PROPERTY ESSAY SHORT OUTLINE

- **Fee Simple**: A free hold estate of virtually infinite duration and of absolute inheritance free of any conditions, limitations, or restrictions to particular heirs
- **Defeasible Fees**: An interest in property which may last forever, except upon the happening or non happening of a specified event, at which point it will automatically terminate
- **Life Estate**: An interest in property measured by the life of either the person using the property or by another’s life
- **Joint Tenancy with right of survivorship**: Each tenant has an undivided interest in the whole estate, and the surviving co-tenant has a right to the whole estate (right of survivorship)
- **Tenancy by the Entirety**: Husband and wife each has an undivided interest in the whole estate and right of survivorship
- **Tenancy Common**: Each tenant has a distinct, proportionate, undivided interest in the property. There is no right of survivorship.

- **DEEDS** – Transfers title to an interest in real property. A deed MUST be in WRITING, SIGNED by GRANTOR, and reasonably IDENTIFY the parties and the land. FL statutes provide that real estate may be conveyed only by a written instrument signed in the PRESENCE OF 2 SUBSCRIBING WITNESSES. This requirement applies to all conveyances by any type of instrument of any interest greater than 1 year.
  - **General Warranty Deed** – expressly guarantees the grantor’s good and clear title and the following covenants:
    - **Covenant of Seisin**: Grantor has estate she purports to convey. Grantor must have BOTH title and possession at the time of the grant.
    - **Covenant of Right to Convey**: Grantor has authority to make the grant. Title alone satisfies this.
    - **Covenant Against Encumbrances**: No physical (ie. Encroachments) or title (ie. Mortgage) encumbrances.
    - **Covenant of Quiet Enjoyment**: Grantee will not be disturbed in possession by a 3rd party claiming lawful title.
    - **Covenant of Warrant**: Grantor agrees to defend against reasonable claims of title by a 3rd party and to compensate grantee for any loss sustained by the claim of superior title.
    - **Covenant for Further Assurances**: Grantor promises to perform acts reasonably necessary to perfect title.
  - **Special Warranty Deed** – Provides 2 limited assurances: 1) Grantor has not conveyed the same estate or interest to anyone other than the grantee; AND 2) Estate is free from encumbrances made by grantor.
  - **Quit Claim Deed** – conveys whatever interest the grantor has. No covenants of title are express or implied.

- **STATUTE OF FRAUDS** – The sale of land should be reduced to writing, identify buyer and seller, legal description of the property, value to be paid, and at lease the signature of the party to be charged. SOF can be overcome by SUBSTANTIAL PERFORMANCE, or DELIVERY of PROPERTY and/or IMPROVEMENTS.
- **EQUITABLE CONVERSION** – Once the contract is signed, equity regards the buyer as owner of the property.
  - FL follows the majority rule. If the property is destroyed, without fault of either party, before closing, the RISK OF LOSS is on the BUYER.
  - The seller must credit any fire or casualty insurance he receives against the purchase price the buyer is required to pay.
- **MARKETABLE TITLE** – Every contract in FL contains an implied warranty that the seller will provide marketable title at closing.

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SELLER’S LIABILITY FOR DEFECTS – The FL SC has held that a seller of new or used real property has an “affirmative duty to disclose” facts materially affecting the value of the property that are not readily observable or known to a purchaser. REMEDY IS RESCISSION of contract.

- **Failure to Disclose** – Seller is liable if:
  - Seller knows or has reason to know of defect
  - The defect isn’t obvious or apparent and buyer is not likely to discover it by ordinary inspection
  - Defect would cause buyer to reconsider purchase if known
- **Active Concealment** – Seller is liable if seller took steps to conceal the defect in the property.
- **Misrepresentation or Fraud** –
  - Seller made a false statement of fact to buyer
  - Seller know statement was false or seller made statement recklessly
  - Buyer relied on the statement
  - It materially affected the value of the property

RECORDING STATUTES – FL has a “PURE NOTICE” recording act. A subsequent BFP prevails over a prior grantee who fails to record.

- To be a BFP, the subsequent party must give value and have no actual, inquiry, or constructive notice of the prior conveyance at the time of her transaction.
  - **Inquiry Notice** – Although FL’s recording statute does not mandate inquiry notice, case law imposes a duty upon the purchaser to physically examine the premises. Physical possession by one who is not the grantor has been held as constructive notice and visible easements have been construed as actual notice because inspection of the land is presumed.
- There is a presumption of lack of notice of an unrecorded instrument by a person subsequently acquiring property
- The burden of proving actual notice is on the claimant of the unrecorded instrument.

NON-POSSESSORY INTERESTS IN LAND – easements, profits, covenants, and servitudes create a rt to use land possessed by someone else.

- **Easement** – Non-possession interest to use land possessed by another or restricts the use of another’s land.
- **Affirmative Easement** – allows the holder to enter onto the servient tenement and make an affirmative use of it.
- **Negative Easement** – prevents the owner of servient tenement from engaging in specified activity on the servient tenement. (ie. Light, air, support, flow)
  - **DISTINGUISH Restrictive Covenant** – private agreement that restricts the use or occupancy of real property. (ie. A promise to do or not to do something on the land.)
- **Easement Appurtenant** – there must be 2 tracts of land: the “dominant tenement” (the estate benefitted by the easement) and the “servient tenement” (the estate subject to the easement right). This easement runs with the holder’s land.
- **Easement in Gross** – the holder acquires the right to use the servient tenement independent of his possession of another tract of land. (ie. The easement benefits the holder rather than another parcel)
- **Creations of Easements**
  - **Easement by Implication** – two types: 1) Easement implied from existing use or 2) Easement by necessity
    - **Easement Implied from Existing Use (Easement by Estoppel or Quasi Easement)** – An easement may be implied if:
      - Prior division of a single tract
      - An apparent and continuous use exists on the servient estate
      - Use is reasonably necessary for the enjoyment of the dominant estate
      - The court determines that the parties intended the use to continue after the division of the land
• **Easement by Necessity** – FL recognizes the common law rule of an implied grant of a way by necessity. Such an implied grant or easement exists where there is no other reasonable way of entrance or exit and the easement is reasonably necessary for the beneficial use and enjoyment of the part granted or reserved. An implied grant only arises where UNITY OF TITLE exists from a common source.

