• 2008: O → “to A for life, then to B’s children.” [B is alive w/no children]
  – A = life estate
  – B’s children = contingent remainder in FSA (cannot be identified)
  – O = reversion in FSA
• 2011: A dies (B is still childless)
• 2013: B has a child, Hannah
• Who owns the land in 2014?

2008: O → “to A for life, then to B’s children.” [B is alive and has no kids.]
• A = present life estate
• B’s children = contingent remainder in FSA (as yet, no ascertainable member of class)
• O = reversion in FSA

2012: A dies. [B is still alive and has no children. Destructibility Rule applies.]
• A = present life estate
• B’s children = contingent remainder in FSA (as yet, no ascertainable member of class)
• O = reversion in FSA, fee simple absolute

Destructibility Rule
• If a contingent remainder was still contingent at the expiration of the immediately preceding estate, the remainder was destroyed
• If applicable, the remainder in the class of B’s children would be destroyed at A’s death
• O would thus have had a present FSA estate
• Note: At common law, contingent remainders were not transferable either inter vivos or by will
  – They weren’t considered “vested” interests capable of being transferred; they were considered more like an “expectancy” (like being named in Bill Gates’s will)
• If the contingent remainder in B’s kids remained valid, then title to the land would be “tied up” (practically) until B’s death
• Destructibility Rule made the land immediately alienable upon A’s death (O had FSA estate)

2008: O → “to A for life, then to B’s children.” [B is alive and childless.]
2012: A dies. [B is alive and has no kids. No Destructibility Rule.]
  • A = present life estate
  • O = fee simple subject to executory interest
  • B’s children = executory interest in FSA (interest will divest O’s estate when B has a child)

O → “to A for life, then to B if B survives A; if not, then to C.”
  • A = present life estate
  • B = contingent remainder in FSA (express condition precedent: B must survive A to take anything)
  • C = alternate contingent remainder in FSA (condition precedent: B does not survive A)
O → “to A for life, then to B; but if B does not survive A, then to C.”
• A = present life estate
• B = vested remainder in fee simple, subject to divestment (condition subsequent)
• C = executory interest in fee simple absolute (will take effect by divesting B’s vested remainder interest)

Would This Work?
• O → “Reserving for myself a life estate, at my death to my children for life, then to my grandchildren for their lives, then to my great-grandchildren for their lives, then to my great-great-grandchildren for their lives, ...” [etc.]

Rule Against Perpetuities
• Each future generation would have a contingent remainder (takers are not yet ascertainable)
• This conveyance, if effective, would enable O to keep the land in his family forever
  – Each generation could only enjoy the land for their respective lives
• Problem: land would be effectively inalienable, for generations (e.g., no generation could transfer property in a way that would cut off interest of the next generation)

• “No interest is good unless it must vest, if at all, not later than 21 years after the death of some life in being at the time the interest was created.”
  – Any contingent future interest that might vest too remotely is considered void *ab initio*
Applying the RAP

- **Step 1**: Classify the interests created by a deed or will (as if they were valid)
- **Step 2**: Apply RAP to all the interests; RAP can apply to invalidate any of the following types of future interests:
  - A contingent remainder
  - A vested remainder subject to open (open class)
  - An executory interest

Applying the RAP

- O → “to A for life, then to B’s heirs.” [B is alive at the time of O’s deed.]
  - A = life estate
  - B’s heirs = contingent remainder in fee simple absolute
  - O = reversion in fee simple absolute (could become possessory at O’s death if B died without heirs)
- Do these interests satisfy RAP?

RAP: The “Measuring Life”

- A “measuring life” is someone:
  - (a) who was alive at the time that the interest you are testing was created, AND
  - (b) whose life/death is related, by logical necessity, to whether that future interest will vest or fail, either during that person’s life, at their death, or within 21 years after their death
- In the prior problem, B is the measuring life that validates the interest of B’s heirs

- Interests of A and O are vested at the time of their creation and are thus valid
- Contingent remainder in B’s heirs is valid, because it cannot vest too remotely
  - B was alive at the time of O’s conveyance (a “life in being”)
  - The interest in B’s heirs must vest immediately at B’s death; at that point, B will either have heirs (and their interest will vest) or he will die without heirs (and their interest will fail)
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• O → “to A, but if B graduates from law school, to B”
  – A = fee simple subject to executory interest
  – B = executory interest in fee simple absolute (will vest if B graduates from law school)
• Do these interests satisfy RAP?
  – A’s interest? YES, vested at time it was created
  – B’s interest? YES, it will either vest during B’s life (if he graduates) or fail at his death (if he didn’t)

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• O → “to A, but if land is ever used for other than agricultural use, to B”
  – A = fee simple subject to executory interest
  – B = executory interest in fee simple absolute (will vest if land is not used for agricultural purposes)
• Do these interests satisfy RAP?
  – A’s interest? YES, vested at time it was created
  – B’s interest? NO. It might vest 500 years from now (> 21 years after B’s death or that of anyone alive at time of A’s deed)

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• O → “to A, but if land is ever used for other than agricultural use, to B”
  – A = fee simple absolute
  – B = nothing (intended executory interest in B is void because it might vest too remotely)
• How might O have “saved” B’s interest?