



COURSE - 3

**GENERAL
+
RESIDENTIAL**

UPDATED-2018



**SUMMARY
NOTES**



**DETAILED
ANSWERS**



**3 MOCK
EXAMS**



**CASE
STUDIES**

OREAPREP.CA

Orea Real Estate Exam Course

Study Notes & Practice Questions

Updated – 2018 Exams

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PART I – STUDY NOTES - GENERAL

1. THE CONTRACT LAW

1.1 Contract

Contract Basics

- A *Contract* is a legally binding agreement between two or more parties who are legally competent, to do something lawful or not to do something, for a consideration or for a promise.
- There must be six (6) elements in a contract - (i) *Capacity*, (ii) *Legal Object*, (iii) *Consideration*, (iv) *Offer and Acceptance*, (v) *Genuine Intention*, and (vi) *Definite & Clear*.
- If some element of the contract is missing, the contract may be *void*, *voidable* or *illegal*.
 - A *Void* contract is that which never existed and cannot be enforced.
 - A *Voidable* contract is that which is valid when signed but gives one of the parties the right to reject. It is enforceable and binding until voided by that party.
 - An *Illegal* contract that which cannot be enforced by law or by courts.

Documents

- The *Statute of Frauds* requires that certain contracts, including those related to real estate trading, must be in writing to be enforceable by law.
- For real estate purposes, the preprinted *Representation Agreements*, *Customer Service Agreements*, *Agreement of Purchase and Sale*, *Agreement to Lease*, their schedules and other related forms are treated as contract documents.
- REBBA 2002 requires all agreements for trading in real estate to be in writing. Copies of agreements must be provided to parties as soon as possible. The exception is *Representation Agreement* where a copy must be provided *immediately* upon signing.
- *Parol Evidence Rule*: According to this rule, a written agreement can only be modified in writing. Alterations, amendments, variations must be written and should not be verbal.

Privity of Contract

- Only parties to a contract are bound by the contract and can enforce the contract terms on each other.
- For example, the *Agreement of Purchase and Sale* is between sellers and buyers, but the brokerage is only a witness.
- If a breach occurs, the seller can only take legal action against the buyer (or vice-versa).
- The brokerage may be subject to a separate legal action for providing misleading information, misrepresentation of facts, failure to fulfill its obligations, etc.

Termination of Contract

- *Mutual Agreement*: When parties agree to terminate contract.
- *Performance*: When the contract obligations have been fulfilled (e.g. the sale is closed).
- *Impossibility of Performance*: When it is not possible to complete the contract (e.g. death or damage to the property).
- *Operation of Law*: When a court orders termination or cancellation of a contract.

1.2 Breach of Contract

Breach

- *Breach of Contract* occurs when one party fails to fulfill obligations under the contract.
- The party breaching the contract is the *Offending Party* (breaching party) and the party which suffers loss is the *Injured Party*.
- The *Injured Party* may approach a court for taking legal action against the *Offending Party*.
- *Tort Liability*: This refers to liability for breach of a duty *other than* breach of contract. For real estate purposes, this liability typically arises when a registrant neglects his/her *Duty of Care*.

Remedies for Breach

- *Rescission*: Revoking or cancelling the contract or setting it aside.
- *Damages*: Financial compensation for losses suffered by the injured party. Just breach of contract is not adequate to claim damages and the injured party must prove the actual financial loss.
- *Quantum Meruit*: Reasonable amount for partial work performed. The amount is determined by courts.
- *Specific Performance*: This remedy is a *Discretion of Courts*, and *not an absolute right* of the injured party. In certain cases, a court may order that the breaching party must do what was promised in the contract. This remedy is used only when *Damages* is not an adequate remedy.
- *Injunction*: Refers to stopping the breaching party from continuing to breach. This remedy is used when the contract was to *refrain from doing something*.

