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MiniCram Real Estate Exam
Real Property Law

Study Notes & Practice Questions

UPDATED – 2019 Exams

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INTRODUCTION

Dear Reader,

Congratulations on purchasing our **MiniCram** for OREA Real Estate Exam preparation. The purpose of this book is to provide you with last minute review of important theory terms and concepts for the exam.

This booklet has been written so that you can focus on key areas of study as well as prepare to overcome most common mistakes the students make on the actual test day.

How to Use This **MiniCram**

You do not have enough time to waste. This **MiniCram** booklet is designed in such a way that your review for the exam is fast paced. It is suggested that you go through each topic one by one. It is assumed that you have already covered the topics in detail in either the actual class or by self-study.

We Want to Hear from You

This book is written by a practicing Real Estate Broker who is also a trained adult trainer. If you have a feedback for the author, need more information or have general comments, please send an email to minicram@outlook.com.

We hope you enjoy your review. Good luck for the exam!

REAL PROPERTY LAW – EXAM FORMAT

This 3-hour exam consists of a total of 50 Multiple Choice questions from both books. Minimum 75% marks are required to pass the exam. For your reference, a blank or completed *Agreement of Purchase and Sale (Offer)* form may be provided in the exam. The breakup of marks is as follows:

First 12 Questions	1 Mark Each	12 Marks
Next 26 Questions	2 Marks Each	52 Marks
Last 12 Questions	3 Marks Each	36 Marks
Total Questions – 50		100 Marks

In case of paper exam, the exam booklet is separate from the answer sheet, which is a machine-readable *Scantron®* sheet. The answer sheet is to be filled up with pencil only. On an iPad exam, you may navigate the pages using the 'Next' and 'Previous' buttons. For more information on the exam, visit the official website at www.orea.com.

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PART I – SUMMARY NOTES

1. PROPERTY OWNERSHIP

1.2 Historic Perspective

Feudal System of Tenure

- This historic *System of Tenure* refers to *holding* of land without owning it.
- The King appointed 1500 *Tenants-in-Chief (Principal Tenants)*.
- They were *Lords of Land* but did not own the land and were *Tenants* to the King.
- They would sublet the land and pay the King for goods and services.
- This system was later replaced with the *concept of Estates*.
- *Estate*: The degree, quantity, nature and extent of interest or rights that a person has in real property.
- *Alienability*: The power to transfer tenure to another person during lifetime or after death.
- *Common Law*: The part of law that is based on centuries old unwritten common customs and principles of society. This part of law is not statutory in nature.
- *Heir*: The person who inherits the property rights after the death of the owner.

1.2 Estates

Fee Simple (Freehold) Estate

- The highest form of ownership which is generally considered *Absolute Right* in real property.
- It provides the most rights with least limitations and is for *indeterminate* period of time.
- The *Bundle of Rights* in Fee Simple ownership may still be subject to restrictions.
- *Fee Simple with Conditions*: Automatically terminates under certain conditions. The condition may be contrary to public policy, and hence, this type of estate is rarely found these days.
- *Fee Tail*: Restricted the inheritability of land to a limited class of heirs (eldest males). No longer valid.

Leasehold Estate

- An interest in land for a definite period of time.
- This estate cannot be longer than the estate from which it was granted.
- Leasehold estate is smaller than the estate from where it flows.

Estate to Uses

- Obtained by way of deed, will or possession.
- It flows from *Trust Ownership* in which the title is in the name of a registered owner but held by a trustee.

Life Estate

- A grantor in a *Deed* or *Will* may grant an interest in the lands to someone for a lifetime.
- Life Estate ends upon the death of the *Life Estate holder (Life Tenant)*.
- *Reversion*: If estate goes back to the *grantor* after end of Life Estate.
- *Remainder*: If the estate goes to a third party after end of Life Estate.

Future Estate

- The concept of *Future Estates* is related to *Life Estates*.
- If a third party (son/daughter) gets ownership by Will of the deceased but the Will also grants right to a surviving spouse until his/her death, it is a *Future Estate* for the third party.
- Both *Life Estate* and *Future Estate (Remainder)* have interest in property from the beginning of Life Estate.
- The person named in *Remainder* cannot use the property until the Life Estate exists.
- The person holding *Life Estate* cannot sell the estate nor can write a Will, but must meet obligations (payment of taxes, maintenance, etc.) during the tenure.
- If both *Life Estate* and *Remainder* agree, the property can be dealt with in any manner.
- *Life Estate* and *Future Estate* together make up the entire *Fee Simple Estate*.

1.2 Real Estate vs. Real Property

The Difference

- *Real Estate*: *Tangible* aspects of property (physical elements -land and improvements).
- *Real Property*: Both *Tangible* (physical elements - land and improvements) and *Intangible* (rights that accrue from ownership).
- *Personal Property*: Movable assets of the owner such as equipment, furniture, furnishings, etc.
- *Chattels* - A movable personal property *usually* not included in the sale price, unless specifically included in the agreement.
- *Fixtures* - Non-movable personal property *usually* included in the sale price, unless specifically excluded in the agreement.

1.3 Bundle of Rights

Rights in Fee Simple

- *Bundle of Rights* in *Fee Simple* ownership include rights to sell, lease, use, give away, enter and to refrain from using rights.
- These rights are subject to restrictions by governments or private bodies.
- *Fractional Interest*: Single right within the Bundle of Rights.
- *Air Rights*: These are *Fractional Interests* given to use the space above physical surface.
- *Surface Rights*: Ground level rights associated with using or altering the surface of the property and include removal of sand, stone, gravel, etc. *Not a Fractional Interest*.
- *Mineral Rights*: These rights are related to exploring, drilling, extracting or removing minerals (such as gas, oil, gold, silver, etc.) below the surface of land. Mineral rights are governed by the *Ministry of Natural Resources*.

Riparian Rights

- *Riparian Rights* are natural rights of owners of shoreline properties.
- *Body of Water* rights include access to water, exclusive access, right to increase in shoreline and the right to navigate.
- *Flow of Water* rights include the right to use water, right to unpolluted water and enforce water flow.

1.4 Limitations on Bundle of Rights

From Government Bodies

- Law enforcement officers may enter a property if some crime is committed.
- *Police Power*: The right of different levels of government to *regulate* division, development and use of property by *Planning Act, Zoning By-laws, Building Codes, Sanitary Regulations*, etc.
- *Expropriation*: Right of the government to take private property for public benefit by paying fair or *just* compensation.
- *Taxation*: Right of all levels of government to generate revenue through the taxation.
- *Escheat*: Right to have ownership returned to state if the owner dies without a will and no heir can be found.

From Private Sources

- Private restrictions coming from subdivisions may limit the development and use of property.
- *Deed Restrictions* typically take priority over *Zoning By-laws* and may not permit use of a property for certain purposes.
- Deed restrictions are negative in nature and run with land.
- *Restrictive Covenants* must be reasonable and not contrary to public interest.
- Easements, rights of way, etc. may also impose restrictions on intended use.

1.5 Concurrent Interest

Right of Survivorship:

- This right exists only in *Joint Tenancy* and not in *Tenancy in Common*.
- Upon death of one joint tenant, the surviving tenants acquire the whole interest in the property.
- The transfer to surviving Joint Tenant(s) is automatic and the property does not become *Estate of the Deceased*.
- *Exception to Right of Survivorship*: If the joint-tenancy of a matrimonial home is with someone other than spouse, the *Joint Tenancy* ends when the owner spouse dies, and his interest becomes *Estate of the Deceased*.

Joint Tenancy

- *Joint Tenancy* is ownership of land by two or more persons and is specifically created as such with clear intention.
- It is based on *Four Unities* and if any of them is missing the Joint-Tenancy automatically converts to Tenancy-in-Common.
- *Possession*: Each owner has *Undivided Possession* of property without any *Exclusive* rights to anyone.
- *Interest*: Each owner has *Equal Interest* in the property that is identical in nature, extent and duration.
- *Time*: Each owner must take ownership at the *Same Time*.
- *Title*: Ownership must be obtained by the *Same Document* (instrument, deed or will).

Termination of Joint-Tenancy

- When Joint Tenancy is terminated, it converts into Tenancy-in-Common.
- *Voluntarily*: When joint-tenants agree to sever their relationship.
- *Severance*: When a joint-tenant sells his/her interest to a third party without the consent of others. Other joint-tenants remain as such with each other but become *Tenants-in-Common* with the one who severed.
- *Partition*: By court order. Splitting the land or dividing sale proceeds if the land cannot be divided.

Tenancy-in-Common

- *Tenancy-in-Common* is ownership of land by two or more persons at the same time.
- These tenants may hold different interests and may acquire them at different times or different ways.
- *Tenancy-in-Common* has only one *Unity of Possession* and each tenant has same rights over the property.
- There is no *Right of Survivorship* and upon death of a tenant, the interest becomes *Estate of the Deceased*.
- Any Tenant-in-Common can deal with his/her interest in any manner e.g. sell, lease, write a will, etc.
- Tenancy-in-Common may be dissolved either by mutual agreement or by a court order.

1.6 Family Law Act

Purpose

- The *Family Law Act* recognizes equal partnership marriage relationship.
- It provides for orderly and equitable settlement of spouse's affairs when a marriage breaks down or when a spouse dies.
- The Act includes defines *Matrimonial Home*, *Net Family Property* and methods for equalization of payments.
- *Dower Rights*: The *Family Law Act* finished this old system where the family assets were generally not owned equally.

Matrimonial Home

- A *Matrimonial Home* is a deemed *Primary Residence* of a family.
- A property may be owned by only one spouse and it can still be a matrimonial home.
- The spouses may also designate any property by *Joint Registration*.
- This releases other properties from the protection of Act regarding possession and consent of non-owner spouse is not necessary while selling or encumbering those properties.
- Such property is still a part of *Net Family Property* calculations for equalization.
- Typically, the seller of real property makes one of the *Nine Statements* in deed concerning the spousal relationship.
- Both spouses have equal right to possession of a *Matrimonial Home*.
- A *Domestic Contract* does not affect *Possessory Rights* of non-owner spouse.
- Designation as *Matrimonial Home* is effective in both *Joint-Tenancy* and *Tenancy-in-Common*.

- The registered owner spouse must get informed written consent of non-owner spouse when selling or encumbering the *Matrimonial Home*.
- Non-owner spouse has right to be notified when a third party affects possessory right.

For example, if a mortgagee wants to take possession and sell the property to recover loan, the mortgagee must notify the non-owner spouse.

Net Family Property

- Any property purchased during marriage is equally divided.
- For properties owned by spouses before marriage, only the net increase in value since marriage is equally divided.
- Each spouse calculates the value of his/her property after deducting the net value that he/she brought into marriage, excluding the Matrimonial Home.
- The spouse with greater net value pays the other to equalize.
- *Exclusions:* Property excluded in *Domestic Contract*, amounts received from courts and insurance claims, inherited or gifted properties, etc.

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2. LEASEHOLD AND NON-OWNERSHIP INTERESTS

2.1 Leasehold Interests

Residential vs. Commercial Leasing

- *Residential Tenancies Act (RTA)* provides a wide range of rights to tenants that are usually not found in *Commercial Tenancies Act*.
- A commercial tenant primarily uses the property for running a business.
- *Hybrid Building (Mixed-Use Building)*: Refers to a structure which is commercial on main floor and apartments upstairs. It is considered commercial for lower floor but residential for upper floor.
- *Home Office*: A small home office within a residence would be treated as a residential property.

Lease vs. Agreement to Lease

- *Lease* is a contract between a landlord and a tenant where the tenant's interest is lesser than that of the landlord.
- The landlord transfers *exclusive possession* of the premises to the tenant for a period called *Term* and for a valuable consideration called *Rent*.
- The landlord must provide *Quiet Enjoyment* and there should not be *Derogation from Grant*.
- The land lord reserves an interest in land called *Reversion*.
- The tenant *may* register his leasehold interest in Land Registry Office.
- *Agreement to Lease*: Referred to as *Unsettled form of Lease* and leads to final *Lease*. It sets out terms of lease between landlord and tenant. Salespersons should attach a blank *Lease* to the *Agreement of Lease* to avoid disputes.

Agreements in Writing

- A lease of less than 3 years need not be in writing but that may not be a good practice for both the landlord and the tenant.
- In case of a dispute, courts consider the *Doctrine of Part Performance* which applies to contracts of land that are not in writing. When one party has actually performed part of the contract (occupied the premises and paid rent), and a clear evidence exists, a contract is deemed to exist.
- As per REBBA 2002, all contracts related to land must be in writing to be effective.
- Lease agreements can also be prepared under *Short Form of Leases Act* which provides for standard short wording.

2.2 Assignment of Lease and Subletting

Privity of Contract

- *Privity*: The difference between *Assignment* and *Subletting* is based on *Privity* which means that only parties to a contract can enforce it on each other.
- Typically, the tenant in commercial lease is not permitted to assign or sublet without the written consent of the landlord, which the landlord cannot withhold unreasonably.
- *Assignment*: If the tenant assigns the lease to a third party (*Assignee*), then that third party establishes *Privity* with the landlord, but the original tenant may not be released by the landlord.

- *Subletting*: If the tenant only conveys a portion of its leasehold interest to a third party (*Subtenant*), the tenant remains in Privity with landlord.
- In subletting, there is generally no Privity of contract between the landlord and the sub-tenant.
- Most commercial leases require the sub-tenant to covenant directly with the landlord.

Preparing Lease Provisions

- Many commercial leases allow the landlord to terminate the lease when faced with assignment or subletting situation.
- The landlord should require consent for assignment or subletting.
- The assignee or subtenant must agree to covenant directly with the landlord.
- The former tenant should not be released unless the landlord elects to do so.
- Landlords often include a provision that tenant does not get any benefit from assignment or subletting.
- The tenant also cannot receive rents more than what he pays to landlord.

2.3 Commercial Leasing Basics

Continuous Use and Dark Space

- A *Continuous Use* clause requires that the tenant continuously occupies the space, maintains substantial stock and fully staffs the business.
- *Dark Space* refers to a situation when the tenant leases a large space in a commercial complex, keeps on paying the rent but physically remains absent.
- This puts the landlord in a difficult situation if the tenant is an anchor tenant as other tenants would not be attracted to the complex.

Fixtures vs. Trade Fixtures

- Most commercial leases provide that any *fixture* attached to the property becomes the property of the landlord at the time of installation.
- Unless a lease specifies otherwise, a tenant who installs a *trade fixture* to the property can remove it at the end of the lease term provided that all rents have been paid in full.
- The tenant may also be required to bring the property back to its original condition and repair any damages.

Difference Between Guarantor and Indemnifier

- The basic difference is based on the scope of liability.
- *Guarantor*: A guarantor has limited liability and if the tenant files for bankruptcy, the guarantor is also released of his obligations.
- *Indemnifier*: Indemnifier is a covenantor in the same sense as the tenant and is liable even if the tenant files for bankruptcy.
- *Co-tenant*: The proposed guarantor becomes co-tenant and is jointly responsible for all obligations.

Rent Provisions

- *Increases in Rent*: The *Commercial Tenancies Act* does not regulate rent increases.

- *Interest on Deposit*: The landlord is not required to pay interest on security deposits, unless otherwise agreed in lease.
- *Change the Locks*: If rent is not paid, the landlord may change the locks of the unit on the 16th day after the due date.
- The landlord should not forcibly enter the premises and should allow the tenant to remove their property.
- *Selling Tenant's Property*: The landlord may, without giving any notice to the tenant, seize and dispose of tenant's property.
- *Notice*: The landlord must notify the tenant of *distress* and the amount required to remedy before selling the assets.
- *Appraisal*: The landlord *must* also hold the property for minimum 5 days and get at least two appraisals before selling.
- Any surplus amount from the sale should be given back to the tenant.
- Subtenant's property cannot be seized or sold by the landlord.

Landlord and Tenant Rights

- Tenants have the right to *Quiet Enjoyment* of leased property and are protected from any interference or threats by the landlord.
- A breach of contract occurs if the landlord deprives the tenant of use of premises, provided the tenant is not in default.
- Landlords and tenants have the right to apply to *Small Claims Court* (less than \$25,000) or to *Superior Court of Justice* to seek damages in case of non-fulfillment of obligations under the lease.
- Landlords must notify the tenant in writing of specific breaches of the lease and allow a reasonable time to comply.
- The landlord may have the right to terminate lease if the tenant fails to fulfill obligations.
- Tenants must pay the rent on due date and *cannot hold back rent* when the landlord fails to fulfill obligations.

Termination of Lease

- *Month-to-Month*: Either the landlord or the tenant can terminate the tenancy with at least one-month notice in writing.
- *Fixed Term Lease*: Once the term of the lease ends, the tenant must vacate the premises.
- *Overholding*: An overholding tenant may have to pay *two months of rent for every month* they occupy the premises after the expiry of the lease.

2.4 Miscellaneous Non-Ownership Interests

Easements

- An *Easement* is a right enjoyed by one land owner over the land of another.
- An easement or right-of-way may be granted for a limited time or forever.
- *Dominant Tenement* is the land owner who gets benefit and *Servient Tenement* is the land owner who suffers the burden.
- Separate ownership of land must exist to create an easement and there must be a clear objective.
- Once created, the easement binds to land and to subsequent owners if the property is sold.
- Easements must be supported by a survey and fully described when selling the property.

- *Easement by Express Grant* refers to creation by mutual consent when one land owner agrees to grant this privilege to another owner.
- *Easement by Implication (Necessity)* refers to creation of easement when it becomes absolute necessity. This *Implied Grant* may be for mutual support such as shared docks which are necessary for reasonable use of a shoreline property.
- *Easement by Prescription (Squatter's Rights)* is created when someone had used a right-of-way for a long period of time (*Adverse Possession*).
- *Easement by Statute* is for groups to provide public utility services. This does not require a dominant tenement.
- An easement can be terminated by three methods:
 - (i) Release by dominant tenement,
 - (ii) When the purpose is over, and
 - (iii) Merger of properties.

Other Non-Ownership Interests

- *Appurtenance*: Something outside the property but belongs to it and adds to its greater interest, utilization or value.
- *Encroachment*: Unauthorized intrusion onto the lands of another owner. It is sometimes granted by *Encroachment Agreement* that may be registered against the title of both properties. This agreement may provide that the encroachment must be removed if something happens in future (damage/destruction/fire, etc.).
- *Encumbrance*: An outstanding claim or lien against a property. A *lien* is a right of encumbrance.
- *Mutual/Shared Drive*: A strip of shared land which is an easement on each property and is used as a joint driveway. It is a common cause of confusion and/or litigation between neighbours.
- *Access Road*: These are private roads leading to cottage or rural properties. Survey is essential to clearly identify such rights-of-way.
- *Profit a Prendre*: A right to enter a property based on a written agreement and take something from it such as crops, minerals, timber, sand, gravel, etc.
- *Mineral Rights*: Rights associated with extracting minerals located below the surface of land. Activities include exploration, drilling or extraction of oil, silver, gold and other precious metals. Mineral rights are granted by *Ministry of Natural Resources*.

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3. LAND DESCRIPTION AND REGISTRATION

3.1 Legal Terminology

Grant

- *Grant* is a deed of conveyance indicating a transfer of interest or estate in real property.
- The equivalent of *Grant* or *Deed* under *Land Titles Act* is called *Transfer* and is effective without being made under *Seal*.
- *Voluntary Grant* is between living persons when a property interests are transferred by seller to a buyer.
- *Expropriation* is another example, but it is a *Compulsory Grant*.
- A Grant has two results – (i) If the transfer is of whole interest, the interest remains unaltered but is in the hands of another person, and (ii) If the transfer is of partial interest, the interest is divided into two parts - one remains with the *Grantor* and the other goes to the *Grantee*.

Quit Claim Deed

- *Quit Claim Deed* is a legal document wherein a person releases all interests in property to another party.
- Release of the *Equity of Redemption* by a property owner to the *Mortgagee* involves this process.
- It is fast and cost-effective process in case there is no way the *Mortgagor* can keep the property.
- If the mortgagee accepts the *Quit Claim Deed* no legal action can then be taken against the mortgagor.
- Upon acceptance, the mortgagee accepts all rights on the property but also accepts any problems associated with it.

Agreement of Sale

- When an *Agreement of Sale* is used, the seller keeps the title of the property while providing possession to the buyer.
- Property title is not transferred to buyer until some future date or until some conditions are met.
- Such conditions may include – (i) Full payment by buyer, or (ii) Sufficient payments are made, or (ii) The buyer has made satisfactory down payment for Seller Take Back (STB) mortgage.
- The buyer has a contractual interest in property until the condition is fulfilled.
- If the buyer defaults in payments, he may lose all interest in property.

3.2 Land Description

Surveys

- The primary and reliable sources of obtaining land description are the *Deed* or the *Survey*.
- The four types of surveys commonly found are: *Reference Plan (R-Plan)*, *Plan of Survey*, *Plan of Sub-division* and *Surveyor's Real Property Report*.
- An example of land description using R-Plan is:
Part 1 of Lot 2, Concession III, Township of Anytown, and Deposited in Land Registry Office of Anycounty.

- It is written as *Plan 88R-1075*. The letter 'R' is called *Pre-fix* to R-Plan number and indicates a Reference Plan.
- A *Plan of Sub-division* is usually approved by Upper Tier Municipality (Region) and registered in Land Registry Office.
- It is written as *Registered Plan 88M-165*. The letter 'M' is called *Pre-fix* to plan number and indicates a subdivision.

Land Measurement

- Historically, land was measured using *Chains and Links* method and was divided into *Counties, Townships, Concessions* and *Lots*.
- One chain had 100 links and was 66 feet in length with 80 chains making up 1 mile.
- Concessions had a frontage of 100 Chains and the *Road Allowance* between concessions was 1 Chain (66 Feet).
- Any parcel of land could be completely described legally like *Lot 3, Concession II, Anytown, Anycounty*.

Township Systems

- *Single Front Township*: Land was divided into lots of 200 acres with each lot having dimensions of 20 chains by 100 chains.
- *Double Front Township*: Land was divided into lots of 200 acres with each lot having dimensions of 30 chains by 66.67 chains. Each lot was patented into two half lots containing 100 acres each.
- *Sectional Township*: A section consisted of 1000 acres of land divided into 10 lots of 100 acres each.

3.3 Land Registration Systems

Land Registry Act (Old)

- *No Guarantee*: In this system, the *Land Registrar* did not take any responsibility for verification or accuracy of title information.
- Abstract books were used for registration and they were divided on township basis with individual properties recorded on *Abstract Pages*.
- These books were indexed on the basis of land description (*Tract Indexing*).
- Since there was no guarantee of accuracy of information, the buyer's lawyer would have to perform a *Title Search* for a minimum of 40 years' period on *Chain of Titles*.

Land Titles Act (New)

- *Guarantee*: This system guarantees that no interest in land other than those given in the register can affect the land.
- The *Parcel Register (Land Titles Register)* is the sole information source of information for purchasers because it contains only existing and valid interests in land.
- This reduces the time taken for title search as only current records have to be searched.
- *Certificate of Title*: This provides accurate and complete reflection of property facts.
- *Land Titles Assurance Fund*: It provides compensation to anyone who suffers loss (or is deprived of ownership) due to errors, document forgery or fraud.
- *Adverse Possession* is not possible under Land Titles Act.

Three Principles of Land Titles Act

- *Mirror Principle*: Title information accurately and completely reflects the current facts and present status of land.
- *Curtain Principle*: The parcel register is the sole source of information for purchasers.
- *Insurance Principle*: If a flaw (defect) appears due to human error, anyone who suffers loss must be compensated.

Land Registration Reform Act

- The purpose of this Act was to reduce the number of standard registration documents to five (5).
- *Form 1: Transfer/Deed of Land*: Used to register a deed under *Registry Act* or *Land Titles Act*. *Land Transfer Tax Affidavit* is a part of this form. It is required so that Land Registrar or the lawyer may collect *Land Transfer Tax*.
- *Form 2: Charge/Mortgage of Land*: Used to register a mortgage lien and provides information on the lender, amount of loan and mortgaged property.
- *Form 3: Discharge of Charge/Mortgage*: This form is executed by the mortgagee and given to the mortgagor verifying that the mortgage loan has been paid off in full. This document needs to be registered in the Land Registry Office. If the mortgagor has paid off the loan but failed to obtain a discharge, a discharge may be obtained from court by providing evidence or by paying off any remaining monies.
- *Form 4: Document General*: This form is used for registration of other interests such as cautions, notice of lien, discharge of power, power of attorney, judgment, notice of survivorship, etc.
- *Form 5: Schedule*: Standard attachment to other forms.

Standard Charge Terms

- Under the Land Registration Reform Act, *Standard Charge Terms* refer to terms and conditions of mortgage loan.
- These are registered in Land Registry Office, given a number and circulated to all Land Registry offices.
- These terms vary from lender to lender and may be amended by filing a new set of terms.

Implied Covenants

- These covenants apply when *Standard Charge Terms* are not included in the registration document.
- When no set of terms and conditions are registered, these Implied Covenants provide for mortgage remedies and procedures regarding default, etc.

3.4 Electronic Land Registration

The POLARIS System

- *POLARIS* system is developed and operated by *Teranet* on the basis of *Title Index* and *Property Mapping*.
- *Teraview* is the *gateway* software package used to perform e-registration.
- Electronic registration activities include title searching, creating and submitting title documents for registration; viewing/printing documents and accessing parcel registers and maps.

- *Personal Security Package (PSP)*: Law firms are usually issued this package to access POLARIS. This includes a removable storage disk with encryption capabilities.

Property Identification

- A unique 9-digit *Property Identification Number (PIN)* is assigned to individual properties.
- PIN can be located using *Block Index Map (Block Number)* and *Property Index Map (Property Number)*.
- *Example: PIN 00114-0051* means Block Number 00114 and Property Number 0051.

3.5 Title Insurance

Policies and Benefits

- Title Insurance provides coverage for loss or liability due to defected or invalid title.
- It addresses various errors that could potentially occur through fraud or simple documentation errors made by solicitors.
- It resolves last minute title problems at the time of closing. For example, a minor encroachment is discovered, and it is likely to cancel the sale.
- Title Insurance may not cover all issues related to the title.
- Title Insurance does not cover personal problems of the property owner.
- Two aspects of coverage are *Duty to Indemnify* (to cover actual loss) and *Duty to Defend* (to cover legal costs).
- Most policies state what risks are covered, what is excluded and what are exceptions.

Typical Coverage

- A document related to the title is not properly signed or defectively registered.
- Some form of forgery or fraud affects the title to the property.
- An inability to access the property is found or someone else owns an interest on the title.
- A violation of municipal zoning by-laws, subdivision development agreement or other agreement relating to development of property.
- Construction liens or any other priority liens are discovered on title.
- Certain restrictive covenants (*Deed Restrictions*) may exist that affect the use of land.

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4. AGENCY LAW AND REBBA 2002

4.1 Agency

Agency and Representation

- An *Agent* works on behalf of another person or party (*Principal*) and is considered an extension of the *Principal*.
- The relationship is different from *Master/Servant* relationship because the master is responsible for the acts of the servant.
- An agency relationship is created when the principal authorizes the agent to work on his/her behalf.
- According to *Agency Law*, it is not necessary to have a written agreement, nor agency has to be intended; it may be created accidentally (*Implied Agency*).
- In real estate transactions, the *Principal* is the seller or buyer and brokerage is the *Agent*.
- REBBA 2002 uses the term *Representation*, indicating that a brokerage (agent) owes *Fiduciary Duties* to a client.
- Salespersons and Brokers are considered employees of the agent (brokerage).

Types of Agency Relationships

- *Single Agency*: When the brokerage represents one party (either the Seller or the Buyer) in a real estate trade.
- *Buyer Agency*: Typically created by *Buyer Representation Agreement*. The brokerage must use professional skills, seek appropriate properties for buyer, find facts about a selected property, keep information of buyer confidential and protect the buyer's best interests.
- *Seller Agency*: Typically created by a *Listing Agreement*. The brokerage must market the property, seek qualified buyers, use professional negotiation skills, keep seller's personal information confidential and protect the seller client's best interests.
- *Sub-Agency*: When an agent authorizes another agent to act on its behalf with the consent of client. This concept extends to co-operating brokerages to work on behalf of the seller. The sub-agent also owes all duties of the agent to the client. Not addressed in REBBA 2002.
- *Dual Agency (Multiple Representation)*: When the same brokerage represents more than one client (both the Seller and the Buyer) for the same trade. Interests of both parties must be protected, and the brokerage must be impartial to both clients.

Multiple Representation is not prohibited but it must be disclosed, and *Informed Written Consent* must be taken. It is potentially a dangerous situation for the brokerage, both legally and ethically.

- *Undisclosed Dual Agency*: This happens when the brokerage works for both parties (seller and buyer) without prior approval from any party.

Consequences - (i) Disciplinary action by Board or RECO, (ii) Action for *damages* by either party, (iii) Forfeiture of commission, (iv) Suspension or cancellation of registration, and (v) Risk for employing brokerage.

