

The Rule Against Perpetuities: A Systematic Approach

Prof. Ford

Spring 2018

1. Define the interests subject to the Rule.

Contingent remainders: “to A for life, then to B and her heirs if B reaches the age of 21.”

Contingent executory interests: “to A and her heirs, but if B is admitted to the bar, then to B and her heirs.”

Vested remainders subject to open: “to A for life, then to A’s children and their heirs.”

Options, in some states, and *rights of first refusal* in a few states.

2. Define the time when the perpetuities period begins.

When the instrument that creates the interest becomes legally effective.

E.g.: when the conveyance deed is executed; when the trust becomes irrevocable; when the testator dies.

3. Decide what must happen for the interest to vest or forever fail to vest.

E.g.: when the condition precedent will happen; when the unascertainable persons become ascertained.

4. Identify the persons who can affect vesting — the potential lives in being.

E.g.: the holder of the interest; the person creating the interest; any person who can affect a condition precedent attached to the interest; any person who can affect the identity of the holder.

5. Test each relevant life to determine if any one validates the interest.