CHAPTER IX

FUTURE INTERESTS

STANDARD 9.1

ATTEMPTED RESTRAINT ON ALIENATION OF FEE SIMPLE ESTATE

STANDARD: A PROVISION IN A WILL OR DEED WHICH ATTEMPTS TO RESTRAIN ALIENATION OF A FEE SIMPLE ESTATE IS VOID.

Problem A: Blackacre was devised in fee simple to Ada Brown subject to a provision that "Ada Brown shall not alienate or mortgage Blackacre until five years after my death." Before the expiration of the five-year period, Ada Brown deeded Blackacre to Theodore Worth. Did Worth acquire marketable title?

Answer: Yes.

Problem B: Blackacre was devised in fee simple to Ada Bedford and Clare Brown, the only children of the testator, with a provision that "it shall not be competent for any devisee to alienate, mortgage, barter or transfer any portion of the real property until my youngest child reaches the age of 25 years." Before the youngest child reached the age of 25, Ada Brown, who was of full age, deeded her undivided one-third interest in Blackacre to Theodore Worth. Did Worth acquire marketable title to an undivided one-third interest in Blackacre?

Answer: Yes.

Problem C: Blackacre was conveyed to John Barry by a deed which provided that the grantee was not to alienate Blackacre during the lifetime of the grantor. Before the death of the grantor, Barry, a single man, deeded Blackacre to Theodore Worth. Did Worth acquire marketable title?

Answer: Yes.

Problem D: Blackacre was conveyed to John Barry and David Barry, "as joint tenants and not as tenants in common." The deed provided that "it is part of the consideration of this deed that neither grantee shall or can sell, deed, mortgage or in any way dispose of his interest without the consent of the other grantee." John Barry, a single man, deeded his interest to Theodore Worth without the consent of David Barry. Did Worth acquire marketable title to the interest conveyed to him by John Barry?

Answer: Yes.

Authorities: Generally: *Mandelbaum* v *McDonnell,* 29 Mich 78 (1874); *In re Estate of Schilling,* 102 Mich 612, 61 NW 62 (1894); *Watkins v Minor,* 214 Mich 380, 183 NW 186 (1921), *Porter v Barrett,* 233 Mich 373, 206 NW 532 (1925); *Braun v Klug,* 335 Mich 691, 57 NW2d 299 (1953).

Problem D: *Smith v Smith,* 290 Mich 143, 28 NW 411 (1939).

Note: See Standard 6.3 as to severance of a joint tenancy.

Caveat: MCL 554.381, which became effective on August 27, 1925, provides that "No statutory or common law rule of this state against perpetuities or restraint of alienation shall hereafter invalidate any gift, grant, devise or bequest, in trust or otherwise, for public welfare purposes."

STANDARD 9.2

RESTRAINT ON ALIENATION OF ESTATE FOR YEARS

STANDARD: ALIENATION OF AN ESTATE FOR YEARS MAY BE EFFECTIVELY RESTRAINED.

Problem: Richard Lambert leased Blackacre to Peter Thomas for a period of 10 years. The lease provided that the tenant could not assign, convey or sublet without the landlord's consent. It also provided that the landlord could re-enter upon breach of the covenant. During the term of the lease, Peter Thomas breached the covenant by assigning the lease to Donald Taylor without Lambert's consent. Can Lambert re-enter and recover possession?

Answer: Yes.

Authorities: *Darmstaetter v Hoffman,* 120 Mich 48, 78 NW 1014 (1899); *Marvin v Hartz,* 130 Mich 26, 89 NW 557 (1902).

Comment: There is authority that, if land is leased to a tenant partnership with a covenant against assignment, the adding of a partner to, or the withdrawal of a partner from, the partnership is not a breach of the covenant. Miller v Pond, 214 Mich 186, 183 NW 24 (1921); Tierney v McKay, 232 Mich 609, 206 NW 325 (1925). It has also been held that the assignment of a leasehold estate for security purposes does not constitute a breach of a covenant not to assign the lease. Crouse v Michell, 130 Mich 347, 90 NW 32 (1902).

STANDARD 9.3

LIFE ESTATE WITH POWER TO CONVEY FEE

STANDARD: THE HOLDER OF A LIFE ESTATE, COUPLED WITH AN ABSOLUTE POWER TO DISPOSE OF THE FEE ESTATE BY INTER VIVOS CONVEYANCE, CAN CONVEY A FEE SIMPLE ESTATE DURING THE LIFETIME OF THE HOLDER. IF THE POWER IS NOT EXERCISED, THE GIFT OVER BECOMES EFFECTIVE.

Problem A: Blackacre was devised to Laura Wales, "for her lifetime, to do with as she pleases, but on her death, if not previously disposed of, Blackacre shall be divided between Gerald Rapp and Ivor Sorenson." Laura Wales died without having conveyed Blackacre. Is the gift over to Rapp and Sorenson valid?

Answer: Yes.

Problem B: Same facts as in Problem A, except that Laura Wales, during her lifetime and for her own benefit, by a deed reciting the power of disposition, conveyed Blackacre in fee simple to Ralph Oakes. Did Oakes acquire title to Blackacre free of the claims of Rapp and Sorenson?

Answer: Yes.

Authorities: MCL 556.122, 556.123 and 556.129.

Comment: The Committee has not attempted to determine the effect of a conveyance by a life tenant who has a power to dispose of the fee if the conveyance does not indicate clearly that it purports to be an exercise of the power. See, MCL 556.114.

STANDARD 9.4

APPLICATION OF RULE AGAINST PERPETUITIES TO NONVESTED INTERESTS IN LAND CREATED BEFORE MARCH 1, 1847, OR AFTER SEPTEMBER 22, 1949 AND BEFORE DECEMBER 27, 1988

STANDARD: A NONVESTED INTEREST IN LAND, CREATED BEFORE MARCH 1, 1847 OR AFTER SEPTEMBER 22, 1949 AND BEFORE DECEMBER 27, 1988, IS VOID UNLESS IT MUST VEST, IF AT ALL, NOT LATER THAN 21 YEARS AFTER SOME LIFE OR LIVES IN BEING AT THE CREATION OF THE INTEREST.

Problem A: By a will executed in 1948, Blackacre was devised "to the Grace Church, to be used for church purposes, and if it ever ceases to be used for church purposes, then to Ivan Potter and his heirs." The testator died in 1965. Did the Grace Church acquire title free of the interest of Ivan Potter and his successors in interest?

Answer: Yes. The executory interest of Ivan Potter was "created," if at all, at the death of the testator, not at the time the will was executed. Hence, the interest is subject to the rule against perpetuities. There is no life in being that may be counted, and therefore the test is whether, at the time of its creation, the interest was certain to vest within 21 years after testator's death. It is obvious that the condition upon which the executory interest was to vest (that is, the failure to use the land for church purposes) might possibly occur at a later date. Hence, the interest is not certain to vest within the prescribed period and is therefore void. The failure of this interest leaves the Grace Church with an indefeasible fee simple estate which may be conveyed.