- *Unintended/Implied Dual Agency*: When no formal documentation exists, and the salesperson unwittingly represents two parties. This mostly happens in open houses.

4.2 Creation of Agency Relationship

Methods

- *Express Agreement*: Created by definite understanding between parties and may be written or verbal. REBBA 2002 requires a written agreement.
- *Ratification*: When the principal accepts the benefit of a previous unauthorized act of the agent. Certain conditions must exist before this applies. The principal must have been in existence and capable of signing a legal contract and he must be aware of the acts of the agent.
- *Estoppel or Conduct*: When a client's *conduct* gives an impression to a third party that another person is acting on his behalf. The client is then stopped from denying the fact that the person is his agent.
- *Operation of Law (By Necessity)*: In emergency situations, when an agent has the authority to bind the principal. Very unlikely in real estate.
- *By Implied Authority*: Agency is considered to be *Implied* when the seller has given express authority to the agent to work for the principal and clear evidence exists, even though no written agreement is signed.

Agency Disclosures

- The existence and nature of relationship with a client or customer must be disclosed.
- The disclosure requirements are set out in *REBBA 2002 Code of Ethics* as well as *CREA Code of Ethics*.
- Salespersons must provide information about service alternatives and give the option to consumers whether they want to be *Clients* or *Customers*.
- In most cases, the disclosure must be made at the *earliest practical opportunity but before an offer is presented*.
- Under *REBBA 2002 Code of Ethics*, the brokerage must also disclose any *Finders Fees* or *Referral Fees* to the clients.

4.2 Agency Duties

Fiduciary Duties of the Agent

- *Fiduciary Duties* are based on the premises of *trust, confidence and best interests*.
- These duties apply even if the agent is working *gratuitously* (without compensation).
- *Accounting*: Agent must safeguard all monies, properties and documents entrusted by the client.
- *Competence*: Agent must exercise a degree of competence (knowledge, skills & judgment) when providing duties. The agent must use superior and professional skills than an average person.

- *Confidentiality*: Personal or motivational information about the client must not be disclosed by the agent. This duty does not apply to disclosure of material facts about the property.
- *Obedience*: *Lawful* instructions of the principal must be obeyed, even if the agent does not agree.
- *Loyalty*: The best interests of the principal must be protected, promoted and kept above all, *except law*.
- *Full Disclosure*: Information regarding agency relationships with parties, material facts about the property and any information relevant to the transaction must be disclosed to the principal.

Indemnity

- *Indemnity* is assurance of one party to financially compensate the other party in case some losses are incurred. It is the right of one party to claim damages from the other party.
- The principal must indemnify the agent against losses, liabilities and expenses incurred in carrying out the duties. If the agent acts unlawfully or breaches duty, indemnification duty is not owed.
- The agent is liable to indemnify the principal for any acts undertaken personally or delegated to agent's employees.
- *Doctrine of Vicarious Responsibility* states that if a principal is held liable by a third party for acts carried out by the agent, the principal may in turn claim indemnity from the agent.
- This typically happens when the agent fails to carry out its duties diligently, misrepresents or does not disclose the material facts.

Remuneration

- *Remuneration* duty refers to payment for services as agreed between parties.
- Remuneration may be claimed even if there is no agreement; the agent acts on behalf of the client and fulfills a duty which is later *ratified*.
- In real estate, it is paid by clients as *commission*.

Delegation of Duties

- *Express Authority*: When the seller agrees to let the brokerage co-operate with other brokerages to sell the property. Even if the co-operating brokerage acts as a sub-agent, the duties are delegated.
- *Implied Consent*: When it is publicly known that delegation is necessary and is a standard practice.
- *Statutory*: Under REBBA 2002, brokerages delegate their duties to their salespersons and brokers.
- *Not being able to perform duties personally due to lack of competence is not a reason to delegate duties*.

4.4 Agency Termination

Methods

- *Mutual Consent*: When the principal and the agent mutually agree.
- *Revocation*: Generally, the principal may revoke (terminate) agency at any time. In real estate, the principal has certain obligations until a specific date. But if terms of agency are satisfied, the principal may be liable for damages if the agency contract is breached. Similarly, the agent may terminate the agency but may be liable for damages for breach of agency agreement.
- *Expiry*: After expiry, the agreement may be replaced with a new agreement. If completed, it may be continued for purposes of commission. *Holdover provisions* may also apply.
- *Completion/Performance*: When the purpose of the agency agreement is achieved.
- *Impossibility of Performance*: When it is not possible to perform the agreement such as a property for sale is damaged by fire.
- *Death, Mental Incapacity or Bankruptcy*: Some agreements may provide that the agreement is binding on the *Estate of the Deceased (principal)*.
- *Registration Cancellation*: When the registration of the brokerage is terminated by RECO.

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5. THE CONTRACT LAW

5.1 Essentials of a Contract

Contract Basics

- A *Contract* is a legally binding agreement between two or more parties who are legally competent, to do some *lawful* act or not to do something, for a *consideration* or for a *promise*.
- Six essential elements of a contract are - (i) *Capacity*, (ii) *Lawful Object*, (iii) *Consideration*, (iv) *Offer and Acceptance*, (v) *Genuine Intention*, and (vi) *Definite & Clear*.
- If some element of 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, valid & binding until voided by offended party.
- An *Illegal* contract that which cannot be enforced by law or courts.

Contract Documents

- The *Statute of Frauds* requires that certain contracts including real estate contracts 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 related forms are treated as contract documents.
- REBBA 2002 requires all agreements for trading in real estate to be in writing and copies must be provided as soon as possible. The exception is *Representation Agreements* where a copy must be provided immediately upon signing.
- *Parol Evidence Rule*: Written agreement can only be modified in writing. Alterations, amendments, variations must be written and should not be verbal.
- *Privity*: Only parties to a contract are bound by the contract and can enforce it on each other. Example: The *Agreement of Purchase and Sale* is between sellers and buyers, but the brokerage is only 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, misrepresenting, failure to fulfill obligations, etc.

Termination of Contract

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

5.2 Breach of Contract

Breach

- *Breach of Contract* occurs when one party to a contract fails to fulfill obligations under the contract terms.
- The party breaching the contract is *offending party* and the party who suffers loss is the *injured party*.

- *Tort Liability* refers to liability for breach of duty *other than* breach of contract.

Remedies

- *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. The injured party must also make an attempt to mitigate damages in order to reduce the loss.
- *Quantum Meruit*: Reasonable amount for partial work performed. The amount is determined by courts.
- *Specific Performance*: It 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 agreed in the contract. This remedy is used only when *Damages* is not an adequate remedy.
- *Injunction*: Stopping the breaching party from continuing to breach. This remedy is used when the contract was to refrain from doing something.

5.3 Elements of a Contract

Capacity

- Most individuals, partnerships and corporations have the legal capacity to enter into contracts. Certain individuals may have *limited capacity* for entering into a contract.
- *Mental Incompetence*: Contracts with mentally handicapped (incapacitated) persons are Void.
- *Intoxicated Persons*: A person who does not understand the agreement terms because of excessive use of alcohol or drugs. Two conditions - (i) the two parties must know each other, and (ii) 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*. These contracts cannot be enforced. The contract can only be voided by minor. If the minor avoids the contract for a reasonable time after age of majority, the right to void by minor is lost. If an adult is a *co-signer* or if it can be proved that the minor received independent legal advice before signing, then the contract cannot be voided even by minor.

Lawful 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. It may be some *value*, an *act in return of an act* or a *promise for a promise*.
- *Value*: When either party receives some amount. Only existence of value matters and not the adequacy.
- *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 a substitute for Consideration.

Offer and Acceptance

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

Genuine Intention: One of the parties may have been induced by *improper means* to sign the contract.

Mistake: Not every mistake makes a contract void.

- *Common Mistake*: Both 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*: Both parties misunderstand each other and then enter into a dispute.
- *Unilateral Mistake*: When one party knows that the other 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 another.

- *Innocent Misrepresentation*: Statement made that is untrue but is honestly believed. Damages cannot be recovered by injured party.
- *Negligent Misrepresentation*: Statement made by someone in a position of trust (registrant) that another person (client) relies on and is later found to be untrue. If the party subsequently suffers financial loss due to wrong information the registrant can be sued for damages.
- *Fraudulent Misrepresentation*: Statement made with knowledge of its falsity or reckless disregard of the truth. The purpose must be to induce the other party into contract. The injured party may resist enforcement of 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. Duress may also occur due to improper use of person's power or knowledge.

Failure to Disclose: Non-disclosure of material facts may make the contract void.

- A *Latent Defect* is some physical deficiency/defect not readily observable through reasonable vigilance.
- 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 absent or something is unconcluded, the contract does not exist.
- The terms must not be inconclusive with an exception that certain things may be agreed upon later by *Arbitration*.

- Uncertainty and disputes arise in a contract when certain things are supposed to be negotiated at a later date.
- Many contracts include the phrase- '*Time is of essence*'.
- In general, if important dates are missing (start date, expiry date, etc.) the contract may become invalid.

5.4 Miscellaneous Topics

Termination and Mutual Release

- The Agreement of Purchase and Sale typically has a provision for termination if included conditions are not fulfilled or waived.
- The agreement includes the wording that the Agreement will become *Null and Void*.
- This releases both parties from the obligations under the contract.
- The parties also sign a form *Mutual Release* and agree to release each other fully and finally.

Power of Attorney

- *Power of Attorney* is a delegated written authority given by one person to another person.
- The *Donor* is the person who grants the authority.
- The *Attorney* is the person who exercises the power of attorney.
- *Power of Attorney for Personal Care (Substitute Decisions Act)* concerns medical/care decisions.
- In real estate, the *Continuing Power of Attorney for Property (Substitute Decisions Act)* is used and it continues even during subsequent donor incapacity.
- This must be registered in the Land Registry Office.
- An attorney cannot sign documents on behalf of others such as donor's spouse or co-owner.
- *Power of Attorney* was used *before* the *Substitute Decisions Act* and is not used anymore.

REBBA 2002 Requirements

- *Inducement/Promises*: Registrants should not, as an inducement to purchase or sell real estate, make any representation that the registrant or anyone else will purchase/sell the real estate. This does not apply when the registrant has a written contract to whom the promise is made.
- *Conveying Offers*: All written offers received by the registrant must be conveyed to the clients as soon as practically possible. This should be done without any regard to the identity of the person making the offer, the contents of the offer or commission.
- *Written and Legible Agreements*: All agreements related to conveyance of interest in real estate (purchase/sale/lease/exchange) must be in writing.
- *Copies of Agreements*: Copies must be delivered to all parties to the agreement *at the earliest practical opportunity*.
- Copies of representation agreements must be delivered *immediately*.

- *Delivery of Deposits and Documents:* Must be done according to the agreement.
- *Inaccurate Representation:* Registrants must not knowingly make any inaccurate representations about trades or services.
- *Error, Misrepresentation and Fraud:* Registrant must make best efforts (take reasonable steps) to avoid Errors, Misrepresentation and Fraud.

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6. THE AGREEMENT OF PURCHASE AND SALE

6.1 Deposit Funds and Commission

Deposit

- *Deposit* is just a sign of good faith and also constitutes a part of purchase price (*consideration*).
- It's a pledge for completion of the contract (Agreement of Purchase and Sale).
- In certain cases, it is forfeited if failure of performance occurs (buyer's default).
- The pre-printed wording of the agreement provides that the *Deposit Holder* will keep the deposit in its non-interest bearing *Real Estate Trust Account*, unless a clause is inserted contrary to this.

Five Day Provision

- The brokerage must deposit the funds in its *Real Estate Trust Account* within 5 business days.
- Business days exclude Saturdays, Sundays and statutory holidays.
- If the co-operating brokerage has delayed the deposit, it may also be held responsible.
- When does the counting start? It depends on what is written in the *Deposit* clause:
 - '*Herewith*' - the days are counted from the *Offer Date*.
 - '*Upon Acceptance*' - the days are counted from date of *Confirmation of Acceptance*.

Failed Agreements and Return of Deposit

- The agreement may include a condition which states that the deposit shall be returned in full if the condition is not fulfilled or waived by buyer.
- In case the agreement is terminated, the deposit can only be returned if – (a) The brokerage receives a *Mutual Release* (consent) signed by all parties, or (b) A *Court Order* authorizes the disbursement.

Commission Entitlement

- A registrant is not entitled to commission unless there is a written agreement, or the registrant has shown the property to the buyer or introduced the buyer and the seller.
- When the transaction is completed, the agreement typically provides for use of deposit funds to reduce commission obligations of the client.

6.2 Representation and Warranty Clause

Difference between Representation and Warranty

- *Representation*: A statement made before or at the time of contracting and is one of the causes that induces a contract and therefore could be the basis for rescinding (terminating) the agreement.
- *Warranty*: A statement that is subsidiary to the contract. Breach of warranty entitles the buyer to damages only and does not permit the buyer to rescind the contract.
- *To the Best of My Knowledge and Belief*: If the clause includes these words, then it is not a complete assurance.

Survive and Not Merge

- Typically, the Representation/Warranty clause includes that the representation and warranty *survives* the closing date and *does not merge* (extinguish) on closing date.
- The clause wording applies to the state of the property only at the time of closing.
- This means that there is *no warranty* after the closing and this is for the protection the seller after closing.

6.3 Analyzing Typical Pre-printed Clauses

Irrevocability

- The *Irrevocability* clause provides a time limit to a party to accept, reject or counter the offer.
- Until that time the party making the offer cannot recall, revoke, change or alter it.
- The offer can be revoked only before communication to the other party.
- If the other party does not take any action, the offer becomes null and void.
- In that case the deposit (if any) is returned to the buyer in full without interest.

Notices

- Typically, the fax numbers or e-mail addresses of brokerages are provided for delivery of documents.
- Notices are assumed to have been received when sent electronically by fax or by e-mail.
- The space is left blank when – (i) A client requests that notices cannot be sent by fax or by e-mail, (ii) When the brokerage is representing both the buyer and the seller (*multiple representation*), and (iii) When one of the parties is a customer.

Chattels, Fixtures and Rental Items

- The agreement must specifically state which chattels are included or which fixtures are excluded.
- The registrants must not make any assumption that certain item is automatically included or excluded.
- Rental items are not owned and cannot be included in sale. If the buyer wants to assume the lease, the name of item, company and regular payment amount should be inserted in the Agreement.

HST

- HST applies to all supplies of real estate with certain exemptions such as residential resales and residential leases.
- If the agreement states that HST is *Included In*, the liability is on seller if it becomes applicable.
- If the agreement states that HST is *In Addition To*, the liability shifts to buyer in case HST becomes applicable.

Title Search

- The buyer's lawyers must report title issues before *Requisition Date*.
- The lawyer may also search title – (i) 30 days after the *Requisition Date* or date on which conditions are fulfilled/waived, or (ii) 5 days before completion date.

- *Root of Title*: Objections related to fundamental issues that the seller may remove, e.g. unpaid previous mortgage.
- *Matters of Title*: Objections that the seller is not able to remove, e.g. right-of-way or easement.
- *Present Use*: Leaving this space blank means that the *present use* of the property may be lawfully continued, and the buyer may be able to arrange fire insurance. If the buyer later finds out any of these to be false, he *may* terminate the agreement.

Title

- In this clause, the buyer is assured that the title is good and free from all restrictions, charges, liens and encumbrances other than those specifically provided in the Agreement.
- The following would not be a valid objection to the title
 - a. Registered restrictive covenants (deed restrictions) that run with land and the seller has complied with,
 - b. Registered easements for public utilities,
 - c. Any *minor* easements that do not materially affect the use of property for supply of domestic utility, telephone services, cable services and any other such services,
 - d. Any easements for drainage, sewer or sanitary services. (*Major easements must be disclosed.*)
- The buyer's solicitor would have a *valid objection* to the title if:
 - a. The property cannot be insured against risk of fire, or
 - b. There is any *deficiency notice* or *work order* against the property, or
 - c. The present use may not be lawfully continued.
- The buyer's solicitor must send the objection to seller's lawyer before the *Requisition Date*.
- If the seller is unwilling or unable to remove the objections and the buyer is unwilling to waive the objections, the buyer *may* terminate the agreement and the deposit would be returned to the buyer in full without deductions.

Documents and Discharge

- The seller is only required to produce the title, deed or other documents that are under his control or possession.
- *Survey*: The seller *must* provide a survey *if* he has it. If survey is not available, the buyer has several options – (i) accept existing survey, (ii) ask the seller for a new survey, (iii) order a new survey at buyer's cost, (iv) obtain *Title Insurance*, or (v) purchase the property without a survey.
- *Mortgage Discharge*: Buyer accepts seller lawyer's *Personal Undertaking* to discharge the mortgage lien using funds received from sale.

Residency

- Non-resident sellers must pay *Capital Gains Tax* on sale of real property. If the seller does not pay, the buyer becomes responsible. Seller's options are –
 - deliver a certificate from *Minister of Revenue* after paying necessary taxes, or
 - credit the buyer for the amount of taxes, or

- provide a *Declaration* that the seller is not a *non-resident*.

Assessment

- The parties are informed that the municipalities maybe doing assessments on annual basis.
- The parties agree that they will not make any claim against each other or brokerages regarding assessment matters.

Urea Formaldehyde Foam Insulation (UFFI)

- UFFI is considered a *Stigma* and must be disclosed by the sellers.
- The pre-printed clause states that –
 - the seller has not used UFFI in the property, and
 - *to the best of seller's knowledge*, the building does not contain or has ever contained Urea Formaldehyde Foam Insulation.
- If the seller refuses to provide such warranty, the pre-printed clause may be deleted and replaced with another clause suggesting the buyer to have inspection of the property.

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7. SALE OF A BUSINESS

7.1 Considerations When Listing

Shares vs. Assets

- *Sale of Shares*: In this case, both *Assets* and *Liabilities* are assumed by the buyer.
- *Sale of Assets*: The liabilities (existing debt) typically stay with the seller when only assets are being sold. In asset sale, the buyer buys only inventory, equipment and goodwill.

Financial Details

- Seller's financial statements such as statement of profit and loss, and statement of assets and liabilities should be obtained for previous three or more years.
- These are typically unaudited statements from seller's accountant.
- Buyers do not normally pay all cash for business purchase and seller may have to provide *Seller Take Back* mortgage.
- *Earnout* method may also be used to finance the balance of purchase price.
- Buyer may also pay the balance from the future cash flows of business.

Lease of Premises

- Details of lease must be provided to the buyer.
- Information related to remaining term, renewability, whether or not the lease is assignable and/or any restrictions on use of premises should be obtained from seller.
- A copy of the lease should be attached to agreement of purchase of sale to avoid confusions at a later date.

Franchise Business

- A copy of franchise agreement should be provided to the buyer.
- The franchisor may have charged a franchise fee or may be charging recurring royalties from sales.
- Franchisors sometimes keep a provision that the sale of business is subject to its approval.
- Appropriate conditions should be inserted in agreement of purchase and sale.

7.2 REBBA 2002

Statements to be Delivered to Buyer

- Section 21 of REBBA 2002 states that if a brokerage is negotiating sale of a business, it must provide the buyer with the following statements prior to a binding agreement:
 1. A *Profit and Loss Statement* for the past 12 months or since the seller acquired the business;
 2. A statement of *Assets and Liabilities*; and
 3. A list of items (e.g. fixtures, chattels, goods or other assets) that are *NOT* included in the sale.
- If the buyer is not provided with the list of excluded items, these are deemed included in sale.

- Requirements 1 and 2 do not apply if the buyer signs a statement attesting to having received and read a *Statement under Oath (Affidavit)* from the seller as to various matters relating to the business.

Sale of Business Affidavit (OREA® Form 503)

- This *Affidavit* is completed by the seller *before a binding agreement* when financial statements are not delivered to the buyer.
- The form requires declaration under oath concerning:
 - a. Who is the owner of the business;
 - b. Whether the business premises are leased or owned;
 - c. What portion of the business premises, if any, is sublet;
 - d. Liabilities of the business, if any; and
 - e. If there are, or are not, books of account for the business and an explanation of why the financial statements are not being delivered to the buyer.
- *Waiver*: The bottom portion of the form contains a *Waiver*. It is completed by the buyer, if he does not require the seller to comply with REBBA 2002 regulations.

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8. CONSUMER PROTECTION

8.1 The Consumer Protection Act

- The *Consumer Protection Act* prohibits unfair practices when conducting business with consumers.
- This act does not affect representations made while selling real property because it is not included as 'goods' in the Act.
- The Act applies to real estate brokerages when making representations regarding services such as listing agreement, buyer representation, appraisals and arranging financing.
- The Act does not apply for consumer transactions for purchase, sale or lease of real property and for transactions under *Residential Tenancies Act*.
- *Time share* agreements and chattels are included in the Act.
- Most complaints regarding misrepresentations made during real estate trading are addressed by Real Estate Council of Ontario (RECO).

Complaint Procedures

- A seller or buyer who is subject to unfair practice or undue pressure may cancel a contract, sue for damages and/or file a complaint with the *Consumer Protection Branch* of the *Ministry of Government Services*.
- Other alternatives available to the consumer are:
 - a. The seller/buyer may rescind (set aside) a contract or cancel it by written notice to the brokerage within 6 months of signing the agreement.
 - b. The seller/buyer may also seek a legal remedy for fraudulent or negligent misrepresentation or for breach of contract by the agent.
 - c. If property is already sold and the agent is entitled to commission rescission may not be possible. In this case, the seller/buyer can recover the amount that was in excess of services, or damages, or both.

False, Misleading or Deceptive Representation

- That the goods and services or the person making the representation have sponsorship, approval, performance characteristics and benefits or quantities that they actually do not have.
- That there is a specific price advantage and it does not exist.
- That misrepresents the authority of a salesperson or agent to negotiate the final terms of the transaction.
- That if the representation is false or misleading the transaction involves or does not involve rights, remedies or obligations.
- Representation that fails to disclose a material fact and it is done with an intention to deceive.

Unconscionable Representation

- Unconscious representation occurs when the person making the representation knows –
 - a. That the consumer is unable to protect his/her interests due to physical infirmity, ignorance, illiteracy, inability to understand language or mental incapacity.

- b. That the price grossly exceeds the standard at which similar goods or services are available.
- c. That the consumer is unable to receive any benefit from the trade.
- d. That the proposed transaction is one-sided in favour of someone other than the client.
- e. That a misleading statement is made and that the consumer is likely to rely upon the opinion given.
- f. That the consumer is subject to undue pressure to sign a contract.

8.2 The Competition Act

Application

- This Federal Act is intended to promote fair competition and efficiency in the marketplace.
- It applies to all types of businesses including real estate brokerages, salespersons and brokers.
- The Act is enforced by the *Competition Bureau*, which is under *Industry Canada*.
- The Act covers criminal as well as civil matters.

False and Misleading Advertising

- The actual wording of an advertisement may be technically correct, but the *general impression* can still be false.
- Three important factors involving offences under this Act –
 - a. *General Impression Test*: The definition of ‘*Misleading*’ is expanded to include *non-literal impressions* (general impression) given by the advertisements.
 - b. *Material Fact*: The term ‘*material*’ refers to any information which could affect a selling/purchasing decision.
 - c. *Intention*: Proof of intention to deceive is not necessarily a prerequisite for charges under this act. It is not a proper defense to argue that the misrepresentation was never intended.

Advertising Guidelines

- *Abbreviations*: Only those abbreviations should be used which are not confusing but are generally accepted in local trading areas.
- *Promotional Claims*: The *general impression* of the text and the actual message must be consistent and not be misleading. Care must be taken when making claims such as ‘*best in area*’, ‘*first time*’, ‘*the largest*’, ‘*most popular choice*’, etc.
- *Multiple Listing Service Agreements*: MLS® listings are considered advertisements under the *Competition Act*. All information on listings must be verified. Inaccurate representations may fall under the definition of *Innocent, Negligent or Fraudulent Misrepresentation*.
- *Pictures and Illustrations*: Should not convey wrong impression of the product. The price range of actual home for sale and the one in illustration must look similar. Disclaimers such as ‘*for illustration purposes only*’ or ‘*artist’s concept*’, or ‘*prices subject to change without notice*’, etc. may be included for clarification.

- *Private Transactions*: Sales above the advertised price are permitted but any amendment to the price must be clearly identified and not be misleading.
- *Contests*: Basic rules for contests should be provided. These include the approximate number and value of prizes, allocation of prizes by region, chances of winning, whether or not a skill testing question is required, place where the rules may be obtained, the closing date of contest and any other unusual restrictions or conditions.
- *Market Evaluation Certificates*: Must clearly identify the service and required disclaimers and/or limiting conditions. These disclaimers or limiting conditions must not contradict the overall message of advertisement.
- *Fine Print/Disclaimers*: These must pass the *General Impression Test* and must not contradict the message of the main text of advertisement.
- *Honours/Awards*: The source and date of honour or award must be included in advertisement. Purchased honours or awards cannot be advertised. When advertising shared awards, written consent of other persons is required.
- *Human Rights Code*: No registrant can deny services to a specific class or group based on colour, race, ethnic origin or religion, etc.

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9. CONSUMER REPORTS AND LAND TRANSFER TAX

9.1 The Consumer Reporting Act

Provisions Regarding Consumer Reports

- This provincial Act permits a consumer reporting agency (*Credit Bureau*) to provide reports to a person who the agency believes intends to use it for some direct business with consumer or entering into a lease, for extending a credit, for a purchase or for any debt collection, etc.
- The consumer must be given notice when information concerning an extension of credit or obtaining of personal information is involved.
- The name and address of the reporting agency must also be given to the consumer upon request.
- The information should only be used for the purpose it is collected. If the purpose changes, new consent is required.
- If a credit is denied due to a bad report, the consumer must be notified within 60 days and the consumer may then request the source of report.

Credit and Personal Information

- The Act protects the consumers by providing them with these rights –
 - a. The right to revise incorrect information about personal credit history;
 - b. The right to know what is being reported; and
 - c. The right to ensure that information given by agencies is being correctly collected, stored and reported.
- *Credit Information*: Name, age, occupation, place of residence, place of current and previous employment, marital status, spouse's name and age, dependents, particulars of education, estimated income, paying habits, outstanding debts, cost of living obligations and assets.
- *Other Personal Information*: Character, reputation, health, physical or personal characteristics, mode of living, etc.
- *Business Employees*: In case of business employees, the name, business address or business telephone numbers is not considered personal information.

Credit Bureau (Credit Investigating Agency)

- Credit bureaus collect information from selected banks, credit companies, etc.
- Credit bureaus do not collect consumer information relating to habits, affiliations, political or social connections.
- They also receive information from public records (judgments, bankruptcies, etc.).
- Credit information is typically updated every 60 days and credit reports are provided on request.
- The individual has the right to verify what information is on file and to dispute or alter incorrect data.
- Further, not all information about an individual is found in records.

9.2 The Land Transfer Tax Act

Real Property Registration

- The provincial *Land Transfer Tax* is assessed on real property when a deed is registered transferring the ownership of property from one party to another.
- It is based on *Value of Consideration* (purchase price).
- A sliding scale is used for calculation instead of a fixed rate.
- Land Transfer Tax is collected at the time of transfer of property, i.e. when an interest in land is conveyed.
- Tax is payable on three conditions –
 1. A registration is made under either the *Registry Act* or the *Land Titles Act*,
 2. The document being registered is a conveyance, and
 3. The conveyance involves land.
- The tax is not applicable when someone buys shares of a company that owns real estate.

Unregistered Interests

- *Unregistered Beneficial Interest*: Tax is also applicable upon disposition (transfer or assignment) of an interest when documents are not registered. Examples are co-operatives and use of trusts.
- *Freehold Interests*: They include life leases, life tenure, equity lease and life tenancy.
- *Exclusions*: Transfer due to death of an owner, registration/discharge of a mortgage, transfers to a spouse due to a separation agreement and certain family transfers for natural love or affection.

Exemptions for Life Leases

- A life lease development provides occupation of a unit for at least 20 years or for the lifetime.
- Land Transfer Tax is not payable if the developer is a non-profit organization or a registered charity, and the buyer of life lease unit uses it as *principal residence*.

Rebate for First Time Home Buyers

- *First Time Buyer*: An individual who is over 18 years of age and has never owned a home anywhere in the world and whose spouse also has not owned a home.
- Such persons are eligible for rebate on Land Transfer Tax, provided that:
 - a. The person buys a newly constructed house or a resale home,
 - b. The home is under *Ontario New Homes Warranty Plan Act*,
 - c. The home is occupied within 9 months of conveyance, and
 - d. It is used as a principle residence.
- The maximum amount of rebate is \$4,000 when the person owns 100% interest.
- If the spouse, who is a co-owner, does not qualify, the rebate is 50%, i.e. \$2,000.
- Rebate can be claimed at the time of registration by filing an affidavit at the land registry office.
- The application for rebate must be made within 18 months of date of transfer.
- This means that first time home buyers do not have to pay *Land Transfer Tax* if the purchase price is \$368,000 or less.

