Fund Assembly

Quiz on Recent Real Property Cases

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False Representation in Closing Documents

1. T or F

- A seller who fails to disclose a judgment lien at closing may be subject to liability that is non-dischargeable in bankruptcy.

TRUE

Old Republic Title Insurance Company v. Fakhuri

Judgment against debtor in favor of Old Republic National Title Insurance Company was held non-dischargeable under 523(a)(2)(A), 11 U.S.C. where all elements of false pretenses or false representation by the debtor were proven by a preponderance of the evidence.

1) A false representation or omission of fact

2) Made with knowledge or with reckless disregard for its truth, with the intent to deceive

3) Upon which another justifiably relies

Old Republic Title Insurance Company v. Fakhuri (In Re Fakhuri), Bankruptcy Case No. 16 B 28526, Adversary Case No. 16 A 00624 (Bankr. N.D. Ill. 2018).

Reliance on Agent Authority

2. T or F

- It is unreasonable to rely on the authority of a principal's agent based on a handshake at a Florida State tailgate party.

TRUE

FPL v. McRoberts

- The Fourth District Court of Appeals found it was not reasonable for a real estate broker to believe an agent of Florida Power and Light could bind his principal based on a handshake and the broker's belief the agent held a high position with the principal, even where that belief was correct.

- The court also found it unreasonable to conclude that a principal would enter into multi-million-dollar agreement over a handshake at a Florida State tailgate party, where its supposed agent refused to give out an office phone number or his business card and could only be reached through a third party.

- *FPL v. McRoberts* 43 Fla. L. Weekly D2278a (Fla. 4th DCA 2018)

Licensees vs. Invitees

3. T or F

- Where a Declaration provides homeowners' guests an easement for ingress and egress to the HOA fitness center, a homeowner's personal trainer is a licensee rather than an invitee and therefore may be excluded from the premises by the Association.

FALSE

Charterhouse Associates, Ltd., Inc. v. Valencia Reserve Homeowners Association, Inc.

- The determination as to whether a person is an invitee must be made by using the "invitation test" established by Florida courts as preferable to the economic benefit test under common law. Under the invitation test, an invitee can be either a "public invitee" that is invited to enter upon a property as a member of the public for a purpose for which the property is held open to the public, or a "business invitee" that is invited to enter upon a property for a purpose directly or indirectly connected to business dealings with the possessor of the land.

- Where an Association declaration provides owners, their guests and invitees an easement for "ingress and egress, enjoyment in, and use of the fitness center", a homeowner's personal trainer invited to enter the fitness center is a business invitee, not a licensee.

- *Charterhouse Associates, Ltd., Inc. v. Valencia Reserve Homeowners Association, Inc.*, 43 Fla. L. Weekly D2645a (Fla. 4th DCA 2018)

Devise of Property Upon Divorce

4. T or F

- A decedent's devise of real property to a fiancée he later marries becomes void when they divorce.

FALSE

Gordon v. Fishman

- The Second District Court held that divorce did not affect devise of property made before the marriage, holding, “Sec. 732.507(2) F.S. applies only when the marriage predates the will.”