Problem B: In 1965 Paula Roberts deeded Blackacre to the Grace Church "so long as it is used for church purposes, and if it ever ceases to be so used the land shall revert to the grantor and her heirs." Does a grantee of the Grace Church who uses Blackacre for other than church purposes hold title free of the interest of Paula Roberts and her successors in interest?

Answer: No. The interest created in the Grace Church is a determinable fee with a possibility of reverter in the grantor. The latter interest is regarded as a retained portion of the fee simple estate and not a newly created interest. Therefore the rule against perpetuities does not apply. This contrasts with Problem A, where an attempt was made to create a shifting interest in some person other than the testator.

Problem C: In 1965, Ruth Evans deeded Blackacre to the Grace Church "on condition that the land be used for church purposes, and if it ever ceases to be so used, the grantor or her heirs may reenter and take the land." Does a grantee of the Grace Church who uses Blackacre for other than church purposes hold title free of the interest of Ruth Evans and her successors in interest?

Answer: No. The estate created in the Grace Church is subject to a condition subsequent, leaving in the grantor a right of entry (sometimes called a power of termination). This interest, like the possibility of reverter in Problem B, is regarded as a retained interest and not as a newly created interest. It is therefore commonly held not subject to the rule against perpetuities. The interest of the grantor (a right of entry) differs from the possibility of reverter in that the latter will take effect automatically if the property ceases to be used for church purposes, whereas the former requires that the condition be broken and that the grantor elect to terminate the estate of the Grace Church.

Problem D: In 1960, Blackacre was deeded to George Morton on condition that "if within 20 years the property shall be used for manufacturing purposes, the land shall pass to Ellen Ives." In 1966, a grantee of Morton used the land for manufacturing purposes. Did the title to Blackacre vest in Ellen Ives?

Answer: Yes. The interest of Ellen Ives is an executory interest, created in someone other than the grantor, and is therefore subject to the rule against perpetuities. The time limitation of 20 years makes certain that the interest will vest, if at all, within 21 years after its creation. It is therefore valid under the rule against perpetuities, and the interest vests immediately upon the happening of the event upon which it was conditioned. Although Morton could convey his interest, his grantee took subject to the same limitation on use for the same 20-year period, and the grantee's estate was divested by breach of the condition.

Problem E: In 1965, Thomas Oldfather, owner of three contiguous lots, deeded one of the lots to George Morton. The deed recited that the lot was to be used for residential purposes only and that if the lot was ever used for other purposes, the grantor or his heirs might re-enter and take the land. Oldfather deeded one of the remaining lots with a similar provision in the deed, but continued to reside in his house erected on the third lot. In 1974 Morton tore down the house upon his lot, and erected a gasoline station. Can Oldfather re-enter and acquire title to the lot?

Answer: Yes. The condition subsequent in the deed to Morton creates a right of entry (or power of termination) in Oldfather, and is not merely a restrictive covenant. This interest is not subject to the rule against perpetuities. Accordingly, upon breach of the covenant, in the absence of waiver, laches or estoppel, or waiver by operation of law pursuant to MCL 554.62, the grantor has the power to re-enter, and upon the re-entry becomes the owner of the land. Because the grantor still retains the ownership of other land in the vicinity, it is assumed that the provisions of MCL 554.46 (which provides that conditions which are merely nominal and of no substantial benefit to the party in whose favor they are to be performed will not be enforced) are inapplicable.

Authorities: Generally: MCL 554.51, 554.52 and 554.53.

Problem A: *St. Amour* v *Rivard,* 2 Mich 294 (1852).

Problem B: *Moffit v Sederlund,* 145 Mich App 1, 378 NW 2d 491 (1985). Decisions in other states have sustained the validity of such an interest. See, 3 Simes and Smith, *The Law of Future Interests, 2nd Ed.,* Sec 1239; 6 *American Law of Property,* Sec 24.62.

Problem C: See, 3 Simes and Smith, *The Law of Future Interests, 2nd Ed.,* Sec 1238.

Problem D: See, 3 Simes and Smith, *The Law of Future Interest,s 2nd Ed.,* Sec 1236.

Problem E: *Barrie* v *Smith,* 47 Mich 130, 10 NW 168 (1881); *Smith* v *Barrie,* 56 Mich 314, 22 NW 816 (1885); *Stahl* v *Dyer,* 235 Mich 355, 209 NW 107 (1926).

Comment A: Before the enactment of Rev Stat 1846, Ch 62, the common law rule against perpetuities was applicable to dispositions of both real and personal property. This chapter, which became effective March 1, 1847, was interpreted to mean that a conveyance of land need satisfy only the statutory requirement which prohibited the suspension of the absolute power of alienation for a period longer than during the continuance of two lives in being (see, Standard 9.6), and that it was not necessary to comply with the common law rule against perpetuities. *Windiate* v *Lorman,* 236 Mich 531, 211 NW 62 (1926); *Rodey* v *Stotz,* 280 Mich 90, 273 NW 404 (1937). The statute, however, did not apply to personal property, and therefore the common law rule against perpetuities continued to be applicable to dispositions of personal property. As to cases in which a single limitation created a future interest in both realty and personalty, see Standard 9.8. 1949 P.A. 38, effective September 23, 1949, (being MCL 554.51, 554.52 and 554.53) repealed the provisions of Chapter 62 prohibiting the suspension of the absolute power of alienation for a period longer than during the continuance of two lives in being, and restored the common law rule against perpetuities, which is made applicable to dispositions of both real and personal property made on and after September 23, 1949. Accordingly, any future interest created on or after that date is subject to the rule. Interests created by will are created at the time of the death of the testator, and not at the time of the execution of the will.

Comment B: Trusts created by an employer as part of a stock bonus, pension, disability or death plan for the benefit of employees are not deemed invalid as violating the rule against perpetuities. MCL 555.301.

Comment C: No gift, grant, bequest or devise, whether in trust or otherwise, for religious, educational, charitable or benevolent uses, or for providing care or maintenance of any part of a cemetery, otherwise valid under state law, is to be deemed invalid by reason of contravening the rule against perpetuities. MCL 554.351.

Comment D: Under MCL 554.401 through 554.404, when land is deeded or devised to be held for any religious, educational, charitable, benevolent or public purpose with a condition creating a possibility of reverter in the grantor, so that if the land ever ceases to be so used, title reverts to the grantor or his heirs, the owner may, under specified circumstances, obtain judicial approval to sell an indefeasible estate in the land. In such a case, the proceeds must be reinvested in other land which is then held subject to the same limitations.

Caveat 1: Section 6(2) of the Uniform Statutory Rule Against Perpetuities Act, MCL 554.71, which became effective on December 27, 1988, provides that if a nonvested property interest was created before December 27, 1988 and, in a judicial proceeding commenced on or after December 27, 1988, is determined to violate the rule against perpetuities as it existed before December 27, 1988, an interested person may petition a court to reform the disposition in the manner which most closely approximates the transferor's manifested plan of distribution and is within the limits of the rule against perpetuities applicable when the nonvested property interest was created.