9.3 Land Transfer Tax Calculations

- The provincial Land Transfer Tax is based on provisions of the *Land Transfer Tax Act*.
- It is calculated on Purchase Price (*Value of Consideration*).
- A graduated scale of tax rates is used instead of single tax rate.

Residential Single-family and Duplex Properties

On the first \$55,000	0.5%
On next \$195,000	1.0%
On next \$150,000	1.5%
Between \$400,000 and \$2 Million	2.0%
Balance Over \$2 Million	2.5%

► **Note:** The 0.5% surcharge on the balance over \$2,000,000 is only for Single Family Residential and Duplex properties. It is not for Vacant Land or Commercial properties.

Example 1: Single-family home, Purchase Price \$48,000.

Amount is below \$55,000.

Land Transfer Tax = $48,000 \times 0.5\% = \text{\$240}$

Example 2: Purchase Price \$165,000.

Amount is over \$55,000 but below \$250,000.

Break up the amount-

$55,000 \times 0.5\% = 275$

$110,000 \times 1.0\% = 1,100$

Land Transfer Tax = $275 + 1,100 = \text{\$1,375}$

Example 3: Purchase Price \$320,700.

Amount is over \$250,000 but below \$400,000. Break up the amount-

$55,000 \times 0.5\% = 275$

$195,000 \times 1.0\% = 1,950$

$70,700 \times 1.5\% = 1,060.50$

Land Transfer Tax = $275 + 1,950 + 1,060.50 = \text{\$3,285.50}$

Example 4: Purchase Price \$448,300.

Amount is over \$400,000. Break up the amount-

$55,000 \times 0.5\% = 275$

$195,000 \times 1.0\% = 1,950$

$150,000 \times 1.5\% = 2,250$

$48,300 \times 2\% = 966$

$$\text{Land Transfer Tax} = 275 + 1,950 + 2,250 + 966 = \text{\$5,441}$$

Vacant Land and Commercial Properties

On the first \$55,000 0.5%

On the next \$195,000 1.0%

On the next \$150,000 1.5%

On balance over \$400,000 2.0%

► **Note:** Up to a value of \$2,000,000 there is no difference in calculations for residential property and vacant land.

Example 1: Vacant parcel of land purchased for \$240,000.

$$55,000 \times 0.5\% = 275$$

$$185,000 \times 1.0\% = 1,850$$

$$\text{Land Transfer Tax} = 275 + 1,850 = \text{\$2,125}$$

Example 3: Industrial Building (Commercial) purchased for \$825,000.

$$55,000 \times 0.5\% = 275$$

$$195,000 \times 1.0\% = 1,950$$

$$150,000 \times 1.5\% = 2,250$$

$$425,000 \times 2.0\% = 8,500$$

$$\text{Land Transfer Tax} = 275 + 1,950 + 2,250 + 8,500 = \text{\$12,975}$$

Example 3: A commercial building purchased for \$2,650,000.

$$55,000 \times 0.5\% = 275$$

$$195,000 \times 1.0\% = 1,950$$

$$150,000 \times 1.5\% = 2,250$$

$$2,250,000 \times 2.0\% = 45,000$$

$$\text{Land Transfer Tax} = 275 + 1,950 + 2,250 + 45,000 = \text{\$49,475}$$

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10. INCOME TAX AND LAND EXPROPRIATION

10.1 The Income Tax Act

Capital Gain

- It is the gain realized from the sale of *Capital Property (including real property)*, a percentage of which must be added to taxable income.
- The taxpayer is responsible for reporting the gain as regular business income or as capital gain.
- If challenged by *Canada Revenue Agency*, the responsibility of proof is on taxpayer.
- The *Tax Court of Canada* hears appeals in this regard and investigates the conduct of the taxpayer before, during and after the taxation period.

Key Factors

- *Intention*: The taxpayer's intention at the time of purchase is a key issue. If a property is purchased for investment, the resale profit *may still be* considered as ordinary income.
- *Relationship to the Taxpayer's Business*: The profits may be considered normal income when a taxpayer uses expertise acquired in regular business to earn profit on purchase/sale. Real estate transactions of contractors, renovators, real estate registrants and appraisers are typically scrutinized very closely.
- *Frequency of Transaction*: How often the taxpayer engages in the sale of capital property is assessed.
- *Nature of Transaction and Assets*: If the asset cannot normally be used either personally or for investment purposes, the gain may be considered as regular business income.
- *Objects of the Corporation*: The *Article of Incorporation* is studied to determine if a transaction falls under the objects of the corporation and its usual business.

Real Estate Transactions

- Profit from sale of real property would *likely be* taxed as regular income if a taxpayer regularly buys and sells real estate.
- If the taxpayer can prove that the transactions were planned and necessary part of total investment program, there *may be* a case for capital gains.
- If a sale is not planned, brokers are not involved in sale, the property is not advertised, there is no evidence of active marketing, then the profit from sale *may be, but not always*, treated as capital gain.

Exemption for Principle Residence

- Exemption from Capital Gains Tax is granted for principal residence, which may be a house or apartment or a mobile home.
- Registrants should persuade their clients to seek expert advice in these matters.
- To qualify as a principal residence –

- a. The taxpayer must own the house either solely or jointly and it must be designated as the taxpayer's principal residence for the year,
- b. The unit must be ordinarily occupied during the year,
- c. A family unit may have only one principal residence,
- d. The land upon which the house sits cannot exceed one acre.

Real Estate Sales by Non-Residents

- Non-resident sellers are required to pay *Capital Gains Tax* within 10 days of completion of sale.
- If the seller fails to pay, the responsibility shifts to the buyer.
- OREA ® Agreement of Purchase and Sale includes a *Residency* clause to comply with the *Income Tax Act*.
- The seller has these options –
 - (i) provide a certificate from Minister of Revenue after paying the tax in advance, or
 - (ii) credit the buyer for paying *Capital Gains Tax*, or
 - (iii) provide a statutory declaration that the seller is *not a non-resident*.

10.2 The Expropriations Act

Expropriation

- *Expropriation* is the act of taking private property for public use with fair compensation to the owner under the *Right of Eminent Domain*.
- *Eminent Domain* is the right of the government or a quasi-public body to acquire private property for public use.
- The *Expropriations Act* sets out expropriation procedures through a legal action called *Condemnation* or *Expropriation*.
- *Expropriating Authority*: The Crown or any other agency such as a regional municipality.

Process

- The Expropriation Authority (*Approval Authority*) serves a notice to owners whose land is to be expropriated.
- Owners can request a hearing within 30 days. This hearing is held by an *Inquiry Officer*.
- After this, expropriation is approved, and a notice is sent to owners.
- *Survey Plan* is registered within 3 months and the Expropriating Authority becomes the owner of property.
- *Fair Compensation* is assessed as of date of registration of survey plan.

Compensation

- Compensation is determined on the basis of fair market value under *Common Law* using 4 assumptions of market value approach.
- Other payments for *Damages* include payment for *Disturbance*, for *Relocation Difficulties* and *Injurious Affection*.
 - *Disturbance*: Includes payment for business losses, loss of rent, loss of landscaping, reduced parking, sale of trade fixtures, etc.

- *Relocation Difficulties*: Payments related to changes in zoning, additional cost of construction difficulties in finding an alternate residence, etc.
- *Injurious Affection*: Includes payment for loss of road access or docking area, construction delays, dust and noise from construction, etc.
- Some special considerations for payment include losses suffered by tenants, penalty for prepayment of mortgages and reduction of owner's rights.

Negotiations and Arbitration

- If compensation is not acceptable to owners, they may serve a notice to municipality within 3 months of registration of Plan of Survey.
- *Board of Negotiations* meets with parties to resolve.
- The *Ontario Municipal Board* may be asked to decide through *Arbitration*.
- If the matter is still not resolved, an appeal in *Court of Appeal* can be made and then to *Supreme Court of Canada*.

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11. SHARED OWNERSHIP

11.1 Creation of a Condominium

The Condominium Act

- A *Condominium Corporation* is created after registration of *Declaration* and *Description*.
- The applicant is called *Declarant* and the registration number is a *Sequential Number* for a particular regional municipality.
- The objects of the corporation are management of –
 - (i) corporation assets, and
 - (ii) the corporation property.
- Unit owners are personally liable for the debts and obligations of the corporation.

Declaration

- *Declaration* is also called the *Condominium Constitution*.
- It includes a statement that *The Condominium Act* governs.
- It includes details about proportionate share of each unit for *Common Elements* and their share of *Common Expenses*.
- Information about common elements for *Exclusive Use* is provided.

Description

- *Description* provides *Diagrammatic Representation* of the property.
- It includes plan of survey, architectural plans and certificate of architect.
- Unit boundaries, shape, dimensions and location of each unit is given in this document.
- Structural plans, certificate of engineer and certificate of *Ontario Land Surveyor*.

Unit and Common Elements

- A *Unit* is the space defined by boundaries within a condominium building.
- All property within the condominium corporation *except units* is considered *Common Elements*.
- The unit owner has exclusive ownership of the unit and is also proportionate owner of *Common Elements* as *Tenant-in-Common*.
- All unit owners have *undivided interest and possession* of the common elements.
- One or more unit owners may have been given *Exclusive Use* of some common elements such as parking or lockers.
- The *Board of Directors* may make changes to common elements without the consent of unit owners, unless owners request a meeting and vote against the proposed work.
- If a meeting is requested and voting is held, at least 66% owners must give approval vote.

Types of Condominiums

- *Standard Condominium*: This is a *freehold* condominium.
- *Common Element Condominium*: This type consists only of common elements but *having no units*. Each owner must hold a freehold parcel of land.

Examples - A golf course, a ski hill resort or a private access road.

- *Leasehold Condominium*: All units and their common interests are subject to leasehold interests (40 to 99 years) by owners.
- *Phased Condominium*: It operates as a freehold corporation in which the *Declarant* may add or create additional successive units/common elements in phases.
- *Vacant Land Condominium*: A unit is just a parcel of land in this type of condominium. It provides for development and sale of units (*land*) without the necessity of immediately completing any structures.

Parking and Storage

- *Freehold*: The unit owner owns the space, either within unit title or with separate title. If title is separate, the owner may sell that space to another unit owner.
- *Leasehold*: The Corporation owns the space and leases it to unit owners.
- *Exclusive Use*: The Corporation owns the space but grants rights as per *Declaration*.
- *Allocated/Assigned*: The Corporation owns the space and assigns spaces to unit owners on discretionary basis.

11.2 Condominium Governance and Operation

Board of Directors

- There must be at least 3 directors who – (i) should be minimum 18 years of age, (ii) should not be *undischarged* bankrupts, and (iii) must not be mentally handicapped.
- A director cannot continue to be a director if one of the later two conditions is not met.
- Directors are appointed for a maximum of 3 years' term.
- Directors rely in good faith on reports of experts (accountants, engineers, lawyers, etc.) and are not personally liable if a breach of duty occurs when they take some decision based on these reports.
- The *First Board* consists of 3 directors and is appointed by the *Declarant* within 10 days of condominium registration.
- The *First Board* continues until the *Turn over Meeting*, which is held to elect new Board of Directors.

Turn Over Meeting

- This meeting is held to transfer control of corporation from *Declarant* to unit owners and hand over documents.
- In this meeting the owners may elect 2 more directors to the board.
- The meeting must be called before the *later of* –
 - a. The 30th day after the *Declarant* transfers 20% of units, or
 - b. The 90th day after the first unit is transferred.

Condominium By-Laws

- *By-laws* are procedures and requirements regarding internal operations and governance of corporation.
- By-laws are made by the Board of Directors.
- A majority of owners must vote in favour of by-laws to be effective.
- After approval, a copy must be submitted in *Land Registry Office*.

Condominium Rules

- *Rules* are regulations regarding safety, security and welfare of owners, as well as property and assets of the corporation.
- The board must provide the owners with a copy of rules.
- Owners may request a meeting within 30 days and a majority of owners must vote in favour of the rules.
- If no meeting is requested, the rules become effective without voting.

Performance Audit

- This audit involves detailed examination of common elements to inspect the building components concerning damage or defects.
- The audit reveals deficiencies that may give rise to a *New Home Warranty* claim.
- First audit must be done within 10 months of registration of condominium.

11.3 Sale/Resale of Units – Key Considerations

Sale of New Units – Disclosure

- Builders must provide a Disclosure statement when new units are sold.
- Buyers have the right to terminate the agreement within 10 days of receiving the Disclosure statement or the Agreement of Purchase and Sale, whichever is later.

Resale - Status Certificate

- The *Status Certificate* provides information to buyers about operational, legal and financial obligations of the corporation.
- The certificate must be provided within 10 days of the request, at a maximum cost of \$100.
- If it is not provided by the Corporation, it is assumed that -
 - a. No default in common expenses has occurred,
 - b. No increase in common expenses has occurred since the date of current year's budget, and
 - c. No levies have been assessed against the subject unit.

Resale - Common Expenses

- *Common Expenses (Maintenance Fees)* are the costs related to performance of objects and duties of corporation.
- Owners of units contribute to common expenses according to their *proportionate share*.
- If a unit owner is in default, the corporation has an *Automatic Unregistered Lien* on the unit.
- This unregistered lien expires in 3 months if the *Certificate of Lien* is not registered by the corporation.

- Unit owner must be given a *Notice of Lien* 10 days before registration.
- If the debt is paid, the corporation must register discharge of lien and notify the unit owner.
- When the unit is sold, this lien has priority over other encumbrances except *Crown Claim* and *Property Taxes*.

Reserve Fund

- The *Reserve Fund* is maintained by the corporation for major repairs and replacement of common elements and corporation assets such as roofs, building exteriors, roads, sidewalks, electrical, heating, plumbing, etc.
- It is not meant for adding new common elements.
- Funds are collected from *Common Expenses* and must be held in a *Trust Account*.
- In case the repair cost exceeds funds held in reserve, a *Special Assessment* may be required to meet the expenses.
- After the deficiency in Reserve Funds is over, the Special Assessment is removed.
- *First Reserve Fund* is created when condominium is registered and until the *First Reserve Fund Study* is done
- The *First Reserve Fund Study* must be done within 1 year of condominium registration.

Use Restrictions

- *Use Restrictions* limit or restrict the use of condominium property.
- This information is included in the *Status Certificate*.
- Some examples are –
 - a. *No Pets* allowed in the building.
 - b. Only white drapery on exterior windows, no installation of antennas, clotheslines, satellite dishes, etc.
 - c. No parking of commercial vehicles.
 - d. No alterations to unit or common elements without the written consent of the corporation.
 - e. No signs permitted on the property.
 - f. No open houses for selling the unit.
 - g. No outside storage of garbage/trash containers.

11.4 Co-operative Buildings

Co-operative Corporations Act

- Co-operatives corporations are owned and controlled by their members.
- They are regulated by *Financial Services Commission of Ontario (FSCO)*.
- The *Co-operative Corporations Act* does not regulate day-to-day business of the co-operatives or its by-laws.
- The Act requires that *One Member Equals One Vote*, regardless of the amount invested.
- Registration of the corporation must be done by a specific number of individuals who file the *Article of Incorporation*.
- *Equity Co-operatives*: These co-operatives have share capital. The buyer buys shares in the corporation and also gets an *Occupancy Agreement (Lease)*. These are regulated under *Residential Tenancies Act*.

- *Non-Profit Co-operatives*: These corporations do not have share capital and are funded by federal and provincial governments.

Financing Issues

- The entire property is financed as opposed to individual units.
- The mortgage on the property is a *Blanket Mortgage* with *Joint Liability* of individual owners proportionate to their share.
- The buyer of a unit must assume the applicable liability of the existing mortgage and then arrange a *Secondary Mortgage*.
- Many lenders may not be ready for such secondary financing unless a significant down payment is made.
- Due to joint liability, buyers may also be liable for obligations of other owners when they fail to meet their financial obligations.

The Agreement of Purchase and Sale

- In resale of a co-operative unit, no interest in land is transferred but the *Land Transfer Tax* is applicable.
- The buyer of a unit is, in fact, buying shares of the corporation proportionate to the value of the unit.
- The lease (*Occupancy Agreement*) of the subject unit is assigned to the new buyer.
- The new owner is provided the following documentation:
 - a. Share certificate (only in equity co-operative)
 - b. Assumption of the *Occupancy Agreement*
 - c. Particulars of rights being acquired (suite and any exclusive use areas)
 - d. The amount of the mortgage to be assumed
 - e. The amount of common expenses (maintenance fee), parking space and locker charges, etc.

11.5 Other Types of Shared Ownership

Co-ownership

- In *Co-ownership* of property all owners become *tenants-in-common* of the property.
- Each co-owner has proportionate interest in the property.
- The operation and governance of the property is in control of the co-owners.
- Co-owners decide the rules and regulations of operation.
- Co-ownership is entirely different from *Condominiums* and *Co-operatives* where the entire property is owned by the corporation.

Timeshare

- Timeshare is division of property rights into *Fractional Interests* based on time.
- They are found in condominiums, co-operatives and co-ownerships.
- It is popular in sale of recreational properties such as vacation resorts.
- *Fee Ownership Interest*: A condominium corporation is created and registered with pages for each time interval.

- Individual weeks are registered under the unit.
- The total interest must be 100%.
- *Right-to-Use Interest*: A condominium need not be created.
 - The title to land and improvements remains with the developer.
 - Buyers get their interest through a lease which specifies the weeks.
 - The buyer of the right enters a *Contractual Arrangement* to enjoy the use of property.
- Sale of Timeshare interest is under *The Consumer Protection Act* which has the following provisions –
 - a. *Written Agreement*: The agreement must be in writing and be delivered to the consumer.
 - b. *Cooling Off Period*: A consumer may cancel a timeshare agreement anytime within 10 days of the *date of receiving* a signed copy of the agreement.
 - c. *Copy Not Provided*: A consumer may also cancel a timeshare agreement anytime within one year if a signed copy of agreement is not provided.

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12. THE RESIDENTIAL TENANCIES ACT

12.1 Residential Tenancies

Types of Tenancies

- *Fixed Term*: The tenant has exclusive possession for a specific term, as agreed in the lease. If the lease is not renewed or if the tenant does not vacate after expiry, the lease converts to month-to-month (*Periodic Tenancy*).
- *Periodic*: The period is fixed (weekly, monthly, etc.) but the length of tenancy is indefinite. It renews itself automatically unless a termination notice is given.
- *Tenancy at Will*: This happens when, after the expiry of the lease, the tenant remains in the property with the consent of the landlord and keeps on paying the rent.
- *Tenancy at Sufferance*: This happens when, after expiry of the lease, the tenant remains in possession of the property without the consent of the landlord and also does not pay the rent.

Lease Agreements

- *Lease (Tenancy Agreement)*: Lease is a contract between the landlord (*Lessor*) and the tenant (*Lessee*).
Lease must have the full legal names of the landlord and the tenant, description of the premises, consideration (amount of rent), legal purpose and a definite term (start and end dates).
- *Agreement to Lease*: It sets out fundamental, material aspects of the agreement between the parties but formal detailed lease is yet to be signed.
 - a. This is unsettled form of lease.
 - b. An *Agreement to Lease* leads to final lease wherein the landlord may add more appropriate clauses.
 - c. This form itself may become the final lease if detailed lease is not to be prepared.
- *Tenant's First Right of Refusal*: This clause provides that before the landlord (seller) can accept an offer from a buyer to sell the property, the landlord must first allow the tenant a specified period to submit an offer on the same terms and conditions.
The landlord can sell when the tenant refuses.

Exemptions from Residential Tenancies Act

- Temporary accommodation for travelling, vacationing or seasonal.
- Farm Employee whose accommodation is conditional on continued employment.
- *Non-profit* housing co-operatives.
- Penal/correctional facilities.
- Emergency shelters.
- Student accommodation provided by educational institutions.
- Occupants having shared bathroom or kitchen with owner.
- Premises for business purposes with living accommodation under one lease.

12.2 Provisions in Residential Tenancies Act

Landlord and Tenant Board (Tribunal)

- This board has two main roles – (i) providing information about *Residential Tenancies Act* to consumers, and (ii) resolving disputes between landlords and tenants.
- *Mediation* is preferred by board where it helps the parties come to some form of agreement. One of the parties has to make an application.
- *Adjudication* is the process whereby hearings are held, evidences are considered, and a decision is made according to the *Residential Tenancies Act*.

Rental History and Credit References

- *Ontario Human Rights Code* sets out requirements for permissible practices by landlords.
- The landlords cannot refuse accommodation to anyone because of race, ancestry, ethnic origin, citizenship, creed, sex, age, marital status, handicap or receipt of public assistance.
- In order to select or refuse a tenant, the landlord may request -
 - a. Rent deposit, rental history and a guarantee for rent;
 - b. Authorization to conduct credit check or credit reference.
 - c. Income information, which can only be requested if credit reference is requested.
 - d. If credit reference is not provided, the landlord can use the income information to select or refuse a tenant.

Rent Deposit

- Landlord can require a rent deposit, which cannot be more than lesser of the amount of rent for one rental period or one-month rent.
- When rent is increased, the landlord may ask for additional deposit.
- The landlord is required to pay interest on deposit.
- The deposit is applied to the last rental period (last month) prior to termination of tenancy.
- The tenant is not required to provide post-dated cheques or automatic withdrawal from bank or credit card.
- The landlord must provide receipts for the rent and rent deposit upon request.

Rent and Rent Increase

- *Lawful Rent*: The first rent charged from a new tenant.
- *Rent Increase*: Minimum 90 days' notice is required before the effective date of increase. Generally, the landlord can only increase the rent if 12 months have passed since - (i) the last rent increase, or (ii) the day of occupation by tenant.
- *Increase above Guideline*: If landlord and tenant agree the rent can be increased above guideline. If capital expenses have increased, the limit for rent increase is 3% above *Rent Guideline* for a maximum of 3 years.
- *Rental Fairness Act 2017*: Landlords must use a standard lease document. Landlords cannot increase the rent above rent guideline if the cost of utilities has increased.

- A landlord will no longer be able to apply for a rent increase above the guideline because utility costs (e.g. fuel, electricity or water) have increased.
- If a landlord has not complied with an order to fix an elevator (issued by the LTB, the municipality or the Technical Standards and Safety Authority), the LTB can dismiss the application or require the landlord to fix the elevators before ordering an above guideline increase.
- A landlord can approach the *Landlord and Tenant Board (LTB)* for increase above guideline if:
 - the landlord's costs for municipal taxes and charges have increased significantly
 - the landlord has done major repairs or renovations (these are called capital expenditures), or
 - the landlord has operating costs for security services performed by persons who are not employees of the landlord.

Pets

- The '*No Pets*' clause in residential lease is prohibited in the *Residential Tenancies Act*.
- Exemption exists when the Condominium *Declaration* does not permit pets.
- In case the tenant has a pet, the landlord may make an application to terminate tenancy and evict tenant if the pet –
 - Causes substantial interference with reasonable enjoyment,
 - Causes a serious allergy, or
 - Is potentially dangerous.

12.3 Access and Entry Rights

- The tenants have the *Right to Quiet Possession* when not in default.
- Neither the landlord nor the tenant can change the entry locking system without providing keys to the other party.
- *Entry with 24 Hour Notice*: The landlord may enter between 8 am and 8 pm to –
 - a. Carry out repairs or to inspect for ensuring repairs,
 - b. Allow a potential mortgagee or insurer to inspect the property,
 - c. Show the property to a potential buyer, and
 - d. For health and safety issues.
- *Entry without Notice*: For *emergencies* or when tenant allows entry. Other reasons for entry without notice include –
 - a. When regular cleaning is done by the landlord (between 8 am and 8 pm),
 - b. When the existing tenant has given termination notice and the landlord wants to show property to a new tenant (between 8 am and 8 pm),
 - c. When the landlord has made reasonable efforts to inform the tenant about entry.

12.4 Termination of Lease

Termination by Landlord

- *Before or at End of term*: Non-payment of rent, illegal act in property, misrepresentation of income, damage, interference with reasonable enjoyment of other tenants, safety reasons and too many persons in the unit. Only 10 days' notice is required.
- Effective September 2017, tenants can give just 28 days' notice to terminate tenancy if they are concerned about the safety of their child. This applies to monthly, yearly and fixed-term tenancies. The tenant must provide the landlord with necessary documentation (such as restraining order, access order, peace bond, etc.) with a signed statement that their child had experienced abuse within the last 90 days.
- *At End of Period*: Various notice periods are as follows –
 - a. Demolition, conversion of use, extensive renovations – 120 days' notice
 - b. Possession by landlord, parents, spouse or child of landlord – 60 days' notice before end of lease. Tenant may also terminate early with 10 days' notice.
 - c. Sale of property and if purchaser's parents, spouse or child has to occupy the unit – 60 days' notice before end of lease. Tenant may also terminate early with 10 days of notice.

Termination by Tenant

- *Daily or Weekly Tenancy*: 28 days before end of lease.
- *Monthly or Yearly Tenancy*: 60 days before end of lease.
- *Fixed Term Tenancy*: 60 days before end of lease.

12.5 Miscellaneous Residential Communities

Care Homes

- Care homes are governed under the *Residential Tenancies Act*.
- Residents receive care services such as health, rehabilitation, nursing care, bathing, feeding, ambulatory, personal hygiene, emergency response, etc.
- Key provisions in the *Residential Tenancies Act* include –
 - A written tenancy agreement must be provided outlining what services are provided,
 - The tenancy agreement must state that the tenant has the right to cancel the agreement within 5 days of signing, and
 - The tenant has the right to seek third party advice.
- Residents must receive an *Information Package* detailing alternative care services available, staff provisions, fire or medical emergency response systems, etc.

Mobile Home Park

- Land lease communities are governed under the *Residential Tenancies Act*.
- A *Mobile Home Park* may have permanent structures on leased land or mobile homes (with wheels or without wheels).

- The landlord retains the possession of land, structures, services and facilities for common use.
- Residents pay the amount of *Land Lease* as well as a monthly *Maintenance Fee*.
- The tenant has the right to sell or lease the home or mobile home without landlord's consent.
- Any land lease agreement that requires landlord to be the agent of the tenant is invalid.
- *Signage*: The tenant may place a sign only on the window of his mobile home. The landlord may prohibit this sign if –
 - a. The prohibition is for all tenants,
 - b. The landlord provides a bulletin board for the '*For Sale*' advertisement, and
 - c. The bulletin board is provided free of charge and located in a public place.

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PART II – PRACTICE QUESTIONS

SAMPLE EXAM 1

► **Note:** Take a blank sheet of paper and note down your answers. The Quick Answer Key is given at the end of this Sample Exam.

1. The *Right of Survivorship* in a joint-tenancy:
 - A. Can be overturned by a specific request in the deceased tenant's will.
 - B. Allows the interest of a deceased tenant to flow directly to the surviving joint tenant rather than being passed on to the deceased estate.
 - C. Is inherent in tenants-in-common arrangement as it is a form of concurrent ownership.
 - D. Is not subject to any exceptions.
2. Which of the following statements is correct about *Adverse Possession* of land?
 - A. It is not possible to obtain a right of way by adverse possession.
 - B. Adverse possession occurs when the owner of the property occupies the property for a long period of time.
 - C. Adverse possession occurs when someone other than the owner occupies the property for a long period of time with the knowledge of the owner.
 - D. It is possible for the occupier of the land to extinguish the title of the actual owner under the *Land Titles Act*.
3. The *Residential Tenancies Act* provides that a landlord may make an application to terminate a lease contract before the end of the term if:
 - A. Too many persons are occupying the rental premises in contravention of the lease contract.
 - B. The landlord requires possession of the leased premises.
 - C. The property has been sold and the buyer wants to lease it to another person.
 - D. Demolition or extensive renovations are being undertaken.
4. With regard to the *Family Law Act*, which of the following is a correct statement?
 - A. Under the Act, one property must be designated as the matrimonial home.
 - B. Under the Act, spouses are always joint-tenants of a matrimonial home.
 - C. Non-owner spouses can contract out of their rights to equal division of property in the event of a marriage breakdown.
 - D. The Act enables a spouse to encumber or dispose of a matrimonial home without the consent of the non-owner spouse.
5. Which of the following statements are correct about the *Planning Act* clause in the *Agreement of Purchase and Sale*?
 - A. It provides that the agreement remains a legally binding contract if the buyer does not use the property according to the provisions of the *Planning Act*.
 - B. It provides that before completion, the buyer should get necessary consent from appropriate authorities for any improvements on the property done by the seller.
 - C. It provides that the seller must comply with all provisions of the *Planning Act* before accepting the agreement.

