Future Interests
&
Other Important Topics of Life
Congratulations! Having mastered the concepts of estates, you are now embarking on the world of future interests. This is the part of Property that many students utterly hate, abhor, detest, and despise. But don’t worry—you won’t. At first the concepts seem foreign, so we fear them. Then we get to know them. They’re not that bad. In fact, as we become more familiar with future interest concepts, they’re actually interesting. Once mastering the basic concepts, future interests become like a game: in a weird sort of way, future interests can be . . . fun.

CHAPTER 1: SPEAKING THE LANGUAGE OF INTERESTS & ESTATES

Recall the universe of estates:

**types of estates:** (1) freehold and  
(2) leasehold

**types of freehold:** (1) fee simple,  
(2) life estate, and  
(3) fee tail

**types of fee simple:** (1) absolute,  
(2) determinable,  
(3) subject to condition subsequent, and  
(4) subject to executory limitation

**types of life estates:** (1) life estate (measured by life tenant’s life)  
(2) life estate pur autre view

An estate refers to what we get when someone gives us property. That is, an estate refers to which particular sticks we get in the bundle of rights that compose property. It is the “What” of property.

The next question that we ask is: *When do we get the property?* The answer to that question depends on the interest that we hold: the interest is either present or future. So, when we talk about “interests,” we are talking about the time in which the estate holder can exercise rights over the estate. A person may have a *present interest* or a *future interest* in an estate.

**IMPORTANT NOTE:** The interest is said first, and then the estate. For instance, a person might have a *present interest* in a *life estate.*
(1) Present Interest
Consider the following example: Harry gives Blackacre “to Sally and her heirs.” What type of estate does Sally hold? Answer: a fee simple absolute. When can Sally exercise her property rights in Blackacre? Presently. Sally need not wait around for anything to happen before she can go onto Blackacre and start using it. It is immediately hers. So, the cited language of the transfer indicates that Sally holds a present interest in fee simple absolute.

Note, again, that we say the interest (present or future), followed by the estate (fee simple or life estate).

(2) Future Interest
Suppose that Fred conveys Blackacre as follows: to Daphne for life, then to Vilma. Daphne holds a present interest in a life estate. Vilma’s estate, however, is not present. She does not get it until Daphne dies: so, Daphne’s holds a future interest. What estate will Vilma eventually get when Daphne dies? Vilma will get a fee simple absolute. Therefore, Vilma today holds a future interest in fee simple absolute. Note that Daphne’s estate—a fee simple absolute—refers to the estate that she will hold in the future.

Unfortunately for law students, future interests do not end there. All “future interests” have different names to describe them. For instance, in the above example, the name of Vilma’s future interest is a remainder. So, Vilma has a remainder in fee simple absolute. There is a unique name describing every future interest that corresponds to each different type of estate.

Chapter 2: Future Interests for the Fee Simple Estates

There are three fee simple estates that we need to focus on for understanding future interests:

(1) fee simple determinable;

(2) fee simple subject to condition subsequent; and

(3) fee simple subject to executory limitation.

(1) Fee Simple Determinable – Possibility of Reverter.
Recall that a fee simple determinable is a fee simple that has a duration placed on it that may cut short the fee simple in favor of the Grantor. The fee simple automatically reverts back to the Grantor. For example, O gives Blackacre to A so long as A remains a student. If A does not remain a student, A’s interest is cut short, and Blackacre reverts to O, who granted Blackacre to A in the first place. So A has a present interest in fee simple determinable.
In the above example, what interest and estate does $O$ hold? $O$ holds a **possibility of reverter** in fee simple absolute. “Possibility of reverter” is the name of the future interest that a Grantor retains when the Grantor gives a fee simple determinable. Stated another way, the Grantor has a future interest to take back the land that the Grantor gave the Grantee, and the name of that future interest is a **possibility of reverter**.

If the duration ends, the fee simple automatically reverts back to the Grantor, so that the future interest is realized, and the Grantor gets back a fee simple absolute. Once the fee simple reverts back to the Grantor, the Grantor then holds a **present interest** in fee simple absolute.

**EXAMPLE:** $O$ conveys Blackacre to $A$ while $A$ is a member of the Catholic church.

- $A$ holds a present interest in fee simple determinable.
- $O$ holds a possibility of reverter in fee simple absolute.
- If $A$ ceases being a member of the Catholic church, $O$ holds a present interest in fee simple absolute and $A$ holds nothing.

