A Primer on Estates and Future Interests

I. Modern Estates and Future Interests in Land

“Estate in land” is the term used to describe a person’s ownership interest with respect to a parcel of land. Sometimes, the owner of an estate in land transfers her entire estate, either by a deed (conveyance), by a will (devise), or by intestate succession (to her heirs, if she dies without a valid will). When the owner transfers her entire estate, the transfer doesn’t really create a “new” estate — it merely transfers the existing estate to a new owner (under the derivative title principle).

In some cases, however, the owner of an estate in land may transfer less than her entire estate (for example, someone holding a “fee simple” estate may transfer to the grantee only a “life estate”). In these circumstances, a new estate is created in the grantee — and depending upon the language of the conveyance, one or more “future interests” or “future estates” (an interest that may entitle its holder to possession of the land at a future date) is either created in a different grantee or reserved by the grantor. The purpose of this primer is to identify the rules that govern the classification of present and future estates in land, and to help you learn to classify the present and future estates created by the language used in a particular deed or will.

Here is an outline of the types of present possessory estates recognized by modern law (excluding the estates held by leasehold tenants, which we will take up in Chapter 7):

I. Fee Simple Estates
   A. Fee Simple Absolute Estate
   B. Defeasible Fee Estates
      1. Fee Simple Determinable
      2. Fee Simple Subject to Condition Subsequent
      3. Fee Simple Subject to Executory Interest
   C. Life Estate
      1. Life Estate (plain)
      2. Life Estate *pur autre vie*
      3. Defeasible Life Estate

If a parcel of land is held other than by a fee simple absolute estate, then there will be a future estate (or future interest) in the land, that corresponds with the type of estate by which the present owner holds the land. There are five types of recognized future interests:

1. Reversion
2. Possibility of reverter
3. Right of entry
4. Remainder
5. Executory Interest

This primer is designed to help you understand each of these present and future estates, how they
correspond to each other, and the language by which a deed or a will might create one or more of these present and future estates.

II. Some Preliminary Concepts

As you read the following materials, keep in mind the following concepts about the modern law of estates in land:

• In the first two chapters of the casebook, you learned the derivative title principle — a transferee (absent estoppel) can receive no more than what the transferor has to transfer. This principle is fully applicable to the law of estates in land. If X has a fee simple absolute estate in Blueacre, X can transfer a fee simple absolute (or a lesser estate, if X so chooses). But if X has only a life estate in Blueacre, X can convey nothing more than X's life estate.

• Generally speaking, an owner of any present or future estate in land can transfer that interest. This was not always so — several types of future interests were not legally transferable under early common law rules. Today, however, any present or future estate can be transferred by deed, in most states. Further, if the estate is an inheritable estate (i.e., capable of being inherited at the owner’s death), then the estate can also be transferred by will (testamentary gift) or by inheritance (if the owner of the estate dies intestate, i.e., without a valid will).

• When the owner of an inheritable estate dies intestate, the owner’s land is inherited by the owner’s “heirs.” At early common law, a person had only one heir — the person’s eldest son. Today, however, every state has a statute of descent and distribution that specifies who should take the property of someone who dies intestate. The persons that would be entitled to claim X’s land under the statute, if X died intestate, would be X’s “heirs.”

• Because a person’s “heirs” can be determined only at the moment of that person’s death, a living person does not have heirs. [A living person might have “heirs apparent.” For example, suppose that if X died today, X’s “heirs” under the statute would be X’s wife and X’s child. We might say that X’s wife and child are his “heirs apparent,” but as long as X is alive, they are not his “heirs” because X has no heirs.]

• Remember from Chapter 4 on Gifts that a will has no legal effect during the life of the testator. For all I know, Bill Gates may have left valuable land to me by the terms of his will, but while Bill Gates remains alive, I have no interest whatsoever in that land. In fact, I will have no interest in that land unless (a) Bill dies, (b) at the time of his death, Bill still owns the land in question, and (c) Bill has not made a new will. A will “speaks” only upon the testator’s death.

III. The Present Possessory Estates
(and an Introduction to their Corresponding Future Interests)

[Note: For each of the “Examples” below, unless otherwise stated, you should assume that O owns
Blueacre in fee simple absolute immediately prior to the conveyance in question.

A. Fee Simple Estate.

To be a fee simple estate in land, an estate must have two characteristics. First, it must be potentially infinite in duration; second, it must be freely inheritable by the owner’s heirs. If an estate lacks either of these characteristics, it cannot be a fee simple estate.