- D. It provides that the buyer may terminate the agreement if the seller has not complied with the provisions of the *Planning Act* by completion date.
6. The *Consumer Protection Act* provides that:
- A. Fines for violations under the Act cannot exceed \$100,000.
 - B. All real estate transactions are exempt as consumer transactions.
 - C. Real estate transactions are exempt as consumer transactions, except those involving timeshares.
 - D. Only negotiations involving seller representation agreements are exempt under the act.
7. When considering whether sale of property is subject to *Capital Gains Tax* or not, which of the following statements is correct?
- A. Sale of real property by registrants is never subject to *Capital Gains Tax*.
 - B. Principal residences are exempted from the *Capital Gains Tax* subject to certain qualifications.
 - C. The frequency of transactions is not an important factor when deciding if the gain from sale is capital in nature or business income.
 - D. If the seller is not a non-resident, *Capital Gains Tax* is never applicable.
8. One of the key characteristics that differentiates a condominium from a co-operative is the fact that:
- A. The condominium levies monthly fees to the owners, but there is no monthly fee in a co-operative.
 - B. The condominium and co-operative both provide legal ownership of the unit title.
 - C. The condominium is managed by a board of directors while a co-operative is not.
 - D. The condominium owner can sell the title to his/her specific unit, but this is not possible in a co-operative.
9. As a general rule, when a tenant wants to sublet the entire leased space to a third party:
- A. The subtenant never needs to be approved by the landlord.
 - B. The landlord maintains the privity of contract with the original tenant.
 - C. The landlord can increase the rent because a new individual will occupy the premises.
 - D. The original tenant is permitted to receive higher rent from the subtenant than he is paying to the landlord.
10. The *Commercial Tenancies Act* includes several obligations of a commercial tenant to the landlord. Which of the following is NOT one of them?
- A. The tenant must fulfill all obligations as set out in the lease agreement.
 - B. The tenant has the right to terminate the tenancy agreement if the landlord fails to fulfill lease obligations.
 - C. The tenant must pay the agreed upon rent on due date.
 - D. The tenant has the right to take disputes involving the landlord to the *Small Claims Court*.
11. What are the requirements of the *Real Estate and Business Brokers Act 2002*, with respect to providing copies of the *Listing Agreement* to the sellers of the property?
- A. One copy of the listing agreement must be given to the sellers within 24 hours of signing.

- B. Sellers must be given a copy of the *Listing Agreement* at the same time as an offer is being signed.
- C. Each seller must be given a copy of the *Listing Agreement* immediately upon signing it.
- D. A copy of the *Listing Agreement* must be given to the sellers within 5 business days.

12. According to the provincial *Land Transfer Tax Act*:

- A. *Land Transfer Tax* applies to the purchase of land and fixtures but not to the purchase of chattels.
- B. New home buyers always get a full refund of the tax paid when purchasing directly from the builder.
- C. First time home buyers get a maximum of \$4000 tax refund if they occupy the home within 120 days.
- D. Life lease interests are exempted from the *Land Transfer Tax* in any life lease development.

13. Seller Smart accepts an offer on his home. The completion date is set in 2 months. Two weeks prior to closing, there is a massive fire in the property. The home suffers substantial damage, but repairs are possible. According to the pre-printed provisions of the *Agreement of Purchase and Sale*, the buyer:

- A. Must rely on his own insurance coverage to repair the damages.
- B. Cannot close the transaction as a damaged house was not what he agreed to purchase.
- C. Must take any proceeds from seller's insurance and complete the sale.
- D. May terminate the agreement given the substantial nature of the damage.

14. The Registrar of the *Real Estate Council of Ontario (RECO)* has published *Advertising Guidelines* for real estate registrants. According to these guidelines:

- A. Specific persons involved in a transaction can never be identified in advertisements.
- B. A registrant cannot identify a property in an advertisement if it is used for commercial purposes.
- C. A registrant can only identify a property in advertisements with informed written consent of the client.
- D. The listing brokerage is authorized to grant consent for identifying the property in advertisements.

15. A number of guidelines and relevant factors are considered to determine whether the profit from the sale of an asset is regular business income or a capital gain. Which of the following is one of these factors?

- A. Whether the seller is a resident or non-resident of Canada.
- B. The frequency of similar transactions.
- C. The taxpayer's marginal tax rate.
- D. The province in which the taxpayer is a resident.

16. Allan owns a cottage property, but it is not directly fronting on to a lake. He has been using his neighbour's property as a laneway to access the lake and to launch his boat for over 20 years without any interruptions. The property is registered under the Registry Act. The neighbour now sells the property and the new owner blocks Allan's laneway access to the lake. He also demands \$12,000 to open the laneway and provide access to the lake. Instead of

making the payment, Allan takes the new owner to court to obtain an order to open the laneway. In your opinion, what would be the most likely decision of the court?

- A. The court decision may go with the new owner because \$12,000 is a reasonable amount to access the lake waters.
- B. The court is unlikely to order opening of the laneway because access to a lake is not a necessity for Allan.
- C. The court is unlikely to order opening of the laneway because new owner is a servient tenement and the easement comes to an end upon sale of property.
- D. An easement has been created by continuous use over a long period of time and the court may order the new owner to open the laneway.

17. In purchase of a unit in a non-profit co-operative housing complex, the new owner must be provided a set of documents. Which of the following is NOT one of them?

- A. A new share certificate.
- B. Assumption of occupancy agreement.
- C. Amount of mortgage.
- D. A copy of rules, regulations and by-laws.

18. Salesperson Sandy shows a property to her buyer client. The property is not listed with any brokerage, but the seller agrees to show the property and pay commission if sold. The showing leads to an offer which is accepted by the seller. In this case:

- A. Sandy has created an agency relationship with the seller, but her brokerage is not bound by it.
- B. An agency relationship has been created by ratification.
- C. An agency relationship has been created by operation of law.
- D. An agency relationship has been created by implied authority.

19. When a property is sold, both chattels and fixtures are often included in the sale. Which of the following is correct statement about chattels?

- A. Chattels are always included in the sale unless they are specifically excluded in the Agreement of Purchase and Sale.
- B. Chattels are best described as items that are leased by the seller rather than owned.
- C. Any items in the property that is permanently attached to the structure.
- D. Chattels are personal moveable items of the seller and are not part of the real property.

20. Salesperson Jenny of Cram Realty Inc. sold one of her listings, 37 Square Street to a buyer who had signed a *Buyer Customer Service Agreement* with her brokerage. According to the provisions of the *Agency Law*, what was the role of Cram Realty Inc. in this transaction?

- A. Cram Realty Inc. was the listing brokerage acting in single seller representation.
- B. Cram Realty Inc. was acting in a multiple representation capacity.
- C. Cram Realty Inc. was both a listing brokerage and a co-operating brokerage.
- D. Cram Realty Inc. was acting in a buyer brokerage capacity.

21. Henderson has purchased a large parcel of land outside the town for a price of \$740,000. What amount of land transfer tax he will have to pay at the time of closing?

- A. \$9,100
- B. \$11,275

- C. \$14,800
- D. \$7,275

22. The *Agency Law* requires that an agent cannot act both as an agent and as a principal in a transaction with another client in the buying and selling of real estate without the client's knowledge and consent. For a real estate brokerage business, where is this requirement more specifically addressed in statute law for the protection of consumers?

- A. *Real Estate and Business Brokers Act 2002*, in the section listing the *Exemptions from Registration*.
- B. *Consumer Protection Act*, in the section relating to *Unfair Practices* in the selling of services.
- C. *Consumer Reporting Act*, in the section dealing with the requirements to obtain a credit report.
- D. *Real Estate and Business Brokers Act 2002*, in the section dealing with *Acquisition or Divestiture by a Registrant*.

23. The *Real Estate and Business Brokers Act 2002* contains specific requirements when a registrant makes certain promises as an inducement for someone to enter into a real estate agreement. Which of the following statements is correct with respect to this section of the Act?

- A. This section of the Act applies to promises to clients but not to customers.
- B. All promises to clients and customers must be put in writing.
- C. The promise must be put in writing and delivered to the person to whom the promise is made.
- D. This section of the Act would apply to a promise to pay the seller's closing expenses.

24. Business owner Brown contacts salesperson Jenny of Cram Realty Inc. to list his business for sale. Brown tells Jenny that he is not interested in showing his financial statements. As a salesperson, which of the following requirements the salesperson must comply with when dealing with this situation?

- A. Inform the seller that if the financial statements are not provided, the seller must give a *Sale of Business Affidavit*, which includes specific information related to the business operation.
- B. Inform the seller that the buyer must get at least the list of items that will be included in the sale of the business.
- C. Inform the seller that not providing financial statements to a buyer is a standard practice, but the buyer must be provided with a statement indicating the annual gross revenue of the business.
- D. Inform the seller that the provincial law requires every business owner to provide financial statements of the business before the buyer submits a written offer.

25. The *Real Estate and Business Brokers Act 2002* requires that certain information must be provided to buyers and sellers before they enter into agreements with the brokerages. Which of the following is NOT one of the requirements of this provision of the Act?

- A. Service alternatives available through the brokerage.
- B. The fact that circumstances could arise when the brokerage may be representing more than one client in the same trade.

- C. The fact that circumstances could arise where the brokerage is representing a customer and providing limited services to a client for the same trade.
- D. The fact that circumstances could arise when the brokerage may be providing services to more than one customer in the same trade.

26. Buyer Bright has an accepted *Agreement of Purchase and Sale* with seller Smart. The transaction is scheduled to close on April 30, 20xx. About two weeks prior to closing, Bright comes to know that Smart is not willing to close the transaction. This fact is confirmed to the buyer by one of his best friends. Which of the following is a valid option for the buyer in this situation?

- A. Tender his documents and funds on the date of completion to his lawyer.
- B. Tender his documents and funds as soon as he knows that the buyer is unwilling to close.
- C. Tell the seller that this is not possible under the terms of the agreement.
- D. Suspend the agreement to give more time to seller.

27. The buyer's lawyer searches the title of the property and finds that there is a registered deed restriction. According to your understanding of pre-printed wording of the *Agreement of Purchase and Sale*, under what circumstances can the buyer use the deed restriction as an objection to the title?

- A. Buyer can never use a registered deed restriction as an objection.
- B. Buyer can use any deed restriction found during the title search as an objection.
- C. A deed restriction can be used as an objection if it conflicts with the future intended use by buyer.
- D. The buyer can use the deed restriction as an objection if the seller has not complied with the deed restriction.

28. When landlord Larson leased one of the units in his commercial plaza, he specifically mentioned in the lease that the storeowner will not be selling cigarettes and lottery tickets. Six months later, the storeowner started selling cigarettes and lottery tickets because he was not making enough profits from his business. This was a clear breach of lease contract by the tenant. If landlord Larson approaches a court, which of the following remedies would most likely be used?

- A. Injunction
- B. Damages
- C. Specific Performance
- D. Quantum Meruit

29. The *Canadian Real Estate Association (CREA)*® publishes guidelines on advertising practices by its members. The guidelines place specific emphasis on false and misleading advertisements so that the members comply with the *Competition Act*. Which of the following would be considered a misleading advertisement according to the Act?

- A. Where the material facts about the property have been verified by the registrant.
- B. Where the general impression of the advertisement is something other than the wording.
- C. Where the abbreviations used are commonly used in the locality.
- D. When the seller intends to sell the property over and above the actual advertised price.

30. Buyer Bright enters into a contract with seller Smart for the purchase of Smart's home. The *Agreement of Purchase and Sale* is negotiated by a real estate brokerage. Following the acceptance, the buyer discovers that the seller did not disclose certain minor latent defects about the property and refuses to close. In this instance:

- A. The seller has the right to enforce the contract and take legal action against the buyer as he has privity with the buyer.
- B. The listing brokerage has the right to enforce the contract as it is a party to the contract.
- C. Both the seller and the listing brokerage can enforce the contract and take legal action to force the buyer to close the deal.
- D. The buyer can sue both the seller and the listing brokerage for not disclosing the defects in the property.

31. The landlord has given 60 day's termination notice to a tenant who is living on month-to-month basis. The landlord wants to occupy the unit himself. The tenant agrees but wants to move out as soon as possible. As per the *Residential Tenancies Act*, which of the following best describes tenant's option?

- A. Since this is a month-to-month periodic tenancy, the tenant must also give 60 days' notice to the landlord.
- B. The tenant has to move out only if the landlord himself has to occupy the unit.
- C. The tenant must stay in the unit and cannot move out until the end of 60 day's period.
- D. The tenant can now give as little as 10 days' notice for early termination of tenancy agreement.

32. The *Consumer Protection Act* has certain provisions for sale of *Time Share* interests. Which of the following statements is correct in this regard?

- A. The agreement must be delivered to the consumer within 10 business days of signing.
- B. A consumer can always cancel a timeshare agreement within one year of signing.
- C. A consumer can cancel the agreement within 10 business days after receiving a written copy.
- D. A consumer can cancel the agreement within year if he does not receive a copy of the agreement for signing.

33. The *Deposit* clause in the *Agreement of Purchase and Sale* provides that the buyer will give the deposit within 24 hours of acceptance of the offer, unless otherwise provided for in the agreement. The *Real Estate and Business Brokers Act 2002* states that the deposit will be placed in the brokerage's trust account within 5 business days. Is there a conflict between the wording of the agreement and the requirements of the Act?

- A. No, there is no conflict. For all transactions, the deposit must be placed in the real estate trust account of the brokerage within 5 business days of the buyer making the offer.
- B. Yes, there is a conflict. The co-operating brokerage has up to 5 business days to give the deposit to the listing brokerage.
- C. No, there is no conflict. The time frame in agreement gives 24 hours to the buyer to submit the deposit and the 5 business days' time is for the listing brokerage to deposit the funds after receipt.
- D. Yes, there is a conflict. The buyer can simply ignore the 24-hour time frame in the agreement because *REBBA 2002* permits him to give the deposit within 5 business days.

34. Bright permanently lives in his property located in a mobile home park. Which of the following statements is correct with respect to the rights and responsibilities of the land owner and Bright?

- A. Bright's tenancy agreement with the landlord of the mobile home park can provide the landlord with the *First Right Refusal* in the sale of the dwelling.
- B. As a tenant of the mobile home park, Bright is responsible for maintaining the grounds and all buildings and equipment intended for common use by residents.
- C. Bright is required by law to use the landlord of the mobile home park as an agent in the sale or lease of his dwelling.
- D. Bright cannot sell or lease his dwelling without the consent of the landlord of the mobile home park.

Case Study – 3 Parts

Salesperson Jenny of Cram Realty Inc. is preparing an offer for her buyer client on a property at 27 Square Street. The property is listed by salesperson Kim of Power Realty Inc.

Listing salesperson Kim has informed the buyer that the 60-year-old detached bungalow has been insulated with urea formaldehyde foam insulation (UFFI). The buyer has no problem and intends to have it removed after closing. There is also a minor easement on the property for the supply of telephone service which the buyer has not been advised of.

An offer of \$415,000 was prepared by salesperson Jenny. Fax numbers for both Power Realty Inc. and Cram Realty Inc. were inserted in the *Notices* clause and the following UFFI clause was inserted in Schedule A of the offer:

"The Seller discloses, and the Buyer acknowledges that the building contains urea formaldehyde foam insulation. The Buyer accepts the property in that state and further acknowledges that the Seller does not warrant the quality or quantity of the insulation or its installation."

The offer was presented to the sellers and, after some deliberation; they decided to make a counter offer by raising the purchase price to \$420,000. The counter offer was presented to the Buyer who decided to accept it.

Answer the following three questions based on the scenario above and the wording the Agreement of Purchase and Sale.

35. The *UFFI* clause in Schedule A conflicts with the preprinted UFFI clause in the offer. Will this create a problem for the parties to the agreement?

- A. No. Provided that the Buyer agrees to waive the provisions of the preprinted UFFI clause in writing or submits an *Amendment* once the offer has been accepted.
- B. No. The *UFFI* clause added to the Schedule A automatically takes precedence over pre-printed *UFFI* clause.
- C. Yes. The preprinted *UFFI* clause should have been deleted as it automatically takes precedence over the *UFFI* clause in Schedule A. It will allow the buyer to sue for breach of contract.
- D. Yes. There is no meeting of minds under the *Contract Law*; the mutual agreement is absent, and the agreement is void.

36. When would notice of acceptance of agreement be deemed to have been given by the buyer to the seller?

- A. As soon as the *Confirmation of Acceptance* is signed by the sellers.
- B. As soon as the fax is personally handed over to salesperson Kim at Power Realty Inc.
- C. As soon as the fax is delivered in person to the sellers.
- D. As soon as salesperson Jenny has transmitted the fax electronically to the listing brokerage.

37. According to the pre-printed wording of the *Agreement of Purchase and Sale*, what impact does the easement have on the transaction?

- A. The buyer has agreed to accept the title to the property subject to any minor easements for supply of domestic utility or telephone service to the property.
- B. The buyer can use the presence of the easement as an objection to title. If the Seller cannot remove the easement prior to completion, the buyer can void the transaction.
- C. In order for the transaction to be completed, the parties will have to sign an *Amendment* setting out the details of the easement.
- D. The agreement will become void as the easement has not been included in the legal description on the offer.

Case Study – 3 Parts

This case study is based on your understanding of the *Common Law of Contract*. Read the questions carefully and answer the following questions.

38. A property law student was asked to explain *Mutual Agreement* as one of the essential elements of a contract. The student wrote the following:

“A contract must have a mutual agreement between the parties. This begins with an offer, which must be complete and definite in its terms. A vague offer, when accepted may result in a complete meeting of minds. When an offer is accepted, it must be accepted exactly as offered. Any change in the offer when acceptance takes place is not really an acceptance but is a counter offer back to the party who made the offer.”

How would you evaluate the student's answer?

- A. This is an unacceptable answer, as the student obviously does not understand the concept of the *mutual agreement*.
- B. This is a reasonably good answer, but the student failed to mention that the communication of acceptance is included in the requirement for a *mutual agreement*.
- C. This is a reasonably good answer, but the student should mention that an offer and acceptance must be in writing for the contract to be binding.
- D. This is an excellent answer. The student fully described the requirements for a *mutual agreement*.

39. Another student was asked to explain the meaning of the term *Lawful Object* and provide two examples related to real estate brokerage to illustrate the meaning of the term. As an answer the student wrote the following.

“Lawful object is one of the essential elements of a contract. For a contract to be binding the purpose of the contract must not violate the law. If a contract is in violation of a Federal or

Provincial Statute, or a common-law requirement, it is void because the object of the contract is not lawful. Contracts contrary to the public policy or our society's morals, injurious prejudicial to the state or public service, or contracts that prevent justice or abuse the legal process would invariably be declared void by the courts. An example of a contract that does not have a lawful object would be an agreement between a group of real estate brokerages to all charge their sellers a fixed percentage as real estate commission. As the second example, if a marriage contract stated a spouse does not have ownership interest in a matrimonial home, such a contract would be void."

There is an error in the student's answer. Which of the following statements describes this error?

- A. Contracts that do not have lawful object are voidable, but not void.
- B. The concept of lawful object applies to common law principles but has nothing to do with federal or provincial statutes.
- C. The second example is not correct. A marriage contract can determine the ownership interest of a matrimonial home.
- D. Lawful object is important, but it is not one of the essential elements of a contract.

40. The third student was asked to explain *Consideration*. Briefly describe the meaning of the term consideration and provide an example related to real state. The student wrote:

"For a contract to be binding each of the parties must receive something in return for what they are giving or doing. The law will not bind someone to a promise if they are receiving nothing in return. Therefore, there must be an exchange between the parties of something of value. Courts require the exchange of something of value but not equal value. As long as there is no fraud, it is up to the parties not the court to determine whether the consideration received is adequate. Consideration can be the exchange of acts or promises to perform certain act, as long as one party receives something of value from the other. Placing a seal on the contract can be a substitute for consideration. Consideration must be past, present or future. An example of consideration would be a deposit submitted by a buyer with an offer as a part of consideration."

There is an error in the student's answer. Which of the following statements best describes this error?

- A. For a contract to be binding the exchange of consideration must be of reasonable equal value.
- B. Consideration can be present or future but cannot be past.
- C. A seal is actually a consideration and is not a substitute for consideration.
- D. A deposit is a pledge of good faith, but it is neither consideration nor a part of it.

Case Study - 5 Parts

Salesperson Jenny of Cram Reality Inc. is preparing an offer for her buyer client on a property listed with Power Realty Inc. The property at 106 Square Street is a detached bungalow with a basement apartment. The buyer intends to move into the main floor of the house and continue renting out the basement apartment. The buyer has specifically told Jenny that he wants to make sure that he won't have to pay HST in addition to the purchase price.

Answer the following five questions related to the scenario above, and the wording of the *Agreement of Purchase and Sale*.

41. The *Notices* clause on the Agreement has spaces to insert fax numbers for delivery of notices to the seller and the buyer. Under which of the following situations would it be appropriate for brokerage fax numbers to be entered in both of those spaces.

1. When the listing brokerage represents the seller and the co-operating brokerage represents the buyer.
 2. When the listing brokerage represents both the buyer and the seller.
 3. When the listing brokerage represents the seller and the co-operating brokerage is a sub-agent of that listing brokerage.
 4. When a private seller has signed a seller customer service agreement with the same brokerage that has the buyer as a client.
-
- A. Only in situation described in option 1.
 - B. Only in situations described in options 1 and 2
 - C. Only in situations described in options 3 and 4.
 - D. Only in situations described in options 2, 3 and 4.

42. How would Jenny have completed the HST clause in the *Agreement of Purchase and Sale* and why?

- A. The clause would have been left blank until the seller certified whether the HST is payable in the transaction or not.
- B. The words '*In Addition To*' would have been typed as this would result in seller having to pay HST if the property was subject to this tax.
- C. The words '*In Addition To*' would have been typed in as the seller would be confirming that the transaction would be subject to HST.
- D. The words '*Included In*' would have been typed in as this would result in the seller having to pay HST if the property was subject to this tax.

43. As stated previously, the basement apartment in the property is currently being rented to a tenant. If salesperson Jenny leaves the '*Present Use*' section blank in the *Title Search* clause of the agreement, what effect would this have on the transaction?

- A. The seller is representing that the basement apartment is illegal.
- B. It makes the agreement voidable because essential information is missing.
- C. The property has a basement apartment and the seller is representing that it's use is legal.
- D. The seller is representing that the property can legally be used as a single-family residence.

44. During the offer presentation, the seller refuses to provide any warranty whether *Urea Formaldehyde Foam Insulation (UFFI)* was used in the property or not. What should salesperson Jenny do in this case?

- A. Disclose the fact to the buyer client and take verbal consent to go ahead with the offer.
- B. The salesperson should make further enquiries and insert appropriate disclosure clauses.
- C. Nothing needs to be done by the salesperson in this case.
- D. Tell the buyer that UFFI has not caused health problems to anyone so far.

45. The seller never disclosed in the listing information that the property was subject to certain restrictive covenants imposed by the subdivision agreement. The buyer's solicitor found these

during the title search and that these restrictive covenants were complied with by the seller. The buyer is now upset and wants to cancel the agreement of purchase and sale. In these circumstances, which of the following statements is correct?

- A. The buyer has the legal right to terminate the agreement because of non-disclosure by the seller.
- B. The buyer cannot terminate but can sue the seller for damages.
- C. Restrictive covenants that run with land and are complied with, are generally not a reason to terminate.
- D. The seller can now make a written disclosure to avoid last minute dispute.

Case Study - 5 Parts

Salesperson Jenny of Cram Realty Inc. shows her client, Henna Fernandez, suite 706, located on 234 Square Avenue. This 2-year old luxury condominium is available for lease. Based on Henna's instructions, Jenny has prepared an offer on the Agreement to Lease form with monthly rent of \$1,650. The term of the lease is one year and, in addition to the first month's rent, one month's rent is offered as deposit. Henna signs the offer and it is faxed to the owner's sales representative at Power Realty Inc. The owner counters the offer with a monthly rent of \$1,750; a rent deposit of \$2,800 in addition to the first month's rent and, a 'No Pet' clause is included in Schedule A of the agreement. Henna does not have a pet and accepts the owner's counter offer. The Agreement to Lease form states that a lease document will be executed by the parties before occupancy.

46. Is there a legal problem with respect to the terms of the owner's counter offer?

- A. Yes, a rent deposit is allowed but it cannot be more than the monthly rental of \$1,750.
- B. Yes, under the *Residential Tenancies Act*, security deposits are allowed, but rent deposits are not.
- C. Yes, a 'no pet' clause cannot be included in any residential lease.
- D. There is no problem, as the tenant has agreed to the terms of the counter offer.

47. Once the *Agreement to Lease* has been completed between the landlord and tenant, Henna is asked to sign the actual lease document. She is upset to see that the lease contains many more clauses and requirements that were not included in the *Agreement to Lease*. For example, the actual lease includes restrictions on decorating, a penalty for NSF cheques, insurance requirements, rules for maintenance and disposal of garbage, a clause making the tenant liable for damage to premises, etc. Which of the following statements correctly describes the legalities of this situation?

- A. The lease should not contain additional clauses and Henna can insist on taking occupancy without signing the lease document.
- B. The lease should not contain additional clauses and Henna has no obligation to rent the condominium if the landlord insists on obtaining a signed lease.
- C. Once the *Agreement to Lease* has been completed, the landlord has the right to add any additional terms to the lease document that the landlord chooses.
- D. A lease normally contains more detailed clauses than an *Agreement to Lease* and, provided that the clauses are reasonable and typical for a residential lease, Henna has an obligation to sign the lease document.

48. Henna moves into the condominium and, 2 months later she buys a 30-pound dog. The property manager tells the owner about the dog and the owner demands that Henna remove the dog from the premises. Does Henna have to comply with this request?

- A. Henna will have to comply with the request because the lease does not contain a clause stating that a dog is permitted.
- B. Henna will have to comply and remove the dog if there is a 'No Pet' provision in the condominium *Declaration*.
- C. A 'No Pet' provision is void according to the *Residential Tenancies Act* and this would override any provision in the condominium *Declaration*.
- D. Henna would only have to comply if she owned a dog prior to the lease being signed and kept this information hidden from the owner.

49. Because of the dispute over the dog, Henna decides to move to a different location. She informs the landlord that she plans to sub-let the condominium. The landlord informs Henna that the sub-tenant must be approved by the landlord before they can occupy the unit. Based on this scenario, which of the following statements is correct?

- A. The landlord may charge a reasonable fee for the sub-letting process.
- B. The landlord can refuse to approve any sub-tenant without justification.
- C. Once the sub-tenant moves in, Henna is no longer liable or responsible for the lease.
- D. The sub-tenant has the right to continue occupying the unit after the expiry of Henna's lease.

50. Henna's lease expires on the 30th day of September. The landlord wants his mother to move into the unit prior to expiry of the lease and, on the 10th of May gives a 30-day notice of termination. The sub-tenant now occupying the property does not want to move. Which of the following statements is correct regarding this situation?

- A. Sixty days' notice is required for a relative and so the earliest that the mother could move in would be the 1st of August.
- B. The notice of termination would be valid if it was the landlord who wants to move into the property, but the notice would not be valid if it is the landlord's mother.
- C. The *Residential Tenancies Act* allows a landlord to terminate a lease at any time for the purposes of moving a mother into the premises.
- D. The landlord can terminate the tenancy for this reason, but the earliest the mother could move in would be the 1st day of October.

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QUICK ANSWER KEY

SAMPLE EXAM 1

1. B	2. C	3. A	4. C	5. D
6. C	7. B	8. D	9. B	10. B
11. C	12. A	13. D	14. C	15. B
16. D	17. A	18. B	19. D	20. A
21. B	22. D	23. C	24. A	25. C
26. A	27. D	28. A	29. B	30. A
31. D	32. C	33. C	34. A	35. B
36. D	37. A	38. B	39. C	40. B
41. A	42. D	43. C	44. B	45. C
46. A	47. D	48. B	49. A	50. D

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SAMPLE EXAM 2

► **Note:** Take a blank sheet of paper and note down your answers. The Quick Answer Key is given at the end of this Sample Exam.

1. Martha owned a house before marriage and it became a matrimonial home after her marriage to Ben. According to the provisions of the *Family Law Act*.
 - A. Ben automatically becomes owner of one half of the property.
 - B. Martha can sell this property anytime without even asking Ben.
 - C. Ben gets one half of the net increase in value of house after marriage.
 - D. Ben does not have any type of interest in this house.
2. Select the correct statement regarding joint tenancy.
 - A. Joint tenancy is between two spouses only.
 - B. All joint tenants must receive ownership at the same time and through same documents.
 - C. Joint tenancy can only be terminated when all tenants have mutual agreement.
 - D. Joint tenancy can be converted into tenancy-in-common without exceptions.
3. Lease is a grant of interest given by a landlord to a tenant. The lease contract must have certain essential elements in order to be enforceable. Which of the following is NOT one of them?
 - A. The parties must be legally competent, and their full legal names must appear in the lease.
 - B. Consideration or rent to be paid and method of payment.
 - C. Description of legal purpose for which the premise is to be used.
 - D. Whether any chattels or fixtures are included or excluded.
4. Which of the following statements is correct about a *Reference Plan*?
 - A. A *Reference Plan* is commonly used to describe a property that is the subject of a severance.
 - B. A *Reference Plan* is used to register a subdivision after all approvals have been obtained for the draft plan
 - C. The registration of a *Reference Plan* legally severs a parcel of land into lots.
 - D. *Reference Plans* are used when the owner wants to avoid the cost of a survey.
5. When an agency relationship is created, the principal owes the agent certain duties. Which of the following statements best describes these duties?
 - A. The principal must act in good faith and fully disclose all information pertaining to the transaction to the agent.
 - B. The principal must act with loyalty and in good faith and protect the interests of the agent.
 - C. The principal owes *indemnification* which means the principal must pay the agent for the services rendered.
 - D. The principal must take responsibility for the lawful acts done by the agent on behalf of the principal and pay the agent for the services provided.
6. Landlord Smart has given his current tenant the option to purchase his three-bedroom bungalow at 135 Cram Street in Huntsville for \$470,000 within one year from the date of agreement. Under this agreement:

- A. The tenant must purchase the bungalow within one year.
- B. The landlord can still sell the property in open market during the term of this agreement.
- C. A legally binding contract does not exist at this time.
- D. The landlord can sue the tenant if he does not purchase the bungalow within the specified time.