**EXAMPLE:** $O$ conveys Blackacre to $A$ for **as long as** $A$ shall use it for school purposes.

- $A$ holds a present interest in a fee simple determinable.
- $O$ holds a possibility of reverter in a fee simple absolute.
- If the land stops being used for school purposes, then $O$ holds a present interest in fee simple absolute.

**NOTE 1:** In both examples, the present interest that $A$ holds will terminate **automatically** if the duration ends.

**NOTE 2:** The Grantor’s estate is with respect to the estate that the Grantor may realize if it reverts back to the Grantor. So, $O$ has a possibility of reverter in fee simple absolute—**not** a possibility of reverter in fee simple determinable.
It is helpful to incorporate the future interests into our diagram from the Estates Handout. The diagram thus looks like this, incorporating the *possibility of reverter* future interest:

![Diagram of estates and future interests]

Note: The future interests are distinguished from the estates in the diagram by placing them in small caps with an “*” next to them.
(1) Fee Simple subject to Condition Subsequent – Right of Entry. Recall that a fee simple subject to condition subsequent has a condition placed on the fee simple that may occur in the future, and the Grantor is given the power to re-take the estate (if the Grantor so chooses). For example, O gives Blackacre “to A, _but if_ A does not remain a student, then O may re-enter.” If A does not remain a student, O may choose to re-take Blackacre if O so desires. What is A’s interest and estate? A holds a present interest in a fee simple subject to condition subsequent. What is O’s interest and estate? O has a future interest known as a right of entry. If O chooses to exercise the right of entry, O will get a fee simple absolute. So, O holds a right of entry in fee simple absolute.

**Example:** “O gives Blackacre to A, _provided, however_ that A brushes his teeth every evening.”

- A holds a present interest in fee simple subject to condition subsequent.
- O holds a right of entry in fee simple absolute.

Incorporating the Right of Entry, the Estates diagram looks like this:
(3) **Fee Simple subject to Executory Limitation – Executory Interest.** Recall that a fee simple subject to executory limitation is a fee simple that has either a *duration* or a *condition* placed on it that favors a third party (a new Grantee). The third party (new Grantee) automatically takes the fee simple on the expiration of the duration or occurrence of the condition.

For example, O gives Blackacre “to A, but if A does not remain a student during her life, then to C.” This means that if A does not remain a student, Blackacre automatically goes to C in fee simple absolute. What interest does A have? A has a present interest in fee simple subject to executory limitation. What interest and estate does C have? The name of the future interest is an **executory interest.** An executory interest **cuts short** A’s estate. If C’s executory interest is realized, C will take Blackacre in fee simple absolute. C therefore holds an **executory interest in fee simple absolute.**

- **EXAMPLE:** “O gives Blackacre to A, provided, however, that A brushes his teeth every evening; otherwise to C.”

- A holds a *present interest in fee simple subject to executory limitation.*

- C holds an *executory interest in fee simple absolute.*

Drawing in the executory interest, the diagram looks like this:
At this point it would be helpful to indicate on the diagram which estates and interests may revert to the Grantor and which go to a third party (a new Grantee).

Accordingly, the box covers estates and interests that may revert to the Grantor, and the circle covers estates and interests that may go to a Third Party.
There are two types of future interests that may arise out of a life estate (regardless of whether it is a regular life estate or a life estate pur autre vie). Those two types of future interests are:

1. a reversion; and
2. a remainder.

A reversion occurs where the Grantor retains the future interest following a life estate.

A remainder occurs where a third party (new Grantee) retains the future interest following a life estate.

1) Reversion
If the Grantor retains the future interest following a life estate, the future interest is called a reversion.

EXAMPLE: O gives Blackacre “to A for life.”

- A holds a present interest in a life estate.
- O holds a reversion in a fee simple absolute. When A dies, Blackacre reverts to O. When the estate reverts to O, O receives a fee simple absolute.

2) Remainder
If a third party (a new Grantee) retains the future interest following a life estate, the future interest is called a remainder.

EXAMPLE: O gives Blackacre “to A for life, then to B and his heirs.”