Caveat 2: MCL 554.38 1, which became effective on August 27, 1925, provides that "No statutory or common law rule of this state against perpetuities or restraint of alienation shall hereafter invalidate any gift, grant, devise or bequest, in trust or otherwise, for public welfare purposes."

Note: See Standard 9.12 as to nonvested interests in land created after December 27, 1988.

STANDARD 9.5

APPLICATION OF RULE AGAINST PERPETUITIES TO CLASS GIFTS EFFECTIVE BEFORE MARCH 1, 1847 OR AFTER SEPTEMBER 22, 1949 AND BEFORE DECEMBER 27, 1988

STANDARD: A DEED OR DEVISE OF LAND TO A CLASS EFFECTIVE BEFORE MARCH 1, 1847 OR AFTER SEPTEMBER 22, 1949, AND BEFORE DECEMBER 27, 1988, IS SUBJECT TO THE RULE AGAINST PERPETUITIES. THE DEED OR DEVISE IS VALID ONLY IF THE PRECISE MEMBERSHIP OF THE CLASS IS NECESSARILY ASCERTAINABLE WITHIN LIVES IN BEING PLUS 21 YEARS AFTER THE EFFECTIVE DATE OF THE DEED OR DEVISE EVEN THOUGH SOME OR ALL OF THE POTENTIAL MEMBERS OF THE CLASS ARE IN BEING WITHIN THE PRESCRIBED PERIOD.

Problem A: In 1970, Shane McGerry deeded Blackacre in trust to pay the income to his wife for life, then to pay the income to his daughter, Mary, for her life, with the corpus to be distributed to any children of Mary living 30 years after the death of the wife. Mary and three of her children were living on the date of the trust deed. Was the gift of the corpus valid?

Answer: No. The precise membership of the class cannot be ascertained until 30 years after the death of the wife and, if Mary predeceases the wife, until more than 30 years after the death of Mary. Accordingly, the disposition cannot be validated by using either the wife or Mary as the measuring life. Although some potential members of the class were in being at the date of the deed, the class will include only those children who survive the wife by 30 years. Hence, the size of the class may increase or decrease for a period beyond lives in being plus 21 years. Consequently, Blackacre may not vest in the remaindermen within the period of the lives of the wife and Mary and 21 years thereafter. The disposition cannot be sustained by taking as measuring lives Mary's three children who were living at the effective date of the trust conveyance, for it is possible that Mary may have other children and these may be the only ones who survive the wife by 30

years. Thus, the precise membership of the class of remaindermen is not necessarily ascertainable within the period of the rule against perpetuities. Hence, the gift of the remainder is invalid although the two life estates are valid.

Problem B: Same facts as in Problem A, except that the trust was created by devise, and the daughter Mary was dead at the time of the testator's death. Was the gift of the corpus valid?

Answer: Yes. Because Mary was dead at the time the devise became effective, no more children could be born to her. Hence, the children may now be taken as "the lives in being" and the precise membership will necessarily be ascertained during their respective lifetimes.

Problem C: Shane McGerry died in 1970, devising Blackacre in trust to pay the income to his widow for life, then to his daughter, Mary, for life, and then to the surviving children of Mary, with the corpus to be distributed to Mary's children who are living when the youngest surviving child reaches the age of 21 years. Was the gift of the corpus valid?

Answer: Yes. The precise membership of the class to take the corpus is necessarily ascertained within 21 years after Mary's life (a life in being at the creation of the interest).

Problem D: Shane McGerry died in 1970, leaving a will executed in 1965, by which he devised Blackacre "to such of the children of my daughter, Mary, as shall attain the age of 30 years." At her father's death, Mary was living and had three children, all of whom were under 30 years of age. Was the gift of the corpus valid?

Answer: No. Because the gift is made to the children of a living person, it is possible that the class may increase in size, and it is also possible that later-born children will be the only ones who reach the age of 30 years. The precise membership of the class cannot be ascertained until more than 21 years after the lives in being at the creation of the interest.

Authorities: MCL 554.51, 554.52 and 554.53. 4 Restatement, Property, Sec 383, Comments C and D, Sec 284; 2 Simes and Smith, *The Law of Future*

Interests, 2nd Ed., Sec 636; 3 Simes and Smith, *The Law of Future Interests, 2nd Ed.,* Sec 1265.

Comment: Although the facts under Problems A and D render the gifts invalid, it has been recognized that a testator can so manifest his intention that the ordinary rule of construction will not apply. *Lariverre* v *Rains,* 112 Mich 276, 70 NW 583 (1897).

Caveat 1: Section 6(2) of the Uniform Statutory Rule Against Perpetuities Act, MCL 554.71, which became effective on December 27, 1988 provides that if a nonvested property interest was created before December 27, 1988 and, in a judicial proceeding commenced on or after December 27, 1988, is determined to violate the rule against perpetuities as it existed before December 27, 1988, an interested person may petition a court to reform the disposition in the manner which most closely approximates the transferor's manifested plan of distribution and is within the limits of the rule against perpetuities applicable when the nonvested property interest was created.

Caveat 2: MCL 554.381, which became effective on August 27, 1925, provides that "No statutory or common law rule of this state against perpetuities or restraint of alienation shall hereafter invalidate any gift, grant, devise or bequest, in trust or otherwise, for public welfare purposes."

Note: See Standard 9.12 as to nonvested interests in land created after December 27, 1988.

STANDARD 9.6

STATUTE LIMITING SUSPENSION OF POWER OF ALIENATION

STANDARD: ANY INTEREST IN LAND, CREATED ON OR AFTER MARCH 1, 1847 AND BEFORE SEPTEMBER 23, 1949, IS INVALID IF IT WOULD OPERATE TO SUSPEND THE ABSOLUTE POWER OF ALIENATION FOR A PERIOD LONGER THAN TWO LIVES IN BEING AT THE CREATION OF THE INTEREST.

Problem A: In 1945, Blackacre was deeded to Daniel Fleet for life, remainder in fee simple to Clarence Stone if he survived Fleet, otherwise remainder in fee simple to Ralph Kline. Is the conveyance valid?

Answer: Yes. (1) During the period specified in this Standard (while Rev Stat 1846, Ch 62, Secs 14, 15, 16, 17, 18, 20 and 23 were in effect), the common law rule against perpetuities was superseded as to land by the statute which limited the creation of interests which would operate to suspend the absolute power of alienation. (2) There is no suspension of the absolute power of alienation in the present case, because all of the parties in interest were in being when the deed became effective and the parties, acting together, could convey an absolute fee in possession. The statute specified that the absolute power of alienation was suspended only "when there are no persons in being, by whom an absolute fee in possession can be conveyed."

Problem B: In 1945, Jane White conveyed Blackacre to Earl Collins by a deed which provided that should Collins, during his lifetime, ever wish to sell Blackacre, White should have the right of first refusal at a determinable price. Is White's interest valid?

Answer: Yes. The absolute power of alienation is not suspended for the reasons stated in the Answer to Problem A.

