Majority status today</b>	Rule applies, but with various statutory reforms

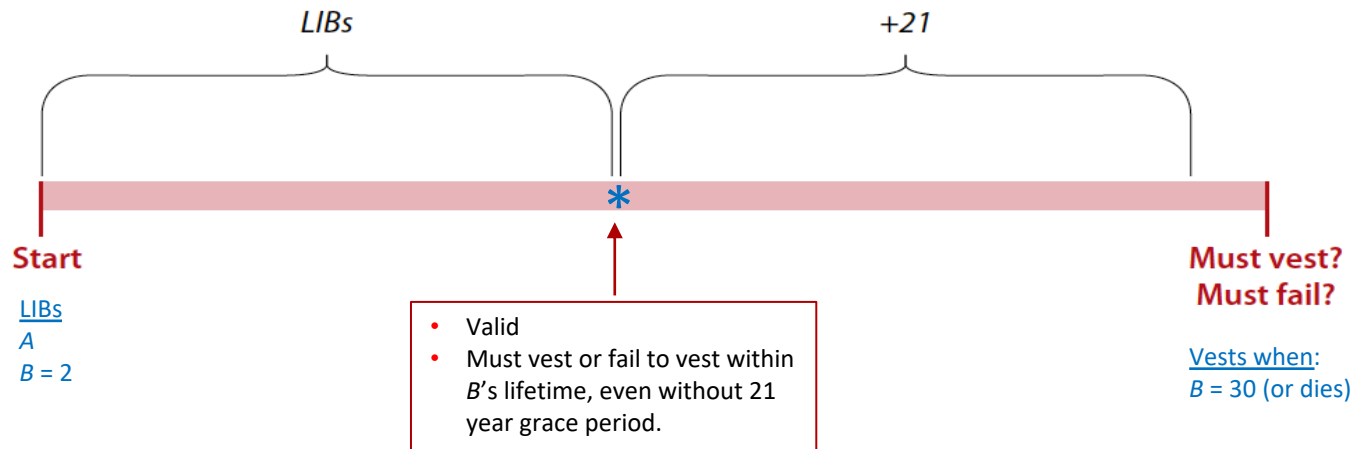
# Rule Against Perpetuities (RAP)

- Rule: No interest is good unless it must vest, if at all, not later than 21 years after some life in being at the creation of the interest.

- Step 1—Label: Label each interest; Vulnerable? (C-Rem, EI, or V-Rem/Open)
- Step 2—Start? *O* makes irrevocable transfer or *T* dies
- Step 3: When will interest vest? Who are LIBs?
- Step 4: Embrace absurdity! (Births, deaths, wait LIB + 21)
- Step 5: Risky situation?
- Step 6: Does destructibility rule also apply? Cross out any invalid interests

# Self-Validating Gift (Example 30, p. 188)

- “To A for life, then *to B if B attains 30.*” (B is 2 years old)