- A holds a present interest in a life estate.
- B holds a remainder in fee simple absolute. When A dies, Blackacre goes to B. B is a third party (or new Grantee) of the estate.
The reversion and remainder future interests may be drawn into the Estates diagram, with a box and circle around them respectively to represent that one reverts to the Grantor and the other to a third party (new Grantee):

- **Estates**
  - **Leasehold**
  - **Freehold**
    - **Fee Simple**
    - **Life Estate**
    - **Fee Tail**
      - **Future interest goes to Third Party** (not Grantor)
        - **s.t. Executory Limitation**
          - long as while during until provided on condition if but if
          - **s.t. Condition**
            - provided that on condition if but if
          - **Possibility of Reverter**
            - long as while during until
          - **Right of Reversion**
            - Future interest reverts to Grantor
        - **Remainder**
          - Future interest reverts to Grantor
Admittedly the Estates diagram is starting to look like a football playbook. But oh well. It will prove a huge help in dissecting and interpreting seemingly confusing conditional land grants—especially on the Bar Exam. Bear with me just a little longer: the diagram is almost complete.

Back to remainders. A remainder must be either contingent or vested.

(a) Contingent remainder

A contingent remainder is a remainder that is subject to a condition precedent. A condition precedent is a condition that must occur before the remainder can be realized.

For example, O gives Blackacre “to A for life, then to B if B gets married.” The condition “if B gets married” must occur before B can get the remainder interest. It is a condition precedent. Once that condition occurs (B actually gets married), then the remainder takes effect, or in other words, the remainder vests. If that condition never occurs before A dies (when A’s life estate ends), then B’s contingent remainder is destroyed.  

**EXAMPLE:** O transfers Blackacre “to A for life, then to C if C cleans his room.”

- The condition “if C cleans his room” is a condition precedent—it must occur for C’s remainder to take effect, or in other words, for C’s remainder to vest.
- A holds a present interest in a life estate.
- C holds a contingent remainder in fee simple absolute.
- O holds a reversion in fee simple absolute.

  o Why does O hold a reversion? Because if the contingency (C cleaning his room) is not satisfied by the time A dies, then Blackacre reverts back to O in fee simple absolute.

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1 Note that this view of destructible contingent remainders is according to the common-law rule. Many states have abolished this rule. See pages 241-43 of Dukeminier et al., Property.
(ii) Vested remainder

A vested remainder is one that is not contingent on some future event happening. There is no condition precedent that must occur in order for the remainder to be effective. (But note that a vested remainder could be stripped away—or in other words, divested. We’ll discuss this further below.)

EXAMPLE: O to A for life, then to B.

• A holds a present interest in a life estate.

• B holds a vested remainder in fee simple absolute.

There are three types of vested remainders:

(1) an indefeasibly vested remainder;
(2) a vested remainder subject to divestment; and
(3) a vested remainder subject to open.

(1) indefeasibly vested remainder

This is the simplest of the vested remainders. It is one that cannot be taken away by any event that happens later. Once vested, this remainder stays.

EXAMPLE 1: O to A for life, then to B.

• A holds a present interest in a life estate.

• B holds an indefeasibly vested remainder in fee simple absolute.

EXAMPLE 2: O to A for life, then to B for life.

• A holds a present interest in a life estate.

• B holds an indefeasibly vested remainder in a life estate.

• O holds a reversion in fee simple absolute.
(2) vested remainder subject to divestment

This is a vested remainder that can be taken away (or divested) if some future event happens. A remainder that is determinable, subject to condition subsequent, or subject to executory limitation all fall under one label—vested remainder subject to divestment.

**EXAMPLE 1:** “O to A for life, then to B, so long as B does not divorce.”

- B’s remainder is determinable in that it automatically ends if B divorces. Note that B’s remainder has vested: it is simply stripped away if B divorces. That vested remainder may be cut short—or in other words, *divested*—if B divorces.
- B holds a *vested remainder subject to divestment* in fee simple absolute.
- O holds a *reversion* in fee simple absolute.
- A holds a present interest in a life estate.

**EXAMPLE 2:** “O to A for life, then to B, but if B divorces, then O may re-enter and take Blackacre.”

- B’s remainder is subject to condition subsequent in that it may end if O, the Grantor, chooses to enter and exercise a power of termination. B’s remainder has vested in that the remainder is presently effective, but it may be cut short—or in other words, *divested*—if B divorces.
- B holds a *vested remainder subject to divestment* in fee simple absolute.
- O holds a *reversion* in fee simple absolute.
• A holds a present interest in a life estate.

EXAMPLE 3: “O to A for life, then to B, but if B divorces, then to C.”

• B’s remainder is subject to executory limitation in that C could cut short B’s interest if B were to divorce. B’s remainder has vested, but may be cut short.

