

Question MEE 6 – July 2022 – Selected Answer 1

(1) As between Wanda and Frank, who is obligated to pay the property taxes on the family home?

The issue is whether a life tenant is obligated to pay the property taxes on their interest. The holder of a life estate is obligated to pay the property taxes on the property which they have a possessory interest in. Wanda is a life tenant because the conveyance gave the family home to Wanda "for life." Therefore, Wanda is required to pay the property taxes on the home. Frank's interest is a remainder which follows a life estate. Frank is an heir of Adele, and he only has responsibility to pay property taxes once Wanda dies. The remainderman is not obligated to pay property taxes until their interest becomes possessory. Therefore, Wanda is obligated to pay the property taxes on the family home.

(2) Upon conveying the apartment building to Frank, what if any interest did Oscar have in the apartment building, and was that interest valid?

The issue is what time of interest Oscar conveyed to Frank, and what future interest corresponds with such interest. A fee simple determinable is a conveyance which is capable of lasting forever, provided that it does not violate a restriction in the granting clause. Fee simple determinable interests contain durational language such as "so long as." The future interest which corresponds with a fee simple determinable is a possibility of reverter which is held by the grantor. If and when the condition attached to the fee simple determinable is violated, possession of the property automatically reverts back to the grantor. On the other hand, a fee simple subject to condition subsequent is an interest whereby the grantee may keep the land so long as they do not violate a condition subsequent. The condition is usually indicated by conditional language such as "provided that" or "on condition that." The future interest that accompanies a fee simple subject to condition subsequent is a right of entry, which is reserved for the grantor. The right of entry language usually must be included in the granting language. The grantor must file an ejectment action once the condition is violated to take back possession of the land.

Here, Oscar granted the apartment building to Frank "so long as" four apartments were rented to families with incomes below the state median income for a family of their size. This restriction contained durational language, which indicates that Frank had a fee simple determinable, and Oscar retained a possibility of reverter. Possibilities of reverter are valid future interests, and the rule against perpetuities does not apply to future interests held by a grantor. Additionally, such conditions are not

absolute restraints on alienation, and therefore are valid. The interest Oscar retained was valid.

(3) Upon Oscar's death, what if any interest does Wanda have in the apartment building, and is that interest valid?

The issue is whether Oscar's possibility of reverter could be transferred through a will to Wanda. Future interests created in the grantor are alienable and devisable. They can be sold to buyers, passed down through intestacy, or given away in a will. Therefore, upon Oscar's death, Wanda took his possibility of reverter in the apartment building by way of the residuary clause in the will. The interest was valid because, as mentioned above, future interests in the grantor are not subject to the rule against perpetuities.

(4) After February 1, 2021, who owns the apartment building?

The issue is who owns the apartment building after Frank violated the condition attached to the fee simple determinable. Upon violating the condition of a fee simple determinable, it automatically reverts back to the grantor. As discussed above, that interest was passed down to Wanda via Oscar's will. Frank violated the condition which required him to rent four apartments in the apartment building to families with incomes below the state median income for a family of their size. Frank terminated all of the leases so he could convert the apartments to luxury apartments. When he did so, his interest in the apartment building terminated, and automatically reverted to Wanda, the holder of the possibility of reverter. Thus, Wanda owns the apartment building. Note that if this had been a fee simple subject to condition subsequent, as of February 1, Frank would still own the apartment building because an ejectment action would be required for Wanda to take back possession of the building.

Question MEE 6 – July 2022 – Selected Answer 2

1) The issue is who between Wanda and Frank is obligated to pay property taxes on the family home.

A property conveyed for the length of a person's life creates a life estate and a future interest, called remainder when it is assigned to a person other than a grantor. Life estates are usually created through language such as "to X, for life." If no additional language follows, the remaining future interest is a reversion to the grantor; however, the grantor can assign the future interest as a remainder to another person. Although

both the owner of the life estate and the owner of the remainder have a property interest, the owner present interest-the life estate- has the duty to pay for the administrative costs of the property, including property taxes.

In this case, Wanda is obligated to pay property taxes on the family home because she is the life estate owner. Oscar conveyed the family home to "my new Wanda, for life, and upon her death to my daughter, Adele, and her heirs." This language created a life estate and a remainder to Adele, who transferred her interest to Frank as part of her will. Her life estate interest is an interest is a present interest in the property, and thus she has the responsibility to pay the taxes. Although Adele regularly paid taxes on the family home, this did not shift the responsibility that Wanda, as the one holding the present interest, has. The fact that Wanda could earn this money by renting the property does not obligate her to do so, but it does not discharge her responsibility either. Thus, Frank is correct, and Wanda is obligated to pay property taxes on the family home.

2) The issue is whether Oscar had any interest in the apartment building he conveyed to Oscar, and if so, whether that interest is valid.

An owner of property can condition a conveyance on various conditions. For example, a fee simple determinable is created when the grantor conveys the property to a grantee but conditions it to a continuing condition such that, if said conditions stops occurring, the grantee's rights are automatically extinguished and the property passes to either the original grantor, or, if assigned, to a third party.

In this case, Oscar conveyed a fee simple determinable, with a possibility of reverter to himself. He conveyed the apartment building to Frank and his heirs on the condition that at least four apartments in the building were rented to families with incomes below the state median for a family of their size. Furthermore, Oscar stated that if the condition was not met, the building would automatically revert to Oscar. The conveyance to Frank and his heirs created the "fee simple" part, while the condition of renting to low-income families created the temporal condition that made this a fee simple determinable. The fact that the grant explicitly stated that the conveyance automatically reverted to Oscar further suggests this is a fee simple determinable, as when ongoing condition for a fee simple ends or stops existing, the rights of the owner of the fee simple determinable are automatically extinguished. Oscar created a fee simple determinable and retained a possibility of reverter in the apartment building.

