

Schenck Price <small>SCHENCK PRICE SMITH &amp; KING, LLP</small>	
<h1>Trust Law Basics</h1> <p>Stetson University National Conference</p>	
Regina M. Spielberg, Esq.	

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Rule Against Perpetuities (RAP)	Schenck Price <small>SCHENCK PRICE SMITH &amp; KING, LLP</small>
<p><b>The Rule:</b></p> <p><b>"No interest is good unless it must vest, if at all, not later than 21 years after some life in being at the creation of the interest."</b></p> <p><b>Example:</b></p> <p><i>O to A so long as used as a School, then to B</i></p> <ul style="list-style-type: none"><li>- May vest more than 21 years after O, A, &amp; B die</li></ul>	
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Rule Against Perpetuities (RAP)	Schenck Price <small>SCHENCK PRICE SMITH &amp; KING, LLP</small>
<p><b>What constitutes a "Validating Life"?</b></p> <ul style="list-style-type: none"><li>- A life in being is someone who is alive at the time the interest was created.</li><li>- A fetus is considered alive from the child is conceived, but only if the child is later born alive.</li><li>- Any living person is considered capable of having more children, regardless of age.</li></ul>	
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Rule Against Perpetuities (RAP)		
<p><b>Applies to:</b></p> <ul style="list-style-type: none"> <li>- <b>executory interests</b></li> <li>- <b>vested remainders subject to open</b></li> <li>- <b>contingent remainders</b></li> </ul> <p><b>Exceptions to RAP:</b></p> <ul style="list-style-type: none"> <li>- <b>Does not apply to gifts of future interests to charities when the prior interests are also charities.</b></li> <li>- <b>Does not apply generally to options for the purchase of land.</b></li> <li>- <b>Does not apply to restraints on alienation if they are not otherwise invalid.</b></li> <li>- <b>Does not apply to any interest retained by the grantor.</b></li> </ul>		
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RAP- Common Law		
<ul style="list-style-type: none"> <li>- <b>The Common Law RAP was established in the 17<sup>th</sup> Century</b></li> <li>- <b>Property can be tied up in contingent interests for lives in being plus 21 years, but not longer.</b></li> </ul>		
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RAP- Common Law		
<p><b>Strategy for Determining RAP Under Common Law:</b></p> <ol style="list-style-type: none"> <li>1. Determine validating lives;</li> <li>2. Kill off the lives in being;</li> <li>3. Determine the first point at which the future interest must vest;</li> <li>4. Determine whether the interest vest within 21 years, or if it will never vest:             <ul style="list-style-type: none"> <li>▪ If the interest must vest within 21 years, RAP is not violated</li> <li>▪ If the interest will definitely never vest, RAP is not violated.</li> </ul> </li> </ol>		
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<b>RAP- USRAP</b>	<b>Schenck Price</b> <small>SCHENCK PRICE SMITH &amp; KING, LLP</small>	
<ul style="list-style-type: none"> <li>- <b>In 1986 the National Conference of Commissioners on Uniform State Laws approved the Uniform Statutory Rule against perpetuities (USRAP)</b></li> <li>- <b>USRAP Process:</b> <ol style="list-style-type: none"> <li>1. Start with analysis under common law;</li> <li>2. Extend from 21 years to 90 years; and</li> <li>3. If the Rule is violated, courts may reform the document to comply with the law.</li> </ol> </li> </ul>		
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<b>RAP Application by State</b>	<b>Schenck Price</b> <small>SCHENCK PRICE SMITH &amp; KING, LLP</small>	
<p><b>Each State approaches RAP differently:</b></p> <ul style="list-style-type: none"> <li>- <b>Twenty-five states and Washington DC have adopted the USRAP:</b> <ul style="list-style-type: none"> <li>▪ Arizona, Arkansas, California, Colorado, Connecticut, Florida, Georgia, Hawaii, Indiana, Kansas, Massachusetts, Michigan, Minnesota, Montana, Nebraska, Nevada, New Mexico, North Carolina, North Dakota, Oregon, South Carolina, Tennessee, Utah, Virginia, and West Virginia.</li> </ul> </li> <li>- <b>Louisiana has never had RAP</b></li> <li>- <b>Seventeen states have retained RAP but allowed certain trusts to continue without application of the rule:</b> <ul style="list-style-type: none"> <li>▪ Arizona, Washington DC, Hawaii, Illinois, Maine, Maryland, Michigan, Missouri, Nebraska, New Hampshire, New Jersey, North Carolina, North Dakota, Ohio, Oklahoma, Virginia, and Wyoming</li> </ul> </li> </ul>		
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<b>RAP Application by State</b>	<b>Schenck Price</b> <small>SCHENCK PRICE SMITH &amp; KING, LLP</small>	