Example 1. O conveys Blueacre by deed “to A for her life.” A’s estate in Blueacre is neither infinite in duration (it will end at A’s death) nor can it be inherited by A’s heirs at her death (because the estate will have ended according to its terms). Thus, A does not have a fee simple estate. [In fact, A has only a life estate.]

Example 2. O conveys Blueacre by deed “to A, and at A’s death, to B.” A’s estate cannot be inherited by A’s heirs at A’s death, because the terms of the gift specify that B must take the land at A’s death. This means that A’s estate effectively terminates upon A’s death. Thus, A does not have a fee simple estate. [Again, A has only a life estate.]

Fee simple estates can be either absolute estates or defeasible estates. A fee simple estate is absolute if there is no event or condition that can ever terminate the estate. Most of the time when someone buys land or receives a gift of land, they receive a fee simple absolute estate. Fee simple absolute ownership — full dominion and control over the land to the maximum extent legally possible — is what we typically think of when we think of “ownership.”

By contrast, if the deed or will that created the estate also expresses an event or condition that may or will terminate the estate, the estate is defeasible.

1. Creating a Fee Simple Absolute Estate.

Traditionally, a fee simple absolute estate was created by a conveyance or devise “to [person receiving the estate] and his heirs.”

Example 3. O conveys Blueacre by deed “to A and his heirs.” A has a fee simple absolute estate in Blueacre.

In Example 3, the words “to A” are considered “words of purchase” that indicate that O intended to convey an estate to A. The words “and his heirs” are “words of limitation” that indicate that O intended for this estate to be an estate that was inheritable by A’s heirs at each generation through time. Thus, A’s estate is a fee simple absolute estate because (a) it is potentially infinite in duration, (b) it is freely inheritable by A’s heirs, and (c) there is no stated event or condition that would terminate A’s estate.

NOTE: In Example 3, A’s death will not terminate the estate! If A still owns the land at the time of A’s death, the estate will pass by devise under the terms of A’s will — or, if A doesn’t have a valid will, the estate will be inherited by A’s heirs as determined by the
state’s inheritance statute.

Under the traditional common law rule, in order to create a fee simple absolute estate, the grantor/testator ABSOLUTELY HAD TO USE the magic words “and his heirs” in the deed/will. Courts treated the absence of those “magic words” as proof that the grantor did not intend to create an inheritable estate — and if an estate wasn’t capable of being inherited, it couldn’t be a fee simple.

**Example 4.** O conveys Blueacre by deed “to A forever.” Under the traditional common law rules of construction, A does not have a fee simple absolute estate, because the deed does not indicate that A’s estate is inheritable. According to the traditional common law rules of construction, A receives only a life estate.

Today, in all 50 states, there is no longer any need to use the magic words “and his heirs” in order to create a fee simple absolute estate. Today, statutes in most states have adopted a more modern rule of construction that assumes that the grantor of a deed or the testator of a will intended to pass all of the interest they had, unless the language of the deed/will indicates their express intention to convey something less than all of their interest.

**Example 5.** O conveys Blueacre by deed “to A forever.” Under the modern rule of construction, A has a fee simple absolute estate. There is no language in the deed indicating O’s intention to retain any interest in Blueacre, and thus O’s entire estate in Blueacre passes to A under the terms of the deed.

Note that where the owner of land holds an estate in fee simple absolute, there is no corresponding future interest in the land held by anyone. Someone who owns a fee simple absolute owns the “full bundle of sticks” with respect to possession of the land, both now and at all times in the future.

2. **Defeasible Fee Simple Estates.**

An estate is defeasible if it is subject to some event or condition that will cause that estate to terminate before its natural conclusion. Traditionally, grantors created defeasible estates when they wanted to place restrictions on the ability of the grantee to use the land for particular purposes or to control the grantee’s decisionmaking in some way. For example, grantors often made gifts of land to charitable or religious organizations, but subject to the condition that the land had to be used for the organization’s charitable or religious purposes, with the estate to be forfeited (or “divested”) if the condition was breached. The common law has recognized three forms of defeasible estates.

a. **The Fee Simple Determinable.** The fee simple determinable is an estate in fee simple that terminates automatically once the stated restriction (called a special limitation) is violated. To create a fee simple determinable estate, courts expected the grantor to use “durational language,” i.e., language that indicated that the estate would last only until the special limitation was violated.