1.3 Elements of a Contract

Capacity

- Most individuals, partnerships and corporations have the legal capacity to enter into contracts. Certain individuals may have limited capacity to sign a contract.
- *Mental Incompetence*: Contracts with mentally incapacitated persons are considered void.
- *Intoxicated Persons*: A person who does not understand the agreement terms because of excessive use of alcohol or drugs. Two conditions must be satisfied –
 - the two parties must know each other, and
 - the individual was so intoxicated that he/she did not understand what he/she is signing.
- *Illiterate*: A person who is unable to read or write.
- *Minors*: Contracts with minors (less than 18 years of age) are *Generally Voidable, Sometimes Void and Never Binding*.
 - The contract cannot be enforced on the minor, but the minor can enforce it on the other party.
 - The contract can be voided by the minor, not by the other party. The contract remains valid if not voided by the minor.
 - If the minor avoids the contract for a reasonable time after attaining the age of majority, the right to void by the minor is lost.

- *Exception*: If an adult is a co-signer, or if it can be proven that the minor received independent legal advice before signing, then the contract cannot be voided even by the minor.

Legal Object

- If object of the contract is illegal, the contract is *Void & Unenforceable*.
- Examples are - contracts for criminal activity, price fixing, bid rigging, perverting justice, tax evasion, contrary to public policy, commission of criminal offences/civil wrong, etc.

Consideration

- Each party receives something to make the contract binding.
- Consideration may be some *value*, an *act in return of an act* or a *promise for a promise*.
- *Value*: When either party receives some amount. In case of a dispute, only existence of value matters. It does not matter whether the amount is adequate or not.
- *Lawful*: The consideration must be lawful. Consideration cannot be stolen money, stolen goods, illegal substances, etc.
- *Past Consideration*: Past consideration is no consideration. It must be *present* or *future*.
- *Seal*: If the contract is signed under *Seal*, it does not need the consideration element. In other words, a *Seal* is considered substitute for the *Consideration* element.

Offer and Acceptance

- Also known as *Mutual Agreement* between parties.
- The *Offer* must be complete and definite in terms, must remain open for a reasonable time for consideration (known as *Irrevocability* of offer) and must be communicated to the *Offeree*.
- *Acceptance* must be unconditional, communicated to the *Offeror*, be made in the required manner and be made within time period specified in the *Offer*.

Genuine Intention

- One of the parties may have been induced by *improper means* to sign the contract.
- Mistake, misrepresentation, undue influence and non-disclosure of material facts may be one of the reasons to prove that genuine intention is missing.

Mistake: Not every mistake makes a contract void.

- *Common Mistake*: It occurs when parties know and accept the intentions of each other but are unaware of some *underlying fundamental fact* regarding the property or the transaction.
- *Mutual Mistake*: It occurs when both parties *misunderstand* each other and then enter into a dispute.
- *Unilateral Mistake*: It occurs when one party knows that the other party is mistaken concerning a fundamental fact but does not make the other party aware of the mistake.

Misrepresentation: A false statement or assessment made by one party to the other party.

- *Innocent Misrepresentation*: A statement that is untrue but is honestly believed. In this case, *Damages* cannot be recovered by injured party.

- *Negligent Misrepresentation*: A statement made by a person in a position of trust. This person knows that the other party is relying on the information provided. If the information is subsequently found to be untrue, and the other person suffers financial loss due to wrong information, the person making the statement may be sued for *Damages*. This typically happens when a registrant neglects his duties and provides information without verifying the facts.
- *Fraudulent Misrepresentation*: A statement made with knowledge of its falsity or reckless disregard of truth. The purpose must be to induce the other party into a contract. The injured party may resist enforcement of the contract and has the right to recover *Damages*.

Undue Influence (Duress): Involves threat or violence, force or pressure so that the other party signs a contract against will. It may also happen due to improper use of person's power or knowledge.

Failure to Disclose: Non-disclosure of material facts or defects may make a contract void.

- A *Patent Defect* is that which is readily visible upon reasonable vigilance/inspection.
- A *Latent Defect* is some physical deficiency/defect not readily visible through reasonable vigilance/inspection.
- A *Material Latent Defect* is something that is judged essential for enjoyment of the property, or renders the property dangerous to occupants, or makes it unfit for habitation, or makes it unfit for the purpose for which it is purchased, or concerns local regulations, or does not have required municipal permits.