• B holds a vested remainder subject to divestment in fee simple absolute.

• C holds an executory interest in fee simple absolute.

• A holds a present interest in a life estate.

• O holds nothing.

(3) vested remainder subject to open

Where a person holding a vested remainder (a remainderman) can be joined in the future by another remainderman, we call that person’s interest a vested remainder subject to open. STOP! What does that mean??? An example might help:

EXAMPLE: Vilma transfers Blackacre “to Fred for life, then to Fred’s children.” At the time of this conveyance, Fred has only one child, Pebbles.

• Pebbles is a remainderman. Pebbles holds a vested remainder in fee simple absolute. It is possible, however, that Fred could have another child, such that Pebbles would have to share her interest in Blackacre with that child (who isn’t born yet). That unborn child would join Pebbles as a remainderman. Because Pebbles’s remainder interest can be joined if another child is born or adopted, Pebbles has a vested remainder subject to open in fee simple absolute.

• Fred holds a present interest in a life estate.

• Pebbles holds a vested remainder subject to open in fee simple absolute.

• Vilma holds nothing.
Ok. By now you’re probably thinking: Maybe I should think about being a rocket scientist instead of an attorney. Perhaps, then, we should consider these remainders more simply. Try thinking of them like this:

**Contingent remainder**: a remainder that doesn’t go into effect until something must happen.

--- Example: O to A for life, then to B if B gets married.

**Vested remainder**: There are three.

1. **Indefeasibly vested remainder**: the remainder cannot be stripped away or joined.
   
   --- Example: O to A for life, then to B and her heirs.

2. **Vested remainder subject to divestment**: remainder may be stripped away (divested).
   
   --- Example: O to A for life, then to B, but if B divorces, then to C.

3. **Vested remainder subject to open**: the remainder may be joined: e.g., unborn children.
   
   --- Example: O to A for life, then to A’s children. (A could still have another kid.)

These types of remainders (the contingent remainder and the three vested remainders) are drawn into the diagram on the next page.
CHAPTER 4: EXECUTORY INTERESTS REVISITED

Up to this point we have always referred to an executory interest as the future interest that cuts short a fee simple subject to executory limitation. There are a few finer points about executory interest that we should now address.

(1) Executory Interest following Vested Remainder subject to Divestment
An executory interest may follow a vested remainder subject to divestment.

Consider the following example: O to A for life, then to B, but if B divorces, then to C. As discussed above, A holds a present interest in a life estate, B holds a vested remainder subject to divestment in fee simple absolute. What does C hold? C could cut short B’s estate, so we say that C holds an *executory interest* in fee simple absolute.

**Example:** Fred transfers Black “to Ethel for life, then to Lucy, provided that Lucy passes her Property class in 2007; otherwise to Ricky.”

• Ethel holds a *present interest* in a life estate.

• Lucy holds a *vested remainder subject to divestment* in fee simple absolute.

• Ricky holds an *executory interest* in fee simple absolute.

**Important Note:** Where the Grantor cuts short the vested remainder subject to divestment, the Grantor holds a *reversion* in fee simple absolute.

**Example of the Important Note:** Fred transfers Black “to Ethel for life, then to Lucy, provided that Lucy passes her Property class in 2007.”

• Ethel holds a *present interest* in a life estate.

• Lucy holds a *vested remainder subject to divestment* in fee simple absolute.

• Fred holds a *reversion* in fee simple absolute.

Thus, an executory interest occurs when a third party may *cut short* a prior estate.

The two possible estates that may be cut short are:

(1) fee simple subject to executory limitation; and

(2) vested remainder subject to divestment.
(2) Shifting Executory Interest

The executory interest that we have thus far discussed is technically called a *shifting executory interest*. We say “shifting” because when the estate is cut short it *shifts* from the original Grantee to a third party. In one of the examples above, we said: “O to A for life, then to B, but if B divorces, then to C.” The correct label for C’s interest and estate is a “*shifting* executory interest in fee simple absolute.”

**EXAMPLE:** O transfers Black “to A, provided, however, that A brushes his teeth every evening; otherwise to C.”

- A holds a present interest in fee simple subject to executory limitation.
- C holds a *shifting* executory interest in fee simple absolute.

(3) Springing Executory Interest

There is one situation where an executory interest is not shifting, but is instead *springing*. The springing executory interest can be hard to spot. But don’t worry. There is a foolproof way to spot it. Always ask: “Who holds the present interest?”