Problem C: Thomas Oldfather died in 1945, devising Blackacre to his wife, Harriet, for life, with remainder to his son, Charles, on the condition that Charles or his representatives pay Grace Oldfather $500. In the event that Charles predeceased Harriet, Blackacre was devised to Grace. Is the disposition valid?

Answer: Yes. Although the remainders are contingent and a valid charge on the land is created, all interests are owned by persons in being who, by joining in a conveyance, can convey an absolute fee simple, and therefore the absolute power of alienation was not suspended.

Problem D: Thomas Oldfather died in 1945, devising Blackacre to his wife for life, then to his daughter, Alene, for life, with the remainder in fee simple to his granddaughter, Carol, if she survived Alene, and if Carol did not survive Alene, the remainder in fee simple to Alene's children. Is the disposition valid?

Answer: Yes. The absolute power of alienation is suspended under the rule stated in the Answer to Problem A, but only for the consecutive life estates of the widow and the daughter, Alene, each of whom was a life in being when the interests were created. Upon the death of the survivor of the widow and Alene, Blackacre will be owned by persons in being by whom an absolute fee in possession can be conveyed. Thus, the absolute power of alienation is suspended for a legal period only. If the absolute power of alienation is suspended, the legality of the suspension is determined by the number of consecutive life estates between the creation of the interests and the end of the period of suspension and not by the number of people who might share in the devise.

Problem E: In 1945 Blackacre was deeded to Frank Bowman and Joan Bowman, husband and wife, for the lifetime of the survivor of them, and then to John Riggs for life, with remainder in fee simple to the surviving children of Riggs in equal shares. Is the conveyance valid?

Answer: Yes. The estate for the life of the survivor of Frank Bowman and Joan Bowman is construed to be an estate for one life only. Because only two consecutive life estates were created, there is no violation of the statute. An estate for the life of the survivor of a class, all of whose members are in being when the interest is created, is but one life estate.

Problem F: Thomas Oldfather died in 1945, devising Blackacre to his son, Charles, for life, and then to those of Charles's children who survived

Charles for the life of the survivor of them, with remainder in fee simple to the surviving heirs of Charles's children. Is the disposition valid?

Answer: No. The power of alienation would be suspended for the life of Charles plus the life of the survivor of Charles's children. As stated in the Answer to Problem E, the life of the survivor of a class is considered to be one life. In the present case, however, it is possible that children of Charles may be born after the testator's death and therefore, the life estate of Charles's children may be measured by a life not in being at the creation of the interests. This possibility defeats the disposition, because the statute permits suspension only during the continuance of two lives in being at the creation of the interests. The illegality of the suspension is not avoided by the improbability of children being born to Charles after the testator's death or by the fact that no such child was born.

Problem G: Thomas Oldfather died in 1945, devising Blackacre to Charles and Richard Oldfather. A separate provision in the will provided that "the aforesaid devises shall not become operative and effective until one year after the date of my death." Is the provision valid?

Answer: No. The absolute power of alienation could not be suspended for any period of days, months or years, because the period is not measured by lives in being. Because the separate provision in the will prevented the devise from taking effect for one year, the absolute power of alienation would be suspended during that period, and the provision is invalid. However, the invalidity of this separate provision does not necessarily invalidate the devise to Charles and Richard.

Problem H: Thomas Oldfather died in 1945, devising his residuary estate, which included Blackacre, to trustees to hold for the benefit of his two sons for their lives, with a provision that if either died leaving issue, the issue should take the parent's share of the income. The will further provided that the trust should continue for 20 years and that the corpus should then be distributed to the children of the testator's sons. Is the disposition valid?

Answer: No. The power of alienation is suspended, because by statute, under a trust for the receipt of rents and profits of land, the estate of the trustee

and the interest of the beneficiary are inalienable. Because the duration of the trust is a period of years, the disposition fails.

Problem I: Same facts as in Problem H, except that the trustees are given the power to sell Blackacre. Does this power prevent the suspension of the absolute power of alienation?

Answer: No. The existence of a discretionary power of sale does not prevent the application of the statute.

Problem J: Same facts as in Problem H, except that the trustees are directed to sell Blackacre. Does this power prevent the suspension of the absolute power of alienation?

Answer: Yes. The mandatory direction to sell the land works an equitable conversion of the power, so that the estate or trust is considered to consist of only personalty, and is therefore not subject to the statute. The validity of the disposition is governed by the common law rule against perpetuities.

Authorities: Rev Stat 1846, CH 62, Secs 14 through 20 and 23, being CL 1948, 554.14 through 554.20 and 554.23 (now repealed by 1949 P.A. 38, being MCL 554.51, 554.52 and 554.53.

Problem A: (1) *Windiate v Lorman,* 236 Mich 531, 211 NW 62 (1926); *Rodey v Stotz,* 280 Mich 90, 273 NW 404 (1937); *Lantis v Cook,* 342 Mich 347, 69 NW2nd 849 (1955). (2) *Case v Green,* 78 Mich 540, 44 NW 578 (1889); *FitzGerald v Big Rapids,* 123 Mich 281, 82 NW 56 (1900).

Problem B: *Windiate v Lorman,* 236 Mich 531, 211 NW 62 (1926); *Lantis v Cook,* 342 Mich 347, 69 NW2nd 849 (1955). See also, authorities cited for Problem A(2).

Problem C: *Torpy v Betts,* 123 Mich 239, 81 NW 1094 (1900); *FitzGerald v Big Rapids,* 123 Mich 281, 82 NW 56 (1900); *Russell v Musson,* 240 Mich 631, 216 NW 428 (1927).

Problem D: *McInerny v Haase,* 163 Mich 364, 128 NW 215 (1910); *Cary v Toles,* 210 Mich 30, 177 NW 279 (1920).

Problem E: *Woolfitt v Preston,* 203 Mich 502, 169 NW 838 (1918); *Truitt v Battle Creek,* 205 Mich 180, 171 NW 338 (1919); *Allen v Merrill,* 223 Mich 467, 194 NW 131 (1923); *Kemp v Sutton,* 233 Mich 249, 206 NW 366 (1925); *Felt v Methodist Educational Advance,* 247 Mich 168, 225 NW 545 (1929).

Problem G: *DeBuck v Bousson,* 295 Mich 164, 294 NW 135 (1940).

Problem H: MCL 555.19 and 555.21. *Foster v Stevens,* 146 Mich 131, 109 NW 265 (1906); *Otis v Arntz,* 198 Mich 196, 164 NW 498 (1917); *Grand Rapids Trust Co v Herbst,* 220 Mich 321, 190 NW 250 (1922); *Gardner v City National Bank & Trust Co,* 267 Mich 270, 255 NW 587 (1934); *In re Richards' Estate,* 283 Mich 485, 278 NW 657 (1938).

Problem I: *Niles v Mason,* 126 Mich 482, 85 NW 1100 (1901), [overruling *Thatcher v The Wardens & Vestrymen of St. Andrew's Church,* 37 Mich 264 (1877)]; *Grand Rapids Trust Co v Herbst,* 220 Mich 321, 190 NW 250 (1922); *In re Richards' Estate,* 283 Mich 485, 278 NW 657 (1938).