Definite and Clear

- If essential terms are missing from the contract or if something is unconcluded, the contract does not exist.
- An exception is a contract in which parties agree to decide certain matters by *Arbitration* at a later date.
- Uncertainty and disputes arise when certain things are supposed to be negotiated at a later date.
- Certain contracts include the phrase - '*Time is of essence*'. In these contracts, if important dates are missing (e.g. start date, expiry date, etc.), the contract may become invalid.

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2. REBBA 2002 CODE OF ETHICS

2.1 General Obligations

Dealing with Clients and Customers

- All registrants should treat every person fairly, honestly and with integrity.
- Registrants should use reasonable skills and judgment to provide *Conscientious and Competent Service* to both *Clients* and *Customers*.

Best Interests

- Registrants should protect and promote the best interests of their clients.
- Personal interests of the registrant should not interfere with this duty.
- Representation duties under REBBA 2002 are deemed to include the *Fiduciary Duties* under the *Agency Law*.

Opinions

- When asked for opinions and information, the registrants should demonstrate reasonable competence.
- Registrants are not supposed to provide *value opinions* if they do not have necessary knowledge and education which is required for valuation.

Dealing with Third Parties

- Registrants should not interfere with contracts or clients of other registrants.
- Clients of other registrants should also not be induced to breach their contracts.

Services from Other Professionals

- If a registrant does not have knowledge, skills, judgment and competence in a matter, or if the registrant is not authorized by law to provide such services, he/she should not provide expert advice on that matter.
- The registrant should encourage them to seek expert services from other better qualified people.
- Registrants should also not discourage them from obtaining expert advice.

2.2 Advertising and Promotions

Advertisements

- *False Advertising:* Advertisements by registrants must be in compliance with REBBA 2002. No registrant shall make false misleading or deceptive statements in advertisements. Registrants must also not help others in falsifying information in trade related documents. The Registrar of RECO may order cessation (withdrawal) of advertising material, order the registrant to retract the statement and publish a correction notice.
- *Registrant Name:* Registrants must advertise their name as registered with RECO. The name of the employer brokerage and its contact number must be included in all

advertisements. Registrants must also disclose their registration status such as “Salesperson”, “Broker” or “Brokerage”.

Promoting the Property

- *Details of Property, Parties and Agreement:* Advertisements must not identify a property, a party or particulars of any agreement without the written consent of the party involved.
- *Inaccurate Representations:* Registrants shall not knowingly make any inaccurate representations regarding their services.
- *Error, Misrepresentation and Fraud:* Registrants shall take reasonable steps to avoid and prevent error, misrepresentation and fraud or any unethical practice.

2.3 Showings and Offers

Working with Buyers

- *Buyer's Search Criteria:* A buyer should be informed about all available properties that meet buyer's search criteria; without any regard to the commission to the registrant.
- *Seller Property Information Statement (SPIS):* If the seller has given an SPIS to the brokerage, potential buyers must be informed about its existence and it must be made available upon request.
- *Material Facts:* Material fact refers to any information that could change a buying or selling decision. Registrants must take reasonable steps to determine material facts. Any material facts *known* to the registrant must be disclosed.

Offer Presentation

- *In Writing:* All agreements related to conveyance of interest in real estate must be in writing.
- *Written Offers:* All written offers received by the registrant must be presented to the clients as soon as practically possible. This should be done without any bias towards the person making the offer, the contents of the offer or the commission that would be earned.
- *Multiple Offers:* In case of multiple and competing offers the registrant must disclose the existence of all competing offers to every person interested in making an offer. But the details of any competing offer should not be disclosed to any competing buyer.
- *Commission Related Agreement:* If the commission is based on seller's net and different offers affect this amount, the seller must be fully informed about all offers that have different offer price. If there is any further commission negotiation between the brokerage and the seller client, this must be disclosed to buyers from other co-operating brokerages.

Copies, Referrals and Deposit

- Copies of the accepted offers must be delivered to all parties to the agreement *at the earliest practical opportunity*.
- Referral fees from lenders or others received by the registrant as a result of the transaction must be disclosed.
- Deposits and trade related documents for clients and customers must be delivered promptly and according to the agreement.