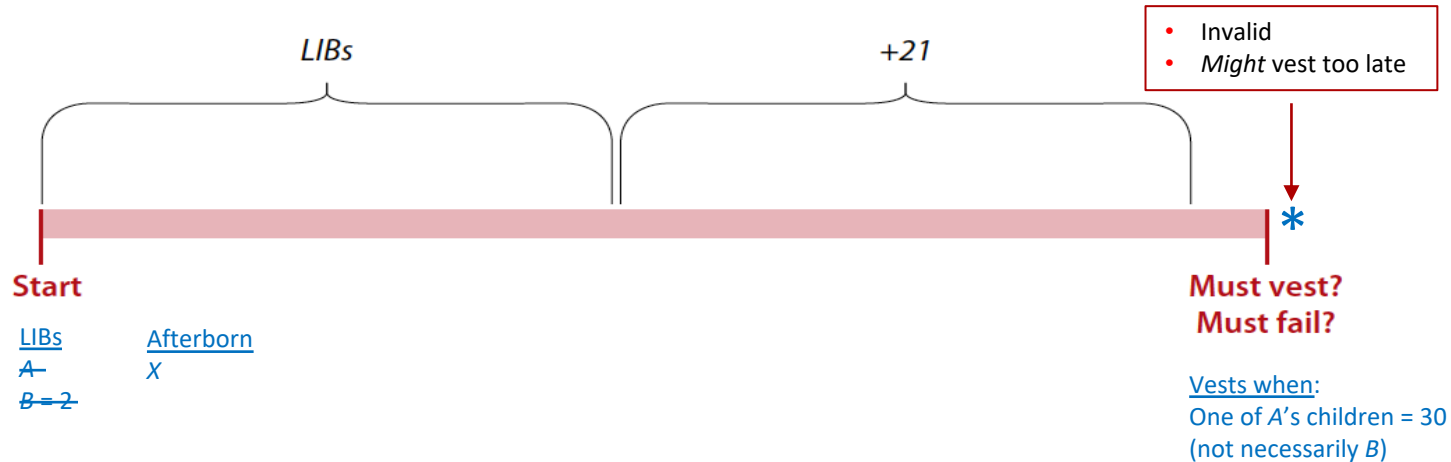


## RAP Vesting (in interest)

- Contingent Remainder  
Taker ascertained +  
No unsatisfied conditions
- Executory Interest  
Interest becomes possessory
- V-rem/Open + other class gifts:  
Class closes +  
Each member satisfies all conditions

# Requirement > 21 Years (Example 31, p. 188)

- “To A for life, ~~then to A’s first child who turns 30.~~” (B is 2 years old)