Problem J: *Penny v Croul,* 76 Mich 471, 43 NW 649 (1889); *Ford v Ford,* 80 Mich 42, 44 NW 1057 (1890); *Mich Trust Co v Baker,* 226 Mich 72, 196 NW 976 (1924); *Van Tyne v Pratt,* 291 Mich 626, 289 NW 275 (1939); *Floyd v Smith,* 303 Mich 137, 5 NW2nd 695 (1942).

STANDARD 9.7

APPLICATION TO CLASS GIFTS OF STATUTE LIMITING SUSPENSION OF THE POWER OF ALIENATION

STANDARD: IF A GIFT WAS MADE TO A CLASS ON OR AFTER MARCH 1, 1847 AND BEFORE SEPTEMBER 23, 1949, AND THE ABSOLUTE POWER OF ALIENATION IS SUSPENDED UNTIL THE DEATH OF THE SURVIVOR OF THE CLASS, THE POWER OF ALIENATION IS SUSPENDED FOR ONE LIFE ONLY.

Problem A: Thomas Oldfather died in 1945, devising land to his widow for life, remainder to his three sons for their lives, and after the death of each son, his share to go in fee to his heirs. Is the remainder in fee valid?

Answer: Yes. The devise can be sustained on either of two grounds. One is that the absolute power of alienation is suspended during both life estates (that of the widow and of the children) but that the life estate in the children is deemed only a single life (that of the survivor). The other is that the gift is separable, and that as to each one-third, the absolute power of alienation is suspended for only two lives (the life of the widow to whom it was devised, and the life of the child to whom the one-third share was devised), because at the child's death the child's heirs will be determined and there will therefore be persons in being who can convey an absolute fee.

Problem B: Thomas Oldfather died in 1945, devising land to his widow and three sons for life and for the life of the survivor, and on the death of the survivor to Valerie Richmond in fee. Is the devise valid?

Answer: Yes. The suspension during the joint life estate is a suspension for only the life of the survivor. The devise can also be sustained on the ground that all interests are vested in ascertained persons who by acting together can convey an absolute fee in possession, and therefore there is no suspension of the power of alienation.

Problem C: Thomas Oldfather died in 1945, devising a farm to his daughter, Alice, for life, another farm to his daughter, Betty, for life, and a third farm to his son, Carl, for life. The remainder interest in all farms was devised to the lineal heirs of the son and daughters, in equal shares. The will further provided that if any child died without issue, the farm devised to that child for life would pass to the testator's widow for life, the remainder to the lineal heirs of the children, if any, but otherwise to the heirs of the widow. Is the devise valid?

Answer: No. The lineal heirs of the son and daughters cannot be determined until the deaths of all three children, and therefore the absolute power of alienation is suspended for more than two lives in being.

Authorities: Generally: Rev Stat 1846, Ch 62, Secs 14 through 20 and 23, being CL 1948, 554.14 through 554.20 and 554.23 (now repealed by 1949 P.A. 38, being MCL 554.51, 554.52 and 554.53).

Problem A: *Felt v Methodist Educational Advance,* 247 Mich 168, 225 NW 545 (1929).

Problem B: *Kemp v Sutton,* 233 Mich 249, 206 NW 366 (1925).

Problem C: *Trufant v Nunneley,* 106 Mich 554, 64 NW 469 (1895). See also *Dean v Mumford,* 102 Mich 510, 61 NW 7 (1894) *Niles v Mason,* 126 Mich 482, 85 NW 1100 (1901); *Foster v Stevens,* 146 Mich 131, 109 NW 265 (1906); *Grand Rapids Trust Co v Herbst,* 220 Mich 321, 190 NW 250 (1922).

Note: See, Standard 9.6, Problems A, B, C and F.

STANDARD 9.8

JOINT APPLICATION OF RULE AGAINST PERPETUITIES AND STATUTE LIMITING SUSPENSION OF POWER OF ALIENATION

STANDARD: IF A SINGLE LIMITATION CREATES A FUTURE INTEREST IN BOTH REAL AND PERSONAL PROPERTY ON OR AFTER MARCH 1, 1847, AND BEFORE SEPTEMBER 23, 1949, THE FUTURE INTEREST FAILS IF IT EITHER:

(A) SUSPENDS THE ABSOLUTE POWER OF ALIENATION FOR A PERIOD LONGER THAN DURING THE CONTINUANCE OF TWO LIVES IN BEING AT THE CREATION OF THE INTEREST; OR

(B) MAY VEST LATER THAN 21 YEARS AFTER SOME LIFE OR LIVES IN BEING AT THE CREATION OF THE INTEREST.

Problem A: Thomas Oldfather died testate in 1945, leaving a residuary estate containing both real and personal property. It was disposed of by a single provision by which the property was left in trust to receive the rents and profits and to apply them to the use of Ada Brown for life, then to Bedford Brown for life, then to Clare Brown for life, and then to be distributed to the children of Clare Brown. All three life tenants survived the testator. Is the disposition valid as to either real or personal property?

Answer: No. The provision does not violate the common law rule against perpetuities because all of the life estates are vested, and the remainder to the children of Clare Brown must vest, if at all, at the end of the three lives. If the estate had been only personal property (to which Rev Stat 1846, Ch 62 did not apply), the disposition would have been valid. Because the interests of the beneficiaries and the trustee are inalienable (MCL 555.19 and 555.21), the provisions of the will operate to suspend the absolute power of alienation for a period longer than during the continuance of two lives in being at the creation of the

interest and are therefore invalid as to the real property. Because the disposition is in part invalid, it fails entirely.

Problem B: Thomas Oldfather died testate in 1945, leaving a residuary estate containing both real and personal property. It was disposed of by a single provision in which the property was left to John Lawson for his life, remainder in fee to Charles Wilson, on the condition that if the real property were ever used for commercial purposes, then both the real and personal property would vest in Roland Hill. Is the disposition valid as to either real or personal property?

Answer: No. The provision does not suspend the absolute power of alienation because all of the interests are owned by persons in being who, by joining together, can convey an absolute fee. If the residue had been only real property, the disposition would have been valid. Because the contingency upon which the residue would vest in Hill is not certain to occur within the period of the rule against perpetuities, the disposition is invalid as to the personal property. Because the disposition is in part invalid, it fails entirely. See, Standard 9.4, Problem A.

Authorities: Generally: Rev Stat 1846, Ch 62, Secs 14 through 20 and 23, being CL 1948, 554.14 through 554.20 and 554.23 (now repealed by 1949 P.A. 38, being MCL 554.51, 554.52 and 554.53).

Problem A: MCL 555.19 and 555.21. *Grand Rapids Trust Co* v *Herbst,* 220 Mich 321, 190 NW 250 (1922); *In Re Richards' Estate,* 283 Mich 485, 278 NW 657 (1938); *DeBuck* v *Bousson,* 295 Mich 164, 294 NW 135 (1940).

Problem B: *Gardner* v *City National Bank & Trust Co,* 267 Mich 270, 255 NW 587 (1934).

