

Rule against Perpetuities: Selected Problems

(Please assume that all persons represented by letters are living when the limitation is made. Also assume that none of the persons described by such words as “children” is in existence unless so stated.) The question is which limitations fail under the Rule.

1. O devises Blackacre “upon the death of all my children and of all my grandchildren born or conceived at my death, to my eldest male descendant then living and his heirs.” O leaves children and grandchildren born and in gestation at his death.

2. O devises Blackacre “twenty-one years after the death of all my children and all my grandchildren living at my death, to my issue then living per stirpes in fee.” O leaves children and grandchildren at his death.

3. O devises Blackacre “thirty years after my death to my eldest descendant then living and his or her heirs.” O leaves children surviving him.

4. O devises Blackacre “to the first of my grandchildren who reaches twenty-one.” O leaves children at his death.

5. O devises Blackacre “to A and his heirs, but if B or his heirs ever pay A or his heirs \$1,000 to B and his heirs.”

6. O devises Blackacre “to my eldest child for life, remainder to its first child in fee, but if my eldest child have no child, or having such it die under twenty-one to B in fee.” O leaves a child at his death.

7. O by settlement made at the time of his marriage conveys Blackacre “to T on trust to pay the net income to O for life, on A’s death to pay the net income to A’s eldest child for life, and on the death of such child to convey Blackacre to its first child in fee.”

8. [omitted]

9. O devises Blackacre “to A for life, remainder to any widow he may leave for life, remainder to B’s children who survive the widow in fee.”

10. O having a term of twenty-one years, devised it “to B, but if all his descendants ever cease to bear the name of Brown, it shall go to C.”

11. O devises Blackacre “to A and his heirs, but if A leaves no child who shall attain twenty-five, to B for life.”

12. O devises Blackacre "to A in fee but if all B's children die under twenty-five, and B survives them, to B in fee."

13. O devises Blackacre "to A for life, the fee simple to the first of his children who reaches twenty-five." Suppose (a) a jurisdiction where a contingent remainder fails for lack of a freehold to support it; (b) a jurisdiction where it does not fail.

14. O bequeaths a picture "to B, but if at any time A and all her descendants are dead, the picture shall go to the children of B living at my death." B has children living when O dies.

15. O bequeaths a picture "to B, but if at any time A and all her descendants are dead, the picture shall go to the children of B then living."

16. O bequeaths a picture "to B, but if at any time A and all her descendants are dead, the picture shall go to the children of B who are living at my death and who survive A and her descendants." B has children living when O dies.

[Note that these problems were written by Prof. Richard Helmholz at the University of Chicago Law School.]