<ul style="list-style-type: none"> <li>- <b>Eight states have repealed RAP either entirely or in some specific fashion:</b> <ul style="list-style-type: none"> <li>▪ Alaska, Delaware, Idaho, Kentucky, New Jersey, Pennsylvania, Rhode Island, and South Dakota</li> </ul> </li> <li>- <b>Nine states have adopted longer fixed periods for RAP</b> <ul style="list-style-type: none"> <li>▪ Alabama, Arizona, Colorado, Delaware, Florida, Nevada, Tennessee, Utah, and Washington</li> </ul> </li> <li>- <b>Three states (Alabama, New York, and Texas) continue to use the common law rule</b></li> <li>- <b>Three states (Iowa, Mississippi, and Oklahoma) use the common law rule with the "wait and see" modification</b></li> </ul>		
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Doctrine of Worthier Title	<b>Schenck Price</b> <small>SCHENCK PRICE SMITH &amp; KING, LLP</small>	
<p><b>The Rule:</b></p> <p>An owner of real property can transfer land to heirs only through the “worthier” method of descent (intestate succession), not by means of devise or conveyance.</p>		
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Doctrine of Worthier Title	<b>Schenck Price</b> <small>SCHENCK PRICE SMITH &amp; KING, LLP</small>	
<p><b>Illustrated:</b></p> <p>If A deeds property to B for life, and then to the heirs of A, the effect of the doctrine is that A has a reversion, while B has a life estate. <i>If the heirs of A are to receive an interest, it will only be at the death of A, not at the death of B.</i></p>		
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Doctrine of Worthier Title	<b>Schenck Price</b> <small>SCHENCK PRICE SMITH &amp; KING, LLP</small>	
<ul style="list-style-type: none"> <li>- Originally a mandatory rule of law nullifying a transfer of a future interest to transferor’s heirs under English feudal law.</li> <li>- Created to force assets to pass by descent, thus triggering an inheritance tax.</li> <li>- Under American law, it was recast as a rule of construction; some states, however continued to apply the doctrine as a mandatory rule of law.</li> </ul>		
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Doctrine of Worthier Title	<b>Schenck Price</b> <small>SCHENCK PRICE SMITH &amp; KING, LLP</small>	
<p><b>Modern Application:</b></p> <ul style="list-style-type: none"> <li>- <b>The Restatement of Property provides that the doctrine of worthier title is not recognized as part of American law, neither as a rule of law nor as a rule of construction.</b></li> <li>- <b>The original rationale for the doctrine is no longer applicable.</b></li> <li>- <b>The Uniform Probate Code also provides that the doctrine is abolished both as a rule of law and as a rule of construction.</b></li> </ul>		
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Ademption	<b>Schenck Price</b> <small>SCHENCK PRICE SMITH &amp; KING, LLP</small>	
<p><b>The Rule:</b></p> <p><b>When specifically devised property is no longer in the testator's estate, the beneficiary's gift fails</b></p>		
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Ademption	<b>Schenck Price</b> <small>SCHENCK PRICE SMITH &amp; KING, LLP</small>	
<ul style="list-style-type: none"> <li>- <b>Applies whether the property was intentionally or unintentionally removed from the testator's estate:</b> <ul style="list-style-type: none"> <li>▪ If a car was left to an individual under a Last Will but such car was given to someone else during testator's lifetime (intentional).</li> <li>▪ If a car was left to an individual under a Last Will but such car was repossessed (unintentional).</li> </ul> </li> <li>- <b>Applies if the item substantially changes in character:</b> <ul style="list-style-type: none"> <li>▪ If a block of marble was left to someone under a Last Will and during the Testator's lifetime, a statue was carved out of that marble, the gift would fail.</li> </ul> </li> </ul>		
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<b>Ademption</b>	<b>Schenck Price</b> <small>SCHENCK PRICE SMITH &amp; KING, LLP</small>
<p><b>Exceptions:</b></p> <ul style="list-style-type: none"> <li>▪ Does not apply to cash gifts.</li> <li>▪ Does not apply if the testator's estate receives insurance proceeds derived from the loss of the property.</li> <li>▪ Does not apply to bequests where the testator names the source for a cash bequest, even if that source is no longer in the testator's estate at death; so if \$100,000 from account at Bank of America is left to someone under a Last Will, even if the Bank of America account doesn't exist, the \$100,000 is still owed from a different source.</li> </ul>	
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<b>Abatement</b>	<b>Schenck Price</b> <small>SCHENCK PRICE SMITH &amp; KING, LLP</small>
<p><b>The Rule:</b></p> <p><b>When an estate does not contain enough assets to satisfy the bequests, some or all of the bequests will be reduced or eliminated in a set order by class of bequest. This will ensure specific distributions are funded and achieved before more general ones.</b></p>	
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<b>Abatement</b>	<b>Schenck Price</b> <small>SCHENCK PRICE SMITH &amp; KING, LLP</small>