**Example 6.** O conveys Blueacre to the School Board “for as long as the land is used for school purposes.” The School Board’s estate is a fee simple estate, as it is potentially infinite in duration (the School Board might never cease using the land for school purposes).
However, the words “for as long as” indicate that the School Board’s estate will terminate immediately when the land is no longer used for school purposes. Thus, the School Board has a fee simple determinable estate in Blueacre.

**Example 7.** O conveys Blueacre to the School Board “until the land is no longer used as a school.” Again, the durational language “until” indicates that the School Board has a fee simple determinable estate in Blueacre.

To identify a “determinable” estate, you would be looking for these durational words of limitation — “so long as,” “as long as,” “during,” “while,” “until,” or other close synonyms.

When the special limitation is violated and the grantee’s estate is terminated, what happens to ownership of the land? When a fee simple determinable estate is first created, there also arises a corresponding future interest in the land — *i.e.*, the right to possession of the land once the special limitation is violated. This future interest is retained by the grantor that created the determinable estate, and it is called a “possibility of reverter.”

**Example 8.** O conveys Blueacre to the School Board “for as long as the land is used for school purposes.” The School Board has a fee simple determinable estate, and O retains a possibility of reverter. If the special limitation is ever breached, the School Board’s title will terminate automatically, and O will become the owner of Blueacre in fee simple absolute.

**b. The Fee Simple Subject to Condition Subsequent.** The common law also allowed a grantor to create an estate on a condition that would permit the grantor the *optional* right to terminate the grantee’s estate and recover possession of the land upon violation of the condition. This estate is called the *estate subject to condition subsequent*. The condition subsequent is *not automatic*; even after the condition is broken, the grantee’s estate continues until the grantor exercises her right to terminate the grantee’s estate. Until that point, the grantor retains a future interest called a *right of entry* or a *power of termination*, which becomes a presently possessory estate only after the grantor legally enforces that right after the condition is violated.

To create a fee simple subject to condition subsequent estate, courts expected the grantor to convey the land using language that both established an express condition and indicated that breach of the condition would give the grantor the legal right to take action to terminate the grantee’s estate.

**Example 9.** O conveys Blueacre “to the School Board, but if the premises are not used as a school, O may re-enter and recover the premises.” The School Board’s estate is a fee simple estate, as it is potentially infinite in duration (the School Board might never cease using the land as a school). However, the words “but if the premises are not used as a school, O may re-enter and recover the premises” indicate that O may take action to terminate the School Board’s estate when the land is no longer used as a school. Thus, the School Board has a fee simple subject to condition subsequent estate in Blueacre. O retains a right of entry in Blueacre.

**Example 10.** Same as Example 9, but two years after the conveyance, the School Board
ceases to use Blueacre as a school. However, O is not aware of this fact, and has not taken any legally effective action to terminate O’s estate. The School Board still holds a fee simple subject to condition subsequent estate in Blueacre. O still retains a right of entry in Blueacre.

Example 11. Same as Example 10, except O learns that Blueacre is no longer being used as a school, and immediately files a lawsuit to eject the School Board from Blueacre. The School Board’s estate is terminated; O now owns Blueacre in fee simple absolute.

c. The Fee Simple Subject to Executory Interest. Prior to 1536, the determinable estate and the estate subject to condition subsequent were the only permitted defeasible estates. At that time, the common law did not allow a grantor to create a defeasible estate and also specify that ownership would rest in a third party once the defeasible estate was terminated. [This kind of third-party future interest is called an executory interest, and only became permissible by law after the Statute of Uses in 1536.]

Today, it is possible for a grantor to make a conveyance that creates both a defeasible estate and a future interest in a third party in the event that the divesting condition or event occurs. This estate is called an estate subject to an executory interest. To create an estate subject to an executory interest, a court would expect the grantor to use language that creates either a special limitation (e.g., “so long as”) or a condition subsequent (e.g., “but if...”), and that indicates that an identified third party would become the owner of the land in the event that the limitation or condition is breached.

Example 12. O conveys land “to the School Board, but if the School Board is not using the land as school in 20 years, then to B.” The School Board’s estate is a fee simple estate, as it is potentially infinite in duration (the School Board might never cease using the land as a school). However, the words “but if the School Board is not using the land as school in 20 years, then to B,” indicate that O intended that B should become the owner of Blueacre after 20 years if Blueacre was not then being used as a school. Thus, the School Board has a fee simple subject to executory interest in Blueacre. B has an executory interest.