7. According to the *Contract Law*, contracts with minors are enforceable if:

- A. The minor has an adult as a co-signor to the contract.
- B. The minor is represented by an adult.
- C. The contract is for a living accommodation.
- D. The minor avoids the contract before reaching the age of maturity.

8. Ben and David own a property as joint tenants. David is doing volunteer work in Austria. So, Ben and his spouse Jane move into the property. Unfortunately, Ben dies. Who then owns the property?

- A. David owns 100% of the property because he owned the property in joint tenancy with Ben at the time of Ben's death and Jane has no interest in the property.
- B. David owns half and Ben's estate owns half, because the *Family Law Act* terminated the joint tenancy upon Ben's death and it became tenancy-in-common.
- C. David owns 100% of the property because of the right of survivorship and Jane has 100% possession of the property.
- D. Jane owns 100% of the property because of the right of survivorship.

9. When a business is sold, and a real estate brokerage is involved, the buyer must get a list of items (fixtures or chattels) not included in the sale. What happens if the seller does not provide such a list?

- A. The buyer does not get any chattels but gets only fixtures because they are fixed to the property.
- B. The buyer gets only chattels but does not get any fixtures with which the seller is running the business.
- C. The buyer gets only the stock and does not get any fixtures or chattels.
- D. All items, whether they are fixtures or chattels, with which the seller is running the business are deemed included in the sale.

10. Salesperson Anson is really impressed with the sales volume generated by this four-person registrant team and wants to advertise this fact. In doing so:

- A. Anson is not permitted to advertise the sales volume generated by his team.
- B. A combined sales volume can be advertised provided the advertisement recognizes all registrants in the team.
- C. Advertising guidelines only permit advertisement of trading activities but not sales volumes.
- D. Advertising sales volumes by a team must first be approved by the Registrar of RECO.

11. The relationship between a *life estate* and a *future estate* can be described by the following:

- A. When the life estate and the future estate are combined, the interest is equal to a fee simple interest.
- B. A life estate and a future estate are always held by the same person.
- C. The person who receives the life estate always determines who holds the future estate.

- D. The person who holds a life estate can sell the property without the consent of the person holding the future estate.

12. A mortgagor when paying off the charge/mortgage:

- A. Typically receives a *Document General* from the mortgagee stating that the mortgage has been paid.
- B. Must pay an outstanding amount to the court in order to discharge that mortgage.
- C. Must receive acknowledgement from the mortgagee that the *Standard Charge Terms* have also been discharged from the title.
- D. Can remove the lien on the property by registering a *Discharge of Charge/Mortgage* form duly executed by the mortgagee.

13. Buyers Kenny and Jenny purchase an investment property. Kenny will have one-fourth interest while Jenny will have three-fourths. Based on this information, which of the following statements is correct?

- A. Kenny and Jenny are joint tenants as both acquired the property at the same time.
- B. The title will automatically transfer to Jenny upon Kenny's death.
- C. Joint tenancy is not created as the interest of each buyer is different.
- D. Kenny and Jenny will create a joint tenancy if the interests were acquired at the same time.

14. Buyer Serina purchased a timeshare interest in a popular resort area about 2 months ago. Last week, she received a copy of the signed agreement from the sellers. According to the provisions of the *Consumer Protection Act*, which of the following statements is correct in this regard?

- A. Serina cannot cancel the agreement because she purchased it more than a month ago and the cooling off period has passed.
- B. Serina can cancel the agreement within 10 days of receiving a signed copy of agreement.
- C. Serina still has 11 more months to cancel the contract.
- D. The contract, once signed, cannot be cancelled because a legally binding contract is already in effect.

15. Buyer Jenny has just made an offer of \$1,415,000 on a freehold home. Assuming that the offer is accepted by the seller, what would be the land transfer tax on this property?

- A. \$14,775
- B. \$28,300
- C. \$24,775
- D. \$18,525

16. Section 116 of the *Income Tax Act* has provisions for *Capital Gains Tax* when non-resident sellers dispose of real property in Canada. If the seller does not pay, the tax becomes buyer's obligation.

Accordingly, which of the following statements is correct about *Capital Gains Tax*?

- A. Non-resident sellers must pay the tax before the interest in property can be transferred to a buyer.
- B. A non-resident seller must remit a certificate from the *Minister of Revenue* to the buyer.
- C. A resident seller must provide a declaration that he is not a non-resident.

- D. Sale of cottage properties and depreciable assets is always capital in nature and capital gains tax must be paid.

17. The government of Ontario permits restrictive covenants (private deed restrictions) to be placed on the title of real property. Which of the following statements describes a reason for including a restrictive covenant in a deed?

- A. To create a mutual drive with the neighbouring property.
- B. For the municipality to enforce zoning restrictions.
- C. To allow a property to be used for a purpose that the zoning bylaws do not permit.
- D. To prevent a property from being used for a purpose that is permitted by the municipal zoning by-law.

18. The *Land Registration Reform Act* sets out five standard documents for registration. Which of the following statements is correct in this regard?

- A. One of the five standard documents set out in the Act is the *Surveyors Real Property Report*.
- B. When a property is sold, and the transaction is registered, a *Transfer/Deed of Land* form is used.
- C. There are both express and implied terms included with each standard document; therefore, there is no provision to add additional terms on a *Schedule*.
- D. The *Document General* form is used to register a *Charge/Mortgage of Land*.

19. A seller of a vacant commercial site is asked by a potential buyer about any possible contamination on the land. The seller, aware of previous dumping of contaminated materials on the land, is in dire financial problems and needs a quick sale. Besides this, he assumes that the contamination will never be found. The seller assures the buyer that the property is clean, and the buyer proceeds based on that fact. However, serious contamination was discovered after closing when an environmental audit was completed.

The seller's statement is best described as:

- A. Fraudulent misrepresentation.
- B. Innocent misrepresentation.
- C. Unilateral mistake.
- D. Negligent misrepresentation.

20. The pre-printed provisions of the *Agreement of Purchase and Sale* contains a representation by the seller that he/she did not install *Urea Formaldehyde Foam Insulation (UFFI)* and that the property does not contain UFFI. If the buyer discovers UFFI on the property after closing the transaction and it is proven that it was installed during the seller's ownership of that property:

- A. The buyer would be responsible to remove the UFFI with no chance of any recourse against the seller.
- B. Since UFFI is not a bad substance, no action is possible against the seller.
- C. Since the representation and warranties are only up to the date of closing and do not merge, the seller will not be responsible as UFFI was detected after closing date.
- D. The seller has given a warranty that conflicts with material facts and legal action for damages could result.

21. The *Real Estate and Business Brokers Act 2002* has some requirements when a brokerage is involved in the sale of a business. Which of the following is correct in this regard?

- A. A statement showing the list of all goods, fixtures, chattels and rights included in the sale of the business be provided to the buyer prior to a binding agreement
- B. A profit and loss statement be provided to the buyer for the past 12 months or ever since the seller acquired the business.
- C. If no financial statements are available, a statement disclosing this fact must be included in the *Agreement of Purchase and Sale* to protect the buyer.
- D. The *Sale of a Business Affidavit* be signed by the seller and witnessed by the listing salesperson.

22. A salesperson advertised new homes in a subdivision and misled consumers as to the actual price being paid and the features included in that price. Assuming the Registrar found this person in violation of Sec. 37 of the *REBBA 2002 Code of Ethics* (false advertising); the Registrar has several options available. Which of the following is NOT one of them?

- A. Order the cessation of this advertising by the registrant.
- B. Require pre-approval of all advertising by that salesperson up to one year under certain circumstances.
- C. Order the cessation of all advertising by the employing brokerage.
- D. Order the retraction of the advertisement and/or publish a correction notice.

23. A salesperson, acting for the listing brokerage, prepared an offer for buyer Bright conditional upon financing within 10 days, which was subsequently accepted by the seller. A few days after acceptance, the buyer informs the salesperson that he is having difficulty getting a mortgage loan and wants his deposit back. In this situation:

- A. The salesperson should tell the buyer that the deposit refund cheque would be sent to him within the next few days.
- B. The brokerage can release the deposit refund cheque with the approval of the broker of record provided a request is received from one of the parties.
- C. The brokerage can release the deposit once all parties to the agreement sign a *Mutual Release*.
- D. The brokerage can release the deposit once a written request is received from the buyer as the money belongs to the buyer.

24. Mrs. Jenny lends Mrs. Smart \$5,000. Shortly thereafter, Mrs. Smart decides to sell a parcel of land that she has owned for many years. Mrs. Jenny is interested in buying the land and submits a written offer to Mrs. Smart with a price of \$45,000 and including a clause that reads:

"Buyer and seller agree that the unpaid loan of \$5,000 is the deposit for this offer and will be deducted from the purchase price on completion."

Shortly after the offer is accepted, Mrs. Smart changes her mind and decides not to sell the land, and claims the agreement is not binding because of lack of consideration. Do you agree with this claim?

- A. No. The unpaid loan was offered as the deposit at the time the offer was made, therefore it qualifies as part of consideration and the agreement is not void.
- B. Yes. Past consideration is no consideration and the agreement is void.
- C. Yes. The agreement would have to be signed under seal for it to be binding.
- D. No. The agreement is not void but it is voidable by the seller due to lack of consideration.

25. Salesperson Skinny was involved in more than 40 transactions over the past year. She is excited and wants to include this information in all her advertisements. In order to advertise this fact:

- A. The salesperson must submit all her advertisements to the Registrar for prior approval.
- B. The salesperson must make it clear in all advertisements what the term *transaction* means.
- C. Real estate registrants are prohibited from advertising number of transactions but can advertise the dollar volume.
- D. The salesperson must also identify all the 40 properties in her advertisements to prove this claim.

26. Buyer Bright has shown keen interest in purchase of a property located at 234 Square Avenue. The basement is finished; however, there is a significant structural problem with the foundation and a persistent problem of water leaking into the basement. There is also a broken window pane on the main floor. On the day that Bright viewed the property, there was no evidence of the leaky basement or the structural problem with the foundation, and both of these problems were impossible to view because the basement was finished. He also did not see the broken window pane. Bright purchased the property through a co-operating brokerage. The seller and the listing salesperson were aware of the problems, but the co-operating salesperson and the buyer were not informed.

After completing the purchase and moving into the property, Bright quickly became aware of the problems and contacted his lawyer to begin legal action. Which of the following statements best describes the legalities of this situation?

- A. There is no cause for legal action, as the problems described are patent defects and do not need to be disclosed.
- B. The problems with the basement and the broken window are material latent defects and should have been disclosed to the buyer.
- C. Both seller and listing brokerage may be liable because they failed to disclose the problem with the leaky basement and the foundation and they are material latent defects.
- D. There is no liability for the seller and the listing brokerage, but the co-operating brokerage is probably liable because of an agent's fiduciary duties to a client.

27. According to the principles of *Land Titles Act*, which of the following statements is incorrect?

- A. The *Mirror Principle* states that the parcel register accurately and completely reflects the current facts about the property.
- B. The *Insurance Principle* provides compensation to anyone who suffers loss due to human error or fraud.
- C. The *Curtain Principle* states that buyers need not look for any document other than the land titles register.
- D. Anyone receiving compensation from *Land Titles Assurance Fund* may also receive compensation from other sources.

28. Which of the following statements is (are) correct regarding the provisions of the *Consumer Reporting Act*?

- 1. According to the Act, a consumer's age, occupation, estimated income and debt obligations are considered personal information.

2. If a landlord is obtaining personal information on an applicant for tenancy, the prospective tenant must be informed of this fact in advance.
 3. The Act applies to the collection and distribution of information on individuals and on business.
 4. If a seller is obtaining credit report on a home buyer because the buyer is asking the seller to take back a mortgage, the buyer must be informed of this fact before the report is obtained.
- A. Only statements 1 and 2 are correct.
B. Only statement 2 is correct.
C. Only statements 1, 2 and 4 are correct.
D. Only statements 2, 3 and 4 are correct.
29. A buyer finds out after closing of the transaction that the seller has removed the built-in dishwasher. The buyer contacts the seller and the seller points out that the dishwasher was not included in the *Agreement of Purchase and Sale* as a *Chattel Included*, therefore the seller had every right to remove it. Which of the following statements best describes this situation?
- A. The salesperson should have included the dishwasher in the Agreement to avoid any dispute after closing.
B. The dishwasher is a chattel and would not normally be included in the price of the property.
C. The dishwasher is a fixture but is not automatically included with the property.
D. The dishwasher is clearly an appliance and would have had to be written into the Agreement to be included in the transaction.
30. Mr. and Mrs. Smart and their children live at 43 Silver Maple Avenue. Only Mrs. Smart is on the title of the property. According to the *Family Law Act*, which of the following statements are correct in this situation?
1. Mr. Smart must give spousal consent if a new mortgage is arranged for 43 Silver Maple Avenue.
 2. If the property is sold, Mr. Smart's signature is not required as he is not on the title.
 3. In the event of a marriage break down, Mr. Smart must immediately vacate the property as he has no ownership rights.
 4. Mr. Smart has a right of possession of 43 Silver Maple Avenue but does not have an ownership interest.
- A. Only statements 1 and 3 are correct.
B. Only statements 1 and 4 are correct.
C. Only statements 2 and 3 are correct.
D. Only statements 1 and 2 are correct.
31. There are differences between the *Registry* system and the *Land Titles* system in Ontario. Based on the differences between these two systems, select the correct statement from the choices provided.
- A. The *Land Titles* system is the newer system and it eliminates some of the problems with the *Registry* system.
B. Metes and bounds descriptions are not permitted in the *Registry* system, but they are recommended for the *Land Titles* system.

- C. The *Registry* system registers documents and the *Land Titles* system registers documents and maintains history of ownerships. Both systems guarantee title to the property.
- D. The definition for a good root of title in the *Land Titles* system is a transfer of title that took place at least 40 years ago.

32. Cram Realty, Inc. was the listing brokerage for a property at 48 Cram Square. Power Realty Inc. sold the property to Mr. and Mrs. Bright, who had signed a *Buyer Representation Agreement* with that brokerage. Just before the scheduled closing date, the Bright's marriage broke up and they refused to complete the transaction. According to the wording of the *Listing Agreement* and the *Buyer Representation Agreement*, which of the three parties would be liable for commission and why?

- A. The sellers would be liable to Power Realty Inc. for the payment of their share of the commission as Power Realty Inc. was the co-op brokerage in the transaction.
- B. The sellers would be liable to Cram Realty, Inc. because the listing brokerage fulfilled its obligation under the terms of the *Listing Agreement* by bringing the sellers an acceptable offer.
- C. The buyers would be liable to Cram Realty, Inc. because the buyers were the ones solely responsible for not closing the transaction.
- D. The buyers should be liable to Power Realty Inc. under the terms of *Buyer Representation Agreement* because it was the buyers' fault that the transaction did not close.

33. As a general rule, an agent is expected to carry out the agency duties personally, since the principal expects the agent to accomplish the task the agent was given. However, there are circumstances under which an agent's duties may be delegated to others.

Which of the following would be one of these circumstances?

- A. When a property is listed on *MLS®* and the co-operating brokerage will be acting as a *sub-agent* of the listing brokerage.
- B. When the property is on *MLS®* and a co-operating brokerage obtains an offer from a buyer client.
- C. When a salesperson obtains a listing, the salesperson's fiduciary duties are delegated to the salesperson's brokerage.
- D. When the agent does not have the necessary skills and capabilities to perform the task.

34. Owner Jamie is running a convenience store in Cram City. He owns the standalone building and uses the apartment upstairs as his residence. Last month, Jamie received an expropriation notice from the municipality. The municipality wants to take about 10 feet from the frontage of his property that abuts the main street. Jamie is concerned that this would reduce his parking space and, besides this, the construction work for the proposed road widening project would cause loss of income for his store. He wants the municipality to pay him as much as possible for expropriating his property.

Which of the following is a correct statement in this regard?

- A. Jamie can refuse expropriation on the grounds that he would lose parking space as well as business income.
- B. Jamie can ask for any amount of compensation over and above the fair market value of the expropriated land.

- C. Jamie cannot refuse expropriation but can demand reasonable damages in addition to the compensation paid by municipality.
- D. Jamie has no right to ask for additional payments apart from the compensation paid by municipality.

35. In one of the in-house training sessions, a property law student was asked to explain the requirements of REBBA 2002 for selling a business. The student gave the following answer:

"The Act requires the buyer to receive a profit and loss statement for the preceding 12 months, a statement of assets and liabilities and a list of items included in the transaction. If the buyer does not receive the financial statements, the seller must provide the buyer with a statement under oath which must include all liabilities of the business and the details of any subletting, and the buyer can waive receipt of the financial statements."

How would you judge the student's answer?

- A. Excellent. The student gave a full and complete answer to the question.
- B. Good. The student's answer was a little brief and should have included the fact that the buyer's waiver must be in writing.
- C. Unacceptable. The student is completely confused with respect to the requirements of financial statements.
- D. Unacceptable. The answer should have stated the requirement for a statement of fixtures, goods, chattels, assets and rights relating to and connected with the business that are not included in the transaction.

36. The *Chattels Included* and *Fixtures Excluded* clauses are for protecting the best interests of the buyers and well as sellers. If you were working with the buyer and preparing the *Agreement of Purchase and Sale* and, there are certain built-in items that do not seem to fit in any of the two categories, what would you do?

- A. Include the items in the agreement so that there is no confusion later.
- B. Leave the clauses blank so that the seller and buyer may decide among themselves later.
- C. Ask the sellers and buyers to take advice from their respective lawyers.
- D. Leave the *Chattels Included* clause blank because these built-in chattels are always deemed included in the sale.

37. The *Real Estate and Business Brokers Act 2002* has certain requirements with respect to promises made by registrants as an inducement.

Which of the following is correct in this regard?

- A. REBBA 2002 requirements are for making promises to buyer and not to sellers.
- B. A registrant can make a promise to a buyer for sale of his home as an inducement to purchase another property, if such is clearly set out in a written contract between the brokerage and the buyers.
- C. A registrant is not permitted to make a promise to a buyer to purchase that buyer's property as an inducement to purchase another property.
- D. A registrant must not promise to buy a seller's property at a pre-determined price as an inducement to list the property with that registrant even when such a promise is put in writing.

Case Study - 3 Parts

Broker of Record Binny is having a sales training for some of his new salespersons who will mostly be dealing in condominium and co-operative resales.

38. In response to a Binny's question about the difference between financing agreements between condominium and co-operatives, salesperson Betty makes the following statement:

"In equity co-operative, a mortgage is registered against the entire building and all owners have joint liability related to their proportionate share of ownership. In condominium, units can be individually mortgaged. Owners of units in condominium are potentially liable for other owners should they not meet their mortgage obligations. Co-operatives present a challenge for financing in circumstances where there is a big difference between the proportionate share of the existing mortgage on a unit and the buyer's down payment. Secondary financing for the necessary amount may be difficult to secure."

The given explanation is not completely correct. Which of the following statements describes the error?

- A. Secondary financing for unit in a co-operative is relatively easy to arrange as building is the security for the mortgagee.
- B. There is no liability on individual unit owners in a co-operative except for their proportionate share of the existing mortgage.
- C. Individual unit owners in a condominium are not responsible for the mortgage payments of other unit owners.
- D. The proportionate share of an existing mortgage on a co-operative unit can be increased to accommodate a buyer's down payment.

39. Another salesperson, Skinny, raises a question about maintenance expenses. Binny asks other salespersons if anyone else could explain the topic. Salesperson, Anson makes the following statement:

"Condominium unit owners make monthly payments for maintenance expenses to maintain the common elements. Unit owners contribute to the maintenance expenses based on their proportionate share as outlined in the condominium Declaration. Since there are no common elements in co-operatives, owners of co-operative do not pay those fees. If a unit owner in a condominium defaults on their maintenance expenses, a lien is automatically placed on their unit by the corporation. A condominium owner's maintenance expenses can be reduced if the owner waives or abandons their right to use part of the common elements such as the tennis court or the swimming pool."

This explanation is also not completely correct. Which of the following statements correctly describes the error?

- A. Each condominium unit owner pays an equal share towards the maintenance expenses, not a proportionate share.
- B. Non-payment of maintenance fees may be a concern but is not considered serious enough to place a lien against the owner's unit.
- C. There are common elements in a co-operative but due to their nature, owners in a co-operative maintain their own property and there is no maintenance fee.
- D. Co-operatives are also subject to monthly maintenance fees and condominium owners cannot reduce their proportionate share of maintenance fee.

Case Study – 3 Parts

Bruce wants to buy a cottage that fronts onto a lake. Woodworking is his hobby and he has plans to build and sell furniture from that cottage property. His rich American cousin, who owns a cottage on one of the popular lakes, has decided to sell. Even though the price is beyond what Bruce had planned to pay, he buys the cottage from his cousin. Bruce does not use any lawyer but simply asks a friend to draft a deed and have it registered under the *Registry Act*. Bruce is convinced that his rich cousin would not have any liens on the property.

40. Shortly after Bruce takes possession of the cottage property, he is surprised to find out that a neighbour uses the cottage laneway to access the lake and launch his boat. He had been using the laneway for over a decade. Bruce is not pleased with this information and would like to terminate this arrangement with the neighbour.

Which of the following statements correctly describes the legal issues that will prevail in this situation?

- A. The neighbour has probably acquired a legal right by prescription to continue using the laneway.
- B. Since no easement is registered on deed, Bruce will have no problem stopping the neighbor from using the laneway.
- C. The neighbour is entitled to use the lane way because all property owners have riparian rights.
- D. The sale of the property and the transfer of title from the cousin to Bruce extinguished any right the neighbour may have had to use the lane way and launch the boat.

41. Bruce decides to occupy the building himself and create a display for furniture in his front yard. To his surprise, he receives a letter from his other neighbour who informs him that the property has a deed restriction preventing any business activities or marketing of any commercial products from the property. He calls the municipality and is informed that the zoning for the area does not prevent him from operating his business. Based on this information, Bruce informs his neighbour that he will definitely plan to sell lawn furniture.

Assuming the deed restriction exists, which of the following statements best describes Bruce's legal situation?

- A. The deed restriction was complied with at the time he bought the property, so Bruce has no reason to be concerned.
- B. The zoning allows him to operate his business, so he has no reason to be concerned.
- C. The sale of the property would terminate any deed restriction previously placed on the property.
- D. Bruce is in violation of a private deed restriction that appears to be valid, so he may have a problem.

42. The following week, Bruce receives a letter from *Canada Revenue Agency* informing him that he is liable for Capital Gains Tax on the cottage that the seller, his cousin, has not paid. Why would such a requirement be included in the *Income Tax Act*?

- A. Because it is not an arm's length transaction and when the buyer and seller are related, the tax becomes the responsibility of both the buyer and the seller.
- B. Because the seller is a non-resident of Canada, it gives *Canada Revenue Agency* the option of not having to collect the tax from someone outside the country.

- C. Because it is a principle residence for Bruce, but not the cousin's principal residence.
- D. Because it is the buyer of the property that is responsible for capital gains on the sale of a capital asset.

Case Study – 3 Parts

This case study requires you to apply your knowledge of the pre-printed clauses in the Agreement of Purchase and Sale, and deal with any questions a buyer may have.

43. You show one of your listings to a buyer client and the buyer decides to submit an offer. You prepare an offer for \$350,000 with \$20,000 deposit, conditional on obtaining a satisfactory home inspection report and a new first mortgage, as requested by the buyer. You then meet with the buyer to get it signed. The buyer explains that to pay the deposit, the buyer must sell some stocks and there is a three-day waiting period before the settlement of a stock transaction takes place and it will take him an additional couple of days to arrange to transfer funds and have access to the money. The buyer points out the agreement states the deposit will be submitted '*Upon Acceptance*' and explains he is not prepared to give the brokerage a cheque unless the funds are in his account.

How should you deal with this problem?

- A. You suggest that the '*Upon Acceptance*' can be deleted and replaced with '*As Otherwise Described in this Agreement*' and a clause can be added to adequately deal with the problem.
- B. You should tell the buyer not to worry because even though the clause states '*within 24 hours of acceptance*' it is common practice for reasonable delays to occur.
- C. You tell him it is your listing and since there is no brokerage involved you can ensure that the deposit will take at least 10 days to clear the bank.
- D. You tell him the real estate law in Ontario has been recently revised to extend the period to deposit the funds to 5 business days and should allow him enough time avoid any problems.

44. The buyer is also surprised to see a clause in the agreement that makes reference to *Consumer Reports*. The buyer asks why this clause is included and how does it affect him. How do you reply to this question?

- A. You explain that it is a standard clause that does not apply to the transaction because the seller is not financing the property.
- B. You explain that there is a new *Privacy Act* in Canada and the brokerage or seller cannot use this clause and obtain information on a buyer.
- C. You explain it gives the brokerage and/or seller the right to obtain credit information on the buyer if they decide it is appropriate for this transaction.
- D. You explain that this clause makes the offer conditional on the buyer having good credit.

45. The buyer has one last question before signing the offer. The agreement includes an expensive refrigerator and stove in the purchase price. In Schedule A, there is a warranty that the appliances would be in good working order on closing, however there is an additional statement the buyer is not familiar with and the buyer wants you to explain what it means. The statement reads

"The parties agree that this representation and warranty shall survive and not merge on completion of the transaction but shall only apply to the state of the property at completion of the transaction."

What do you explain as to why this statement is included with the warranty on the appliances?

- A. This statement requires the buyer to have a pre-closing inspection and notify the seller of any deficiencies in the appliances at the time of closing the transaction.
- B. This statement is included to prevent the warranty from ceasing to exist at completion of the transaction, but to protect the seller if there is a problem with the appliances that happens after completion.
- C. This statement ensures that if anything happens to the appliances after completion, the seller must either replace the appliance or pay for any repairs required.
- D. The statement makes the agreement conditional on the appliances being in good working order when the buyer takes possession.

Case Study - 5 Parts

Salesperson Jenny of Cram Realty Inc. is preparing an offer for her buyer clients Mr. and Mrs. Smart on a property listed by Power Realty Inc. The offered price is \$460,000 and is irrevocable until 6 pm on April 2nd. The names of the buyer making the offer are Mr. Jamie Smart and Mrs. Jenny Smart. The buyers are planning to use the property as their matrimonial home. Both names are entered the Agreement of Purchase and Sale as buyers and the agreement is signed by both at 9 am on April 1st.

There is a \$375,000 mortgage on the property held by Cram City Financials Inc., but the buyers do not want to assume it. The seller is going to discharge it out of the sale proceeds. However, actual registration of the discharge of the mortgage will not take place until a few weeks after the transaction closes. The offer was presented to the sellers at 1 pm on April 1st. At 3 pm, the sellers signed the offer back at \$475,000 but the irrevocable time was not changed. The counter offer was presented to the buyers and they accepted it. The following day, on April 2nd, prior to the expiration of the irrevocable period, the seller was given his copy of the accepted agreement. Based on above scenario, answer the following questions.

46. With respect to the buyers, whose names must be registered on title at the closing of this transaction?

- A. It is up to the buyer's lawyer to decide whose names would go on title.
- B. For the property to be a matrimonial home, both spouses must be registered on title on the closing of the transaction.
- C. Neither of the buyers can be registered on the title on closing of the property being designated as a matrimonial home.
- D. Only one of the buyer's name in the agreement can be registered on the title and the property can still be a matrimonial home.

47. Is the seller's mortgage going to prevent the transaction from closing because it cannot be discharged on or before closing?

- A. No. This is not a problem as one of the pre-printed clauses in the agreement allows for the discharge of the mortgage after closing based on the seller giving a direction of payment and a lawyer's undertaking to do so.

- B. No. The mortgage is not a concern because this is not an encumbrance on the property and as a result, the buyers do not really care whether the seller discharges the mortgage or not.
- C. Yes. This problem can be resolved only if buyers agree to assume seller's mortgage.
- D. Yes, this is a problem. The *Title* clause states that the property will be free and clear from charges and encumbrances on closing and the seller must ensure that the mortgage is discharged prior to closing.