<p><b>- Most Common Pattern of Abatement under a Last Will and Testament:</b></p> <ol style="list-style-type: none"> <li>1. Intestate property</li> <li>2. Residuary devises</li> <li>3. General devises (cash gifts)</li> <li>4. Demonstrative devises (gifts from a specific account)</li> <li>5. Specific devises (specific items of property)</li> </ol>	
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Rule in Shelley's Case		
<p><b>The Rule:</b></p> <p>If a conveyance creates a life estate in a transfer and also creates a remainder in that transferee's heirs, then the future interest belongs to the transferee, not the heirs</p>		
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Rule in Shelley's Case		
<p><b>Illustrated:</b></p> <p>To A for life then to A's heirs. The remainder interest belongs to A, not A's heirs.</p> <p><i>Essentially, merges the interests and the life estate is irrelevant; A holds the entire interest.</i></p>		
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Rule in Shelley's Case		
<p><b>History:</b></p> <ul style="list-style-type: none"> <li>- Rule of feudal origin</li> <li>- Abolished in England in 1925</li> <li>- The Rule in Shelley's Case has been abolished in an overwhelming majority of states in the United States</li> </ul>		
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Reciprocal Trusts		
<p><b>The Rule:</b></p> <p><b>If two trusts exist, the trusts will be “uncrossed” if they meet three criteria:</b></p> <ol style="list-style-type: none"> <li>1. They have substantially identical terms</li> <li>2. They were created at the same time</li> <li>3. They are part of the same transaction</li> </ol> <p><b>Reciprocal trusts will be treated as if it benefits the person from whom it came.</b></p>		
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Reciprocal Trusts		
<p><b>Ways to Avoid the Reciprocal Trust Doctrine:</b></p> <ol style="list-style-type: none"> <li>1. Draft the trusts pursuant to different plans.</li> <li>2. Don't put a husband and wife in the same economic position following the establishment of the two trusts.</li> <li>3. Use different distribution standards in each trust.</li> <li>4. Use different trustees or co-trustees.</li> <li>5. Give one spouse a non-cumulative 5x5 power, but not the other.</li> <li>6. Give one spouse a special power of appointment, but not the other.</li> </ol>		
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Reciprocal Trusts		
<p><b>Ways to Avoid the Reciprocal Trust Doctrine (continued):</b></p> <ol style="list-style-type: none"> <li>7. Give one spouse the broadest possible special power of appointment and the other spouse a special power of appointment exercisable only in favor of a narrower class of permissible appointees.</li> <li>8. Give one spouse a power of appointment exercisable both during lifetime and by Last Will and the other spouse a power of appointment only by Last Will.</li> <li>9. Create different vesting provisions for each trust.</li> <li>10. Instead of mandating distributions, give the beneficiaries control, or a different degree of control, at different ages.</li> <li>11. Vary the beneficiaries.</li> <li>12. Create the trusts at different times.</li> <li>13. Contribute different assets to each trust.</li> </ol>		
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<b>Sources</b>	<b>Schenck Price</b> <small>SCHENCK PRICE SMITH &amp; KING, LLP</small>
<ul style="list-style-type: none"> <li>- <i>Death By A Thousand Cuts: The Rule Against Perpetuities</i>, 25 J. Legis. 141</li> <li>- <i>STUDENT WORK: Equitable Modification: Ameliorating the Harsh Consequences of the Common-Law Rule Against Perpetuities While Eliminating the Uncertainty of the Uniform Statutory Rule Against Perpetuities</i>, 102 W. Va. L. Rev. 221</li> <li>- <i>The Rule Against Perpetuities: A Survey of State (AND D.C.) Law</i>, <a href="https://www.actec.org/assets/1/6/zarlsky_RAP_survey.pdf">https://www.actec.org/assets/1/6/zarlsky_RAP_survey.pdf</a></li> <li>- Estate Planning Newsletter #2263 (December 18, 2014) at <a href="http://www.leimbergservices.com">www.leimbergservices.com</a></li> <li>- <i>Symposium: The Role of Federal Law In Private Wealth Transfer: Unconstitutional Perpetual Trusts</i>, 67 Vand. L. Rev. 1769</li> <li>- <i>Means to an End: Electively Forcing Vesting to Suit Tax Rules Against Perpetuities</i>, James P. Spica, ACTEC Law Journal Vol. 40:347</li> <li>- <i>Doctor v. Hughes</i>, 122 N.E. 221 (N.Y. 1919)</li> <li>- <i>Restat 3d Property: Wills and Other Donative Transfers</i>, § 16.3.</li> <li>- Uniform Probate Code (UPC) § 2-710</li> <li>- <i>Beware of the Reciprocal Trust Doctrine</i>, Bruce D. Steiner and Martin M. Shenkman, Estate Planning &amp; Taxation, April 2012</li> </ul>	
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<b>Thank you</b>	<b>Schenck Price</b> <small>SCHENCK PRICE SMITH &amp; KING, LLP</small>
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<small>Schenck, Price, Smith &amp; King, LLP</small>	

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