



Real Property

Class 5



The Non-Freehold Estates – The Term of Years

- Must be for a **definite period of time** (cannot last forever)
- There is no minimum or maximum amount of time
- **No notice is necessary to terminate**; it expires naturally
- Can be subject to a limitation (determinable, condition subsequent, etc.)
- Future interest in the owner is called a "remainder"

- **Language of Creation:**
 - "To A for 5 minutes"
 - "To A for 5 years"
 - "To A for 20,000 years"
 - "To A, until a dog walks on the Moon" ???



The Non-Freehold Estates – The Periodic Tenancy

- No set maximum term for the tenancy
- Tenancy divided into “periods” that are set forth at the outset
- If no periods are set forth, periods are the length of rent payment intervals, with the end of the periods being when rent is due

- **Creation**
 - Expressly
 - Implied, when no other tenancy is specified for a rental arrangement
 - Implied, when a holdover tenant after a term of years expires
 - Implied, when a term of years fails because of the Statute of Frauds

- **Termination - Notice Requirement:**
 - One full period, PLUS
 - Tenancy can only be terminated at the end of a period



The Non-Freehold Estates – The Tenancy At Will

- Creation usually must be express because it's generally a disfavored tenancy
- **Tenancy at sufferance**, created when a tenant has overstayed the lease and the landlord is deciding whether to hold the tenant over; in the mean time, the tenancy is similar to the tenancy at will
- Language of Creation:
 - "To A, as long as we both agree to continue the lease."
- Termination:
 - Historically, no notice was required
 - Today, reasonable notice is required (e.g., 30 days)



The Rule against Perpetuities

- Application:
 - Only to interests not in the grantor
 - Only to interests that are not definite (i.e., only to **executory interests and contingent remainders**)
- These interests must vest, if at all, within 21 years after the death of a life in being at the time the interest is created.
- Steps:
 1. Seek out all parties whose existence is relevant to the vesting of the interest (usually beneficiaries but could also be other people)
 2. Those are the **measuring live**
 3. Figure out if there is any scenario in which the interest could vest 21+ years after the death of all of the measuring lives



QUIZ TIME!



Waste

- The **duty** to avoid waste is incumbent upon any **holder of a present interest** in property in which there is also a future interest that is held. The **duty** to enforce that right belongs to the **future interest holder**.
- Duties relevant to waste:
 1. Present interest holder must avoid affirmative waste actions that decrease the value of the land
 - Exceptions:
 - prior use
 - reasonable repairs or regular maintenance
 - property suitable only for exploitation
 2. Present interest holder **must make reasonable repairs** on the property out of his or her own pocket
 3. Present interest holder must avoid "**ameliorative**" waste; must not substantially change the property, even if it's an improvement, without the consent of the future interest holder(s)

