Possessory Estates Cont’d

- Life Estates Cont’d
  *Woodrick v. Wood*

- Defeasible Estates
  *Mahrenholz v. County Board of School Trustees*

Woodrick v. Wood,
1994 WL 236287 (Ohio 1994), Casebook, p. 218

Prevention of Waste

- Affirmative
  - Injurious
  - Ameliorative

- Permissive
  - Common law v. Ohio law
  - Relief granted
If you love someone, give them a fee (fee simple absolute)

Defeasible Estates

- So far, we’ve studied one kind of fee simple.
  - Absolute
- Today, we discuss another type of fee simple.
  - Defeasible
Defeasible Estates

Two/Three Defeasible Fees Simple

1. Determinable
2. Subject to Condition Subsequent
3. Subject to Executory Limitation

NB: A life estate may also be defeasible.
“O to A for life, so long as . . . .”

Defeasible Estates

Fee Simple Determinable

• “O to A and his heirs so long as the land is used for residential purposes”

• It will end automatically when an event occurs. The grantor is conveying a fee simple only until an event happens.

• It uses words of duration, such as “so long as” “while used for”, and “until”.
Defeasible Estates

Fee Simple Determinable Cont’d

• The future interest created is a **possibility of reverter**.

• The future interest may be expressly retained by the grantor or it may arise by operation of law.

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Defeasible Estates

Fee Simple Subject to Condition Subsequent

• “*O to A and his heirs; however, if the land is not used as a library, then to O*”

• It **may be cut short or divested** at the transferor’s election when a condition occurs.

• It uses words such as “but if”, “provided, however”, and “on condition that”.
Defeasible Estates

Fee Simple Subject to Condition Subsequent Cont’d

- The future interest created is a right of entry or a power of termination for the grantor.
- The fee simple continues unless and until the right of entry is exercised.

Defeasible Estates

Fee Simple Subject to Executory Limitation

- “O to A and her heirs until B marries, then to B”
- “O to A and her heirs, however if B marries, then to B”
- The future interest created when a grantor creates either a fee simple determinable or a fee simple subject to condition subsequent and rather than retaining a future interest in himself, creates one instead in a third party.
**Mahrenholz v. County Board of School Trustees,**

**Defeasible Estates**

“this land to be used for school purpose only; otherwise to revert to Grantors herein”

- Type of defeasible interest
- Alienability
- Effect of subsequent deeds

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**Mahrenholz Cont’d**

**Precedent Cited by the Defendants**

- **Latham v. Illinois Central Railroad Co.**
  “their successor and assigns forever, for the uses and purposes hereinafter mentioned and for NONE other”

- **McElvain v. Dorris**
  “This tract of land is to be used for mill purposes, and if not used for mill purposes the title reverts back to the former owner.”