48. Mr. and Mrs. Smart had measured the room dimensions very carefully and had mentioned to salesperson Jenny that they wanted to convert part of the home into an office. Jenny realizes that this would be a change of use for the property.

Which of the following statements correctly describes how the preprinted wording of the *Agreement of Purchase and Sale* deals with the issue of future use by Mr. and Mrs. Smart?

- A. The buyer should not be concerned because they can insert the future use in the blank space in the *Present Use* section under the *Title Search* clause.
- B. Since the *Title Search* clause permits the buyers to verify the future use of the property, there should not be any concern.
- C. Since the buyers have clearly mentioned their intentions to convert part of the property into an office, the seller must get any municipal consent for change of use.
- D. There is a real concern for the buyers because in the standard wording of the agreement, the sellers do not provide any warranty that the future intended use would be lawful or not.

49. If there was a significant damage to the property after the agreement became firm and legally binding, the buyer would have certain options as per the pre-printed wording of the *Agreement of Purchase and Sale*. Which of the following is one of them?

- A. The buyer must take proceeds from his own insurance and close the deal.
- B. The buyer can simply walk away from the deal without the fear of breaching the contract.
- C. The buyer must take proceeds from seller's insurance and close the deal.
- D. The seller must make necessary repairs so that the deal could be closed.

50. Which of the following statements is correct about signing the *Acknowledgement* section of the *Agreement of Purchase and Sale*?

- A. Only one of the buyers and sellers have to sign this section.
- B. All parties to the agreement need to sign the *Acknowledgement* and it can be done any time after *Confirmation of Acceptance* has been signed.
- C. All parties to the agreement must receive copies of the agreement and sign the *Acknowledgement* after the *Confirmation of Acceptance* has been signed.
- D. The *Acknowledgement* section of the agreement has no effect on validity of the agreement since the *Confirmation of Acceptance* has already been signed.

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QUICK ANSWER KEY
SAMPLE EXAM 2

1. C	2. B	3. D	4. A	5. D
6. C	7. A	8. B	9. D	10. B
11. A	12. D	13. C	14. B	15. C
16. C	17. D	18. B	19. A	20. D
21. B	22. C	23. C	24. A	25. B
26. C	27. D	28. C	29. A	30. B
31. A	32. D	33. B	34. C	35. D
36. A	37. B	38. C	39. D	40. A
41. D	42. B	43. A	44. C	45. B
46. D	47. A	48. D	49. B	50. C

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SAMPLE EXAM 3

► **Note:** Take a blank sheet of paper and note down your answers. The Quick Answer Key is given at the end of the Sample Exam.

1. Which of the following statements correctly applies to the four unities in joint tenancy?
 - A. The four unities are the unities of time, title, tenancy, and interest.
 - B. If there are four joint tenants, they each must have equal interest in the property.
 - C. It is not possible to rent or lease a property owned under joint tenancy.
 - D. The four unities are required for both joint tenancy and tenants in common.
2. Which of the following statements best describes the concept of *Real Property*?
 - A. Real property includes the physical real estate and any improvements and fixtures permanently attached, plus the *Bundle of Rights* of ownership.
 - B. Real property includes the physical real estate plus the rights of ownership of that real estate, along with any chattels within the boundary of the property.
 - C. Real property is defined as the real estate, plus the bundle of rights to the property, but does not include any physical improvements to the land.
 - D. Real property is defined as the physical tangible real estate plus the fixtures permanently attached to the property.
3. The provincial laws permit private deed restrictions to be placed on the title of the real property and this affects the use of property. The main purpose of these restrictions might be:
 - A. To allow the property to be used for a purpose that the zoning bylaws do not permit.
 - B. For the municipality to enforce their zoning bylaws.
 - C. To prevent a property from being used for a specific purpose, even if the use is permitted by the municipal zoning by-laws.
 - D. To impose a positive burden on the property.
4. Mr. and Mrs. Smart buy a property and receive a deed from the sellers, which they take to the registry office and register it under the *Registry* system. Does this now mean that they are the legal owners of the property?
 - A. Yes, as long as the deed is registered, and the sellers did not commit to deliberate fraud.
 - B. Maybe, or maybe not. There are several legal reasons why the deed may not have transferred the title to the buyers.
 - C. Yes, the deed is proof of their title to the property even if not registered.
 - D. Yes, once the deed is registered on title, there is proof of their ownership for anyone who searches the title.
5. Which of the following statements best describes the concept of *Agency*?
 - A. An agent is a representative who is expected to have greater expertise than the principal for the task to be performed.
 - B. An agent is a representative who owes fiduciary duty to the clients.
 - C. An agent is an independent contractor who operates without any controls or guidance by the principal.
 - D. An agent is a real estate salesperson who is representing a principal brokerage.

6. An agent's duties can be delegated to others under certain circumstances. With respect to real estate brokerage in Ontario, which of the following statements best describes the delegation of the agent's duties?
- A. The listing salesperson is not qualified to sell the property and therefore lists the property on *MLS®*.
 - B. The listing salesperson's fiduciary duties are delegated to the brokerage by the salesperson.
 - C. The listing brokerage's duties are delegated to the co-operating brokerage when the co-operating brokerage represents a buyer who submits an offer.
 - D. The listing brokerage makes an offer of sub-agency to other brokerages who may be working for the buyer.
7. Based on the provisions of the *Contract Law*, which of the following statements best describes the term *Non Est Factum*?
- A. It is a remedy to recover losses for a breach of contract.
 - B. It protects someone who entered into an agreement without reading the fine print.
 - C. It is based on the fact that someone did not misunderstand an agreement because they did not carefully read the contract document.
 - D. Someone is induced to enter into an agreement that is different from their intentions.
8. With respect to fixtures and chattels, what simple rule should you follow when arranging an agreement between a buyer and a seller?
- A. Rather than use your own judgment or assumption as to whether an item is a fixture or a chattel, if an item is included, list it as included and if an item is not included, write it in as excluded.
 - B. You should give the buyer a copy of the listing data sheet, so that both seller and buyer are in agreement as to what is included and what is excluded in the agreement.
 - C. If an item might fall under the definition of a fixture, you should not list it as a *Chattel Included* in the purchase price when drafting an offer.
 - D. If you are going to list an item as included in the purchase price, it must be attached to the property with some degree of permanence.
9. Which of the following statements correctly describes the meaning of the term *Expropriation*?
- A. The right of a municipality to seize a property for unpaid property taxes.
 - B. The right of the federal, provincial, and municipal government to require a property owner to use a property for specific purpose.
 - C. The taking of a private property by the government for public use, with fair compensation to the owner.
 - D. The right of the government to exercise their '*Police Power*' and regulate the use of real property.
10. Which of the following statements is correct with respect to a condominium?
- A. The *Condominium Act* creates the legal framework for registering a deed for a unit in a multiple dwelling building.
 - B. A condominium is created upon registration of the condominium corporation.
 - C. The purpose of the condominium corporation is to hold legal title to the units on behalf of the owners.

- D. Buyers of both new and resale units are allowed a 10-day period to cancel their purchase.
11. Identify one of the essential elements that must be present in every contract for it to be enforceable?
- A. A seal must be present in the contract.
 - B. The acceptance of the offer must be communicated to the offeror.
 - C. The consideration exchange must be of equal value.
 - D. There must be past or future consideration.
12. Which of the following is a requirement for a restrictive covenant to be enforceable?
- A. It must be positive in nature and be a benefit to the property owners.
 - B. It must be included in the zoning bylaws.
 - C. It must be reasonable and not arbitrary to public interest.
 - D. It must provide a direct benefit to the property on which the covenant has been registered.
13. The *Feudal System* of holding land was used long time ago but over a period of time, it was replaced with:
- A. Ownership by the Crown.
 - B. The concept of tenancy.
 - C. Ownership based on the concept of estates.
 - D. Approximately 1500 tenants-in-chief.
14. Before his death, Hadley had written a Will in which he granted his wife Hanna a *life estate* for the cottage property and a *future estate* for their son Diego. Hanna, being a business executive for a multinational corporation, travels a lot and leases the cottage to a tenant on a 10-year lease contract. Unfortunately, Hanna dies in an accident 4 years after leasing the cottage. Diego now wants to terminate the lease and occupy the cottage himself.
- What would be the status of the lease in this situation?
- A. The cottage becomes Hanna's estate and is now the landlord for the tenant.
 - B. Since six years are still remaining in the valid lease, Diego will not be able to occupy the cottage.
 - C. If the lease was registered on title, the lease would be valid, and the tenant can stay for the remaining six years.
 - D. The lease ceases to exist upon Hanna's death and Diego can obtain vacant possession of the cottage.
15. The *Land Titles* system is more efficient than the *Registry* system because:
- A. Title by possession (*prescription*) is permitted only in the *Land Titles* system.
 - B. It is not necessary to review the forty years' history of a property to determine marketability of the title.
 - C. In the *Land Titles* system, the title is searched by reviewing the history of the property for over forty years.
 - D. It is the only system in which title insurance can be purchased.

16. Agents owe their clients fiduciary duties, including the duty of *loyalty*. Which of the following statements correctly applies to this duty?

- A. All facts known to the agent pertaining to the property and transaction must be disclosed to all parties.
- B. If the principal's interest conflicts with the interests of the agent, the agency is terminated.
- C. The agent owes the duty of loyalty to clients as well as customers, who use the services of the agent to make an offer.
- D. The agent must place the principal's interests ahead of the interest of the agent and the interest of third parties.

17. Under the *Real Estate and Business Brokers Act 2002*, when a brokerage is involved in sale of a business, certain documents must be provided to the buyer before a binding agreement takes place. Which of the following is NOT one of them?

- A. A statement of assets and liabilities of the business.
- B. A statement of profit and loss statement for the previous 12 months or ever since the seller acquired the business.
- C. A list of items not included in the sale.
- D. An affidavit by the seller with respect to various financial aspects of the business.

18. Owner Smart's home is located on a 100-acre lot. A developer approaches you and asks you to represent him in purchases of this property if the seller agrees. Owner Smart has not listed the property for sale, but the developer agrees to pay you a commission of \$25,000 if you succeed to convince owner for selling his home. However, the developer insists that his identity must not be disclosed to owner smart until after the transaction is closed. Which of the following statements describe the best way you should deal with the developer's proposal?

- A. You should immediately try to obtain a six-month listing for the property from the owner.
- B. Discuss agency relationships with the developer and ask him to sign a *Buyer Representation Agreement*.
- C. Politely explain to the developer that a percentage of sale price would be a more appropriate way of calculating your commission.
- D. You must explain to the developer that you cannot deal with him because of his non-disclosure requirements.

19. When a condominium is registered, the main purpose for creating the condominium corporation is to?

- A. Limit the liability of the unit owners.
- B. Hold title to all of the units on behalf of the owners.
- C. Sell shares in the corporation to raise capital.
- D. Manage and maintain the property and the assets of the corporation.

20. A real estate salesperson submits a listing to the *MLS®* system and mistakenly misrepresents the size of the property by approximately 20%.

Because of this error, the salesperson could face a legal action under:

- A. The Consumers Reporting Act.
- B. The Consumer Protection Act.

- C. The Real Estate and Business Brokers Act 2002.
- D. The Income Tax Act.

21. Which of the following statements best describes an *Agent*?

- A. A representative who is required to follow all the instructions given by the principal.
- B. Someone who represents the principal in business transactions and who can bring the principal into legal relationships with other parties.
- C. A servant of the principal who is controlled by and supervised by the principal.
- D. A representative who is required to substitute his/her good judgment if he/she does not agree with the instructions of the principal.

22. When a contract is breached, the injured party has an obligation to '*mitigate*' their damages. What does this mean?

- A. The injured party must take reasonable steps to reduce the extent of the loss caused by the breach.
- B. The injured party can receive payment for the part of the contract that has been performed.
- C. The injured party can claim damages even if no actual loss is suffered.
- D. The injured party can claim damages, but not costs.

23. Ken and Sarah are interested in renting a two-bedroom apartment. The landlord has checked their references and is agreeable to a one-year lease provided they give the landlord 12 postdated cheques. Which of the following statements is correct regarding this situation?

- A. If a tenant agrees to provide postdated cheques, a landlord cannot request a deposit for the last month's rent.
- B. A landlord cannot demand postdated cheques as a condition of renting to a tenant.
- C. The *Residential Tenancies Act* makes no reference to postdated cheques and it is up to the parties to the lease.
- D. Landlords are permitted to demand postdated cheques to ensure the monthly payments are made.

24. Before Ben and Sally got married, they entered into a '*marriage contract*' which stated that if the marriage broke up, Sally would retain full 100% ownership in the 42 Cram Square, a property that she inherited from her father before marriage. Once married, they move into the 42 Cram Square home. What is Ben's legal status with respect to the 42 Cram Square property?

- A. If the marriage breaks up, Ben would be entitled to the 50% of the value of the property.
- B. Ben has no right whatsoever to the home because of the marriage contract.
- C. The property is a matrimonial home and Ben owns half of the property.
- D. Ben has a right of possession of the property but would not be entitled to any of the value of the property if the marriage breaks up.

25. Which of the following statements correctly applies to the registration of documents under the *Land Registration Reform Act*?

- A. The six standard forms required by the act are the *Transfer/Deed of Land*, the *Charge/Mortgage of Land*, the *Charge/Mortgage of Land for Subsequent Mortgages*, the *Document General*, the *Land Transfer Tax Affidavit*, and the *Agreement of Purchase and Sale*.

- B. The four standard forms required by the act are the *Transfer/Mortgage of Land*, the *Discharge of Charge/Mortgage*, the *Document General*, and the *Schedule*.
- C. The five standard forms required by the act are the *Transfer/Deed of Land*, the *Charge/Mortgage of Land*, the *Discharge of Charge/Mortgage*, the *Document General* and the *Schedule*.
- D. The six standard forms required by the act are the *Transfer/Deed of Land*, the *Change/Mortgage of Land*, the *Transfer of Charge/Mortgage of Land*, the *Agreement of Purchase and Sale*, and the *General Schedule*.

26. A buyer finds out after closing that the seller has removed a bar and the set of bar stools that were located in the recreation room. The buyer is upset because they were listed as included in the price on the feature sheet for the property. The buyer contacts the seller and the seller points out that they were not included in the agreement. The bar was actually not attached to the property in any way and the property sold for less than the full listed price. Which of the following statements best describes this situation?

- A. They are chattels and are not included in the purchase price unless specifically included in the agreement.
- B. Even though they are chattels they were listed on the feature sheet, so the seller should not have removed them.
- C. They are fixtures that are part of the property and therefore were included in the purchase price.
- D. They are fractional interests according to the '*Bundle of Rights*' and therefore are included in the property.

27. When a real estate brokerage is involved in the sale of a business and the seller is unwilling or unable to provide the financial statements to the buyer, the seller must provide a sworn statement to the buyer. From the list below, select the statement that correctly describes the information that must be included in the *Sale of Business Affidavit*.

- 1. All assets and liabilities of the business
 - 2. The terms and condition under which the person disposing of the business holds possession of the premises.
 - 3. The terms and conditions of any subletting.
 - 4. An explanation of the reason why the buyer will not get financial statements.
 - 5. Full legal names of all shareholders of the business.
- A. Only statements 1 and 2 describe the required information.
 - B. Only statements 2, 3 and 4 describe the required information
 - C. Only statement 2 and 5 describe the required information
 - D. Only statements 1, 3 and 4 describe the required information.

28. A property law student was asked to write out the definition of a contract. The student provided the following answer:

"A contract is an agreement for consideration between two or more capable persons with genuine intention to do or not to do some lawful act and must be in writing to be valid."

How would you evaluate this student's answer?

- A. The definition is not correct because a contract deals with facts and has nothing to do with capacity of parties.

- B. The definition contains all the necessary elements and the student's answer is correct.
- C. The definition is basically correct but should state to be binding rather than to be valid.
- D. The student is not correct in stating that a contract must be in writing.

29. The *Residential Tenancies Act* permits landlords to terminate the lease before the expiry of the term for certain reasons. The statements below describe the circumstances under which a landlord may terminate the lease of a residential tenant before the expiry of a fixed-term lease. The tenant has an additional 15 months remaining under a two-year lease. Select the statement(s) that describe a valid reason for which the landlord can legally terminate the lease under the current legislation.

- 1. The mortgagee is selling the property under *Power of Sale* and the buyer of the property wants vacant possession.
- 2. The owner of the property wants vacant possession because the owner wants to move into the property.
- 3. The tenant did not pay rent when due and the rent continues to remain unpaid.
- 4. The owner of the property wants vacant possession because the owner has a friend who wants to move into the property.

- A. Only statement 3 describes a valid reason for termination.
- B. Only statement 2 describes a valid reason for termination.
- C. Only statements 1 and 4 describe a valid reason for termination.
- D. Only statements 2 and 3 describe a valid reason for termination.

30. Mr. and Mrs. Bright are going through a marriage breakdown and have asked you to list the property they've lived in since they got married ten years ago. Mr. Bright is the only one on title and is somewhat familiar with the *Family Law Act*. He makes a number of statements to you. Which of the following statements made by Mr. Bright are correct?

- 1. This is not a matrimonial home because I have never designated it as such.
- 2. Because we are married, my wife and I are joint owners of property.
- 3. Even though she is not on title, my wife will have to consent to the sale of this property.
- 4. My wife has no interest in the property, so I can list and sell it immediately.

- A. Only statements 3 and 4 are correct.
- B. Only statement 3 is correct.
- C. Only statements 2 and 4 are correct.
- D. Only statements 1 and 3. are correct.

31. A commercial tenant enters into a lease for a unit in a small commercial mall that has not yet been constructed. There is a site plan attached to the *Agreement to Lease* showing unobstructed automobile access to a take-out window on the exterior wall of the unit. But prior to the tenant taking possession of the unit, the tenant observes that the developer has altered the plans for the project and has added another building there with four more rental units. This new building that is not on the original plan makes it significantly more inconvenient for cars to access the take-out because the cars have to take a much longer route around the new building. The tenant refuses to sign the final lease and requests the return of their deposit.

Based on the legal relationship between landlords and tenants, should the tenant be able to cancel the agreement?

- A. Yes, because an *Agreement to Lease* does not require the tenant to sign the actual lease.
- B. No, because the landlord is not interfering with the tenant's use of the property and the additional units will attract more traffic to the mall.
- C. Yes, because the landlord has misrepresented the property to the tenant.
- D. No, because the tenant has already signed a binding *Agreement to Lease*.

32. Salesperson Kim of Cram Realty Inc. is showing a property to a buyer customer. During showing she makes the following statements:

1. "*I think this is the best house you can buy at this price.*"
2. "*I can assure you that this house does not have Urea Formaldehyde Foam Insulation.*"
3. "*The basement has been rented for several years and it is legal apartment.*"

Identify the statements that could prove to be misrepresentation.

- A. None of the three statements can be proved to be misrepresentations because the buyer is a customer.
- B. Only statement 3 is a serious legal issue for being regarded as a misrepresentation.
- C. Only statements 1 and 2 can be proven to be misrepresentations because statement 3 is not a representation.
- D. Only statements 2 and 3 can be misrepresentations because statement 1 is not a representation.

33. The *Real Estate and Business Brokers Act 2002* contains several statutory requirements that originally developed many years ago as common law duties of agents and principals. From the statements given below, select the statement(s) that correctly describe(s) this relationship?

1. The requirements for maintaining a *Real Estate Trust Account* relate to the agent's fiduciary duty of accounting.
 2. The requirements for salespeople and brokers to complete an education program to qualify for registration relate to the fiduciary duty of competence.
 3. The payment of commission to brokerages as described in the Act is based on the client's duty of indemnification.
 4. The requirements for representation agreements relate to common law obligations for having definite terms of the contract.
- A. Only statements 1, 2 and 4 are correct.
 - B. Only statements 2 and 3 are correct.
 - C. Only statements 1 and 4 are correct.
 - D. Only statements 1, 3 and 4 are correct.

34. You obtain a listing, show the property to a buyer who signs a *Buyer Customer Service Agreement* with your brokerage. The offer states that the deposit will be submitted '*Upon Acceptance*' of the offer. Before you can meet with the sellers and present the offer, the buyer calls you and informs you he/she has changed his/her mind and does not want you to present the offer. Which of the following statements best explains how you will deal with this situation?

- A. You don't present the offer and you don't keep a copy of it because it was never really a valid offer.
- B. You don't present the offer, but you keep a copy of it for the brokerage records.

- C. You return to the buyers and if you cannot convince them to submit the offer, you simply give it back to them.
- D. You tell the buyer that you must present the offer and inform the sellers of what has taken place

35. A first-time home buyer has purchased a two-storey home for \$532,500. Assuming that this buyer qualifies for full rebate under the Land Transfer Tax Act, what would the actual Land Transfer Tax payable on this purchase?

- A. \$3,125
- B. \$7,115
- C. \$6,640
- D. \$4,117

36. Buyer Bright has just submitted an offer on a house after 2 months of search for a suitable property. He particularly liked the house because one of the rooms has a large size. He intends to alter the design and make it his home office. Which of the following statements is correct according to the pre-printed clauses of the *Agreement of Purchase and Sale*?

- A. It is the seller who finally decides how the property would be used after closing.
- B. Both the seller and the buyer can determine the future use of the property.
- C. There is no warranty from the seller as to the intended future use of the property.
- D. Bright should not be worried because his lawyer will find out about the future use.

37. Tracy, a tenant, advises the landlord that she has just received a company transfer to the United States. This is a permanent transfer and she will not be returning to Canada. Tracy signed the lease 2 months ago for a term of one year and has 10 months remaining. Which of the following would be the best advice to Tracy to deal with the lease contract?

- A. Tracy has no options until the term of the lease expires. Once it expires, she can terminate or assign the lease.
- B. Since there are still ten months to run under the lease, Tracy should try to sublet the unit because her liability will end when the new tenant moves in under the sublease.
- C. Tracy will need to formally abandon the unit in order to move to the United States while still continuing to pay rent for the full 12 months of lease.
- D. Tracy should try to assign the lease as she will not be returning. With an assignment, Tracy is only responsible for the lease up to the time of assignment.

38. There are two basic types of timeshare projects; one giving a *fee ownership* interest and the other giving a *right-to-use* interest. Which of the following statements correctly describes a *right-to-use* interest timeshare?

- A. Timeshare buyer obtains shares in the corporation that owns the property.
- B. The timeshare buyer obtains a contractual notice of lease that designates the specific period of time.
- C. Each timeshare period is separately registered on title.
- D. It requires registration of the property as a condominium.

39. Buyer Smart wants salesperson Jenny to explain him Timeshare interest in a vacation resort. In response to his questions, Jenny gives provides the following information:

1. Timeshare agreements are governed under REBBA 2002 only if a real estate brokerage is involved in the sale.

2. If the timeshare project is a *Fee Ownership* type, the developers have to create a condominium corporation.
3. Individual weeks are typically designated as units in timeshare properties.
4. In a *Right to Use* timeshare, a condominium corporation is created, and units are leased instead of being sold.
5. Both *Fee Ownership* and *Right to Use* timeshare agreements are governed under the *Consumer Protection Act*.

Which of the above statements are correct?

- A. Statements 1 and 2 are correct.
- B. Statements 2, 3 and 4 are correct.
- C. Statements 2, 3 and 5 are correct.
- D. Statements 1, 2 and 4 are correct.

Case Study – 2 Parts

Buyer Smart has signed a Buyer Representation Agreement with Cram Realty Inc. Salesperson Jenny is working with him to locate a 2-bedroom unit in a condominium building. They have inspected several units in different apartment buildings, but buyer Smart wants to give little more time for his search. During one of the showings the buyer asks several questions.

40. Buyer Smart is curious to know about functioning of the condominium complex. Salesperson Jenny gives the following statements in response to questions by the buyer:

"Condominium corporations are managed by a Board of Directors. The Declarant must appoint the First Board with at least 3 directors within 10 days of corporation registration. This board holds office until the Turnover Meeting where the board hands over documents to the unit owners. The board makes by-laws of the corporation. A majority of unit owners must vote in favour of the by-laws to become effective. A copy of the by-laws is registered with the land registry office."

The information given by the salesperson is not entirely correct. Which of the following best describes the error?

- A. The first board of directors is appointed by unit owners and not the *Declarant* and there must be at least 5 members.
- B. The corporation appoints directors in the board and not the unit owners.
- C. The *Declarant* makes the by-laws of the corporation and every unit owner must give approval.
- D. The *Turnover Meeting* is held to transfer control of the corporation from the *Declarant* to the unit owners.

41. In response to buyer Smart's questions about *Common Elements* and *Reserve Fund*, salesperson Jenny responds as follows:

1. The *Declarant* must maintain a *First Reserve Fund* until the corporation completes a *First Reserve Fund Study*, and this must be done within one year of condominium registration.
2. The *Reserve Fund* is for major repairs, replacement and regular maintenance of common elements of the building.

3. A portion of the *Common Expenses* paid by unit owners is set aside for contribution to *Reserve Fund*.
4. In case of minor repairs of common elements, money from *Reserve Fund* may be used, provided that at least 80% unit owners give approval vote.
5. The corporation is only required to inform the unit owners when it wants to use *Reserve Fund* money for adding new common elements to the building.

Which of the above statements is/are correct?

- A. Only statements 1 and 3 are correct.
- B. Only statements 2 and 4 are correct.
- C. Only statements 1, 3 and 5 are correct.
- D. Only statements 2, 3 and 5 are correct.

Case Study - 3 Parts

Peter and Lisa had been in relationship for years and now they are getting married. Peter owns a townhome worth approximately \$250,000 and an old Chevy Impala. Lisa has just completed university and she owns a used car which has very little residual value. She has student loans and hopes that she will get a good job and will be able to pay off the debt within a few years. Peter and Lisa get married and Lisa moves in with Peter. Lisa finds a good job locally wherein she is looking forward to a bright future. 2 years later, Peter's get transferred to a distant city, about 200 kilometres away. Peter and Lisa are now listing their home for sale.

42. Which of the following correctly describes the legal requirements with respect to selling the home?

- A. Peter owned the home before they got married and there is no requirement for Lisa to be involved in the sale in any way.
- B. Lisa has a right of possession of the property owned by Peter and must sign a spousal consent for the sale of the property.
- C. Lisa would have signed the documents for sale of the property only if it has been designated as their matrimonial home.
- D. According to the *Family Law Act*, Lisa now owns half the home and must sign any documents related to the sale.

43. The home is listed for sale and their marriage situation changes dramatically over a few weeks. Lisa visits the new town with Peter but is not happy. She is afraid that a move to that town would destroy her career. In another 2 weeks, Peter is shocked to know that Lisa wants to divorce her. Based on the information provided, which of the following statements correctly describes the legal requirements for the distribution of their assets for the marriage breakup?

- A. Peter owned the home before their marriage and Lisa is entitled to half the increase in value of the family assets, excluding the home that Peter owned before the marriage.
- B. According to the *Family Law Act*, each spouse is entitled to half the value of the assets.
- C. They will have to equalize the increase in value of the assets they brought into the marriage, plus the value of the assets acquired during the marriage.
- D. Since the marriage only lasted less than 3 years they will each be entitled to keep the assets they brought into the marriage and will equally share the assets they acquired after the marriage.

44. Based on the above information, what could Peter have done to provide greater protection for his assets upon the breakup of his marriage?

- A. There is nothing Peter could have done because a marriage is an equal partnership relationship according to the family law act.
- B. Before the marriage, Peter could have required Lisa to agree to a marriage contract that allowed him to retain a greater portion of the assets if there was a marriage breakup.
- C. Peter could have registered a statutory designation on his home stating that it was not a matrimonial home.
- D. Peter could have placed a substantial mortgage on his home once he realized the marriage was in trouble.

Case Study - 3 Parts

Broker of Record, Binny has decided to discuss the sale of a business as the topic for the meeting this week. He provides information on documentation requirements for the buyer when a brokerage is involved in the sale.

45. After a brief discussion, Binny asks if some salespeople can explain REBBA 2002 requirements with respect to the documentation that is to be provided to a buyer. A salesperson volunteers and states the following:

"Before a binding Agreement of Purchase and Sale is entered into, the brokerage shall provide to the buyer, financial statements signed by or on behalf of the seller including: a profit and loss statement, a statement of assets and liabilities of the business for the preceding 12 months or since the acquisition of the business by the person disposing of it and a list of goods, chattels, rights, fixtures and other assets related to the business that are not included in the sale."

There is an error in the explanation given by the salesperson. Which of the following statements describes this error?

- A. The Act requires the buyer to receive a sworn statement of the seller's creditors.
- B. The buyer must receive the statements before closing, not before a binding agreement is entered into.
- C. The buyer must also receive a statement of goods, chattels and assets included in the business.
- D. The profit and loss statement is for the preceding 12 months or since acquisition, not the statement of assets and liabilities.