Example 13. Same as Example 12, but after 20 years, Blueacre is not being used as a school. The School Board’s estate is terminated. B has a fee simple absolute interest in Blueacre.

Example 14. Same as Example 12, but after 20 years, Blueacre is still being used as a school. By its terms, the condition has been satisfied and can no longer be breached. As a result, the School Board’s estate is no longer subject to divestment. The School Board now has a fee simple absolute estate. B no longer has any interest in Blueacre.

B. Life Estate.

The life estate is a present possessory estate that lasts only for the lifetime of the person by whose life it is measured. In most cases, the grantee in whom a life estate is created is also the measuring life. It is possible, however, to create a life estate in one person that is measured by the lifespan of
another person; such an estate is called a life estate *pur autre vie*.

Whenever a life estate is created, at least one future interest (and perhaps more) also exists. If the grantor who makes a conveyance creating a life estate does not, in the same conveyance, specify who will take the land at the death of the life tenant, then the grantor has retained a future interest called a reversion. At the death of the life tenant, ownership of the land will then revert to the grantor. By contrast, the grantor who makes a conveyance creating a life estate might also, in the same conveyance, specify another person to take ownership of the land upon the life tenant’s death. In that case, the person so specified has a future interest called a remainder.

**Example 15.** O conveys Blueacre “to Key for life.” Key has a present possessory life estate, but the conveyance does not specify what happens to the land at Key’s death. Thus, O retains a reversion in fee simple absolute in Blueacre. Upon Key’s death, O will own Blueacre in fee simple absolute (unless O made an effective transfer of the reversion during Key’s life).

**Example 16.** O conveys Blueacre “to Key for life, then to Middleton.” Key has a present possessory life estate, and the conveyance specifies that Middleton is entitled to take possession of the land upon Key’s death. Thus, Middleton holds a remainder in fee simple absolute in Blueacre. Upon Key’s death, Middleton will own Blueacre in fee simple absolute (unless Middleton made an effective transfer of his remainder during Key’s life).

**Example 17.** O conveys Blueacre “to Key for the life of Smith.” Key has a present possessory life estate *pur autre vie*, which will terminate upon Smith’s death. The conveyance by O does not specify what happens to the land at Smith’s death. Thus, O retains a reversion in fee simple absolute in Blueacre. Upon Smith’s death, O will own Blueacre in fee simple absolute (unless O made an effective transfer of the reversion during Key’s life), even if Key is still alive.

Just like a grantor can create a defeasible fee simple estate, a grantor can also create a defeasible life estate. The same guidelines discussed above (for the creation of defeasible fee simple estates) would also apply to the creation of defeasible life estates.

**Example 18.** O conveys Blueacre “to Key for life, so long as the land is used for residential purposes only.” O has created an estate that will definitely terminate upon Key’s death, and will terminate automatically even prior to Key’s death if the land is not used for residential purposes. Thus, Key has a present possessory life estate determinable. In this circumstance, O holds both a reversion (as O would be entitled to possession upon Key’s death) and a possibility of reverter (as O would be entitled to possession if the land was not used for residential purposes). Upon Key’s death, or if the land ceases to be used for residential purposes, O will own Blueacre in fee simple absolute.
IV. Classifying Future Interests

The preceding section of this primer introduced you to the five types of future interests recognized by the common law. This section again reinforces the characteristics of each type of future interest and the present possessory estate(s) with which each future interest corresponds.

A. Future Interests Reserved by the Grantor.

1. **Reversion.**

As your casebook explains on page 292, a *reversion* is the future estate that the grantor retains when the grantor conveys less than its entire estate — *i.e.*, when the grantor holds a fee simple estate but conveys to the grantee only a life estate — without specifying who is to take the property at the conclusion of the lesser estate.

*Example 19.* O conveys Blueacre “to A for life.” O has conveyed away a lesser estate than O possessed (as O held a fee simple absolute estate prior to the conveyance). O has not specified who may take possession at the conclusion of A’s life estate. Accordingly, O retains a reversion in fee simple absolute.

Today, because the fee tail estate has been abolished, the only freehold estate that is a “lesser” estate than a fee simple is the life estate. Thus, a reversion typically correspond with a life estate (*i.e.*, it “follows” a life estate).

