Lee Burgess: Welcome back to the Law School Toolbox podcast. Today, we are talking about life estates and their corresponding future interests, as part of our "Listen and Learn" series. Your Law School Toolbox hosts are Alison Monahan and Lee Burgess, that's me. We're here to demystify the law school and early legal career experience, so you'll be the best law student and lawyer you can be. We're the co-creators of the Law School Toolbox, the Bar Exam Toolbox, and the career-related website CareerDicta. Alison also runs The Girl's Guide to Law School. If you enjoy the show, please leave a review or rating on your favorite listening app. And if you have any questions, don't hesitate to reach out to us. You can reach us via the contact form on LawSchoolToolbox.com, and we'd love to hear from you. And with that, let's get started.

Lee Burgess: Hello, and welcome back to our "Listen and Learn" series. Today, we are diving into part two of a two-part series discussing present estates and future interests. In today's episode we are going to be covering life estates, reversions, and remainders. If you haven't listened to part one, I suggest you go back and give it a listen before continuing with this episode, because we cover a basic review of present and future estates, as well as the default property interest, the fee simple absolute, which will be a good foundation for this episode. And with that said, let's get started!

Lee Burgess: If you recall from part one of this two-part series, the most common form of property ownership is the fee simple absolute, and all other present and future estates are carved out of that fee simple interest. To continue our metaphor from last time, the fee simple absolute is a whole pie. Each present and future interest in the property that the owner gives away is a piece of that pie. The first "piece" we're going to talk about in today's episode is called a life estate.

Lee Burgess: A life estate grants possession of a property to an individual for the duration of a person's life. Generally, that will be the life of the individual the life estate is granted to, but it may be measured by a third party's life in rare cases. The key language to look for in identifying a life estate is that the duration of the interest is being measured in terms of a person's life, not just a set number of years. So, you want to look for the words "for life" or some variant of that.

Lee Burgess: As we found in part one of this series, ownership interests can feel very abstract, so let's consider a short example: O conveys Willow Lane to A for life. In this example, O is conveying a fee simple interest in Willow Lane to A, but that interest will only last for the duration of A's life. Therefore, O is conveying a life estate in Willow Lane to A.

Lee Burgess: Now, what happens to Willow Lane when A dies? Because O only conveyed the property for the duration of A's life, O has only given away a piece of the pie, or a present interest in Willow Lane. The other piece of the pie must go somewhere, and in this example, that piece remains with O. Remember, our present and future interests must always add up to the fee simple absolute. We must always have the whole pie, even if it has been divided amongst a group of people. So here, when A dies, the property reverts back to O and will pass on to O's heirs and so on. This is called a reversion.

Lee Burgess: A reversion is the future interest held by the grantor of a life estate or an estate for years, which we'll discuss in a moment. O has carved out an interest in Willow Lane that will return to O when the lesser estate expires – when A dies, in our example. O's interest in Willow Lane becomes possessory immediately upon A's death, so there is an automatic reversion. O does not have to take any additional actions.

Lee Burgess: Sometimes a grantor may carve out more than one life estate, but in the end, the property will ultimately revert back to the grantor when the final lesser estate expires, unless otherwise specified. Let's look at a slightly more complex example to illustrate how this would play out: O conveys Willow Lane to A for life, then to B for life. O dies with a will granting Willow Lane to C. Here, O conveys a life estate to A like before; however, in this example, the property won't revert back to O when A dies because O has given a second piece of the pie away. O has also given B a life estate. So, when A dies, B will hold a fee simple interest in the property for the duration of their life. When B dies, then the property will revert back to O and O's heirs. In this example, O has died and left the property to C, making C O's heir. So, C will own a fee simple absolute interest in Willow Lane upon B's death.

Lee Burgess: Still with me? This is complicated stuff! When in doubt, try to remember, anything the grantor does not give away, they retain. The present and future interests must always add up to that fee simple absolute, because that is the whole title to the property.

Lee Burgess: Now, before moving on to estates of years, let's talk about the rights and obligations of a life tenant. A life estate is fully alienable, unless subject to a valid restraint on alienation. So, the life tenant may sell, gift, mortgage, or otherwise transfer their interest in the property to another. The key to remember here, however, is that a life tenant cannot convey more than they have. They only have one piece of the pie, not the whole thing. So, even if A, from our original example, transfers their life estate interest in Willow Lane to a third party – let's say B – the estate will still terminate when A dies. Even though

B is in possession of the property, when A dies, Willow Lane reverts back to O because O kept that reversion interest for themselves. A only had a life estate interest, so A can only convey a life estate interest. And that life estate is measured in terms of A's life. That does not change with the transfer to B. The measuring life always remains the same.