Furthermore, certain types of properties are subject to the Rule Against Perpetuities. When the Rule Against Perpetuities applies, a transfer is not valid unless if it will vest,

if at all, within 21 years of the death of the last life in being at the time of the transfer. Conveyances to unascertainable persons or subject to condition subsequent or precedent are subject to the Rule Against Perpetuities. For such properties, the rule will invalidate the grant that will not vest, but the rest of the grant will be valid. However, future interests in the original grantor are not subject to the rule against perpetuities.

In this case, the conveyance is valid under the rule against perpetuities. The fee determinable has an ascertained owner, Oscar, who was the original grantor. Since the rule against perpetuities does not apply to future interests in grantors, his future interest was valid. Thus, Oscar retained a valid possibility of reverter in the apartment building.

3) The issue is whether Wanda has a valid interest in the apartment building.

Generally, future interests are fully alienable. For example, a future interest can be passed on through a will, even if the conveyance did not have explicit language assigning the right to the grantee "and their heirs." Upon conveyance, the grantee receives all the rights of the grantor unless a separate condition or a contract precludes this. A grant of a residuary estate will include the testator's future interests that have not already been assigned elsewhere in the will.

In this case, Wanda has a valid shifting executory interest in the apartment building. Although he conveyed the apartment building before dying, upon death Oscar still had a possibility of reverter in the building. This interest was not assigned through other will provisions. Thus, upon his death, the interest was part of his residuary estate, which passed to Wanda. Wanda took this future interest, and as this interest would divest Frank, who was not the original grantor, it is considered a shifting executory interest and it will be valid.

4) The issue is whether Wanda or Frank own the apartment building.

When the triggering condition ending a fee simple determinable occurs, the first grantee's possessory interest is automatically extinguished and the property passes to the person with the next possessory interest. In this case, Wanda is the owner of the property. Wanda had a valid shifting executory interest, and Frank had the property in fee simple determinable "so long as at least four apartments" in the building were rented as specified. As of Feb. 1, 2021, the conditions for the fee simple determinable had ended, and thus Frank's rights were automatically extinguished and Wanda took ownership of the property. And as the property was not further conditioned, even if

Wanda is not currently in possession of the property, she is the current owner in fee simple.

Question MEE 6 – July 2022 – Selected Answer 3

1. Wanda is obligated to pay the property taxes on the family home. When a life estate has been created, the interest holder in the life estate and the remaindermen have different rights and responsibilities concerning the property. While remaindermen may be required to pay the mortgage on a property, the life estate holder is required to pay for the upkeep and maintenance of the property, including the property taxes. This requirement does not change even if the remaindermen pay the property taxes for a period, the responsibility to pay still belongs to the holder of the life estate.

Here, Wanda has a life estate interest in the family home and thus is required to pay the property taxes. While Adele previously paid the taxes, and Frank properly inherited her remainder in the life estate, such payments do not create a responsibility for continued payments or constitute an assumption of that responsibility. As such, Wanda is obligated to pay the property taxes on the family home.

2. Upon conveying the apartment building to Frank, Oscar retained a possibility of reverter in the property and that interest was valid. When granting a fee simple in a property, the grantor can impose certain conditions on the property's use. The language used to impose these conditions can create either a fee simple determinable or a fee simple subject to a condition subsequent. In a fee simple determinable, the grantor gives the grantee a fee simple but conditions that fee simple on compliance with a condition. If that condition is ever not satisfied, then the property automatically reverts to the interest holder. This is known as a possibility of reverter. There is a presumption against the creation of fee simple determinables, and the grantor must specifically state that that is the interest they are granting. On the other hand a fee simple subject to a condition subsequent is similar, except that instead of the property automatically reverting, the grantor retains an interest known as a right to reentry, so that if the grantee violates the condition the grantor can enter the property and take back possession. Importantly, in the case of a fee simple subject to condition subsequent the interest holder must take possession of the property, it does not automatically revert to them.

Here, in the conveyance from Oscar to Frank, Oscar specifically stated that "if at any time fewer than four apartments are being rented to below-median-income families, the apartment building automatically reverts to Oscar." This clearly establishes the condition as well as Oscar's right in the possibility of reverter, as reversion is

automatic if Frank violates the condition. As such, Oscar created a fee simple determinable and retained a possibility of reverter.

3. Upon Oscar's death Wanda inherits his possibility of reverter in the apartment building. The possibility of reverter, just like any other future interest, is inheritable. Furthermore, these interests, if conveyed to one's heirs, do not violate the Rule Against Perpetuities, as they will vest their interest upon the death of the grantor.

Here, Oscar granted Wanda in his will "the entire residue of his estate." Included in that residue is all future interests owned by Oscar, including the possibility of reverter in the apartment building. As such, after Oscar's death Wanda owns a possibility of reverter in the apartment building, and that interest is valid.

4. After February 1, 2021, Wanda owns the apartment building. A possibility of reverter can be inherited by heirs. Thus, any violation to a grants condition will result in the heir taking immediate ownership of the property. As such, because Frank no longer rented at least four apartments to below-median-income families, the apartment building automatically reverted to Wanda. The fact that Wanda claim to own the building on February 7 is irrelevant, as ownership automatically transferred when Frank failed to properly abide by the condition. Thus, after February 1, 2021, Wanda owns the apartment building.