1. Please provide an Analytical Overview of the Topic.

This material has two broad topics: life estate and defeasible estates (with two subclasses, determinable and subject to condition subsequent). The material on life estate introduces the topic of trust and makes an important distinction between a legal life estate and an equitable life estate (stating that after 1925, following a major property reform in Great Britain, a life estate can only be created in a trust. p. 204, fn 24. Can you see why?)

In addition, there is in the defeasible estates area, another broad, yet understated topic or question that one should note. That is, what types of conditions (of use) can attach to estates (all types), what language is used to create them, and what types of legal interests do they create? These include five analytical categories that must be assessed in each instance:

1. The “mere wish” condition, such as “to A, please maintain the garden.” A fee simple absolute, and the condition is not one or has no legal effect on the ownership rights or actions of A.

2. The other end of the spectrum is the “absolute restraint on alienation,” such as “to A, and never to sell.” A fee absolute, and the condition is void as an absolute restraint on alienation.

3. Perhaps in between, there is the “covenant,” such as “to A, for residential use.” Here, if A violates the restriction, A does not lose the estate, but is subject to the enforcement of the restraint, either by way of money damages or injunctive relief.

4. Then there are the first of the two defeasible estates, the determinable which the textbook adequately discusses, the result of which is that the estate will or may be terminated or cut short upon the occurrence of the triggering event. In a grant to “A so long as used for school purposes.” if A no longer uses for school purposes, then A automatically loses the estate to the next interested party (subject to the statute of limitations as to the next party’s exercise of their rights to the property).

5. And lastly, there is the second of the two defeasible estates, the subject to condition subsequent which the textbook adequately discusses, the result of which is that the estate may be cut short (at the option of another, the original grantor or successor in title or a designated third party). In a grant to “A, but if the property is not used for school purposes,” if not used for school purposes, then A may lose the estate upon the next interested party’s exercise of their option to take the estate.
2. Some organizing, introductory remarks and areas to focus on.

In addition to the above, there are several subtopics in this reading assignment, all of which are very important, including

1. The life estate, its value and use, p. 189, introduction to the trust
2. The life estate, it creation and rules of interpretation, White v. Brown, p. 190
3. Rationale (4) for rules against direct restraint on alienation (promoting marketability of real property), p. 195
4. Valuation of life estate and remainder (or reversion), p. 196
5. Power to liquidate or alienation (sell) land affected by a life estate and future interest, Baker v. Weedon, p. 197
6. The law of waste, affirmative vs (non)permissive, p. 201
7. Wise use of the life estate, p. 203, note as to insurance, while the life tenant is obligated to maintain insurance, if paid, the proceeds belong to the life estate holder only, p. 203 (do you see why?)
8. Special problems of a legal life estate in personalty (chattel), p. 204
9. Use of an equitable life estate, in a trust, fiduciary duty, trustee’s authority to sell assets in trust, p. 204
10. Seisin, livery of seisin, and charter of feoffment, p. 205
11. Leasehold estates, p. 206
12. Defeasible vs absolute estates, determinable and (automatic) possibility of reverter or executory interest (p. 207, fn 27) and subject to condition subsequent and (optional) right of entry or power of termination or fee simple subject to an executory limitation (p.208, fn 28), p. 206
13. Restrictions on the alienation of possibility of reverter or a right of re-enty (sic), under common law neither could be transferred by will or inter vivos conveyance, but by inheritance, Mahrenholz v County Board of School Trustees, p. 208
14. Modern rules of alienation of possibility of reverter and right of entry, and the statute of limitations application, p. 214
15. Distinguishing defeasible estates from a covenant, p.215
16. Restrictions against absolute restraints on alienation, Mountain Brow Lodge v Toscano, p.215

17. Where ambiguous, favor subject to condition subsequent, and why? p. 217, fn 30 (pass on the greater, less restriction estate)

18. Distinction between a defeasible estate and a future interest, while both seek to curtain alienation, the former is considered “vested” and do not violation the Rule Against Perpetuities, p. 217, fn 31

19. Courts have found that defeasible estates that limit alienation “if it materially affects marketability adversely, by unreasonably limiting the class of persons to whom it may be alienated, then the limitations are invalid. Falls City v. Missouri Pacific Railway Co., p. 220

20. Courts have also struck as invalid unreasonable conditions as capricious. See note 2, p. 221.

21. If the defeasible estate is condemned by the government under eminent domain, the majority view is that the possessory holder of the estate takes the entire condemnation award and the holder of the reversionary interest gets nothing. But see the Restatement of Property, as to the imminence of realization of the event. p. 221. See City of Palm Springs (where the event was found to be imminent) p. 222 and compare Ink v. City of Canton (where the court attempted to value the law with and without the restriction) p. 222.

22. Defeasible life estates tied to marital status were once used but have little value today. It may be used to provide support until one is married, but should not be used as a weapon to punish one for marrying. (Is there really a difference?) p. 224. (and according to the Restatement, does not apply to cohabitation, p. 224; does this work against promoting marriage?)