Lee Burgess: Okay, but what if the transfer at issue is a lease? So, instead of selling or gifting Willow Lane to B, A leases the property to them. Is this allowed? It is! Remember, life estates are freely alienable. The important thing to note here is that the lease will end when A dies, unless O opts to continue it. A cannot grant more than they have, so they can only lease the property for up to the duration of their life estate.

Lee Burgess: Now, let's talk about everyone's favorite topic – taxes! Who is responsible for the real estate taxes and mortgage payments with a life estate? If the property is producing rental income, the life tenant is responsible for all ordinary taxes on the land and the interest on the mortgage. However, if the property is not producing income, the life tenant is only responsible for taxes and mortgage insurance up to the reasonable rental value of the land.

Lee Burgess: The life tenant has one final obligation, and that is the duty to not commit waste. A may have a possessory interest in Willow Lane now, but O still has a future interest in the property, and with that interest comes the right to receive Willow Lane in the same condition as A did. The life tenant, therefore, must make ordinary repairs to the property in order to maintain it for the future interest holder. The life tenant does have the right to make changes to the property that are considered necessary to permit reasonable use, but any such changes cannot diminish the value of the property.

Lee Burgess: How do we feel so far? Hopefully, we're doing okay! Our next and final present estate is very similar to a life estate, except for how we measure its duration. An estate of years is exactly what it sounds like – the grantor is conveying a fee simple interest to an individual for a set number of years, rather than for someone's life. As a quick example: O conveys Willow Lane to A for 20 years. O is granting a fee simple interest in Willow Lane to A for 20 years. After those 20 years are up, Willow Lane will revert back to O who, like with life estates, holds a reversion. See how similar that is to life estates?

Lee Burgess: Our final topic for today is remainders. Sometimes a grantor may decide to give away the whole pie, rather than keep a reversion for themselves. So, instead of O conveying Willow Lane to A for life, the example would read: O conveys Willow Lane to A for life, then to B. Instead of the property reverting back to O

when A dies, the property will pass to B in a fee simple absolute. O has given away the whole pie. A holds the present interest, while B now holds the future interest, and that future interest is called a remainder.

Lee Burgess: Seems simple enough, right? Well, unfortunately, it's a little more complicated than that, because there are two types of remainders – vested and contingent. We'll start with vested remainders. Vested remainders are a type of remainder held by a specified person that is certain to become possessory upon the expiration of the prior estate. There are no conditions; the remainder is automatically going to vest. This is our "O to A for life, then to B" example. Willow lane automatically vests to B when A dies.

Lee Burgess: Now, there are two sub-types of vested remainders. The first is called a "vested remainder subject to open". This is when a future interest is given to a class of people that may increase in size between the time the grant is made and the time the interest becomes possessory. Let's consider this example: O conveys Willow Lane to A for life, then to B's children. B's children's interests will vest as soon as they are born, so long as A was alive at the time or died while they were in utero. This future interest is considered "subject to open", because the number of children B may have between the time of the grant and A's death can increase.

Lee Burgess: The second type of vested remainder is called a "vested remainder subject to complete divestment". This is when a future interest has vested, but may be terminated by an event that occurs after vesting but before the interest becomes possessory. Take this example: O conveys Willow Lane to A for life, then to B, so long as the land is used for agriculture. A has a life estate, as we know. B's interest has vested, but there is a potential that interest could be terminated if Willow Lane is no longer used for agriculture. The condition, if it occurs, will essentially completely "divest" B of their interest in Willow Lane and the property will revert back to O, who holds a possibility of reverter. If you recall from part one of this series, it is a possibility because if the condition never happens, the property will never revert back to O and will instead remain with B indefinitely.

Lee Burgess: That is vested remainders. Now, what about contingent remainders? With contingent remainders, the grantee's right to immediate possession is subject to the occurrence of a condition. Essentially the grantee does not get the property, unless they meet certain conditions.