Note: See Standard 9.6, Problem J, regarding the effect of a mandatory direction to sell real property.

Caveat 1: Section 6(2) of the Uniform Statutory Rule Against Perpetuities, MCL 554.71, provides that if a nonvested property interest was created before December 27, 1988, and, in a judicial proceeding commenced on or after December 27, 1988, is determined to violate the

rule against perpetuities as it existed before December 27, 1988, an interested person may petition a court to reform the disposition in the manner which most closely approximates the transferor's manifested plan of distribution and is within the limits of the rule against perpetuities applicable when the nonvested property interest was created.

Caveat 2: MCL 554.381, which became effective on August 27, 1925, provides: "No statutory or common law rule of this state against perpetuities or restraint of alienation shall hereafter invalidate any gift, grant, devise or bequest, in trust or otherwise, for public welfare purposes."

STANDARD 9.9

ALIENABILITY OF FUTURE INTERESTS – REVERSIONS, REMAINDERS AND EXECUTORY INTERESTS

STANDARD: ALL REVERSIONS AND REMAINDERS, VESTED OR CONTINGENT, AND ALL EXECUTORY INTERESTS ARE ALIENABLE, DEVISABLE AND DESCENDIBLE.

Problem A: In 1985, Renee Vincent, owner of Blackacre, conveyed to Lois Taylor a life estate in Blackacre. In 1990, Vincent conveyed her remainder interest in Blackacre to Thomas Holden. Taylor died in 1991. Did Holden then have marketable title to Blackacre?

Answer: Yes. Vincent' remainder interest was alienable, even though it was a future, non-possessory interest.

Problem B: In 1985, Blackacre was devised to Lois Taylor for life, remainder to Rachel Miles. In 1990, Miles's interest was devised to Thomas Holden. Taylor died in 1991. Did Holden then have marketable title to Blackacre?

Answer: Yes. The remainder vested in Miles was devisable and descendible, even though it was a future, non-possessory interest.

Problem C: In 1985, Blackacre was devised to "Lois Taylor for life, and if Connie Roberts survives Lois Taylor, remainder to Connie Roberts." In 1990, Connie Roberts conveyed her interest to Thomas Holden. Taylor died in 1991, leaving Connie Roberts surviving. Did Holden then have marketable title to Blackacre?

Answer: Yes. Roberts's contingent remainder was alienable, even though it was a future, non-possessory interest.

Problem D: Same facts as in Problem C, except that Connie Roberts died before Lois Taylor. After Connie Roberts's death, did Holden have any interest in Blackacre?

Answer: No. By the deed from Connie Roberts, Holden acquired only the interest which Connie Roberts had. That interest was a contingent remainder, to take effect only if Connie Roberts survived Lois Taylor.

Problem E: In 1979, Freda Olmstead conveyed Blackacre "on condition that if within 20 years Blackacre is used for other than residential purposes, then Blackacre is to go to Everett Ives." In 1982, Ives conveyed his interest to Thomas Holden. In 1990 Blackacre was used for other than residential purposes. Did Holden then have marketable title to Blackacre?

Answer: Yes. Ives acquired an executory interest in Blackacre. The interest was alienable. When the condition was breached, title vested in Holden, the grantee of the executory interest.

Authorities: Generally: MCL 554.11 and 554.35.

Problems A and B: *Case v Green,* 78 Mich 540, 44 NW 578 (1889); *Hovey v Nellis,* 98 Mich 374, 57 NW 255 (1894); *Russell v Musson,* 240 Mich 631, 216 NW 428 (1927); *Kerschensteiner v Northern Mich Land Co,* 244 Mich 403, 221 NW 322 (1928); *In re Coots' Estate,* 253 Mich 208, 234 NW 141 (1931).

Problems C and D: *l'Etourneau v Henequet,* 89 Mich 428, 50 NW 1077 (1891).

Problem E: *Goodell v Hibbard,* 32 Mich 47 (1875). See also *Russell v Musson, supra,* and *Defreese v Lake,* 109 Mich 415, 67 NW 505 (1896).

Comment: The alienability of reversions and vested remainders has never been in doubt. Although the alienability of contingent remainders was in doubt in early common law, the modern tendency is toward permitting alienability. 2 Restatement, Property, 162 (1936). MCL 554.11 provides that "[w]hen a future estate is dependent upon a precedent estate, it may be termed a remainder, and may be created and transferred by that name." MCL 554.35 provides that "[e]xpectant estates are descendible, devisable and alienable, in the same manner as estates in possession." These two provisions, which have been in effect since March 1, 1847, have been construed to authorize alienation of contingent remainders.

STANDARD 9.10

ALIENABILITY OF FUTURE INTERESTS – RIGHTS OF ENTRY AND POSSIBILITIES OF REVERTER CREATED ON OR AFTER SEPTEMBER 18, 1931

STANDARD: ALL RIGHTS OF ENTRY AND POSSIBILITIES OF REVERTER CREATED ON OR AFTER SEPTEMBER 18, 1931 ARE ALIENABLE, DEVISABLE AND DESCENDIBLE.

Problem A: In 1953, Paula Roberts conveyed one acre of Blackacre to the Homestead School District "so long as the land is used for school purposes, and if it ever ceases to be so used the land shall revert to the grantor and her heirs." In 1960, Roberts conveyed Blackacre (without excepting her interest in the one-acre tract) to Thomas Holden. The use of the one-acre tract for school purposes ceased in 1977. Did Holden then have marketable title to Blackacre?

Answer: Yes. The possibility of reverter retained by Roberts is alienable and was conveyed to Holden by the 1960 deed. When the special limitation ended, the title reverted to Holden, the holder of the possibility of reverter. The result would be the same if the possibility of reverter had been devised to Holden or had vested in him by intestate succession.

Problem B: In 1954, Ruth Evans conveyed one acre of Blackacre to the Homestead School District "on condition that the land be used for school purposes, and if it ever ceases to be so used, the grantor or her heirs may re-enter and take the land." In 1960, Evans conveyed Blackacre (without excepting her interest in the one-acre tract) to Thomas Holden. The use of the one-acre tract for school purposes ceased in 1977. Did Holden then have the right to re-enter the one-acre tract?

Answer: Yes. The right of entry retained by Evans is alienable and was conveyed to Holden by the 1960 deed. Although the school district's estate did not terminate upon breach of the condition in 1977, Holden could then exercise his right of re-entry and acquire the title. The

result would be the same if the right of entry had been devised to Holden or had vested in him by intestate succession.

Authorities: MCL 554.101 and 554.111.

Comment A: The first of the cited statutes provides broadly that when the owner of an "expectant estate, right or interest in real or personal property" dies before the precedent estate terminates, if the contingency arises by which the owner would have been entitled to an estate in possession, "his... grantees and assigns if he shall have... conveyed such right or interest, shall be entitled to the same estate in possession." The second statute is applicable specifically to the reversionary interest in land conveyed on a condition subsequent and provides for complete alienability. This act, however, is specifically not applicable to any such interest created before its effective date.

Comment B: MCL 554.46 (pertaining to nominal conditions) has not been considered in the above problems.