Let me say that again in case you missed it:

Whenever you look at any conveyance, the first thing you should do is ask:

**Who holds the present interest?**

Always, always, always first ask this question when you examine a conveyance. Always. If you do, you’ll be able to spot the *springing* executory interest.

Now that we’re clear on the question that you must ask (Who holds the present interest?), let’s see how that will help us. Consider the following:

Ollie conveys Blackacre to Alex if Alex graduates from law school by 2010.

Who holds the present interest? Has Ollie actually let go of Blackacre yet? No, because Alex has not graduated from law school. Ollie is saying: “I’m going to give this to you, Alex, but only when you graduate from law school by 2010.” Presently, then, Ollie still has Blackacre. **Ollie, the Grantor, holds onto the present interest.** Only if Alex graduates from law school will Alex take Blackacre. That is, only if Alex graduates from law school will Alex cut short Ollie’s present interest in Blackacre. So, Alex has an executory interest. It cuts short Ollie’s estate.
Ollie, then, has a present interest in fee simple subject to executory limitation. Because Alex’s executory interest cuts short the Grantor’s estate—rather than some other Grantee—we say that Alex’s executory interest is *springing*.

So: **Where an executory interest cuts short the Grantor’s interest, it is a springing executory interest and the Grantor holds a present interest in a fee simple subject to executory limitation.**

Consider the following examples:

1. Bruce conveys Whiteacre to David if David cleans his room next week.
   - Bruce holds a *present interest* in fee simple subject to executory limitation.
   - David holds a springing executory interest in fee simple absolute.

2. Bruce conveys Brownacre to David if David continues to use Brownacre for a Dairy Queen.
   - David holds a *present interest* in fee simple subject to condition subsequent.
   - Bruce holds a *right of entry* in fee simple absolute.

3. Bruce conveys Blueacre to David, but if Blueacre stops being used as a Dairy Queen during David’s life, then to Amy.
   - David holds a present interest in fee simple subject to executory limitation.
   - Amy holds a shifting executory interest in fee simple absolute.

Let’s examine each example:

- In the first example, Bruce has not yet conveyed Whiteacre to David. David first must clean his room to get Whiteacre. This means that Bruce holds onto the present interest. When David cleans his room, he will cut short Bruce’s interest. Thus, Bruce holds a present interest subject to executory limitation. David holds a *springing* executory interest in fee simple absolute. (It is *springing*—not shifting—because David cuts short the *Grantor’s* estate.)
• In the second example, Bruce has given Brownacre to David on the condition that Brownacre continue to be used for Dairy Queen purposes. It’s as though Bruce says: “Here you go, David. You can have it. It’s yours. But you must keep using it for Dairy Queen, otherwise I can come and take it back!” David, the Grantee, holds the present interest. Specifically, David holds a present interest in fee simple subject to condition subsequent. Bruce holds a right of entry in fee simple absolute.

• In the third example, Bruce has given Blueacre to David. But Amy can take Blueacre away from David if it ceases being used as a Dairy Queen during David’s life. So David presently holds Blueacre. Amy has the future interest. Thus, David has a present interest in fee simple subject to executory limitation. Amy holds a shifting executory interest in fee simple absolute. Bruce holds nothing.

Do not be confused. Just remember: executory interests are always shifting unless they cut short the Grantor’s interest; then they’re springing. The way you spot springing executory interests is by asking: “Who holds the present interest?”

So, we can draw two small boxes into our “final” diagram to remind us of shifting and springing executory interests as follows (see next page):
CHAPTER 5: THE RULE IN SHELLEY’S CASE

Most jurisdictions have altogether abolished the Rule in Shelley’s case. In Arkansas, the rule is valid only if the instrument was executed prior to July 16, 2003. See Ark. Code 18-12-303. If that circumstance applies, then where the conveyance states: “O to A for life, then to A’s heirs,” A holds a present interest in fee simple absolute. That is the Rule of Shelley’s case: “O to A for life, then to A’s heirs” gives A a present interest in fee simple absolute. Without the Rule in Shelley’s case, A holds a present interest in a life estate, and A’s heirs hold a contingent remainder in fee simple absolute. (Why is the remainder contingent? Because A’s relatives cannot become heirs until A dies: the remainder interest is contingent on A’s relatives outliving A.)