2. **Possibility of reverter.**

As your casebook explains on page 292, a *possibility of reverter* is the future interest that arises when the grantor conveys a determinable estate of the same duration as the grantor possessed but does not specify any third party to take possession of the land in the event that the grantee breaches the special limitation. A possibility of reverter will always correspond with a determinable estate (either a fee simple determinable or a life estate determinable).

*Example 20.* O conveys Blueacre “to A so long as the land is used for residential purposes only.” O has conveyed away a determinable estate of the same duration that O held (*i.e.*, O held a fee simple absolute in Blueacre, and has now conveyed a fee simple determinable in Blueacre). O’s conveyance does not specify who may take possession of Blueacre in the event that the land is no longer used for residential purposes. Thus, A has a fee simple determinable estate, and O retains a possibility of reverter in fee simple absolute. In the event that A began using Blueacre for business purposes, A’s estate would be terminated; thereafter, O would own Blueacre in fee simple absolute.

3. **Right of entry.**

As the casebook explains on page 293, a *right of entry* is the future interest that arises when a grantor conveys an estate subject to a condition subsequent, retaining an express or implied power
to take action to terminate the estate if the condition is breached. A right of entry will always correspond with a present estate subject to condition subsequent (either a fee simple subject to condition subsequent, or a life estate subject to condition subsequent).

**Example 21.** O conveys Blueacre “to A, but if the land ceases to be used for residential purposes, O may re-enter and terminate A’s estate.” O has conveyed an estate subject to condition subsequent and has expressly retained the right to terminate A’s estate in the event that the land ceased to be used for residential purposes. A holds a fee simple subject to a condition subsequent, and O holds a right of entry in fee simple absolute.

**B. Future Interests Created in a Grantee (Third Party)**

1. **Remainder.**

As the casebook explains on page 293, a remainder is a future interest that is created in a grantee and that can or will become a present possessory estate only at the natural end of a prior possessory estate created in the same instrument of conveyance.

**Example 22.** O conveys Blueacre “to A for life, then to B.” O has conveyed a life estate to A and has specified in the same deed that at the end of A’s life, B may take immediate possession of Blueacre. A has a present possessory life estate, and B has a remainder. At A’s death, B will be entitled to possession of Blueacre in fee simple absolute.

**Example 23.** O conveys Blueacre “to A for life.” Twenty minutes later, O makes another conveyance of Blueacre “to B.” The first deed granted a life estate to A, and did not specify who should take possession of Blueacre upon A’s death. Thus, in the first deed, O retained a reversion in fee simple absolute. At the time of the second deed, O no longer held a present possessory estate, and thus the deed cannot pass a present possessory estate to B. Instead, under the derivative title principle, B receives by the second deed exactly the same title as O held — a reversion in fee simple absolute, entitling O to take possession at A’s death. Thus, after the second deed, B holds a reversion in fee simple absolute, entitling B to possession of Blueacre at A’s death. [Unlike Example 22, B’s interest in Example 23 cannot be a remainder because it was not created in the same instrument of conveyance by which O created the life estate in A.]

Because a remainder must follow the natural end of the preceding estate, a remainder can only follow a life estate. A remainder can never follow a fee simple estate, because a fee simple estate is by definition one that is potentially infinite in duration (and thus can never terminate naturally). Thus, a remainder will always correspond with (or follow) a life estate.

Remainder interests are either vested or contingent. A **vested remainder** is one that satisfies both of these two criteria: (1) It is created in a person that is ascertained (identified) at the time of the conveyance. (2) It is not subject to any condition precedent (and the natural termination of the preceding estate is NOT considered to be a condition precedent). Any remainder that is not a vested remainder is a **contingent remainder.** Thus, a contingent remainder is one that is either (1) created
in a person incapable of being ascertained at the time of the conveyance, or (2) subject to a condition precedent.

Example 24. O conveys Blueacre “to A for life, then to B.” O has conveyed a life estate to A and has specified in the same deed that at the end of A’s life, B may take immediate possession of Blueacre. A has a present possessory life estate, and B has a remainder. Because B is an identified person at the time of O’s deed, and because there is no condition precedent attached to the remainder, B’s remainder interest is vested. Thus, A has a present possessory life estate, and B has a vested remainder in fee simple absolute.

Example 25. O conveys Blueacre “to A for life, then to B if by that date B has graduated from law school.” O has conveyed a life estate to A and has specified in the same deed that at the end of A’s life, B may take immediate possession of Blueacre, but only if B has graduated from law school. A has a present possessory life estate, and B has a contingent remainder in fee simple absolute, because B’s remainder interest is subject to a condition precedent (that B has graduated from law school by the time of A’s death).