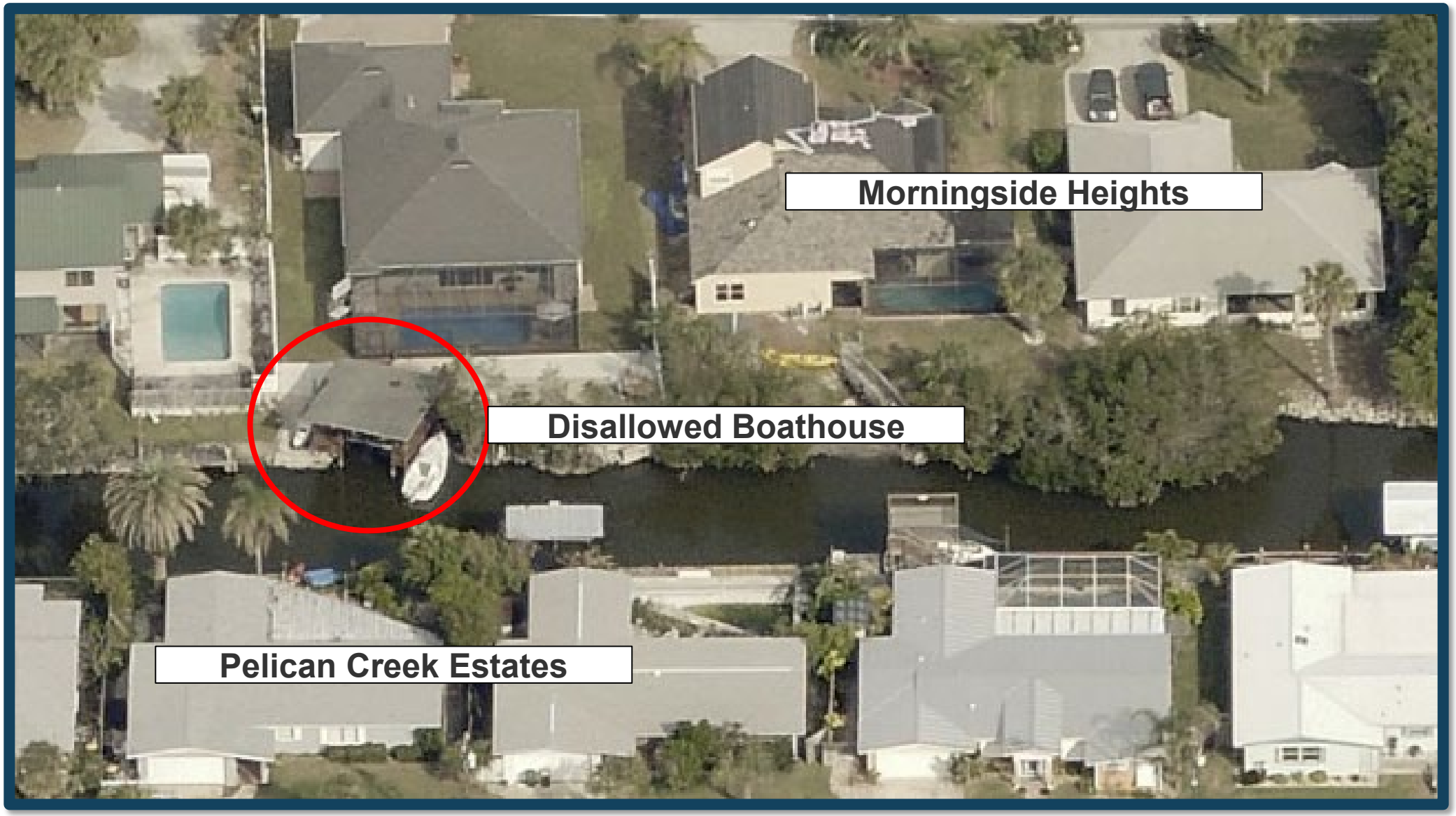
- *Gordon v. Fishman,* 43 Fla. L. Weekly D1969b (Fla. 2d DCA 2018).

Common Law Dedications

5. T or F

- When a common law public dedication is located on the edge of a plat, abutting property owners have title to the full width of the dedicated property, as opposed to “to the center line.”

TRUE


Morningside Heights
Disallowed Boathouse
Pelican Creek Estates

Pelican Creek Homeowners, et al. v. Pulverenti

- The Fifth District Court held that a common law dedication by a developer passed title to a canal easement to successors in title, i.e., the abutting property owners because when a public dedication is located on the edge of a plat, abutting property owners have title to the full width of the dedicated property, as opposed to the typical "to the center line" arrangement.

- *Pelican Creek Homeowners, et al. v. Pulverenti* 243 So. 3d 467 (Fla. 5th DCA 2018).

Slander of Title

6. T or F

- A Notice of Interest in real property recorded with a copy of an agreement between the parties attached, is slander of title.

FALSE

Trigeorgis v. Trigeorgis

The five elements that must be proven for a plaintiff's claim of slander of title (a/k/a disparagement of title or property action) to be successful are:

(1) Falsehood

(2) Publication

(3) Publisher knows or reasonably should know that such falsehood will likely result in inducing other to not deal with the plaintiff;

(4) The falsehood results in a material and substantial inducement of others not to deal with the plaintiff; and

(5) Special damages are proximately caused by the publication of the falsehood.

- *Trigeorgis v. Trigeorgis,* 240 So.3d 772, (Fla. 4th DCA 2018).

Duties of a Buyer

7. T or F

- A purchaser of real property has a duty to inquire into amounts that could be adjudged against the seller in pending lawsuits initially involving the property, even where the Notice of Lis Pendens has been discharged.

FALSE

Villamizar vs. Luna Capital Partners

- The Third District Court held that knowledge of a lawsuit for payment of unsecured debts does not create a duty in an arm's length buyer purchasing debtor's real property for market value to inquire into amounts claimed to be owed by the seller, when equitable liens counts were dismissed, the Notice of Lis Pendens was discharged, and no claim been reduced to a judgment.

