Rule Against Perpetuities Problems (pp. 248-49)

1. O conveys “to A for life, then to B if B attains the age of 30.” B is now 2 years old. B is the validating life. When B dies, B will either be over 30, in which case the interest will have vested, or he will be under 30, in which case it will have permanently failed. As a general rule, it seems safe to say that when a contingency is tied to a named person who is alive at the time of the gift (B here), the interest will not violate the RAP, because that named person will be the validating life.

2. O conveys “to A for life, then to A’s children for their lives, then to B if B is then alive, and if B is not then alive, to B’s heirs.” A has no children at the time of the conveyance. The remainder to A’s children is valid, because it vests (or fails) upon A’s death, so A is the validating life. The remainder to B is valid because it must vest or fail upon B’s death. There is an apparent problem with the contingent remainder to B’s heirs “if B is not then alive,” that is, at the death of the last of A’s children. The argument is that B may have a child after the conveyance but die well before A’s longest living child dies: B is then not alive, so the condition on B’s interest is not fulfilled and nothing comes to B’s estate (and therefore nothing to B’s heirs by will or intestate succession). To vest in B’s according to the conveyance, B’s child would have to take within 21 years of B’s death, and we have no guarantee that will happen. The longest living of A’s children may die more than 21 years after B’s death. Had it been written “then to B for life and then to B’s heirs,” which is apparently the intent, it would have been valid, because B is the measuring life.

This argument, however, misinterprets the meaning of the term “vest.” B is alive at the time of the gift, and so is a potential validating life. We are talking about a remainder interest that goes either to B (if B is alive when the last of A’s children dies) or to B’s heirs (if B is dead by the time the last of A’s children dies). The remainder interest is vested in B or B’s heirs within 21 years of B’s death. Remember, for an interest to be “vested” it need not be possessory. There is, in fact, no real contingency with respect to the remainder. Even if B dies more than 21 years before the last of A’s children, B’s heirs are determined at the time of B’s death, and the remainder interest fully vests in those heirs at that time, even though it may take many years (and more than 21) for the remainder interest to become possessory. Therefore, the remainder to B or B’s heirs, depending on who is alive when the last of A’s children dies, is valid.

3. O, a teacher of property law, declares that she holds in trust $1,000 “for all members of my present property class who are admitted to the bar.” Is the gift good? The members of the property class are the validating lives. When all pass the bar, or when the last not to pass dies, it vests in all those who have passed. Suppose O had said “for the first child of A who is admitted to the bar”. If A has presently living children, they might die unadmitted to the bar, while after the gift A might have a child and then die. We might not know about that child’s admission to the bar for more than 21 years.

4. O conveys “to A for life, then to A’s children who reach 25.” A has a child, B, age 26, living at the time of the conveyance. Is the remainder valid? When A dies, A may leave a minor child, say age 3, born after the conveyance. We won’t know whether that child will reach age 25 for 22 years. So, the remainder is void. B’s being 26 doesn’t help. The gift is vested as to B but is “subject to open,” and because new members of the class might appear who do not satisfy the perpetuities period, the gift is void as to all members. NOTE: The statement in the book (p. 248) that a for a class gift to be valid, each and every member of the class must be in existence and identified at the time the class gift is created seems to be incorrect. The correct rule, I think, is that the gift must vest, that is, all conditions precedent must be satisfied, within the perpetuities period for each and every member of the class or the gift is void as to all members of the class. That is, if new members of the class are born after the conveyance, the gift may still be good as long as the interest vests for those new members as well as those alive at the time of the
conveyance.

5. O conveys “to A for life, then to A’s widow, if any, for life, then to A’s issue then living. Is the gift to A’s issue valid? The gift to the widow is OK, because A is the validating life, and when A dies he either will or will not be married. When A’s widow, if any, dies, issue from A who are still alive can be determined. However, this question is open until A’s widow dies, which might be more than 21 years after A’s death, so A cannot be the validating life for them. The widow cannot be the validating life, because A might marry someone who, at the time of the gift, has not yet been born (this problem is known as the “unborn widow” problem).