



## THE BACHLAWRETTE

# SITUATIONSHIPS AND THE RULE AGAINST PERPETUITIES

**A**s we learned in 1L year, the Rule Against Perpetuities requires the fate of a piece of property to be reasonably certain. A future property interest must permanently vest or forever fail within a foreseeable period of time to be viable. (I'd put the full rule in a footnote but to avoid evoking any law school trauma, I'll kindly refrain.)

The same principle applies to your "interest" in a person whom you are dating. Although an initial period of non-exclusivity is to be expected, it cannot last indefinitely if you are seeking a committed, monogamous relationship. As the Rule Against Perpetuities mandates, there is a certain point at which the relationship either needs to be official or needs to be over.

Why do certain partners attempt to defy the Rule Against Perpetuities in begetting a drawn-out, ill-defined situationship? Violations of the rule are triggered by three specific types of property interests. To save you the trouble of digging up your old property outlines, here's a review of the three violative future interests and how they might play out in your current situationship.

### The Rule Against Perpetuities Explained

A **contingent remainder** is a future interest that is capable of vesting immediately following the known expiration of the current situationship. The situationship is one that will, by design, eventually terminate regardless of whether the contingent remainder vests. The contingent remainder vests only if a specified condition is met.

In dating, the contingent remainder is the person who likes spending time with you right now but who sees an end date from the start. This person might eventually become more attracted to someone else who meets the specified conditions, or their "interest" may simply fade over time for other reasons. This person will likely give you indications from the beginning that they are not looking for anything serious.

As frustrating as this can be, you can usually know what to expect with this person. The best advice here is to not get too attached, to maintain low expectations, and to end the situationship if you feel like your needs are not being met.

An **executory interest** is a future interest that enacts immediately once a specified condition is met. The executory interest necessarily interrupts a situationship that would otherwise continue.

In dating, the executory interest is the person who will lead you on, seeming genuinely interested, but who will abruptly jump ship as soon as someone else satisfies the specified conditions. Despite never expressly committing to you, this person will lure you into a false sense of security so that you feel blindsided when the tables turn.

The best advice here is to truly believe them when they say they want to "take things slow" or don't want to "put a label" on the relationship. If you are looking for something serious, cut your losses now due to the recognition that more time will probably not persuade this person to commit.

A **vested remainder subject to open** (“open remainder”) is a future interest that vests following the known expiration of the current situationship. When the remainder vests, there is an inarticulable class of potential beneficiaries that can potentially broaden over time.

In dating, the open remainder is the former flame who will return in hopes of reconnecting but in a nonmonogamous sense. Unlike the contingent remainder, who will never be heard from again, the open remainder is flexible to multiple dating prospects, possibly including you if you allow that.

If you find yourself in this situation and are looking for a monogamous relationship, do not be charmed or persuaded by the open remainder. Absent a drastic change of mindset, this person will always be “subject to open” and will not be willing to fully commit to you or to anyone.

### Can a Voidable Situationship Be Redeemed?

The three above-described future interests are likely to perpetuate a situationship, rather than a relationship. In rare cases, however, a situationship can gradually give rise to legally enforceable rights (i.e., an exclusive relationship) through adverse possession. For adverse possession to apply, the relationship must be:

1. **1. Actual:** There must be actual interaction between the parties of a romantic or amorous nature.
2. **2. Adverse:** The initial relationship must be nonmonogamous, i.e., adverse to an exclusive relationship.

3. **3. Exclusive:** This is self-explanatory — you and your partner must agree that the relationship is exclusive.
4. **4. Open and notorious:** You and your partner must openly acknowledge your exclusive relationship status to friends, family, and others.
5. **5. Plain view:** You and your partner must go out on dates in public, make public introductions, and otherwise put the public on notice of your exclusive relationship.
6. **6. Term of years:** You and your partner's satisfaction of the above must persist for a reasonable time period to elevate the dynamic from situationship to relationship.

In most cases, the mere passage of time is not true adverse possession ... but rather adverse regression of your mental and emotional health. It is key to look out for signs that your prospective partner cares more about their own needs than yours. Only you can know whether your current situationship is meant to vest or be put to rest.

\*\*\* Please note that this constitutes general information rather than legal advice. If you are preparing for the bar exam, do not import this dating-related commentary into your essays ... unless you want yours to be featured as the sample on the California Bar website (and not necessarily in a good way). Consult a Barbri book or property law professor regarding your individual situation.

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*Do you have dating-related questions or stories/advice for lawyers? Send your questions, stories and advice to The Bachlawrette at [bar@sdcba.org](mailto:bar@sdcba.org) for possible inclusion (anonymously, unless otherwise requested) in a future column.*



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