- *Villamizar vs. Luna Capital Partners, LLC*, 43 Fla. L. Weekly D2395a, (Fla. 3rd DCA 2018).

Adverse Possession

8. T or F

- A 2016 legislative change to Sec. 95.18, FL Statutes permits adverse possession without color of title where the party making the claim has been in possession for less than 7 years.

FALSE

Bank of America v. Eastridge

- The Fifth District Court held where the possessor fails to allege seven years of continuous possession of the property in an adverse possession claim as required under Sec. 95.18, F.S., the trial court is required to consider the titleholder's defense of failure to state of cause of action. This is true even after default, because a default only acts as an admission of well-pled allegations in a complaint.

- *Bank of America v. Eastridge,* 43 Fla. L. Weekly D1836b, (Fla. 5th DCA 2018).

Reversibility of “Inconsistent” Judgments

9. T or F

- A final judgment requiring a party to remove a portion of a fence blocking a neighbor’s access easement, but allowing the fence to be rebuilt in another location also blocking access is “internally inconsistent” and therefore subject to reversal.

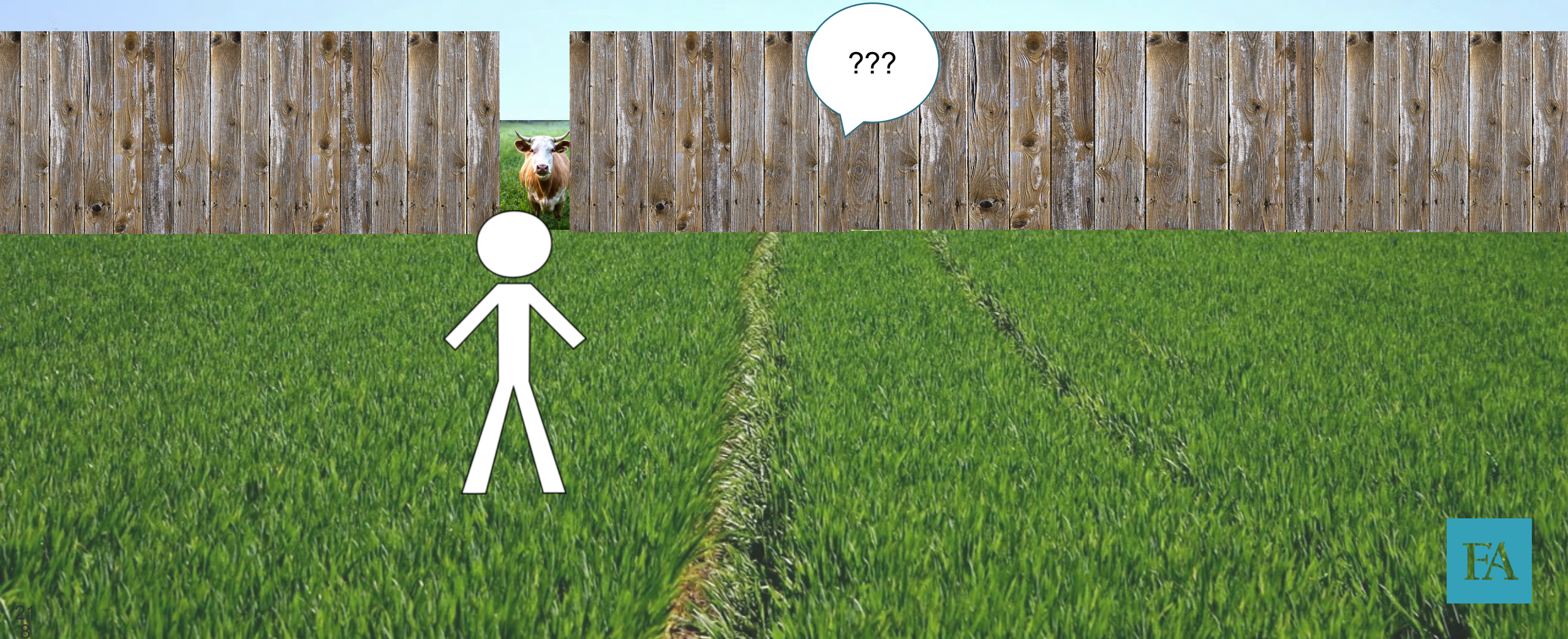
TRUE

Borowski v. Ferrer

- The First District Court ruled that a final judgment requiring a party to remove a portion of a fence encroaching into a neighbor's easement for access, but also providing for that party to be able to rebuild the fence in a place that still obstructed the neighbor's easement for access, was internally inconsistent and therefore reversed.

