Wills Problems

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Limits on Testamentary Freedom

		In Massachusetts
Spousal Protection		
	Dower	abolished
	Curtesy	abolished
	Elective shares	190B-2-301; 191: 15
	Homestead Descent	n.a.
	Allowances	190B-2-403
Child Protection		
	Elective Shares	190B-2-302
	Homestead Descent	n.a.
	Allowances	190B-2-403
	Nonenforcement of "negative wills"	"American Rule" probably applies
Chronological Limits		
	Rule Against Perpetuities	190B-2-901
Controlling Beneficiaries' Behavior		
	Varying treatment of spendthrift trusts	Permissible in MA
	Testamentary conditions	"public policy"
Taxes		
	Federal Estate Tax	Progressive, over $13.99M
	State Estate Tax (12)	Typically progressive, over $1M
	State Inheritance Tax (6)	

Rule against Perpetuities – Classic Version

No interest, other than one reserved by the grantor/testator, is good unless:
- **it must vest (if it is a remainder)**
- **or become possessory (if it is an executory interest)**
- **if at all**
- **no later than 21 years after the termination of some <u>life in being</u> at the creation of the interest**

Lives in being:
- measuring life must come before the 21 years
- "must not be so numerous and so situated that evidence of their deaths is likely to be unreasonably difficult to obtain"
- includes periods of gestation at both ends

Interests Subject to the Rule:
- legal and equitable interests
- real and personal property
- CRM, VRMSO, EI
- options in gross to purchase property

Exempt Interests:
- PR, PT, RV
- VRM and VRMSD
- Lessees' options to purchase or renew leases
- contingencies in easements

Abbreviations

Freehold Estates

FS = fee simple (absolute)

FT = fee tail

        FTM = fee tail male

        FTF = fee tail female

        FTS = fee tail special

FSD = fee simple determinable

FSCS = fee simple subject to a condition subsequent

FSEL = fee simple subject to an executory limitation

LE = life estate

LEAV = life estate pur autre vie

Nonfreehold Estates

TY = term of years

TW = tenancy at will

TP = periodic tenancy

TS = tenancy at sufferance

ll = landlord

t = tenant

Future Interests

RV = reversion

PR = possibility of reverter

PT = power of termination (right of entry)

RM = remainder

        VRM = vested remainder

        VRMSD = vested remainder subject to divestment

        VRMSO = vested remainder subject to open

        CRM = contingent remainder

EI = executory interest

        ShEI = shifting executory interest

        SpEI = springing executory interest

Concurrent Interests

TC = tenancy in common

JT = joint tenancy

TE = tenancy by the entirety

CP = community property

Rule against Perpetuities – Classic Version

Examples:

a) O grants her cottage in Truro "to M for life, remainder to the first child of my daughter D to graduate from college." At the time of the grant, O has a daughter (D) and a son (S). D has two children (E & F).

b) O devises her cottage "to my children for life, remainder to such of my grandchildren as reach the age of 25." At the time of her death, O has a daughter (D), a son (S), and two grandchildren (E & F).

c) O grants her cottage "to my children for life, remainder to such of my grandchildren as reach the age of 21." At the time of the grant, O has a daughter (D), a son (S), and two grandchildren (E & F).

d) O devises her cottage to my son S for life, then to S's widow for her life, remainder to their children who survive them. At the time of O's death, S is 40 years old, married to W, who is 35 years old. They have one child, E.

Interests in (a):
- M: LE
- E&F: CRMs
- G (unborn child of D): CRM
- O: RV

Interests in (b):
- D&S: LEs
- E&F: CRMs
- G (unborn grandchild): CRM
- O's heirs: RV

Interests in (c):
- D&S: LEs (subject to partial defeasance)
- E&F: CRMs
- G (unborn child of unborn child of O): CRM
- O: RV

Interests in (d):
- S: LE
- W: CRM for life
- E: CRM
- G (unborn child of unborn wife of S): CRM
- O's heirs: RV

("afterborn child" problem)

("afterborn child" problem)

("fertile octogenarian" problem)

("unborn widow" problem)

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Interests in (c):
- D&S: LEs (subject to partial defeasance)
- ~~E&F: CRMs~~
- ~~G (unborn child of unborn child of O): CRM~~
- O: RV

(" fertile octogenarian" problem)

Interests in (d):
- S: LE
- W: CRM for life
- ~~E: CRM~~
- ~~G (unborn child of unborn wife of S): CRM~~
- O's heirs: RV

("unborn widow" problem)

Rule against Perpetuities – Massachusetts Version

2-901(a): "A nonvested property interest is invalid unless:

(1) when the interest is created, it is certain to vest or terminate no later than 21 years after the death of an individual then alive; or

(2) the interest either vests or terminates within 90 years after its creation. "

- Exclusions include:
  - Most non-donative transfers (e.g., options in commercial transactions). [2-904(1)]
  - Conditions that govern when one charity is displaced by another. [2-904(5)]