• **Statutory Easement by Necessity** – Any land outside the municipality that is used for dwelling or agricultural purposes which is shut off or hemmed by lands, fencing, or other improvements so that no reasonable route for entrance and exit is available, the owner or tenant may use and maintain the easement for ingress and egress. UNITY OF TITLE is NOT required. The servient tenement is entitled to compensation for the use of the easement.

  ▪ **Easement by Prescription** – the holder has used the easement for the statutory period of 20 years, the use was open and notorious, adverse, and continuous.

  ▪ **Express Grant** – in writing and signed by the holder of the servient tenement. Must comply with all formal requirements for a deed unless the duration is brief enough to be outside of the Statute of Frauds.

  ▪ **Express Reservation** – Arises when grantor conveys title to land but reserves the right to continue to use the tract for a special purpose.

  o **Profit** – a right to take resources from another’s land. A writing is usually required.

  o **License** – permission to go onto another’s land. A writing is generally NOT required. **An invalid oral easement may be deemed a license. A license may be revoked at will or upon grantor’s death.**
    ▪ A license is personal to the licensee and is inalienable. Any attempt to transfer a license results in revocation by operation of law.

  o **Real Covenants** – normally found in the deed. It is a written promise to do something or the land (ie. Maintain a fence) or a promise not to do something on the land (ie. Not build a multi-family dwelling. Real covenant “run with the land” which means that subsequent owners may enforce or be burdened by the covenants. In order to run with the land there must be intent, notice, horizontal and vertical privity, and touch and concern the land. Damages sought are MONEY DAMAGES.)

  o **Equitable Servitude** – A covenant, regardless of whether it runs with the land, equity will enforce against the assignee of the burdened land who has notice of the covenant. The usual remedy is an INJUNCTION.

➢ **LANDLORD/TENANT**

  o **Tenancy for Years** – runs for a specified amount of time (ie. 12 months, 5 years). Unless the period is less than 1 year, it MUST be in WRITING. The lease terminates automatically at the end of the lease term.

  o **Periodic Tenancy** – Continues on successive periods (ie. Month-to-month, year-to-year). Notice of termination must be given to end the lease will be automatically renewed. If the tenancy period is year to year or longer, at least 6 months notice must be given. If the tenancy is shorter, then notice must be given 1 period in advance.

  o **Tenancy at Will** – tenancy that can be terminated by either the landlord or the tenant at any time. They also terminate when: either party dies, the landlord transfers his interest, the tenant attempts to transfer his interest, etc.

  o **Tenancy at Sufferance** – arises when a tenant wrongfully remains in possession after the expiration of a lawful tenancy. It lasts only until the landlord takes steps to evict the tenant. No termination is required. There mere payment of rent is not construed as a renewal of the term.

  o **Holdover Doctrine** – If a tenant continues in possession after the lease terms ends, the landlord may either evict the tenant or bind the tenant to a new periodic tenancy. However, FL law DOES NOT permit the landlord to bind a NONRESIDENTIAL tenant to a new periodic tenancy, instead a tenancy at sufferance is created.
    ▪ FL allows for the collection of DOUBLE RENT when a tenant holds over.
- **Lease Agreement** – a contract containing the promises of the parties.
- **Duty to Deliver Possession** – Landlord has a duty to deliver actual possession at the beginning of the leasehold term. The landlord is in breach if he hasn’t evicted a hold-over tenant by the beginning of the new tenant’s term.
- **Implied Warranty of Habitability** – In FL, the landlord has a duty to reasonably inspect the premises for habitability and to maintain the residential premises. Under a residential lease, the landlord must: 1) comply with building, housing, and health codes; or 2) where there are no applicable codes, maintain the roofs, windows, screens, doors, floors, steps, porches, exterior walls, foundations, and all other structural components in good repair.
  - If landlord doesn’t repair, tenant must given landlord written notice specifying noncompliance
  - Landlord has 7 days to comply or tenant may:
    - Move out and terminate the lease (**constructive eviction**)  
    - Reduce or Abate Rent to fair market value in view of defects.
  - In FL, tenant has NO DUTY to make repairs, with the exception of plumbing. The landlords obligations to repair may be altered in a single family dwelling or duplex.
- **Constructive Eviction** – Landlord does something to make property uninhabitable. Tenant may terminate lease and seek damages. The following conditions must be met:
  - Must be a result of LANDLORD’s ACTIONS not a neighbor or 3rd party
  - Conditions must be very bad that court can conclude that it is uninhabitable.
  - Tenant must vacate in a reasonable time after giving notice. If tenant does not vacate, she has waived the right to do so.
- **Landlord Remedies** – If the tenant stops paying rent, the landlord CANNOT result to self-help. The landlord may remove the tenant only by means of an action for possession filed in county court.
  - **Eviction** – Actual eviction occurs when the landlord or a paramount title holder excludes the tenant from the entire premises. Actual eviction terminates the tenant’s obligation to pay rent.
  - **Ejectment** – the legal remedy that landlords can sometimes use to remove a person from wrongfully occupying the property.