- *Borowski v. Ferrer,* 43 Fla. L. Weekly D2038a, (Fla. 1st DCA 2018)

Borowski v. Ferrer



FR/Bar AS IS Contract

10. T or F

- At the conclusion of the inspection period, a buyer under a FR/Bar "AS IS" contract may tender a conditional deposit, requiring the Seller to pay for repairs or extend the closing.

FALSE

Diaz v. Kosch

- During the inspection period under an “As Is” FR/Bar contract, Buyers, both attorneys, contacted Sellers accusing them of misrepresentations and threatening to sue, based on open permits and concerns about radon readings, but also stating they **would nevertheless tender the 2d deposit due under the contract by the end of the inspection period “with full rights reserved.”**

- After the inspection period had expired, Buyers demanded Sellers provide price concessions, which they refused. Buyers sued, alleging breach of contract, conversion, and various types of fraud, and seeking punitive damages.

- 4 years later, the trial court granted summary judgment for the brokers and the Sellers, including the Sellers’ counterclaim for forfeiture of the $285,000 deposit, and awarded the Sellers **$850,000 in attorneys’ fees.**

- On appeal, the 3rd District affirmed the court below in all respects, holding that the Contract gave the Buyers two choices by the end of the Inspection Period: **1) Accept the property “As Is” and make the 2d deposit, or 2) Reject it, and cancel.**

- *Diaz v. Kosch,* 250 So. 3d 156 (Fla. 3d DCA 2018)

Abandonment of Homestead

11. T or F

- When a family moves out of homestead property due to city and county code lien violation orders declaring the property unsafe for habitation, they are deemed to have abandoned the homestead and the husband can sell without his wife's joinder.

FALSE

Yost-Rudge v. A to Z Properties, Inc.

- The Fourth District held that City and county code violation orders deeming property unsafe for habitation did not eliminate a wife's interest in her homestead absent an evidentiary showing as to her intent to return.

- *Yost-Rudge v. A to Z Properties, Inc*. 44 Fla. L. Weekly D393 (Fla. 4th DCA 2019).

Parties in Interest

12. T or F

- A wife is a proper defendant in a lawsuit seeking to recover property in which she took title with her husband, even where she is not a party to the contract giving rise to the claim.

TRUE

Chaudhry v. Pedersen

- The Fifth District Court held that a lawsuit could not be dismissed as against a wife where she took title to property with her husband, whom the plaintiff alleged had contracted to convey the property to him after purchasing it at a tax deed sale, because the wife's interest was adverse to the plaintiff's and her presence necessary for a proper determination of the case.

- *Chaudhry v. Pedersen*, 44 Fla. L. Weekly D405a (Fla. 5th DCA 2019).

Voidability of Judgment

13. T or F

- A summary judgment entered without a hearing is voidable.

FALSE

Richard v. Bank of America

- The Fourth District held that under Fla. R. Civ. P. 1.540(b)(4), a judgment entered on a motion for summary judgment without a hearing constitutes a denial of the due process guarantee of notice and an opportunity to be heard, resulting in such judgment being void.

- A judgment that is void can be challenged at any time without the necessity to show excusable neglect, a meritorious defense, or due diligence, even after seven years from the date that the judgment is entered.

- *Richard v. Bank of America, N.A.*, 43 Fla. L. Weekly D2531a, (Fla. 4th DCA 2018).

Foreclosure Remedies

14. T or F

A lender cannot execute on both a judgment for damages and a judgment for foreclosure at the same time.

TRUE

Schneider v. First American Bank

- The Fourth District held that a lender cannot be allowed to execute on a judgment for damages and a judgment for foreclosure at the same time, as doing so could result in the lender recovering more than the amount owed to it, and that after a foreclosure sale the lender can only collect the deficiency outstanding under its note.

- *Schneider v. First American Bank,* 43 Fla. L. Weekly D1673a, (Fla. 4th DCA 2018)

Time-Traveling Judgments

15. T or F

A clerk of court may backdate time stamps on judgments to coincide with the time of the hearing upon which they are entered.

FALSE

Guy v. Plaza Home Mortgage, Inc.