Example 26. O conveys Blueacre “to A for life, then to B’s first child.” At the time of this conveyance, however, B has no children. O has conveyed a life estate to A and has specified in the same deed that at the end of A’s life, B’s first child may take immediate possession of Blueacre. The interest of B’s first child is thus a remainder interest. However, because B has no children at the time of the conveyance, it is impossible to identify the specific person who holds this remainder interest. Thus, A holds a present possessory life estate, and B’s first child holds a contingent remainder in fee simple absolute.

A remainder interest that was contingent at the time it was created may subsequently become vested (either because a previously unascertained taker becomes identified or because a condition precedent to the remainder is satisfied).

Example 27. Same as Example 25, but five years after the original conveyance and while A remains alive, B graduates from law school. B’s remainder interest is no longer subject to a condition precedent, as B’s graduation from law school satisfies the condition stated in the deed. Thus, as soon as B graduates from law school, A still holds a present possessory life estate, and B now holds a vested remainder in fee simple absolute.

Example 28. Same as Example 26, but five years after the original conveyance and while A remains alive, B has her first child (named X). The remainder interest in B’s first child is no longer one in an unascertainable person; now, upon A’s death, X (as B’s first child) will be entitled to possession of Blueacre. Thus, upon the birth of X, A still holds a present possessory life estate, and X now holds a vested remainder in fee simple absolute.

Likewise, it is possible that a remainder that was contingent when it was created might fail altogether (either because a condition precedent is not satisfied or it becomes impossible to ascertain the person in whom the remainder was created).
**Example 29.** Same as Example 25, but five years after the original conveyance, A dies. At the time of A’s death, B has not graduated from law school. Because B can never satisfy the condition precedent for B’s remainder interest, B’s contingent remainder fails. This means that B will not be entitled to possession of Blueacre, even if in the future B actually graduated from law school.

**Example 30.** Same as Example 26, but five years after the original conveyance, B dies without ever having had a child. Now there can never be a “first child of B” to take the remainder interest. Thus, the contingent remainder held by “B’s first child” fails.

In classifying the estates created by a conveyance, you must account for the possibility that a contingent remainder created by the conveyance might subsequently fail by identifying the potential interests that would take effect in the event of such a failure.

**Example 31.** Go back to Example 25. A has a present possessory life estate, and B has a contingent remainder in fee simple absolute (subject to the condition precedent that B has graduated from law school by the time of A’s death). The conveyance does not specify who may take possession of Blueacre if A dies without B having graduated from law school. As a result, the grantor O has also retained a future interest, which is a reversion in fee simple absolute. If B has not graduated from law school by the time A’s life estate ends, B’s contingent remainder will fail, and O will then hold title to Blueacre in fee simple absolute.

**Example 32.** Go back to Example 26. A holds a present possessory life estate, and B’s first child holds a contingent remainder in fee simple absolute. The conveyance does not specify who may take possession of Blueacre after A’s life estate ends if B has died without ever having had children. As a result, the grantor O has also retained a future interest, which is a reversion in fee simple absolute.

**Example 33.** Same as Example 32. Two years after the original conveyance by O, B dies without ever having had children. The contingent remainder in B’s first child fails, as B’s first child can never be ascertained. As a result, A continues to have a present possessory life estate, and O holds a reversion in fee simple absolute.

**Example 34.** Same as Example 32. Two years after the original conveyance by O, B has a child, X. The remainder interest in B’s first child now vests, as X is identified and the remainder is not subject to any condition precedent. As a result, A continues to have a present possessory life estate, and O holds a reversion in fee simple absolute. O no longer holds any future interest, as the land can no longer revert to O’s possession.

2. **Executory Interest.**

As the casebook explains on page 297, an **executory interest** is a future interest that is created in a person other than the grantor and that can become a present possessory estate only by divesting (i.e., prematurely terminating) a prior estate.
Example 35. O conveys Blueacre “to A, but if B graduates from college, then to B.” By the terms of the conveyance, the only way that A’s estate can terminate is if B graduates from college. Thus, A has a fee simple estate (it is potentially infinite in duration), but it is not an absolute estate because it is subject to being divested if B graduates from college. If B graduates from college, B’s interest will “divest” A’s title and B will be entitled to take possession of Blueacre in fee simple absolute. Thus, A has a fee simple subject to executory interest, and B has an executory interest in fee simple absolute.