Note: See Standard 9.11 regarding rights of entry and possibilities of reverter created before September 18, 1931. See Standard 9.13 regarding the period of limitation for enforcement of possibilities of reverter and rights of entry.

STANDARD 9.11

ALIENABILITY OF FUTURE INTERESTS—RIGHTS OF ENTRY AND POSSIBILITIES OF REVERTER CREATED BEFORE SEPTEMBER 18, 1931

STANDARD: ATTEMPTED INTER VIVOS ALIENATION OF EITHER A RIGHT OF ENTRY OR A POSSIBILITY OF REVERTER CREATED BEFORE SEPTEMBER 18, 1931, EXTINGUISHES THE INTEREST, BUT THE INTEREST IS DESCENDIBLE, MAY BE RELEASED TO THE HOLDER OF THE POSSESSORY ESTATE AND, IF HELD IN CONJUNCTION WITH A REVERSION, MAY BE CONVEYED WITH THE REVERSION.

Problem A: In 1930, Ruth Evans conveyed one acre of Blackacre to the Homestead School District "on condition that the land be used for school purposes, and if it ever ceases to be so used, the grantor or her heirs may re-enter and take the land." In 1940, Evans conveyed Blackacre (without excepting her interest in the one-acre tract) to Thomas Holden. Did the 1940 deed extinguish the right of entry?

Answer: Yes. With limited exceptions (see Problems D and E), rights of entry created before September 18, 1931 (the effective date of MCL 554.101 and 554.111) are inalienable and attempted alienation extinguishes them.

Problem B: In 1930, Paula Roberts conveyed one acre of Blackacre to the Homestead School District "so long as the land is used for school purposes, and if it ever ceases to be so used the land shall revert to the grantor and her heirs." In 1940 Roberts conveyed Blackacre (without excepting her interest in the one-acre tract) to Thomas Holden. Later in the same year, Roberts died intestate and her entire estate descended to Hubert Finn. Did the 1940 deed extinguish the possibility of reverter?

Answer: Yes. The possibility of reverter was extinguished by the attempted alienation. Neither Holden, the grantee in the 1940 deed, nor Finn, the heir of the original grantor, would be have any interest in the one-acre tract.

Problem C: In 1930, Ruth Evans conveyed Blackacre to the Homestead School District "on condition that the land be used for school purposes, and if it ever ceases to be so used, the grantor or her heirs may re-enter and take the land." In 1956, Evans died intestate and her estate descended to Hubert Finn. The use of Blackacre for school purposes ceased in 1958. Did Finn then have the right to re-enter Blackacre?

Answer: Yes. Rights of entry and possibilities of reverter are descendible, and may be enforced by intestate successors of the original holder of the interest.

Problem D: In 1930, Ruth Evans conveyed one acre of Blackacre to the Homestead School District "on condition that the land be used for school purposes, and if it ever ceases to be so used, the grantor or her heirs may re-enter and take the land." In 1940, Evans conveyed her interest in the one-acre tract to the Homestead School District. Did the school district then hold the one-acre tract free of the condition?

Answer: Yes. Although rights of entry and possibilities of reverter created before September 18, 1931 are generally inalienable, they may be effectively released to the holder of the possessory estate.

Problem E: In 1930, Freda Olmstead leased Blackacre (commercial property) to Talbot Cook for 40 years. The lease provided that if Cook failed to keep the premises in proper repair, the landlord might re-enter and terminate the lease. In 1950, Olmstead conveyed her interest in Blackacre to Raymond Lowe. In 1960, Cook failed to make necessary repairs and remained in default. Could Lowe then re-enter and terminate the lease?

Answer: Yes. Although rights of entry created before September 18, 1931 are generally inalienable, when a right of entry is held in conjunction with a reversion, it may be conveyed with the reversion and the grantee may enforce it.

Authorities: *Halpin v Rural Agricultural School District 9,* 224 Mich 308, 194 NW 1005 (1923); *Oakland County v Mack,* 243 Mich 279, 220 NW 801 (1928); *Fractional School District 9, Waterford & Pontiac Townships v Beardlee,* 248 Mich 112, 226 NW 867 (1929); *Avery v Consumers Power Co,* 265 Mich 696, 253 NW 189 (1934); *Dolby v State Highway Commissioner,* 283 Mich 609, 278 NW 694 (1938); *Juif v*

State Highway Commissioner, 287 Mich 35, 282 NW 892 (1938); *Schoolcraft Community School District 50 v Burson,* 357 Mich 682, 99 NW2nd 353 (1959).

Comment A: Michigan decisions have not always distinguished carefully between the right of entry and the possibility of reverter. *Schoolcraft Community School District No. 50 v Burson, supra,* contains language generally construed as creating a possibility of reverter, while in *Dolby v State Highway Commissioner, supra,* the court construed the language in the original conveyance as a condition subsequent and referred to the interest as a "right of re-entry." It should be noted that no reported Michigan authority is cited for that part of the Standard which states that these interests "may be released to the holder of the possessory estate and, if held in conjunction with a reversion, may be transferred with the reversion." These two exceptions to the general rule of inalienability were well recognized at common law. 4 Simes and Smith, *The Law of Future Interests,* Sec 1862. Thus if A conveyed to B a determinable fee, reserving a possibility of reverter, even though A might not be able to make a valid conveyance to a third party, A could release his interest to B, thus turning B's estate into a fee simple absolute. A right of entry could be similarly released to the holder of the possessory estate on condition subsequent. 2 Restatement, Property, 161(a) (1936). The second exception arises when the right of entry is held in conjunction with a reversion. For example, if A leases land to T for 20 years, and provides in the lease that upon breach of certain specified conditions A may re-enter and terminate the lease, A has both a reversion and a right of entry. If A conveys all his interest to X, the latter would acquire the fee simple estate subject to the lease and would also acquire the right of entry, enabling X to enforce the conditions in the lease. 4 Simes and Smith, *The Law of Future Interests,* Sec 1862. The Committee believes that these exceptions, permitting alienation of the right of entry under these circumstances, were applicable in Michigan even before the 1931 statutes. The descendibility of rights of entry and possibilities of reverter is discussed in *Puffer v Clark* , 202 Mich 169, 168 NW 471 (1918).

Comment B: MCL 554.46 (pertaining to nominal conditions) has not been considered in dealing with the above problems.

Note: See Standard 9.10 regarding rights of entry and possibilities of reverter created on or after September 18, 1931.

STANDARD 9.12

APPLICATION OF UNIFORM STATUTORY RULE AGAINST PERPETUITIES TO NONVESTED INTEREST IN LAND CREATED AFTER DECEMBER 26, 1988

STANDARD: A NONVESTED INTEREST IN LAND CREATED AFTER DECEMBER 26, 1988 IS INVALID UNLESS:

(A) THE INTEREST IS CERTAIN TO VEST OR TERMINATE NO LATER THAN 21 YEARS AFTER THE DEATH OF A PERSON LIVING AT THE TIME THE INTEREST WAS CREATED; OR

(B) THE INTEREST EITHER VESTS OR TERMINATES WITHIN 90 YEARS AFTER IT WAS CREATED.