CHAPTER 6: THE RULE AGAINST PERPETUITIES

Take a deep breath—one more concept to go. It is the Rule Against Perpetuities (“the Rule”). Before the Rule existed, a Grantor could control land for what seemed like forever. For instance, “O to A for life, then to A’s kids for life, then to A’s grandkids for life, then to A’s great-grandkids for life, then to A’s great-great-grandkids for life, then to A’s great-great-great-grandkids for life, etc…” The Rule stopped this from happening.

Here is the formal definition of the Rule:

“No interest is good unless it must vest, if at all, not later than twenty-one years after some life in being at the creation of the interest.”

Here’s what that means: If either a contingent interest (contingent remainder or executory interest) or a vested remainder subject to open exists, those interests must vest within 21 years of the death of some specific person referred to (expressly or implicitly) in the conveyance.

An example helps to understand this:

Ollie conveys Blackacre to Alex for life, then to Alex’s kids for life, then to Alex’s grandkids. Assume that Alex presently has no kids.

Before looking at the Rule, what interest and estate do Alex’s unborn children have? Answer: contingent remainder in a life estate (contingent on being born). What interest and estate do Alex’s grandkids have? Answer: contingent remainder in fee simple absolute (again, contingent on being born). Because we know that they hold contingent remainders, we know we have to apply the Rule.
Now to the Rule. All interests must indefeasibly vest within 21 years of any specific person’s death referred to in the conveyance. Alex is the only specific person referred to. So, for an interest to be valid under the Rule, it must indefeasibly vest within 21 years after Alex dies. We call Alex the “validating life.”

The example raises two issues under the Rule. The first issue is whether Alex’s kids’ interest will indefeasibly vest within 21 years of Alex’s death. The answer is yes. When Alex dies, we know he can have no more kids, so his kids’ remainder interests will no longer be vested subject to open or contingent. The interests of his kids will have indefeasibly vested because they will turn into present interests in a life estate at his death. Alex’s kids’ interests are valid under the Rule.

The second issue is whether Alex’s grandkids’ interest will indefeasibly vest within 21 years of Alex’s death. Suppose Alex has a kid, Betty, and then Alex dies the next day. Thirty years later, Betty could have a kid, Fred, who would be Alex’s grandkid. Fred’s interest would not have indefeasibly vested 21 years after the death of Alex. This means that the phrase, “then to Alex’s grandkids” is invalid. It is struck from the conveyance. Ollie holds a reversion in fee simple absolute.

**Example:** Ollie conveys Blackacre to Amy so long as Blackacre is used as a Dairy Queen; otherwise to Chris.

- Amy holds a present interest in fee simple subject to executory limitation.
- Chris appears to hold a *shifting* executory interest. BUT WAIT! What about the Rule. Will Chris’s executory interest vest within 21 years after Amy dies? Remember, when Amy dies, then her heirs take Blackacre, subject to the executory limitation of using as a Dairy Queen. It could be, then, that Blackacre is used for a Dairy Queen 50 years after Amy dies, but then is converted to a McDonald’s. In that situation, Chris’s executory interest would not vest until 50 years after Amy died. Thus, the phrase “otherwise to Chris” would be invalid under the Rule. It should be stricken, so that Ollie holds a possibility of reverter in fee simple absolute.

  - NOTE: The Rule does not apply where the Grantor holds a possibility of reverter, right of entry, or reversion. Ollie’s possibility of reverter is valid even though it may not be realized for a few centuries to come.
  - NOTE 2: Under the traditional common-law approach, when a phrase must be stricken under the Rule, it is stricken immediately. You do not “wait and see” if the Rule would in fact be violated. The fact that Blackacre stopped by used as a Dairy Queen the day after the conveyance does not change the fact that
the conveyance violated the Rule—under the traditional common-law approach.
Arkansas has recently passed legislation that adopts a more practical approach to applying the Rule. Rather than striking an interest at the time of the creation (at the conveyance), we wait and see whether the interest either vests or terminates within 90 years of its creation. This approach is called the wait-and-see test.

**Example:** In 2000, Ollie conveys Blackacre “to Amy so long as Blackacre is used as a Dairy Queen; otherwise to Chris.” In 2007, Blackacre stopped being used as a Dairy Queen.

- Under the traditional common-law approach, Chris’s shifting executory interest violates the Rule.
- Under the wait-and-see test, Chris’s shifting executory interest turns into a present interest in 2007, when Blackacre stopped being used as a Dairy Queen. So Chris’s interest would not be invalid under the wait-and-see test.