Example 36. O conveys Blueacre “to X when X graduates from college.” At the time of the conveyance, X has not yet graduated from college. As a result, the conveyance does not create a present possessory estate in X. O thus retains the present possessory estate in Blueacre. O holds a fee simple estate (it may last forever, because X may never graduate from college), but it is not absolute; if X graduates from college, O’s interest will be divested and X will be entitled to possession of Blueacre in fee simple absolute. Thus, O holds a fee simple subject to executory interest, and X holds an executory interest in fee simple absolute.

Example 37. O conveys Blueacre “to X so long as the land is used for residential purposes.” By the terms of the conveyance, X’s estate will terminate automatically (it will be “divested”) if the land ceased to be used for residential purposes. Because the terms of the conveyance do not specify who would take possession of Blueacre in that event, O retains a future interest in Blueacre. It is not an executory interest, however, because it is a future interest retained by the grantor. Instead, it is a possibility of reverter (see Example 20). X holds a present possessory fee simple determinable estate, and O holds a possibility of reverter in fee simple absolute.

Executory interests may be either shifting interests or springing interests. An executory interest is a “shifting” interest if it could divest a prior vested estate created in a grantee in the same conveyance. An executory interest is a “springing” executory interest if it could divest the title of the grantor. Thus, the executory interest held by B in Example 35 is a shifting executory interest, as it could take effect only by divesting the present possessory estate of A (which was created in the same conveyance). By contrast, the executory interest held by X in Example 36 is a springing executory interest, as it could take effect only by divesting the present possessory estate retained by the grantor.

V. Class Gifts (and the Rule of Convenience)

In some cases, an owner of property may transfer ownership of that property to an entire class of persons. For example, if an owner of land dies intestate, the owner’s “heirs” inherit the decedent’s land. If there are two or more heirs, these multiple heirs would share ownership of the land as concurrent owners (we take up concurrent ownership specifically in Chapter 6). Likewise, an owner of land could make a transfer of the land to a class of persons either by deed or by will. Such a transfer is often referred to as a class gift.

Any ownership interest (i.e., any present or future estate) that can be held by an individual can also be shared among a class. Thus, just as X can own a fee simple absolute in Blueacre, so may X’s
children own a fee simple absolute in Blueacre. Just as A can own a life estate in Redacre, so may A’s grandchildren. Just as Y can own a remainder interest in Blackacre, so may Y’s children.

By their nature, classes are sometimes “open.” If there is a class gift to X’s children and X is alive at the time of the gift, X can have more children that could join the class. This aspect of class gifts creates the need for a couple of special rules relating to the classification of estates and the “closing” of the class. These rules are demonstrated by the following examples.

**Example 38.** O conveys Blueacre “to X for life, then to X’s children.” At the time of the gift, X has no children. X holds a life estate. Because X’s children cannot be ascertained at the time of the conveyance, X’s children (as a class) have a contingent remainder in fee simple absolute. O retains a reversion in fee simple absolute (and O would take possession of the land if X died without ever having had children).

**Example 39.** Same as Example 38, except that two years later, X has a daughter, Sarah. At this point, Sarah’s identity is now ascertained, and the remainder interest is not subject to a condition precedent. X continues to hold a life estate in Blueacre. Sarah holds a vested remainder in fee simple absolute, _subject to open_ (i.e., subject to X having more children who would join in the class and share in the remainder).

**Example 40.** Same as Example 39, except that two years later, X has a son, Jacob. X continues to hold a life estate in Blueacre. Sarah and Jacob hold a vested remainder in fee simple absolute, subject to open.

**Example 41.** Same as Example 40, except that twenty years later, X dies. X never had additional children. The class closes (as X can no longer have children). Jacob and Sarah now own Blueacre in fee simple absolute.

Sometimes, the rule of convenience will operate to close a class prematurely (before it would close naturally). The rule of convenience specifies that when any member of a class is entitled to demand possession of the land, the class closes at that point. If a person that would have been a member of the class otherwise is subsequently born, they remain outside of the class and do not share in the gift.

**Example 42.** O conveys Blueacre “to A for life, then to X’s children.” At the time of the conveyance, X is alive and has two children, Jacob and Sarah. A holds a present possessory life estate. Jacob and Sarah hold a vested remainder in fee simple absolute, subject to open.