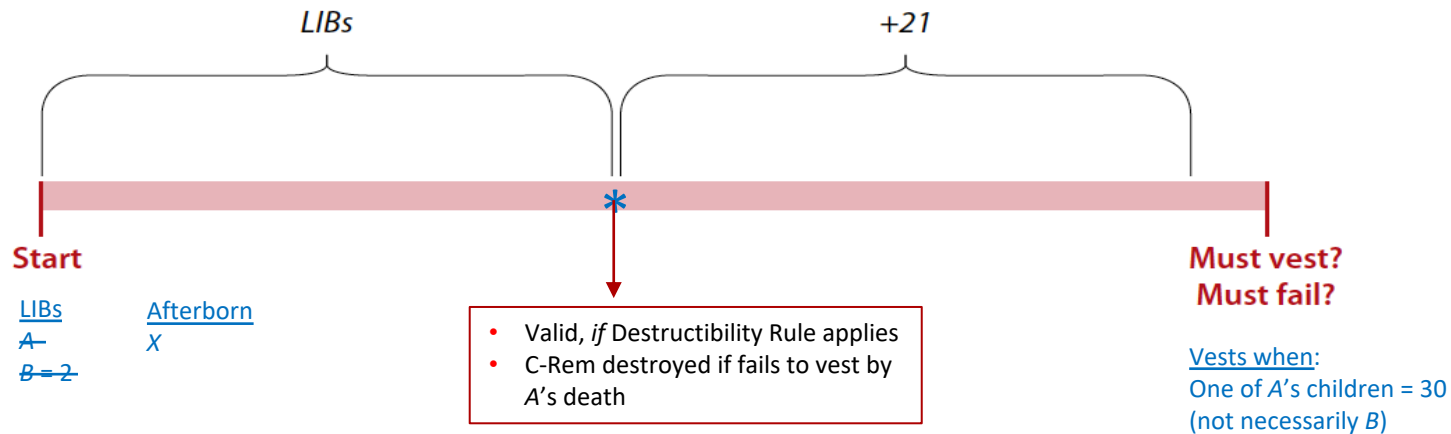


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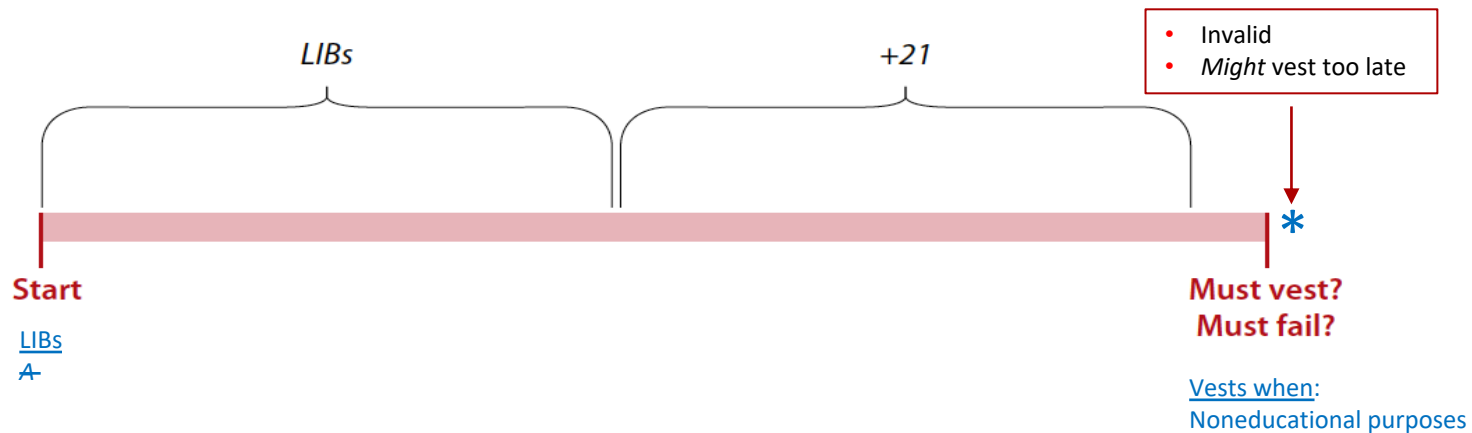


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- Executory Interest  
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Class closes +  
Each member satisfies all conditions

# Timeless Condition / Nonhuman Entity (Example 32, p. 189)

- “To the City, ~~but if it ceases to use the property for educational purposes, to A and his heirs.~~”

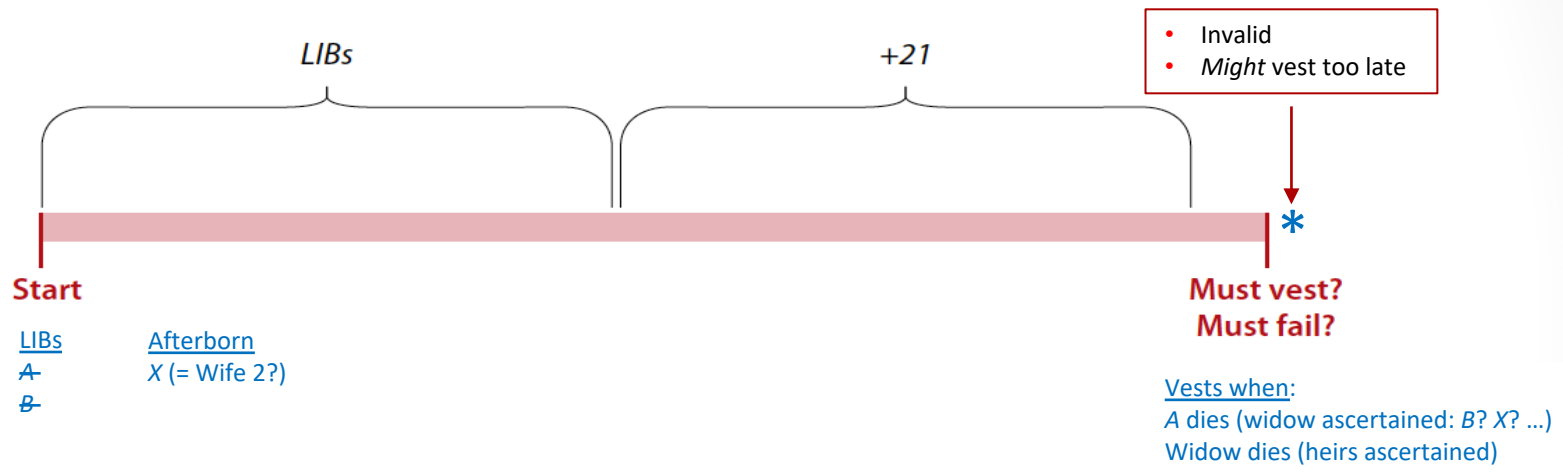


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Each member satisfies all conditions

# Unnamed Persons—“Unborn Widow” (Example 33, p. 190)

- “To A for life, then to A’s widow for life, ~~and then to the heirs of A’s widow.~~” (A = 80, B = wife)



