

A man owned a tract of land in fee simple. By will duly admitted to probate after his death, the man devised the land to "any wife who survives me for life with remainder to such of my children as are living at her death."

The man was survived by his wife and by two daughters and a son. Thereafter, the son died and by will duly admitted to probate devised his entire estate to a friend. The son's sole heirs at law were the two daughters.

Later, the wife died. In an appropriate lawsuit to which the two daughters and the friend are parties, title to the land is at issue.

In such lawsuit, judgment should be that title to the land is in which party?

- A. The two daughters and the friend, because the earliest vesting of remainders is favored and reference to the wife's death should be construed as relating to time of taking possession.
- B. The two daughters and the friend, because the provision requiring survival of children violates the Rule Against Perpetuities since the surviving wife might have been a person unborn at the time of writing of the will.
- C. The two daughters, because the remainders were contingent upon surviving the life tenant.
- D. The two daughters, because the son's remainder must descend by intestacy and is not devisable.

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 **life estate** is a present possessory interest in real property that expires upon the death of an individual. The future interest that follows a life estate is either a reversion (if it is held by the grantor) or a **remainder** (if it is **created in a grantee**—as seen here). A remainder is **contingent** if it is held by an **unknown or unborn person** OR subject to a **condition precedent**.

Here, the man devised a life estate in the land to his wife and a remainder to his children—but only if they survived the wife. Because the children's remainders were contingent upon surviving the wife, no child's interest can vest before the wife's death. This is true regardless of whether there is a policy favoring early vesting (**Choice A**). And since the son died *before* the wife, the son never acquired an interest in the land to devise to his friend. Therefore, the two daughters—both of whom were alive when the wife died—have title to the land.

(Choice B) A future interest that violates the Rule Against Perpetuities (RAP) is void. Therefore, had the children's remainders violated RAP, the daughters would *not* take title to the land.

(Choice D) Remainders (whether they are vested or contingent) are transferable inter vivos, devisable by will, and inheritable by intestate succession.

Educational objective:

Future interests following a life estate are called remainders if they are created in a grantee. And remainders are contingent if they are (1) held by an unknown or unborn person or (2) subject to a condition precedent.

References

Restatement of Property § 157 cmt. u (Am. Law Inst. 1936) (contingent remainders).

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