46. Binny then asks what can be done if the seller does not have adequate financial statements or is unwilling to give them to the buyer. A salesperson answers:

"The seller can provide a statement under oath stating why the financial statements will not be provided. The statement must include specific information such as all liabilities of the business, details of the lease and any subletting of the premises. The buyer must sign a waiver that waives receipt of the financial statements and the list of fixtures, goods, chattels and assets excluded from the transaction."

There is an error in the salesperson's explanation. Which of the following statements describes this error?

- A. The waiver waives receipt of the financial statements, but not the items excluded.

- B. The buyer must make a statement under oath to waive receipt of the statements.
- C. The salesperson should advise the other salespeople never to sell a business if there are no financial statements.
- D. The waiver also waives receipt of the items included in the transaction.

47. Binny then states it would be a good idea to review other related documentation which should be demanded from the seller in order to protect the buyer's interests. In response to Binny's question, one salesperson provides the following statements:

"The requirements of the REBBA 2002 are only minimum requirements. If possible, the buyer should be provided with at least 3 years financial statements of the business. If the business is a franchise business, then the buyer must study the franchise agreement thoroughly before entering into a binding agreement. This is because the franchisor may have reserved the right to make the sale void if the franchise fee is not paid again by the buyer. The franchise fee paid to a franchisor depends on its market penetration."

The salesperson has made an error with respect to documentation. Which of the following statements best describes this error?

- A. The salesperson incorrectly stated that REBBA 2002 requirements are minimum.
- B. The buyer should get at least 5 years financial statements from the seller.
- C. If the business is a franchise business, the buyer need not worry about franchise documentation because it is normally in favour of the business owner.
- D. The one-time franchise fee is already paid by the seller and the franchisor cannot make the sale void if the buyer does not pay it again.

Case Study – 3 Parts

Salesperson Jenny, a representative with Cram Realty Inc. shows 42 Glenvale Street, a property listed with Power Realty Inc. to her buyer clients Mr. and Mrs. Smart. The property is on a street on which homes have been demolished and replaced with beautiful new two-storey homes. While 42 Glenvale Street is not one of the newly constructed ones, this home has been completely renovated with very high-quality materials and workmanship.

The Smart family is attracted to the location mainly because the recent construction in the area has caused the city to eliminate the drainage ditches in the neighbourhood and install storm sewers, new pavement, curbs and sidewalks. They believe that the improvements to the neighbourhood will help to increase property values in the area and they purchase the property.

Based on the above scenario, answer the following three questions.

48. Soon after the sale closes, and the Smart family moves in, the buyers call salesperson Jenny and give her some unpleasant news. The expensive appliances (refrigerator, stove, washer, dryer) have been removed from the property, even though these items were written into the agreements as chattels included. Unfortunately, the sellers have moved to another province and the buyers state that they expect salesperson Jenny to compensate them. They point out that salesperson Jenny mentioned the appliances as one of the benefits of the property at least twice during the showing and subsequent negotiations. Which of the following statements correctly describes the legal situation with respect to the appliances?

- A. Salesperson Jenny is responsible because she wrote them into the Agreement as chattels included in the purchase price.
- B. The buyers would have a claim against both the listing and selling brokerage.
- C. Based on the concept of indemnification, the buyers would only have claim against the sellers.
- D. The buyers would have a claim against the listing brokerage but not Jenny's brokerage.

49. A few weeks later the buyers call salesperson Jenny and they are very upset. They have received a notice from the municipality that an additional \$2,200 will be added to the property tax bill over and above the \$3,800 expenses for the taxes Jenny quoted them. This is due to local improvement charges for the new storm sewers, pavement, curbs and sidewalk. According to the notice, this charge will be for the next 10 years. Now the buyers demand compensation. Salesperson Jenny replies that this charge was not included on the data sheet provided by the listing brokerage and that is why the buyers were not quoted the correct amount for taxes. Which of the following statements correctly describes the legalities of this second problem?

- A. The local improvements may increase the value of the property and the buyers have no claim against the brokerages.
- B. Jenny is a buyer representative and should have checked out whether the new street, curbs, etc. might result in local improvement charges.
- C. The improvements to the street were clearly visible to the buyers and they have no reason to complain that the taxes are not the amount they were told they would be.
- D. It is not Jenny's problem since it was the listing brokerage that provided the information on the taxes.

50. Salesperson Jenny is not at ease after this sale because it is proving to be a difficult one. The buyers call again with another complaint. The buyers have noticed some discrepancies in lot dimensions given in the Agreement of Purchase and Sale and the survey. The survey clearly shows the lot to be 39 feet in frontage as indicated by lot boundaries. They have checked the dimensions on the Agreement of Purchase and Sale and while the depth of 120 feet is correct the frontage is indicated to be 43 feet. The buyers state that in addition to their claim over the local improvement issue, they expect to be compensated for the discrepancy in lot frontage.

Do you think the buyers will be successful with a claim based on the discrepancy in the size of the lot?

- A. Yes, the buyers will win because Jenny obviously made a fraudulent misrepresentation.
- B. They should win against the sellers but not the brokerage because the sellers must indemnify the brokerage.
- C. Yes, because the value of the residential lot is normally based on the frontage of the lot.
- D. No, because this is a relatively minor discrepancy and the boundaries of the lot were obvious and observable when they inspected the property.

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QUICK ANSWER KEY
SAMPLE EXAM 3

1. B	2. A	3. C	4. B	5. B
6. C	7. D	8. A	9. C	10. A
11. B	12. C	13. C	14. D	15. B
16. D	17. D	18. B	19. D	20. C
21. B	22. A	23. B	24. D	25. C
26. A	27. B	28. D	29. A	30. B
31. C	32. D	33. A	34. D	35. A
36. C	37. D	38. B	39. C	40. D
41. A	42. B	43. C	44. B	45. D
46. A	47. D	48. C	49. B	50. C

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SAMPLE EXAM 4

► **Note:** Take a blank sheet of paper and note down your answers. The Quick Answer Key is given at the end of the Sample Exam.

1. In an estate known as *Fee Simple with Conditions*:
 - A. The title typically includes certain conditions that must be complied by the grantor.
 - B. The party that gets the estate is permitted to retain it for lifetime.
 - C. The estate goes to a third party called '*Remainder*'
 - D. The condition may not be consistent with existing laws or public policy and it is rarely found these days.
2. In a single front township, a concession is:
 - A. A township roadway that is 66 feet in width.
 - B. A strip of land 100 chains in width that extends across the entire township.
 - C. A one thousand acre section of land.
 - D. A lot containing 200 acres.
3. Which of the following statements related to residential and commercial tenancies is correct?
 - A. The tenant has no right to occupy the premises after expiry of the lease in both residential and commercial tenancies.
 - B. A residential tenancy includes a clause that if the tenant sublets the premises, the lease would be terminated.
 - C. A residential landlord may require the tenant to pay a security deposit in addition to last month's rent, but for commercial tenancies, such a clause is not permitted.
 - D. A commercial lease is more likely to have a '*Continuous Use*' clause, but such a clause is not included in residential lease.
4. What is the main benefit of having the *Acknowledgement* completed on the Agreement of Purchase and Sale?
 - A. It ensures the seller's lawyer will pay the balance of the commission due.
 - B. It verifies the exact time the offer was actually accepted.
 - C. It can prove that the communication of acceptance of the agreement has taken place before the irrevocable period has expired.
 - D. The *Status of Frauds* requires the *Acknowledgement* to be completed.
5. Which of the following statements explains why a *Reserve Fund* is required in a condominium?
 - A. It is used for major repairs and replacement of common elements and corporation assets.
 - B. It is used to pay for the regular maintenance of the common elements.
 - C. It is used to offset the payments of unit owners who default on monthly common expenses.
 - D. It is used to bring a unit owner's defaulted mortgage into good standing to avoid the possibility of the building being sold under *power of sale*.

6. An enforceable contract must have six elements. Which of the following is NOT one of them?
- A. There must be a mutual agreement.
 - B. One of the parties must receive something.
 - C. The object of the contract must be legal.
 - D. The terms of the contract must be clear and definite.
7. According to the provisions of the *Land Transfer Tax Act*:
- A. This tax is not payable on sale of chattels.
 - B. Land transfer tax on vacant land is calculated on a fixed rate of 1.5%.
 - C. The purchase price of land and building is taxed separately.
 - D. Transfer of real estate upon death of a spouse is exempted from Land Transfer Tax.
8. With respect to the *Residential Tenancies Act (RTA)*, which of the following is NOT correct?
- A. The RTA has provisions for annual guidelines regarding increases in the rent based on the *Consumer Price Index*.
 - B. The RTA includes procedures for recouping capital expenditures.
 - C. The RTA sets guidelines for determining the first rent charged by a landlord.
 - D. The RTA contains vacancy de-control provisions.
9. Which of the following statements is correct with respect to an *Agreement for Sale*?
- A. The buyer has a contractual interest in the property that gives the buyer possession, but the seller retains title to the property until the required payments are made.
 - B. An *Agreement for Sale* provides the buyer with more security and protection than a sale financed with a mortgage.
 - C. An *Agreement for Sale* is essentially an *Agreement of Purchase and Sale* in which the seller takes back a mortgage on the property.
 - D. An *Agreement for Sale* is used when an *Agreement of Purchase and Sale* is assigned to a third party.
10. What does the *Statute of Frauds* require when it comes to real estate contracts?
- A. The contract for the sale of real estate must comply with the *Vendors and Purchasers Act*.
 - B. Certain contracts, including those for real estate, must be in writing to be enforceable at law.
 - C. The parties to the contract must be at least 21 years old to make it enforceable.
 - D. The parties to the contract for the sale of real estate located in Ontario must use an *Ontario Real Estate Association®* form.
11. Which of the following best describes the concept of a life lease project?
- A. Life lease projects provide an alternative for seniors who want to live in a condominium but are unwilling to pay maintenance fees.
 - B. Life lease projects are designed to give tenants security for tenure and a monthly rent that will not increase over their lifetime.
 - C. Life lease projects give occupants a fee simple interest in their unit plus a leasehold interest in various amenities.
 - D. Life lease projects allow seniors to purchase the right to occupy a unit for their lifetime.

12. Salesperson Jenny of Cram Realty Inc. has listed a 3-bedroom home for lease. She is trying to obtain some information from prospective tenants including the names and addresses of their two previous landlords. Do you think the requirements of the *Consumer Reporting Act* apply to this situation?

- A. Yes, but the salespersons cannot require prospective tenants to provide references.
- B. No, because the agent duties to clients under the common law means that the *Consumer Reporting Act* is not applicable.
- C. Yes, because obtaining contact information about a previous landlord is similar to obtaining personal information.
- D. No, because landlords cannot be contacted to obtain information on their previous tenants.

13. In Ontario, a consumer can cancel a *Listing Agreement* or a *Buyer Representation Agreement* if false, misleading, deceptive or unconscionable representation was made to obtain the representation agreement. The consumer is provided these rights under:

- A. The Consumer Protection Act.
- B. The Statute of Frauds.
- C. The Competition Act.
- D. The Personal Information Protection and Electronic Documents Act.

14. Peter and Lisa have been living together in a leased apartment for years. They now decide to buy a home close to their workplace. Peter contributes \$75,000 and Lisa, who has saved more money than Peter, contributes \$150,000 for the purchase. They register the property as joint-tenants. Lisa becomes sick soon after the purchase. She had to be hospitalized and dies within a year of their purchase. Based on this information, who will be the owner of the property after Lisa's death?

- A. Peter will own one-third and Lisa's estate will own two-thirds.
- B. Ownership will depend on the terms included in Lisa's Will and testament.
- C. Peter will become the sole owner of the property.
- D. Peter will own 50% of the property and the remaining 50% will be owned by Lisa's estate.

15. The following statements are based on how the *Registry* system and the *Land Titles* system operate in the province of Ontario. Select the correct statements.

- 1. To search titles in the *Land Titles* system, it may be necessary to go back into the *Registry* system and search the original farm lot.
 - 2. If the *Land Titles* system is available, all new condominiums and subdivisions must be registered under this system.
 - 3. In the *Registry* system, the accuracy of information is guaranteed and the title is insured.
 - 4. Property indexing is based on the name of the owner in both the *Registry* system and the *Land Titles* system.
-
- A. Only statements 1 and 4 are correct.
 - B. Only statements 1 and 3 are correct.
 - C. Only statement 3 is correct.
 - D. Only statement 2 is correct.

16. A property located at 36 Cram Square has been sold. Cram Realty Inc. owed *fiduciary duties* to the seller and third-party duties to the buyer. In the same transaction, Power Realty Inc. owed third-party duties to the seller and *fiduciary duties* to the buyer. What was the role of Cram Realty Inc. and Power Realty Inc. in this transaction?

- A. Cram Realty Inc. is the listing brokerage and Power Realty Inc. is acting as a *sub-agent* of Cram Realty Inc.
- B. Power Realty Inc. has a *Buyer Representation Agreement* with the buyer and Cram Realty Inc. is the listing brokerage.
- C. Power Realty Inc. has a *Customer Service Agreement* with the buyer and Cram Realty Inc. is the listing brokerage.
- D. The two brokerages, Power Realty Inc. and Cram Realty Inc., are both in a multiple representation situation.

17. Salesperson Kim of Cram Realty Inc. listed a grocery store and sold it to a buyer who had responded to Kim's advertisement in the local newspaper. After the completion of the transaction, the buyer complained to salesperson Kim that the ice cream freezer was not a fixture, but it belonged to the company which supplied ice cream to the store. In her defense, salesperson Kim states that this is not her fault because this was the first time she had sold a grocery store. Which of the following statements correctly describe salesperson's conduct in this transaction?

- A. The buyer has no reason to complain because freezers are typically owned by their suppliers.
- B. The salesperson is not responsible due to seller's duty of indemnification.
- C. The salesperson has breached her duty of exercising reasonable care and skill.
- D. The salesperson has acted with average diligence and the buyer has no reason to complain.

18. Buyer Jane tells one of her family friends that she is interested in selling her home in the west end of the city. The friend was actually looking for a home in that neighbourhood and goes with Jane to inspect the property. Jane makes an offer of \$420,000 and the friend accepts the offer. Jane was previously a law student and knows that according to the *Statute of Frauds*, the agreement must be in writing. She writes up the details of the deal on paper. Both Jane and the family friend sign and date the paper.

After two weeks, the sale results in a dispute between Jane and the family friend. Jane was told by her lender that there would be a penalty in the amount of \$11,240 for early discharge of the mortgage loan. She now wants the buyer to assume her mortgage so that she could save the penalty. Also, she is waiting for possession of her new home, which has been delayed by the builder for another 4 months. But the buyer friend wants to buy Jane's home on the agreed upon date within 2 months.

Which of the following statements best describes the legal status of this agreement and the reason?

- A. A legally binding agreement does not exist because the standard *Agreement of Purchase and Sale* was not used.
- B. A legally binding agreement does not exist because the terms of the offer were not definite and clear and there was no complete meeting of minds.

- C. There is a legally binding agreement and the buyer must assume seller's existing mortgage and agree to the extended closing date.
- D. A legally binding agreement does not exist because the offer was made by the seller and not the buyer.

19. The following statements provide certain situations where one party has breached the terms of a legally binding lease contract. Identify the situation in which the court is likely to award an *Injunction* to restrain the offending party for doing something that was not permitted in the lease?

- A. Cram Convenience has signed a lease to rent the adjoining unit in order to double up its current area to meet customer demands. The landlord has not completed the '*Landlord's Work*' as agreed in the lease contract.
- B. Cram Convenience has filed for bankruptcy prior to the start of the lease with the landlord. It has informed the landlord that they will not be taking possession of the premises and the landlord has leased it to another convenience store.
- C. Cram Convenience has been leasing premises in a corner plaza for the past 5 months. So far, they have failed to pay any rent as required by the lease contract.
- D. Cram Convenience is located in a corner plaza and has a five-year lease which explicitly prohibits the sale of cigarettes. Three months ago, Cram Convenience started selling cigarettes in order to increase their sales.

20. Bright buys a 2,400 square feet single family home and has clear intentions of converting it into a residential duplex. The current zoning for the property permits both single family and duplexes in this neighbourhood. Prior to the closing date, Bright's lawyer performs a title search and finds a deed restriction that prohibits use of the home as a duplex. Bright objects to this deed restriction because of his plans to convert the property into a duplex.

What legal issues will be prevalent in determining whether Bright can convert the property into a duplex or cancel the agreement with the seller?

- A. Bright cannot convert the home into a duplex and cannot even cancel the agreement because the deed restriction was complied with by the seller.
- B. Bright can terminate the agreement because the deed restriction conflicts with the zoning for the neighbourhood.
- C. Once the property is sold, the deed restriction is removed and Bright can convert the home into a duplex.
- D. Bright can terminate the agreement because the deed restriction was never disclosed to him and it does not permit duplexes.

21. In the process of selling services to consumers, the provincial *Consumer Protection Act* prohibits false, misleading and unconscionable representations. Which of the following statements made by a real estate salesperson would be a violation of the Act?

- A. A salesperson promises a buyer that the subject property under consideration will definitely increase 10% to 15% in value by next year.
- B. A salesperson informs a buyer that the zoning for the property will permit conversion to a residential duplex, but this statement is not true.

- C. A salesperson informs a buyer that he has confirmed information that the local municipality will permit severance of subject parcel of land into two separate lots, but this statement is not true.
- D. A salesperson tells the buyer that the provincial laws requires a buyer to sign a Buyer Representation Agreement with the brokerage before showing any property.

22. Buyer Bright is interested to submit an offer for a unit in an equity co-operative building. In response to his questions, salesperson Kim of Cram Realty Inc. provides the following information:

1. The buyer must assume liability of the proportionate share of the co-operative blanket mortgage and arrange a secondary mortgage for the necessary amount.
2. Every buyer of a unit in a co-operative building needs to be approved by the board of directors.
3. Unlike a condominium building, the buyer of a unit is not required to pay *Land Transfer Tax* on the purchase price.
4. The buyer must sign and accept the occupancy agreement prior to getting possession of the unit.
5. The title of the unit is transferred to the buyer upon completion of the transaction.

Which of the statement(s) given by the salesperson are correct?

- A. Only statements 1, 2 and 5 are correct.
- B. Only statements 1 and 4 are correct.
- C. Only statements 2, 3 and 4 are correct.
- D. Only statements 2 and 5 are correct.

23. Owner Smart has made the last payment to the lender for the full amortization of the mortgage loan. Which of the following statements correctly describes the status of the mortgage lien on the title of the property?

- A. Since the mortgage loan has been paid off in full, the mortgage lien is now removed from the title.
- B. The lender is now required to register a discharge of the mortgage lien by using the *Document General*.
- C. The mortgage lien will remain on the title of the property until a *Discharge of Charge/Mortgage* is registered on the title.
- D. The owner now must discharge the mortgage lien using a *Schedule* to the *Charge/Mortgage of Land* earlier registered on the title.

24. Michael and Harry jointly purchase a commercial property for investment purposes. Michael will have one-third interest and Harry will have two-thirds interest. This means that:

- A. Michael and Harry are now *joint-tenants* of the property because they acquired the interest at the same time using same document.
- B. Michael and Harry are essentially *tenants-in-common* because their interests are not equal.
- C. Michael and Harry have not created *joint-tenancy* because their interests are not equal.
- D. The title to the property would automatically be transferred to Harry upon Michael's death.

25. Salesperson Jenny of Cram Realty Inc. obtains a listing from seller Shiney. Jenny's sister Skinny is interested in this property and she submits an offer to the seller through Jenny. The sellers accepted the offer but in the rush of events, Jenny did not inform the sellers that the buyer was her sister. Jenny's sister Shiney resold the property one month after the closing and made a huge profit on the sale. Based on this information, salesperson Jenny breached the Fiduciary Duty of:

- A. Good faith and full disclosure.
- B. Indemnification.
- C. Competence.
- D. Confidentiality.

26. Salesperson Kim of Cram Realty Inc. is representing a buyer client. She and the buyer client come across a property which is not listed but is being sold by the owner himself. The buyer submits an offer on this property. When the offer is presented to the seller, he wants some assistance from salesperson Kim with respect to making a counter offer and understanding certain pre-printed clauses of the *Agreement of Purchase and Sale*. Kim not only helps the seller in understanding the agreement but also provides competent service. Based on this information, which of the following statements is correct?

- A. Salesperson Kim has established a sub-agency relationship with the seller.
- B. Cram Realty Inc. has client relationship with the buyer and has created a customer relationship with the seller.
- C. Salesperson Kim may have created an implied agency relationship with the seller.
- D. A limited dual agency has been created as a result of salesperson Kim's actions.

27. Power Realty Inc. is in receipt of an offer on their listing for property located at 41 Cram Square. The offer comes with a deposit of \$10,000 in the form of a certified cheque. Power Realty Inc. deposits the funds in its real estate trust account as required by REBBA 2002. The offer is conditional upon the buyer arranging a satisfactory mortgage financing within five business days of acceptance. Unfortunately, the buyer is not able to obtain financing and the agreement fails. Based on the standard wording of the mortgage financing condition, the buyer is now asking for his deposit to be returned. Which of the following statements is correct in this regard?

- A. Power Realty Inc. has an obligation to return the deposit to the buyer and it is clearly mentioned in the mortgage condition.
- B. A *Mutual Release* form must be signed by both parties and this is the only way the deposit can be returned to the buyer.
- C. When an agreement fails due to inability of the buyer to obtain financing, the sellers automatically get the right to forfeit the deposit funds.
- D. If the sellers do not agree to signing the *Mutual Release* form, the buyer can try to obtain a court order to receive his deposit.

28. Salesperson Kim sold a property to her buyer client. The seller had mentioned in the listing that the chandelier in the living area is only 2 years old. A few days after closing, the buyer comes to know from the neighbour that he and the seller had purchased the chandeliers together in deal about 10 years ago. The buyer is now very upset and makes up his mind to take legal action against the seller and the listing brokerage. According to the *Contract Law*, which of the following elements of contracts would be closely scrutinized by the court?

- A. Genuine Intention.
- B. Lawful Object.
- C. Capacity of the Parties.
- D. Definite and Clear.

29. Smart purchased two properties in 2009 for the purpose of investment. He sold both of them in 2015 and made good profit on sale. In his 2015 annual tax return, he claimed the profit as *Capital Gains*. *Canada Revenue Agency* sends a letter to Smart concerning his tax return. If Smart claims that these properties were a part of his overall investment program:

- A. *Canada Revenue Agency* must accept the taxpayer's claim and treat the profit as *Capital Gain* instead of treating it normal business income.
- B. The profit from sale of investment properties is always treated as *Capital Gain* and this should not be a matter of dispute.
- C. The taxpayer must go to the *Tax Court of Canada* to get an order that the gain realized is capital in nature and not a business income.
- D. This may be treated as a valid argument for *Capital Gain*, provided the taxpayer is able to support his claim.

Case Study - 2 Parts

Salesperson Anson has taken up training for selling commercial real estate. His broker of record Rodrigues is experienced in commercial and investment properties. Anson often talks to Rodrigues on various matters concerning sale of businesses. Last week Rodrigues went out of country and Anson needs help on requirements of the *Real Estate and Business Brokers Act 2002* regarding sale of businesses.

You may help salesperson Anson by answering the following three questions.

30. What should a salesperson be careful about the financial statements of the business which is being sold?

- A. A three to five-year history of financial statements must be provided to the buyer.
- B. The *Sale of Business Affidavit* is completed prior to a binding agreement if no financial statements are available.
- C. The *Sale of Business Affidavit* is used to disclose all assets of the business.
- D. Any sub-lease does not have to be disclosed to a buyer because when the business sells, the sub-lease will be terminated.

31. According to REBBA 2002, the requirement for the seller to provide a profit and loss statement and a statement of assets and liabilities is not required if:

- A. If the buyer waives this requirement in an appropriate statement from the person disposing of the business as to various matters concerning the business.
- B. The business has been operating for less than three years.
- C. If the seller signs a *Sale of Business Affidavit* in the presence of his solicitor.
- D. If the buyer and seller make an arrangement that these statements will be provided by the seller within three months of the closing.

Case Study - 3 Parts

This case study deals with the relationship between the *Contract Law* and the *Consumer Protection Act*. The term '*common law*' refers to that part of law which developed over hundreds of years, based on customs, traditions and the values of society, and established into law throughout the years, mainly by the decisions of courts. The *Consumer Protection Act* gives consumers much more comprehensive protections than the basic requirements of the *common law* during sale of '*goods and services*'.

For example, the *Consumer Protection Act* states that a misleading '*statement of opinion*' can be a violation of the Act. This sets a high standard in dealing with consumers and this may not have been previously found in the common law of contract.

Based on the information provided, answer the following questions.

32. Which of the following statements describes this difference between the requirements of the *Consumer Protection Act*, as compared to the common law principles relating to '*opinions*' given during the contracting process?

- A. Providing an '*opinion*' is deemed an acceptable sales technique and is not a legal issue for either common law or statute law.
- B. Contract law prohibits exaggerations and misleading opinions, while the *Consumer Protection Act* prohibits only false statements of fact.
- C. Under the common law of contract, a '*statement of opinion*' is not considered to be a representation and therefore does not give rise to legal rights or recourse.
- D. Contract law is based on common law principles, while the *Consumer Protection Act* sets out the ethical standards for real estate registrants.

33. There are additional examples of requirements under the *Consumer Protection Act* that set a high standard for the protection of consumers.

Which of the following statements describes such an example?

- A. While common law requires both latent and patent defects in a property to be disclosed, the *Consumer Protection Act* requires only patent defects to be disclosed.
- B. The *Consumer Protection Act* sets high standards prohibiting exaggeration when advertising real property.
- C. The *Consumer Protection Act* establishes the principle of '*buyers beware*' for consumer transactions in Ontario.
- D. The *Consumer Protection Act* specifically states that failing to state a material fact falls under the definition of a false, misleading or deceptive representation.

34. By prohibiting '*unconscionable representations*' in the selling of goods and services, what area of the common law of contract does this section of the *Consumer Protection Act* most directly relate to?

- A. Consideration in a contract.
- B. Capacity of the parties, duress and undue influence.
- C. The concept of lawful object.
- D. Deliberately giving false information about real property.

Case Study - 3 Parts

Salesperson Kim of Cram Realty Inc. sold a property to her buyer client at 58 Meadow Drive for \$318,000 with a scheduled closing date in two months from now. The buyer particularly liked the property as it had a wide private driveway on which he intends to park his motor home and boat. The 50 x 110 feet lot has a backyard to accommodate a swimming pool for his family. The offer was drawn on the standard Agreement of Purchase and Sale.

The following three questions are based on the above scenario and the pre-printed wording of the Agreement of Purchase and Sale.

35. Yesterday, the buyer received a phone call from his lawyer informing him that there is a restrictive covenant on the property that prohibits parking of recreation vehicles and boats. This was an important consideration for the buyer when deciding to purchase this property and now he wants to terminate the transaction. Which of the following statements best describes how the pre-printed wording of the *Agreement of Purchase and Sale* deals with the issue of deed restriction found in the title search?

- A. The agreement states that the buyer can not object to a deed restriction found in the title search if the deed restriction is being complied with.
- B. All deed restrictions must be described in detail in *Schedule A* of the Agreement of Purchase and Sale.
- C. The buyer can use any deed restriction discovered in the title search as an objection to closing the transaction.
- D. The buyer can not object to any deed restrictions found in the title search.

36. The buyer's lawyer also informs him that there is an easement for a storm sewer across the rear 15 feet of the property. Unfortunately, this will prevent the buyer from installing a swimming pool in the back yard. The presence of the easement was never disclosed to the buyer and he no longer wants to complete the transaction.

Is there is problem regarding the title?

- A. No, because a 15 feet easement for a storm sewer is considered a minor easement.
- B. Yes, any easement on the property must be detailed in a separate clause on Schedule A of the Agreement of Purchase and Sale.
- C. No, the agreement states that the buyer is agreeing to accept title to the property subject to any and all easements on the property.
- D. Yes, the buyer is agreeing to accept title subject to minor easements, but not those easements that materially affect the use of the property.

37. By this time the buyer is quite upset and is wondering if there is something else that has not been disclosed to him regarding the property. So, he instructs his lawyer to demand a survey of the property from the seller. As per the pre-printed wording of the *Agreement of Purchase and Sale*, is the seller required to provide a current survey of the property or to pay for a new survey?

- A. No, the seller is only required to provide a survey which is in seller's possession or control.
- B. No, there is no mention of a survey in the pre-printed clauses.
- C. Yes, the seller is required to pay for and provide a survey to the buyer.
- D. Yes, only if it is part of the adjustments at the time of closing.