- The Fourth District noted as part of another ruling its disapproval of the practice of the Broward County clerk's office of backdating time stamps on judgments to the time of the hearing upon which they were rendered, rather than the time the clerk received the signed order, resulting in a judgment showing entry several hours before it was actually entered by the court. The court found the practice inconsistent with appellate rules, in that the time for appeal runs from the date of rendition, not the date the judgment is signed.

- *Guy v. Plaza Home Mortgage, Inc.*, 43 Fla. L. Weekly D910a (Fla. 4th DCA 2018)

Competitive Bidding Requirements

16. T or F

Sec. 125.35, F.S., does not require a county selling land under its "county economic development powers" to adhere to the statute's competitive bidding requirement.

TRUE

Matheson v. Miami-Dade County

- The Third District ruled that an owner of property near land Miami-Dade County planned to sell for development of a Major League Soccer stadium had no right to offer a bid competing with the offer by a group including former professional soccer player David Beckham.

- In reading Sec. 125.35, F.S.'s provision that "no sale of any property shall be made" without a competitive bidding process in *para materia* with the statute's "county economic development powers," the court found that the County can sell its land at a below-market rate for the public purpose of economic development without a competitive bidding process.

Lynne Sladky/Associated Press

- *Matheson v. Miami-Dade County, FL* 43 Fla. L. Weekly D2293 (Fla. 3d DCA 2018).

Seller Liability for Title Defects

17. T or F

Where a recorded mortgage in the back chain is missed in the examination of title, the seller may be liable for breach of the warranty deed, unjust enrichment and fraud.

FALSE

Winfield Investments, LLC v. Pascal-Gaston Investments, LLC,

- The Fifth District found that a missed mortgage in the back chain supports breach of warranty vs. seller, but not unjust enrichment, because there is no quasi-contract claim where a contract exists, or fraud, because the missed mortgage was recorded and therefore "obvious."

- *Winfield Investments, LLC, et al, v. Pascal-Gaston Investments, LLC,* 43 Fla. L. Weekly D1916 (Fla. 5th DCA 2018).

Equitable Lien Foreclosure

18. T or F

- Where an ex-wife paid off her ex-husband's prior mortgage on property granted to her in their divorce, then defaulted on her new loan, after which the property was returned to the ex-husband by judgment in the divorce case, the new lender has an equitable lien against the property, but could not foreclose without a showing that the ex-husband was in default.

TRUE

Rozanski v. Wells Fargo

- The Second District held that the proceeds of a loan, secured by a mortgage encumbering property awarded to an ex-wife in her divorce, used to pay off the ex-husband's prior mortgage on the property, entitles the ex-wife's mortgagee only to an the imposition of an equitable lien against the property by virtue of subrogation, where it is later found that the ex-wife's judgment awarding her the property in the divorce was procured by fraud. There is, however, no right to foreclose that equitable lien where the ex-husband never defaulted under his prior mortgage..

- *Rozanski v. Wells Fargo,* 43 Fla. L. Weekly D1417a (Fla. 2d DCA 2018).

Dischargeability in Bankruptcy

19. T or F

Debts indicated in a Ch. 13 Plan to be paid “outside the plan” are included in the debtor’s discharge.

FALSE

Dukes v. Suncoast Credit Union

- The 11th Circuit held that for a debt to be "provided for" under a plan, the plan must make a provision for or stipulate to the debt.
- Debts that are indicated to be paid "outside the plan" cannot be discharged.
- In addition, a discharge of a secured creditor's debt is a violation of Sec. 1322(b)(2) U.S.C. if the debtor does not provide value to the secured creditor or if the secured creditor does not consent, and creditors' debts secured by the debtors primary residence are expressly prohibited from being modified except where the creditor accepts the plan, or the plan provides that the creditor will receive full value of its claim and maintain its secured interest on the residence, or the debtor where the debtor surrenders the property.

- *Dukes v. Suncoast Credit Union (In re: Dukes)*, Case No. 16-16513 (11th Cir. 2018).

Certificate of Title

20. T or F

- An owner taking title by certificate of title in a junior lien foreclosure is bound by an assignment of rents clause in the superior mortgage.

FALSE

Green Emerald Homes, LLC v. Residential Credit Opportunities Trust

- The Second District held that an owner who takes title by Certificate of Title in a junior lien foreclosure is not obligated to adhere to the terms of a superior mortgage that includes an assignment of rents clause because the new owner is not a borrower or mortgagor.

- *Green Emerald Homes, LLC v. Residential Credit Opportunities Trust,* 43 Fla. L. Weekly D1444a, (Fla. 2nd DCA 2018)

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Thank You!

for attending

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