## RAP Vesting (in interest)

- Contingent Remainder  
Taker ascertained +  
No unsatisfied conditions
- Executory Interest  
Interest becomes possessory
- V-rem/Open + other class gifts:  
Class closes +  
Each member satisfies all conditions

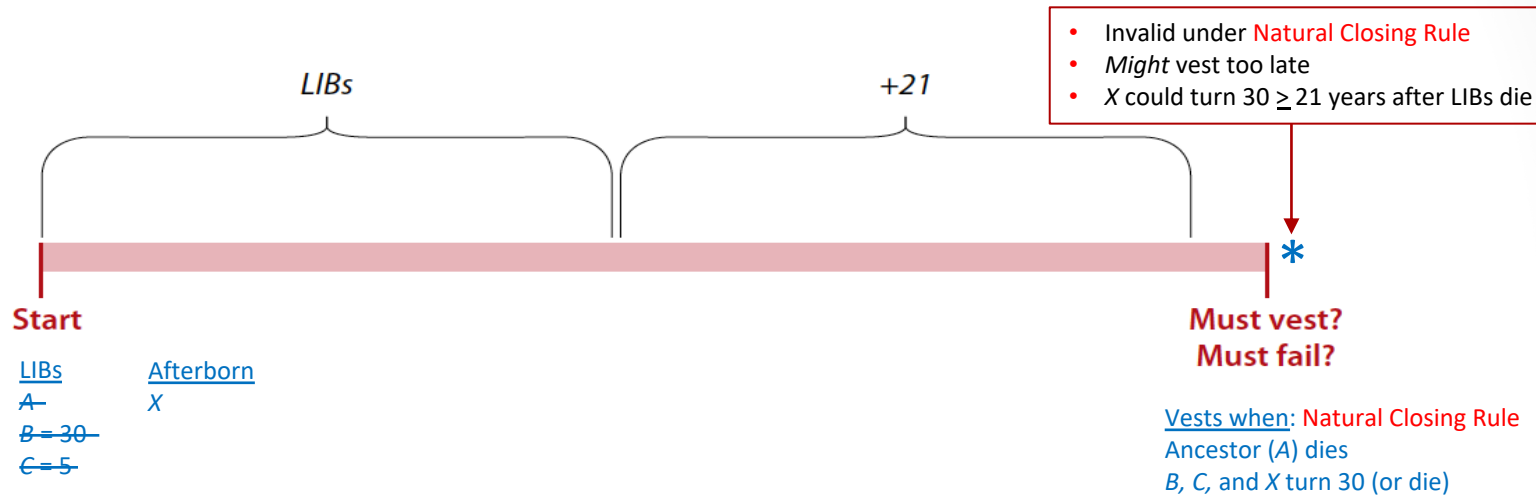






# Class Gift—Saved by Rule of Convenience? (Example 35, p. 191)

- “~~To A’s children who reach 30.~~” When T dies, A has two children: B (30) and C (5)

