

A testator owned a tract of land in fee simple. The testator wrote and executed, with the required formalities, a will that devised the land to "my daughter for life with remainder to my descendants per stirpes." At the time of writing the will, the testator had a husband and no descendants living other than her two children, the daughter named in the will and a son.

The testator died and the will was duly admitted to probate. The testator's husband predeceased her, but she was survived by her daughter, her son, four grandchildren, and one great-grandchild. The testator's children were her sole heirs at law.

The testator's children brought an appropriate action for declaratory judgment as to title of the land. Guardians ad litem were appointed and all other steps were taken so that the judgment would bind all persons interested.

In that action, the court ruled that the daughter has a life estate in the whole of the land and that the remainder is contingent.

The court must have chosen a construction that did which of the following?

- A. Implied a condition that remaindermen survive the daughter.
- B. Implied a gift of a life estate to the son.
- C. Related all vesting to the death of the testator.
- D. Related all vesting to the time of writing of the will.

Explanation:

Vested remainders v. Contingent remainders

	Definition	Examples
Vested	Remainder <i>not</i> subject to condition precedent & held by identifiable living person	"... remainder to A"
Contingent	Remainder subject to condition precedent or held by unknown / unborn person	"... remainder to A, but only if A outlives B" "... remainder to my heirs"

A **remainder** is a future interest in real property that is capable of becoming possessory upon the expiration of a [life estate](#) or term of years. Remainders are either:

vested – **not subject to** any **condition precedent** AND held by an **identifiable living person** *or*

contingent – subject to some **condition precedent** (other than the natural termination of the prior estate) OR held by an **unknown or unborn person**.

Here, the testator wrote a will that devised a life estate to her daughter and a remainder to her descendants. After the testator's death, the court ruled that that the remainder was contingent—not vested. This means that the court cannot have chosen a construction (ie, interpretation) of the testator's will that related all vesting to:

the time of the writing of the will – in which case, the testator's descendants who were alive and identifiable when she wrote the will (her two children) would have had *vested* remainders **(Choice D)** *or*

the death of the testator – in which case, the testator's descendants who were alive and identifiable when she died (her children, grandchildren, and great-grandchild) would have had *vested* remainders **(Choice C)**.

Instead, the court must have chosen a construction of the testator's will that implied a condition that remaindermen survive the daughter. In that case, the remainder would be *contingent* because the testator's descendants who will survive the daughter and eventually take possession of the land are still unknown.

(Choice B) There is no indication that the court implied a life estate to the son. And even if it did, this would not create a contingent remainder.

Educational objective:

A *vested* remainder is not subject to any condition precedent and is held by an identifiable living person, whereas a *contingent* remainder is either subject to a condition precedent or held by an unknown or unborn person.

References

Restatement of Property § 157 (Am. Law Inst. 1936) (discussing the types of remainders).

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