Problem A: In 1990 John Jones deeded Blackacre to Joseph Smith to be used for educational purposes and if it ever ceased to be so used, then to Richard Johnson or his heirs. In 1995 Smith ceased using Blackacre for educational purposes. Did title to Blackacre vest in Johnson?

Answer: Yes. Although the interest of Johnson was not certain to vest or terminate no later than 21 years after the death of a person living at the time the interest was created, the interest of Johnson did in fact vest within 90 years after it was created.

Problem B: In 1990 John Jones deeded Blackacre to Joseph Smith to be used for educational purposes and if it ever ceased to be so used, then to Richard Johnson or his heirs. Smith conveyed Blackacre to Edward Brown in 1995. Did Brown acquire title to Blackacre free of any interest of Johnson?

Answer: No. Although the interest of Johnson was not certain to vest or terminate no later than 21 years after the death of a person living at the time it was created, the interest may vest within 90 years after the date the interest was created. If Brown ceases to use Blackacre for

educational purposes within 90 years after the date Johnson's interest was created, title to Blackacre would vest in Johnson or his heirs.

Comment A: Even if a disposition violates the Uniform Statutory Rule Against Perpetuities, MCL 554.74 provides that on the petition of an interested person, a court may reform the disposition in the manner that most closely approximates the transferor's manifested plan of distribution and is within the 90-year limitation provided in the statute.

Comment B: As to nonvested interests for "public welfare purposes", MCL 554.381, effective August 27, 1925, provides: "No statutory or common law rule of this state against perpetuities or restraint of alienation shall hereafter invalidate any gift, grant, devise or bequest, in trust or otherwise, for public welfare purposes."

Note: See Standards 9.4 and 9.5 as to nonvested interests in land created before December 27, 1988.

STANDARD 9.13

PERIOD OF LIMITATION FOR ENFORCEMENT OF POSSIBILITIES OF REVERTER AND RIGHTS OF ENTRY

STANDARD: A POSSIBILITY OF REVERTER OR A RIGHT OF ENTRY TO TERMINATE A POSSESSORY OR OWNERSHIP INTEREST IN REAL PROPERTY ON THE OCCURRENCE OF A SPECIFIED CONTINGENCY IS UNENFORCEABLE IF THE SPECIFIED CONTINGENCY DOES NOT OCCUR WITHIN 30 YEARS AFTER THE DATE OF CREATION OF THE INTEREST TO BE TERMINATED UNLESS:

(A) THE SPECIFIED CONTINGENCY MUST OCCUR, IF AT ALL, WITHIN THE PERIOD OF THE RULE AGAINST PERPETUITIES; OR

(B) THE INTEREST TO BE TERMINATED IS:

(1) A LEASE FOR A TERM OF YEARS;

(2) AN INTEREST HELD FOR PUBLIC, EDUCATIONAL, RELIGIOUS OR CHARITABLE PURPOSES; OR

(3) AN INTEREST CREATED IN A CONVEYANCE FROM THE UNITED STATES OF AMERICA, THE STATE OF MICHIGAN OR ANY AGENCY OR POLITICAL SUBDIVISION OF EITHER OF THEM; OR

(C) THE POSSIBILITY OF REVERTER OR RIGHT OF ENTRY IS PRESERVED BY THE RECORDING, WITHIN A PERIOD OF NOT LESS THAN 25 NOR MORE THAN 30 YEARS AFTER CREATION OF THE TERMINABLE INTEREST OR WITHIN ONE YEAR AFTER MARCH 29, 1968, WHICHEVER IS LATER, OF A WRITTEN NOTICE THAT THE OWNER OF THE POSSIBILITY OF REVERTER OR RIGHT OF ENTRY DESIRES TO PRESERVE IT. THE NOTICE MUST BE RECORDED IN

THE OFFICE OF THE REGISTER OF DEEDS OF THE COUNTY IN WHICH THE REAL PROPERTY SUBJECT TO THE POSSIBILITY OF REVERTER OR RIGHT OF ENTRY IS LOCATED.

Problem A: On June 29, 1952, James Farmer conveyed Blackacre to the Michigan Railway Company "so long as it is used for railroad purposes and, if the land shall cease to be used for railroad purposes, the land shall revert to grantor or his heirs." In 1987, the Michigan Railway Company ceased railroad operations and no longer used Blackacre for railroad purposes. Farmer did not record any written notice of his desire to preserve his possibility of reverter. The Michigan Railway Company later conveyed Blackacre to Robert Jones. Did Jones acquire title to Blackacre free of any interest of Farmer or his heirs?

Answer: Yes.

Problem B: Same facts as in Problem A, except that on July 20, 1980, Farmer recorded a notice of his desire to preserve his possibility of reverter in the office of the register of deeds in the county in which Blackacre is located. Did Jones acquire title to Blackacre free of any interest of Farmer or his heirs?

Answer: No.

Problem C: On January 15, 1948, Patricia Smith conveyed Whiteacre to the Westland School District "on condition that the land shall be used for educational purposes, and if it ever ceases to be so used, the grantor or her heirs may enter and take the land." In 1996 Whiteacre ceased to be used for educational purposes. On March 15, 1998, Westland School District conveyed Whiteacre to Steven Young. Did Young acquire title to Blackacre free of the right of entry of Smith or her heirs?

Answer: No.

Authorities: Generally: MCL 554.61 through 554.65.

Problem A: MCL 554.63. *Ludington & Northern Railway v The Epworth Assembly,* 188 Mich App 25, 468 NW2d 884 (1991).

Problem B: MCL 554.64.

Problem C: MCL 554.65.

Comment A: The constitutionality of MCL 554.61 *et seq.,* as it affects interests created before the effective date of the Act, was upheld in *Ludington & Northern Railway v The Epworth Assembly,* 188 Mich App 25, 468 NW2d 884 (1991).

MCL 554.65 provides that a right of termination created before the effective date of the Act may be preserved by the recording of a written notice that the owner desires to preserve the same "within a period of not less than 25 nor more than 30 years after creation of the terminable interest or within 1 year after the effective date of this act, whichever is later."

Comment B: The term "terminable interest" under MCL 554.61 *et seq.* is defined as "a possessory or ownership interest in real property which is subject to termination by a provision in a conveyance or other instrument which either creates a right of reversion to a grantor or his heirs, successors or assigns or creates a right of entry on the occurrence of a specified contingency." Under *Ludington & Northern Railway v The Epworth Assembly, supra,* it is clear that the limitation period on the duration of possibilities of reverter and rights of entry is enforceable in certain cases. Although not essential to the holding of the case, the Court of Appeals in *Ludington & Northern Railway v The Epworth Assembly, supra,* distinguished between a "true reversion," in which a qualified fee is determinable upon the occurrence of an event which is 'certain' to happen, and a possibility of reverter, in which a fee is subject to termination upon the occurrence of an event which is not certain to happen. The Committee expresses no opinion whether the Act is effective to limit the time period within which a "true reversion" must occur.