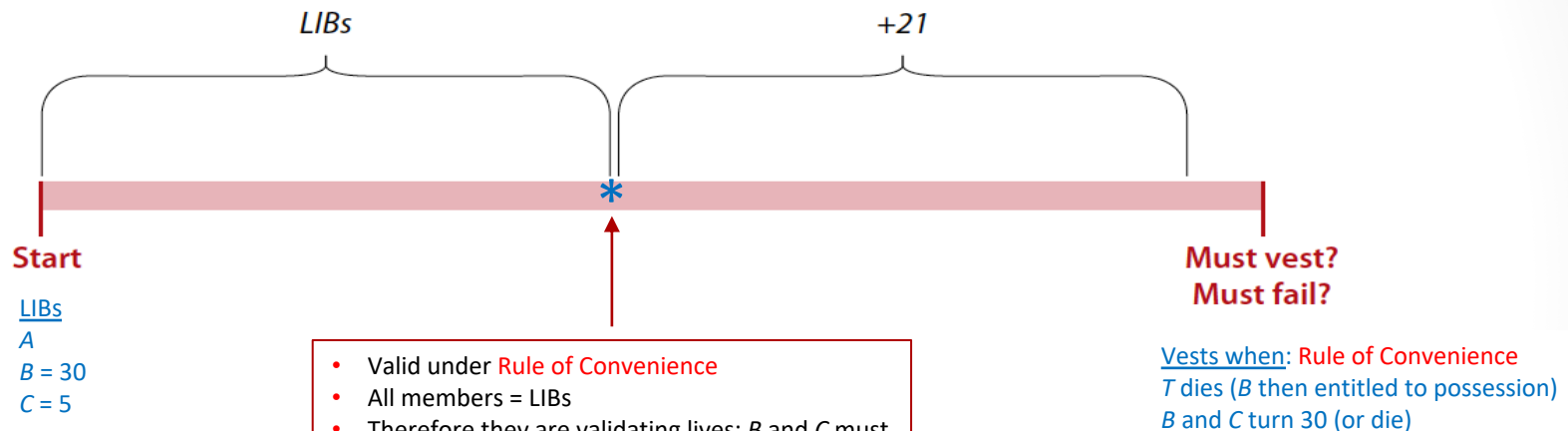


- Invalid under **Natural Closing Rule**
- *Might* vest too late
- X could turn 30  $\geq$  21 years after LIBs die

- RAP Vesting (in interest)
- Contingent Remainder  
Taker ascertained +  
No unsatisfied conditions
  - Executory Interest  
Interest becomes possessory
  - V-rem/Open + other class gifts:  
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# Class Gift—Saved by Rule of Convenience! (Example 35, p. 191)

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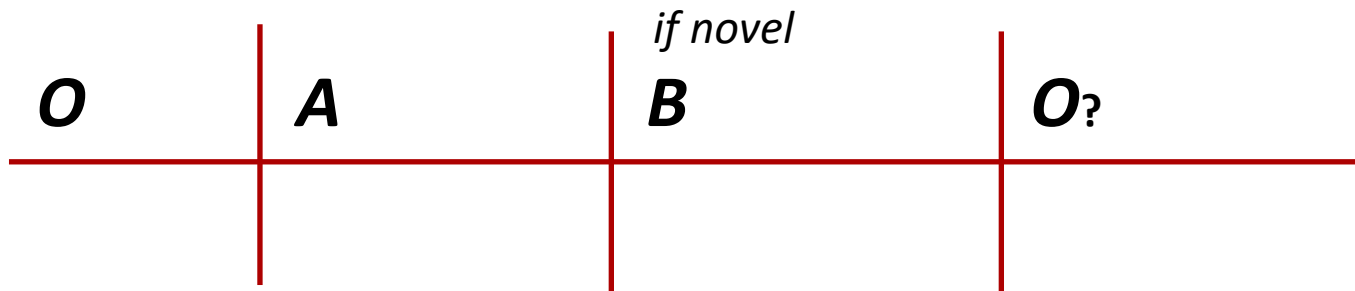


- Valid under **Rule of Convenience**
- All members = LIBs
- Therefore they are validating lives: B and C must turn 30 (or die) during their own life span, even without the 21 year grace period
- Notice *Testator* holds present estate until T dies

- RAP Vesting (in interest)
- Contingent Remainder  
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No unsatisfied conditions
  - Executory Interest  
Interest becomes possessory
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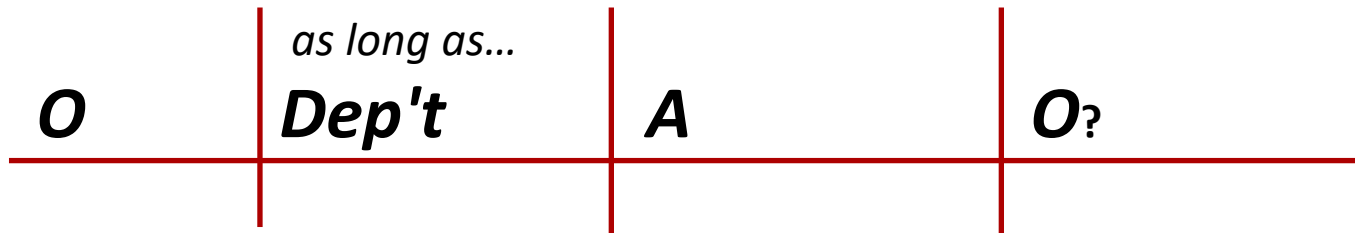
# *Test Your Understanding* (p. 193)

