

PROPERTY I QUIZ: FUTURE INTERESTS

Prof. Bell

NOTE: Choose the one best answer to each question, applying the majority rule of property law. As on the MBE, you have 1.8 minutes/answer.

Question 1

Oscar died leaving a will that said, in relevant part, "I leave my house to Albert, to inhabit for the duration of his life. Then I want Barbara to have the house, assuming that she survives Albert." Barbara died first, followed by Albert, survived by Oscar's son. What best describes the result?

- (a) Oscar's son gets the house.
- (b) Albert's heirs get the house.
- (c) Barbara's heirs get the house.
- (d) The house escheats to the State.

Question 2

In 2000, Olive died leaving a will that said, in relevant part, "I convey my city lot to the Springfield Chapel on condition that it use the property to operate a food bank there; failing that, the property should go to my son, Alan." The chapel operated a food bank on the lot until 2010, when it began to use the property solely for parking. Alan had died, leaving a daughter, Betty. What best describes the result?

- (a) The Chapel retains the property because the Alan's future interest was not certain to vest or fail within 21 years of Alan's life.
- (b) The Chapel retains the property because Alan has died.
- (c) Betty gets the property because her interest has vested within 90 years of its creation.
- (d) Betty gets the property because Olive imposed an invalid restraint on its alienation.

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1. Although the majority rule will construe ambiguous language as creating a fee simple rather than a life estate, Oscar quite plainly intended to give Albert only a life estate. Barbara has only a contingent remainder, given that Oscar has stipulated that she must survive Albert to take possession in fee simple absolute. Since she does not satisfy that condition precedent, the house will revert to Oscar's heir, his son.

(Note that you could construe the grant as one giving Barbara a vested remainder in fee simple subject to divestment by a shifting executory interest, but that does not alter the outcome.)

(a) is thus right.

(b) is wrong because Albert had only a life estate.

(c) is wrong because Barbara did not satisfy the condition precedent to taking possession.

(d) is wrong because Oscar has an heir.

2. Recall that USRAP is our majority rule, making application of the RAP relevant but not controlling.

(a) is wrong because, though it accurately describes the outcome under the common law Rule Against Perpetuities, because it is no longer the controlling rule.

(b) is wrong because it presents a *non sequitur*; Alan's death does not prevent his heirs from taking the executory interest.

(c) is right because it describes the outcome under the majority rule, USRAP.

(d) is wrong because the restraint is not formally one that forbids sale, nor one that would in practice bar all alienation of the property.