Johnson v. Davis, 480 So. 2d 624 (Fl. 1985), Casebook p. 488

The Duty To Disclose Defects Cont’d

- Is nondisclosure calculated to mislead equivalent to fraudulent concealment?
- Theories for the imposition of liability for nondisclosure
- Material facts

Johnson v. Davis Cont’d

Theories for the Imposition of Liability for Nondisclosure

- Reliance on nondisclosure or misrepresentation
- Unethical or unfair bargaining conduct
- Inefficiency
Johnson v. Davis Cont’d

What constitutes a *material* defect?

• Leaky roof?
• Noise?
• Homeless population?
• Sex offender nearby?
• Hazardous waste site?
• Landfill?

Lempke v. Dagenais,
547 A.2d 290 (N.H. 1988), Casebook p. 494

Implied Warranty Of Quality

• Negligence
• Torts v. Contracts
• Privity
Lempke v. Dagenais Cont’d

Implied Warranty Of Quality Cont’d

• “sound legal and public policy considerations”
• Economic loss v. personal injury
• Limits on warranty

Remedies for Breach of the Contract

For the nondefaulting party:

• Damages
• Retention of the deposit (sellers) or restitution of the deposit (buyers)
• Specific performance
Remedies for Breach of the Contract

- “Loss of the bargain” rule
- Special damages
- Punitive damages
- Majority rule