Lee Burgess: There are three key situations to look out for with contingent remainders. First, unascertained persons. For example: O conveys Willow Lane to A for life, then

to B's first child to reach the age of 21. The interest is contingent because the child must reach the age of 21, and we have an unascertained person because we don't know which of B's children will be the first to reach 21. We, of course, hope that it will be B's first-born child, but unfortunate things do happen and it is possible that their first-born may not survive to age 21. So, we cannot ascertain who the grantee is at the time O carves out this piece of the pie. The second situation to watch out for is unborn children. So, let's change the above example up a bit: O conveys Willow Lane to A for life, then to B's next born child. B must have a child after A dies in order for that child to get Willow Lane. Lastly, there may be a contingent remainder where, as described above, the grantee must satisfy a specified condition. As an example: O conveys Willow Lane to A for life, then to B, if B marries C. In order for B to get Willow Lane, they must meet the specified condition of marrying C.

Lee Burgess: I know it's a lot, so let's walk through some hypos together to better illustrate how these ownership interests play out in the real world. Our first hypothetical is adapted from Question 5 on the July 2008 California bar exam, but changed a bit to better reflect the topics we covered in our podcast today:

Lee Burgess: "Ann purchased a 3-bedroom condominium unit in which she resides. Several years later, she executed a deed by which she conveyed the condominium to Ed. The deed recited that the conveyance was in fee reserving a life estate to the grantor. What property interests do Ann and Ed have, if any, in the condominium unit?"

Lee Burgess: What do we think? This is a tricky one, because it is not written in that traditional "O to A" structure that we all like to see. We can still figure this out though! Here, Ann purchased the condominium unit initially. So she is our grantor, our "O". She conveyed the condo unit to Ed, but is "reserving a life estate to the grantor". Rather than granting a life estate to someone else, Ann is granting the life estate to herself, and the piece of the pie she is giving away is the future interest. So, Ann has a life estate in the condo unit; she possesses the condo unit for the duration of her life. When she dies, the condo unit will then pass to Ed. Ed is a third party, not a grantor, so he will hold a remainder. Because Ed's interest will become possessory as soon as Ann dies, he holds a vested remainder.

Lee Burgess: Hopefully this hypothetical helped provide some context as to how these issues appear on the bar exam. Let's walk through another example to be certain. This hypothetical is pulled from Question 2 on the February 2003 California bar exam. Like with our first example, we've adapted it to reflect only the present and future estates issue:

Lee Burgess: "Olga, a widow, owned Blackacre, a lakeside lot and cottage. On her seventieth birthday she had a pleasant reunion with her niece, Nan, and decided to give Blackacre to Nan. Olga asked Bruce, a friend, for help in the matter. Bruce furnished Olga with a deed form that by its terms would effect a present conveyance. Olga completed the form naming herself as grantor and Nan as grantee, designating Blackacre as the property conveyed. Olga then told Bruce to 'Hold this deed and record it if Nan survives me.' What property interest did Olga intend to convey to Nan?

Lee Burgess: What do we think about this one? Here, Olga is the owner of Blackacre, and she is our grantor. She told her friend Bruce to hold the deed and have it recorded if Nan survived her. This language reflects that Olga did not intend to grant Nan a present interest in Blackacre, but rather a future interest. And that future interest is contingent upon the happening of a condition – that Nan survives Olga. If Nan does not survive Olga, Nan, or her heirs in this case, would not get Blackacre. Because Nan's interest is contingent upon her outliving Olga, Olga intended to convey a contingent remainder to Nan. Nan must meet the condition in order to get Blackacre.

Lee Burgess: And with that, we're out of time! If you enjoyed this episode of the Law School Toolbox podcast, please take a second to leave a review and rating on your favorite listening app. We'd really appreciate it. And be sure to subscribe so you don't miss anything. If you have any questions or comments, please don't hesitate to reach out to myself or Alison at lee@lawschooltoolbox.com or alison@lawschooltoolbox.com. Or you can always contact us via our website contact form at LawSchoolToolbox.com. Thanks for listening, and we'll talk soon!

RESOURCES:

"Listen and Learn" series
California Bar Examination – Essay Questions and Selected Answers, July 2008
California Bar Examination – Essay Questions and Selected Answers, February 2003
Podcast Episode 501: Listen and Learn – Present and Future Estates (Part 1)