- Problem 1: “To A for life, then to B if B writes a novel that sells at least a million copies.” (*B has not written any novels.*)



# Test Your Understanding (p. 193)

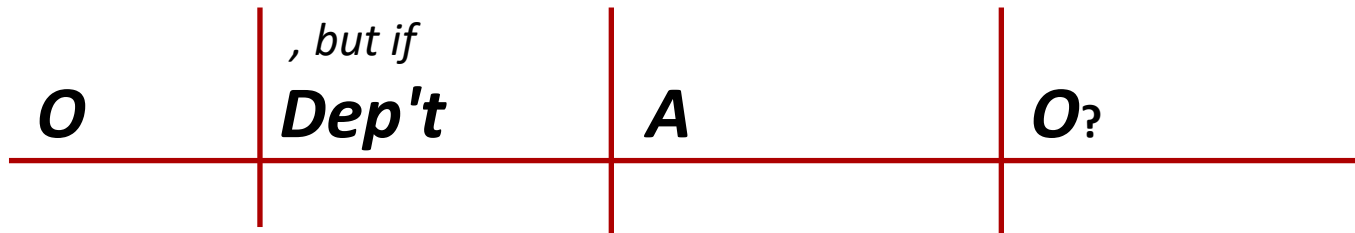
- Problem 2: “To the local fire department *as long as* it uses the property for the operation of a fire department, then to A and her heirs.”



- *Is A's interest valid?*
- *If not, cross out the invalid language. Pay attention to punctuation marks!*
- *What's left for O after applying the RAP?*

# Test Your Understanding (p. 193)

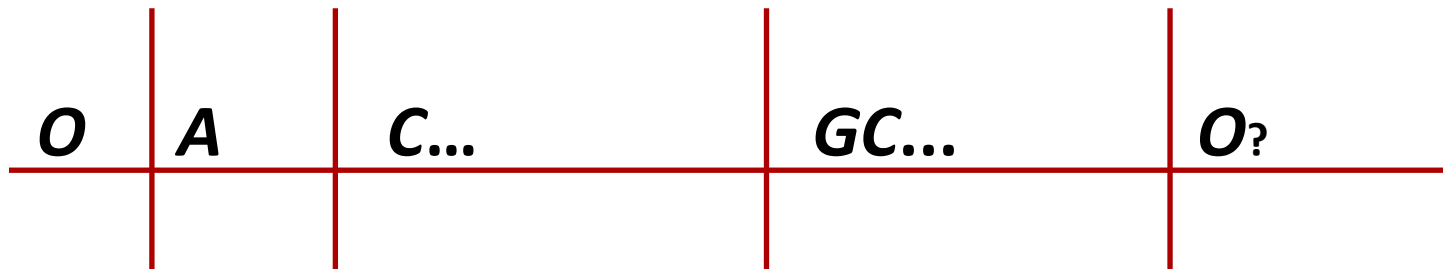
- Problem 3: “To the local fire department, *but if* it uses the property for any purpose other than the operation of a fire department, then to A and her heirs.”



- *Is A's interest valid?*
- *If not, cross out the invalid language. Pay attention to punctuation marks!*
- *What's left for O after applying the RAP?*

# Test Your Understanding (p. 193)

- Problem 4: “To A for life, then to her children for their lives, and then to her grandchildren.” A is 80 years old and infertile. She has one child (C) and one grandchild (GC).



# *Test Your Understanding* (p. 193)

- Problem 5:  $T$  devises, “To my children for life, then to my grandchildren.”  $T$  dies, leaving one child ( $C$ ) and one grandchild ( $GC$ ).

$T$	$T$ 's kids ( $C$ )	$T$ 's grandkids ( $GC\dots$ )
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# *Abrams v. Templeton* (p. 193)

- “To my husband Frank Ramage during . . . his natural life and at his death . . . to my son Albert Ramage . . . during his . . . natural life . . . .”
- “And at his death to his children to hold . . . during . . . their natural life . . . .”
- “And at their death their several interests to be divided among their children.”