**Example 43.** Same as Example 42, but ten years later, A dies. At the time of A’s death, X is still alive. Jacob and Sarah, however, are entitled to demand possession of the land. Thus, the class “closes,” even though X may still have additional children. Jacob and Sarah own Blueacre in fee simple absolute.

**Example 44.** Same as Example 43, but five years later, X has another child, Ben. Ben does not share in the class gift, as the class has already closed under the Rule of Convenience. Jacob and Sarah own Blueacre in fee simple absolute, but Ben owns no interest in Blueacre.
The rule of convenience is a “rule of construction” rather than a “rule of law.” This means that courts will generally apply the rule of convenience because the court believes that applying the rule will carry out the grantor’s likely intention; however, the court will not apply the rule if doing so would defeat the grantor’s express or apparent intention.

**Example 45.** Same as Example 44, but assume that the original conveyance read “to A for life, then to any child ever born to X, share and share alike.” A court would be unlikely to apply the Rule of Convenience to close the class upon A’s death in this case, because that would be contrary to O’s expressed intention. Jacob and Sarah would have owned the land in fee simple absolute, but subject to open (i.e., subject to the risk of X having another child who would also share in ownership of Blueacre. Thus, when Ben was born, Jacob, Sarah, and Ben would all own Blueacre in fee simple absolute, subject to open. The class will not close until X’s death.

**VI. Problem Set**

In each of the following problems, classify the present and future estates created by the conveyance according to the rules set forth in the preceding sections. For each problem, assume that O held a fee simple absolute estate in Blueacre prior to the conveyance.

1. O conveys Blueacre “to A for life, then to B for life.” What is the state of the title?

   a. Two years later, B dies. Now what is the state of the title?
   
   b. Three years later, O dies. O’s will leaves O’s lands to X. Now what is the state of the title?

2. O conveys Blueacre “to A for life, then to B for life, then to C.” What is the state of the title?

   a. Two years later, C dies intestate. What is the state of the title now?

3. O conveys Blueacre “to A for life, then to B’s heirs.” What is the state of the title:

   a. If B is alive at the time of the conveyance?
   
   b. If B is dead at the time of the conveyance?

4. O conveys Blueacre “to A, but if B graduates from college, then to B.” What is the state of the title?

5. O conveys Blueacre “to A for life, then to B’s children.” What is the state of the title if:

   a. B has no children at the time of the conveyance?
   
   b. B has two children at the time of the conveyance?
   
   c. B is dead at the time of the conveyance?
6. O conveys Blueacre “to A for life, then to B if B graduates from college.” What is the state of
   the title?
   a. Two years later, A dies. B has not yet graduated from college. What is the state of
      the title now?

7. O conveys Blueacre “to A for life, then to B if B survives A; if B does not survive A, then
to C.” What is the state of the title?

8. O conveys Blueacre “to A for life, then to B; but, if B does not survive A, then to C.” What is the state of the title?

9. O conveys Blueacre “to A as long as A lives on Blueacre.” What is the state of the title?

10. O conveys Blueacre “to X for life, then to B, but only after B has given X a proper funeral.”
    What is the state of the title?

11. O conveys Blueacre “to A for life, but if A gets married, grantor may re-enter and terminate
    A’s estate.” What is the state of the title?

12. O conveys Blueacre “to A for life, then to A’s children who survive him.” At the time of
    the conveyance, A has no children. What is the state of title?
    a. Two years later, A has twin boys (Bert and Ernie). What is the state of the title now?

13. O conveys Blueacre “to A for life, then to A’s children.” At the time of the conveyance, A
    has no children. What is the state of the title?
    a. Two years later, A has a daughter (Kate). What is the state of the title now?
    b. Two years later, A has another daughter (Allie). What is the state of title now?
    c. Two years after that, Kate dies in an accident. What is the state of the title now?
       [What additional information, if any, do you need to know?]

14. O conveys Blueacre “to A for life, then to the children of B.” B has two children (Chandler
    and Monica). What is the state of the title?
    a. Two years later, A dies. What is the state of the title?
    b. Three years later, B has another child (Ross). What is the state of the title?

15. O conveys Blueacre “to A’s heirs.” What is the state of the title?

16. O conveys Blueacre “to A’s children.” A has no children at the time of the conveyance.
    What is the state of the title?
    a. Three years later, A has a child (Tom). What is the state of the title now?
17. O conveys Blueacre “to A’s children.” At the time of the conveyance, A has three children (Moe, Larry, and Curly). A is alive and capable of having more children. What is the state of the title?