Case Study - 3 Parts

Seller Smith has about 7 acres of land and wants you to sell 4 acres out of it. He calls salesperson Martin for a listing presentation and finally agrees to list these 4 acres of land at the rate of \$35,000 per acre, subject to approval of severance from the municipality. Just a day after the listing is advertised, Mr. and Mrs. Williams inspect the property and like it as if they had been just waiting for Smith to list it for sale. They ask Martin to make an 'all cash' offer for the full price and on Smith's terms because they don't want to let it go. Since the offer is on seller's terms, they don't think that their offer would be rejected, and on salesperson's advice, they give only 6 hours' irrevocable time to the sellers.

Salesperson Martin, understanding that it is a multiple representation, prepares the offer on June 2nd at 10am. He is careful to insert a condition about approval of severance by the local municipality. The offer, with irrevocable for the same day at 5pm, is signed by Williams at 11am. Martin assures the buyers that he does not see any reason that their offer would be rejected by the seller. Mr. and Mrs. Williams are very happy that they have finally found a piece of land to build their dream home. They are excited and leave for their cottage for celebrations.

Based on the scenario given above, answer the following 3 questions.

38. Martin presents the offer to seller Smith. Smith accepts the offer and signs the confirmation of acceptance at 3pm. Martin is happy and immediately puts a *SOLD* sign on the property. What should have Martin done about the *SOLD* sign?

- A. Martin can put the sign as the seller has signed the *Confirmation of Acceptance*.
- B. Martin should have waited for the seller to sign the *Acknowledgement*.
- C. Martin should have waited until all parties have signed the *Acknowledgement*.
- D. Since this is a multiple representation, Martin can put the *SOLD* sign without getting *Acknowledgement* of the buyer or seller.

39. Martin calls Williams to inform them about acceptance of their offer, but they do not pick up the phone. Martin calls again after an hour, but Williams still do not pick up the phone and Martin leaves a message. It is 4.45pm and Williams are still not traceable. They are probably busy in their celebrations. Martin is worried that the acknowledgement is not yet signed by the buyers and only 15 minutes are left for the irrevocable time to expire. What should have Martin done in this situation?

- A. Martin should have kept a more reasonable time period for the irrevocability of the offer.
- B. Martin can sign the acknowledgement on behalf of his buyer clients.
- C. Martin does not have to worry because the offer is on seller's terms and the seller has accepted it.
- D. Martin should have asked the buyers to sign acknowledgement also when they signed the offer.

40. Seller Smith and buyer Williams are now anxiously waiting for the severance approval from the municipality. Unfortunately, the municipality rejects the severance application and the buyers refuse to close the deal. Which of the following statements is correct in this regard?

- A. Smith can sue buyer Williams as he has a legally binding contract with them.
- B. A legally binding contract does not exist because the object of contract is unlawful.
- C. Smith can only sue Martin or his brokerage but not the buyers.

- D. Smith can sue only Martin's brokerage because Martin is only an employee of the brokerage.

Case Study – 5 Parts

The following case study is based on analysis of pre-printed clauses of the *Agreement of Purchase and Sale*.

Salesperson Jenny is working with seller Smart who has signed a *Listing Agreement* with her brokerage Cram Realty Inc. Smart is a resident of the United States and he wants to sell his 3-bedroom bungalow that he purchased a few years ago as an investment property. In one of the open houses, a buyer named Bright walks in with salesperson Kim of Power Realty Inc. After long verbal negotiations, the buyer and seller agree on some fundamental aspects of the deal. Salesperson Kim prepares an offer for her buyer clients Mr. and Mrs. Bright. The date of the offer is August 5, 20xx and it is irrevocable until 8.00pm on August 6, 20xx. The completion date is set for October 30, 20xx.

Answer the following five questions based on the information provided.

41. The buyers ask salesperson Kim to explain them the meaning of the date and time inserted in the *Irrevocable* clause. How would she respond to this query?

1. The buyers have the right to withdraw the offer even after signing it provided that it has not been communicated to the sellers.
 2. When communicated to the sellers, the buyers cannot withdraw the offer during the *Irrevocable* time period.
 3. The buyers have been given until 8.00pm on August 6, 20xx to accept or reject the offer. When this time passes the offer automatically becomes null and void.
 4. The buyers give until 8.00pm on August 6, 20xx to sellers to accept, reject or counter the offer. When this time passes the offer automatically becomes null and void.
 5. The sellers must accept the offer without any changes before 8.00pm on August 6, 20xx.
- A. Only statements 1, 2 and 5 are correct.
B. Only statements 2, 3 and 4 are correct.
C. Only statements 1, 2 and 4 are correct.
D. Only statements 3, 4 and 5 are correct.

42. Buyers have a question about the *Residency* clause in the *Agreement of Purchase and Sale*.

How would salesperson Kim respond to the buyers' query?

- A. This clause clearly states that the sellers are responsible for paying the *Capital Gains Tax* on sale of property with no liability of the buyer whatsoever.
- B. This clause is for the protection of the buyer so that the buyer does not become responsible for *Capital Gains Tax* on sale by a non-resident seller.
- C. This clause makes it mandatory for all non-resident sellers to pay *Capital Gains Tax* in advance to the *Minister of Revenue*.
- D. This clause makes it mandatory for all sellers of real property in Canada to provide a declaration that they are not non-residents.

43. Salesperson Kim has left the *Present Use* section within the *Title Search* clause blank in the offer. How does that affect the agreement?

- A. Since this is a mandatory section and leaving it blank would nullify the agreement.
- B. This is an optional section and when left blank does not affect the agreement.
- C. Leaving *Present Use* blank means that after completion the buyers can use the property in any way they want.
- D. If the buyers find out that they cannot lawfully continue the present use of the property, they have the option of terminating the agreement.

44. The buyers would like to know more about the pre-printed *Insurance* clause. How would salesperson Kim respond to this query?

- A. In case significant damage occurs to the property before closing, the buyers can either terminate the agreement or take proceeds from sellers' insurance to complete the transaction.
- B. The sellers are responsible to keep the property insured until closing and will direct their lawyer to transfer the insurance to buyers upon closing.
- C. In case significant damage occurs to the property before closing the buyers and sellers agree that the agreement will automatically become null and void.
- D. In case significant damage occurs to the property before closing the sellers may decide whether they want to proceed with the transaction or not.

45. The buyer's lawyer has requested that he needs a copy of survey of the property in order to complete the transaction. The seller's lawyer checks with the sellers but they do not have the survey in their possession. Which of the following is a valid option for the buyers?

- A. The buyers may now require the sellers to order an up-to-date survey of the property at their cost.
- B. The buyers can obtain their own *Title Insurance* in the absence of a survey and proceed with the completion of transaction.
- C. Sellers can assure the buyer that they have *Title Insurance* which will cover all problems with the property.
- D. The buyers may terminate the agreement based on a pre-printed clause that makes the agreement conditional on sellers to provide a copy of survey.

Case Study – 5 Parts

Salesperson Jenny of Cram Realty Inc. is doing an open house in the neighbourhood. Mr. and Mrs. Bright visit the open house, inspect the property and inform Jenny that they would like to make an offer. Salesperson Jenny tells them that there is a lot of interest in the listing. An offer has already been submitted and she expects other offers within a couple of days. Jenny advises the Brights that if they really want the property, they should immediately submit an '*all cash*' offer with no conditions and a large deposit. The buyers reply that they have no worries about their finances and they agree to make an offer as the salesperson suggests.

The Brights' offer is accepted, and they purchase the property. However, once the sale is completed, they begin to realize they may have acted too hastily. There are a number of defects in the condition of the property, including moisture in the basement and a problem with windows on the second floor that do not open and close as they should. To make the matters worse, another salesperson from a different brokerage they had been dealing with earlier, claimed that

they were under contract with that brokerage and owed that brokerage a 2.5% commission, based on the terms of a *Buyer Representation Agreement* they had signed two months ago.

The Brights are very unhappy with the situation and contact their lawyer in an effort to find out what can be done.

46. When Mr. and Mrs. Bright came to the open house to view the property, salesperson Jenny provided them with information about the property, such as current taxes and lot dimensions, but she assumed they understood they were *customers* and did not discuss the topic of agency relationships with them at any time during the entire conversation. Which of the following statements best describes the salesperson Jenny's conduct in this regard?

- A. While the *Common Law of Agency* requires a customer's questions to be answered honestly, it does not require a customer's interest to be actively protected and there should be no serious legal consequences for what has happened.
- B. If salesperson Jenny would have simply had them sign a *Buyer Customer Service Agreement* as a schedule to the offer, her conduct would have been satisfactory.
- C. Salesperson Jenny may have displayed questionable ethics but should not have any legal problems as a result of her conduct.
- D. Salesperson Jenny failed to establish a proper relationship with the buyer and this may increase any liability she may have with respect to possible deficiencies in the property.

47. Assuming that Mr. and Mrs. Bright were willing to accept the idea that they were customers, which of the following statements best describes the Salesperson Jenny's conduct towards them?

- A. There is no evidence that the salesperson concealed any latent defects from them and the buyers do not have any legal cause for complaint.
- B. Salesperson Jenny owes even customers a duty of care and there could be serious legal and ethical consequences for the way she obtained the offer from the buyer.
- C. The standard *Agreement of Purchase and Sale* states the buyers have had an opportunity to obtain a home inspection report and since they chose not to do so, the salesperson is not responsible for the conduct of the buyers.
- D. The common law principle of '*Buyers Beware*' applies to customers and the salesperson has no cause for any concern.

48. Based on everything you know from the scenario as described, what would have been the best way for salesperson Jenny to have handled the issue of agency with these buyers?

- A. Salesperson Jenny should have explained both representation and customer service to them and asked them which of the two they would like to choose.
- B. Salesperson Jenny should have explained agency to them and informed them that since her client was the seller, she was representing the seller's interests in the transaction and she would be happy to provide them with customer service.
- C. The buyers were obviously customers and since they were already prepared to make an offer, it may have been detrimental to salesperson's seller client to distract buyers with discussions of agency.
- D. Salesperson Jenny should have discussed agency representation with them even before they viewed the property and should have required them to enter into a representation agreement with his brokerage.

49. Mr. and Mrs. Bright's lawyer writes a letter to Salesperson Jenny and one of the claims included in the letter states that the buyers believed that they were clients at the time of the purchase and their interests should have been adequately protected. In your opinion, what was their agency status at the time of the purchase?

- A. Clearly, everything in the scenario points to the fact that they were customers.
- B. Agency was created by express agreement and they were clients.
- C. They were neither clients nor customers, as no representation agreement and no customer service agreement were signed with them.
- D. A court may determine that the advice provided to them by the salesperson gave them cause to believe the salesperson was representing their interests.

50. According to the scenario, another brokerage which did not sell them the property is making a claim that the Brights owe that brokerage a commission as a result of their purchase. Which of the following statements is most correct in describing this problem?

- A. Mr. and Mrs. Bright do not really have a problem in this regard, as the other brokerage was in no way involved in the purchase of the property.
- B. The other brokerage may have a claim against salesperson Jenny's brokerage, which sold them property, but has no legal claim against the buyers.
- C. At the time of obtaining an offer, salesperson Jenny had an obligation to find out if they were under contract with another brokerage.
- D. Salesperson Jenny was not in any way involved with any relationship they may have had with other brokerage and has no responsibility for the buyers' possible liability to pay commission to that brokerage.

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QUICK ANSWER KEY
SAMPLE EXAM 4

1. D	2. B	3. D	4. C	5. A
6. B	7. D	8. C	9. A	10. B
11. D	12. C	13. A	14. C	15. D
16. B	17. C	18. B	19. D	20. A
21. D	22. B	23. C	24. B	25. A
26. C	27. D	28. A	29. D	30. B
31. A	32. C	33. D	34. B	35. A
36. D	37. A	38. C	39. A	40. B
41. C	42. B	43. D	44. A	45. B
46. D	47. B	48. A	49. D	50. C

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PART III – DETAILED ANSWERS

SAMPLE EXAM 1

1. B. The Right of Survivorship is the distinguishing feature between joint-tenancy and tenancy-in-common. Accordingly, when one joint-tenant dies, his/her interest passes on to the surviving joint-tenant(s).

This right does have certain exceptions, but it cannot be overturned by the will of the deceased. Although it is a form of concurrent ownership, but it is not inherent in tenancy-in-common

2. C. *Adverse Possession* occurs when someone 'other than the owner' occupies the land of the owner for a long period of time, with the knowledge of the owner but ignores the rights of the owner.

It is possible to obtain a right of way by way of adverse possession but under the *Land Titles Act*, the occupier cannot extinguish the title of the real owner. This was possible earlier if the land was registered under the *Registry Act*.

3. A. The landlord has the right to give a notice of termination to the tenant before the expiry of the lease term if too many persons are occupying the unit and it violates the lease terms.

For other reasons given here, the landlord must wait until the end of the lease term to give termination notice.

4. C. The Family Law Act permits spouses to exclude a property from the calculations of *net family property* by having a *domestic contract (marriage contract)*. This means that the non-owner spouse may not get any share from the excluded property in the event of marriage breakdown or when that property is sold.

It is not necessary that spouses must designate one property as a matrimonial home because the principal residence of the family is a *deemed* matrimonial home. The Act does not require that both owners must be joint-tenants of the matrimonial home. A property may be owned by a single spouse and it can still be a matrimonial home. The owner spouse cannot encumber or dispose of a matrimonial home without the consent of the non-owner spouse.

5. D. The *Planning Act* clause in the standard *Agreement of Purchase and Sale* states that the agreement will create an interest in the property only if the transfer to buyer is in compliance with subdivision provisions of the *Planning Act*. In case the seller needs consent (such as *Consent to Sever*), this must be done at seller's expense before the completion date.

Other statements are not correct. The *Planning Act* does not include any requirement for the buyer with respect to future use of property. If any necessary consent is required, it is seller's responsibility and not buyer's. Further, the seller does not have to obtain the required consent before accepting the offer.

6. C. Most real estate transactions are regulated under the *Real Estate and Business Brokers Act 2002 (REBBA 2002)*, but those involving timeshares are regulated under the *Consumer Protection Act*.

It is incorrect that *all* real estate transactions are exempted under the *Consumer Protection Act*. Negotiations involving both buyer and seller representations may be under the Act.

7. B. Sale of a property which is a *principal residence*, is exempted from *Capital Gains Tax*, subject to certain qualifications.

It is incorrect to state that sale of real property by registrants is *never* subject to *Capital Gains Tax*. When there is a dispute between the taxpayer and the *Canada Revenue Agency*, the *Tax Court of Canada* considers the frequency of similar transactions by the taxpayer and this is one of the important factors. Sale of real property by a non-resident seller is typically subject to *Capital Gains Tax* and is not exempted.

8. D. In a co-operative building, the title to the unit remains with the co-operative corporation and the unit owner only has shares and right to occupy the unit. This means that the unit holder is in fact selling shares of the corporation but not the title to the unit. The buyer receives a share certificate and the right to occupy is assigned to the buyer.

This makes option B incorrect. Monthly maintenance fees are payable in both condominium and co-operative and both are managed by a board of directors.

9. B. When a tenant subleases whole or part of the leased premises, a new contract (sublease) is created between the tenant and the subtenant. The landlord maintains the privity of contract with the original tenant and the tenant maintains privity with the subtenant.

It is incorrect to state that the subtenant never needs to be approved by the landlord. The landlord may not be able to increase the rent of the original tenant if the tenant wants to sublease. However, the landlord may demand certain out-of-pocket expenses. Typically, the tenant is not permitted to collect rent from the subtenant more than what he pays the landlord.

10. B. The tenant cannot stop rent payments in case the landlord fails to fulfill obligations under the lease.

Other statements are correct. The tenant must fulfill all obligations set out in the lease, must pay rent on time and has the right to take disputes to the Small Claims Court.

11. C. The registrant must provide a copy of the *Listing Agreement* to each seller *immediately* upon signing.

This time limit is not 24 hours, 5 business days or until the seller receives and signs an offer.

12. A. *Land Transfer Tax* is payable by buyers on the purchase price of real property, but not on chattels which are movable personal possessions. For this, the total purchase price must be broken down into two parts – real property (including fixtures) and chattels with *Land Transfer Tax* applicable on value of real property only.

New home buyers do not *always* get a full refund of the tax because the maximum refund amount is subject to certain limitations. First time home buyers get a refund of maximum \$4000 if they qualify and occupy the home within 9 months. Certain life lease interests are exempted under the *Land Transfer Tax Act* but subject to certain qualifications.

13. D. The standard Agreement of Purchase and Sale provides two options to the buyers when the home suffers substantial damage prior to closing. The buyer may terminate the agreement or take proceeds from sellers' insurance and complete the transaction.

The buyers cannot rely on his insurance because he has not arranged it yet. Since the buyer has options, it is incorrect to state that the buyer cannot close the transaction. Further, it is incorrect that the buyer *must* take proceeds from sellers' insurance and close the transaction.

14. C. A registrant can only identify a property, a party or particulars of an agreement only after obtaining specific written instructions or consent of the client.

It is incorrect that specific persons can never be identified in advertisements because it is possible with written consent. Commercial properties for sale can be identified with prior written consent of the sellers. The sellers grant authorization for identifying the property in advertisements and not the listing brokerage.

15. B. The frequency of similar transactions is one of the factors considered to determine whether the gain/profit from the sale of a capital asset is regular income or a capital gain.

Whether the seller is a resident or non-resident, taxpayer's marginal tax rate and the province of residence are not among these factors.

16. D. When an easement or right of way was being used over a long period of time, the court may consider it as an easement by *prescription*. The new owner may be ordered to open the laneway based on this fact.

Other statements are not correct. The amount new owner is demanding may or may not be reasonable, but it does not affect the existence of easement. An easement may exist for certain valid reason and not necessarily for a necessity. An easement binds to land and does not cease to exist when the property is sold.

17. A. Non-profit co-operatives do not have shares and hence, the buyer does not get a share certificate.

Other documents mentioned herein are typically provided to the buyer.

18. B. Agency by ratification refers to a situation when a party accepts the benefit of an unauthorized act of the agent. In this scenario the seller did not specifically grant authorization of representation but agreed to pay commission if the showing resulted in a sale. Hence, the seller accepted the offer from the buyer, which was a direct benefit arising out of the salesperson's actions.

The salesperson did create an agency relationship with the seller and the brokerage is bound by the terms of the agreement because the salesperson is an employee of the brokerage. Agency relationship is neither implied in this case nor it is created by operation of law.

19. D. Chattels are personal and movable items of the owner and not considered a part of the real property. Some examples are equipment, appliances, furniture, furnishings, etc.

It is incorrect to state that chattels are *always* included in the sale. When a property is sold, chattels are usually excluded from the sale, unless they are specifically included in the agreement. Leased items in a property are not owned by the seller and cannot be included in the agreement. Items that are permanently attached to the property are called *fixtures*.

20. A. Cram Realty Inc. had a listing agreement with the seller, it was representing the seller and was acting in a single representation capacity. A *Listing Agreement* creates an agency relationship with the seller.

This is not a multiple representation situation because the buyer is not represented by the brokerage. A *Buyer Customer Service Agreement* does not create a representation relationship. *Customer Service Agreements* create a non-agency relationship. The terms 'co-operating brokerage' and 'buyer brokerage' are typically used when a brokerage is representing the buyer.

21. B. \$11,275.

Solution: On First 55,000 X 0.5% = \$275

On Next 195,000 X 1% = \$1,950

On Next 150,000 X 1.5% = \$2,250

On Balance 340,000 X 2% = \$6,800

Land Transfer Tax = 275 + 1,950 + 2,250 + 6,800 = \$11,275

22. D. The regulations under the *Real Estate and Business Brokers Act 2002* state that a registrant cannot act as an agent and as a principal in a transaction with another party unless a written disclosure is made to the other party and specific consent is obtained. This requirement is in the section named '*Acquisition and Divestiture by a Registrant*'. When a salesperson, broker or a brokerage has a direct or indirect interest in a transaction, whether for a sale or for a purchase, this fact must be disclosed to the other party.

This above said requirement is not an exemption and hence, not in the '*Exemptions from Registration*' section of REBBA 2002. The *Consumer Protection Act* and *Consumer Reporting Act* do not regulate these activities of the registrant.

23. C. REBBA 2002 requires that when a registrant makes a promise to a party as an inducement to enter into an agreement, the promise must be in writing and be delivered to the party to whom it is made. This requirement applies to both clients and customers.

24. A. When a business is sold, the buyer must receive financial statements from the seller prior to a binding agreement. When the seller is not willing, or unable to provide financial statements to the buyer, the seller must complete a *Sale of Business Affidavit* and the buyer can then waive these requirements if he still wants to proceed with the transaction. These statements include *profit and loss statement* for the preceding 12 months (or ever since the seller acquired the business) and a *statement of assets and liabilities* of the business.

Other statements are not correct. The buyer must get a list of items *excluded* from the sale. There is no such requirement that if financial statements are not provided, the seller must provide a statement of gross annual revenue to the buyer. Also, the financial statements are provided *after* the buyer makes an offer but prior to a binding agreement. The seller is not required to provide them *before* the offer.

25. C. This statement is not correct. It should read – The fact that circumstances could arise when the brokerage is *representing a client* and providing *limited services to a customer* for the same trade.

Other statements given here are correct.

26. A. According the pre-printed provisions of the *Tender* clause in the *Agreement of Purchase and Sale*, the buyer can only tender funds on the date set for closing. If the seller does not tender the documents (Title/Deed, etc.) in favour of the buyer on that date, the seller would be in breach of contract.

Tendering of funds or documents cannot be done prior to the completion date. The seller cannot be said to be in breach of contract before the completion date.

27. D. A deed restriction registered on title can be used a valid objection to the title only if the seller has not complied with it.

It is incorrect to state that the buyer can never use any deed restriction as an objection to the title or can never use a deed restriction as an objection. The buyer cannot use a deed restriction as an objection if it conflicts with the intended future use of the property by buyer. The *Future Use* clause of the agreement addresses this issue.

28. A. The court is likely to use *Injunction* as a remedy to this breach of contract by the tenant. The purpose is to stop the breaching party from further breaching the contract. Injunction is typically an option when the contract is to *refrain from doing something* (for not selling cigarettes and lottery) and a party starts doing that thing (tenant starts selling cigarettes and lottery)

Others remedies for breach of contract do not apply to the given scenario.

29. B. The technical wording of the advertisement and the general impression given out must be consistent with each other. If these two are giving out conflicting message, the advertisement may be considered false and misleading. This test is known as *General Impression* test, and any advertisement which fails the test is in violation of the *Competition Act*.

The activities given in other statements are not in violation of the *Competition Act*.

30. A. This scenario is based on privity of contract, which states that only parties to a contract can enforce the contract terms on each other. The *Agreement of Purchase and Sale* is a contract between the buyer and the seller. If the buyer refuses to close the transaction, he would be in breach of the contract and only the seller can take a legal action against the buyer.

The listing brokerage and the selling brokerages are only witnesses to this contract but not a party to it. The buyer may not be able to take a direct legal action against the listing brokerage.

31. D. When the landlord gives 60 days' notice to the tenant, the tenant may vacate the premises with 10 days' notice.

This makes other statements incorrect. The tenant does not have to give a 60 days' notice in response to the landlord's notice. The reason for tenant's 10 days' notice does not only apply to a situation where the landlord himself wants to occupy the unit but also applies if the reason for

termination is demolition of property or conversion of use. The tenant does not have to stay for another 60 days after receiving the termination notice.

32. C. The Consumer Protection Act provides that the buyer (*consumer*) of a timeshare interest can cancel the agreement within 10 days of *receiving* a signed copy of the agreement.

The Act does not mandate that the agreement must be delivered to the consumer within 10 *business* days. The buyer can also cancel the agreement anytime within one year if a signed copy of agreement is not delivered.

33. C. The *Deposit* clause in the *Agreement of Purchase and Sale* requires the buyer to give the deposit cheque within 24 hours of the date of *Confirmation of Acceptance*. This is different from REBBA 2002 requirement for the deposit holder, which is usually the listing brokerage, to deposit the funds in its *Real Estate Trust Account* within 5 business days. These two requirements are not in conflict with each other but have distinct purposes.

The deposit holder does not have to place the funds in trust account within 5 business days for all offers but only for those offers wherein the deposit is paid '*Herewith*'. The time starts from the date of *Confirmation of Acceptance* when the deposit is to be paid '*Upon Acceptance*'. The buyer cannot ignore the 24-hour time frame because this is a requirement under the agreement and the buyer must comply with it.

34. A. The tenancy agreement in a land lease community may include a clause giving the landlord the *First Right of Refusal*. Accordingly, when the tenant wants to sell his mobile home and receives an acceptable offer from a buyer, the tenant must give 72 hours' time to the landlord to make an offer of purchase on the same terms as agreed with the buyer. The tenant can sell the mobile home to the buyer if the landlord first refuses to buy. Hence, the landlord has the *first right to refuse* the purchase of the mobile home.

The maintenance of grounds and other common areas is the responsibility of the landlord. The landlord cannot require the tenant to use him as an agent for sale or lease of the mobile home. Whether the tenant needs or does not need landlord's consent for the sale of the mobile home depends on the lease contract.

Case Study – 3 Parts

35. B. The Agreement of Purchase and Sale specifically has a provision that if a clause in the schedule conflicts with a pre-printed clause, the clause inserted in the schedule takes precedence over the pre-printed clause.

There is no need to delete the pre-printed clause or any Amendment to the agreement. Since the agreement addresses the issue of conflicting clauses, we cannot say that *mutual agreement* or *meeting of minds* is missing.

36. D. According to the pre-printed wording of the *Notices* clause, notices are deemed delivered when they are transmitted electronically (by fax or by email).

Notices are not deemed delivered when the parties sign the *Confirmation of Acceptance*. There is no need to personally hand over the notices, unless the clients have specifically asked the brokerages to do so.

37. A. In the *Title* clause of the *Agreement of Purchase and sale*, the buyer agrees to accept the title subject to *minor* easements for provision of domestic utilities. Telephone service is one such example. The buyer cannot object to the title because the minor telephone easement was not disclosed to him.

This explanation makes other options incorrect. A minor easement for supply of a domestic utility need not be mentioned in the legal description of the property. The buyer does not have a valid objection and there is no need to make an *Amendment* to the agreement

Case Study – 3 Parts

38. B. *Mutual Agreement (offer and acceptance)* is one of the essential elements of a contract. One party must make an offer (*offeror*) and the other party (*offeree*) must accept. One of the requirements for acceptance of the offer is that it must be communicated to the *offeror*.

This explanation makes other statements incorrect. We cannot say that the student does not understand the concept of *mutual agreement*, or it is completely unacceptable. The student gave a reasonably good answer but somehow missed the communication part.

39. C. The object of the contract must be lawful for a contract to be valid and legally binding. Otherwise, the contract may become void. A domestic or marriage contract in which one of the spouses does not get ownership interest is permitted under the *Family Law Act*. Such a contract does not create an *unlawful object*.

Any contract where the object of the contract is unlawful is considered *void* and not *voidable*. Since the *Contract Law* is based on common law principles, other federal or provincial statutes may have provisions to override certain requirements under the common law.

40. B. The *Contract Law* states that the agreed upon consideration must be present or future but it cannot be something that was agreed in the past. This is based on an old saying '*old consideration is no consideration*.'

Consideration does not have to be of equal value. Only existence of consideration is required but its adequacy is not required to create a legally binding contract. In fact, consideration may be in terms of value, an act in return of an act or simply a promise for a promise. If a contract is signed under *seal*, it is considered a substitute for the consideration.

Case Study - 5 Parts

41. A. Fax numbers and/or email addresses of the brokerages are inserted only when the listing brokerage represents the seller and the co-operating brokerage represents the seller.

When a single brokerage represents both the seller and the buyer (*multiple-representation*), the brokerage is not authorized to act as an agent for the purpose of sending or receiving notices. This is written in bold in the *Notices* clause. This section is also left blank when the co-operating brokerage is acting as a subagent of the listing brokerage.

42. D. The buyer's salesperson should inset '*Included In*' in the HST clause to protect the interests of the buyer because the buyer has made it clear that he does not want to be responsible for paying HST.

The HST clause cannot be left blank at the time of drafting the offer. Inserting '*In Addition To*' would mean that the buyer must pay HST in addition to the purchase price.

43. C. When the *Present Use* section in the *Title Search* clause is left blank, it is considered that the way seller making a representation that the buyer would be able to lawfully continue the same use. The property has a basement apartment and the seller is presently renting it. (*Note: In practice, the registrants must verify the zoning provisions to verify whether the second unit is permitted in the subject zone or not.*)

The *Present Use* section is not a mandatory clause that must be filled up. Leaving it blank does not make the agreement null and void. If the seller wants to describe the present use as a single family residential, this must be clearly written in the clause.

44. B. UFFI is considered a *stigma* and a material fact, which must be disclosed to the buyer in writing. In case the seller refuses to provide any warranty with respect to use of UFFI in building, the salesperson must make further enquiries and insert appropriate clauses in the agreement.

Verbal disclosure of material facts is not an acceptable practice under REBBA 2002. It is not appropriate for the salesperson to ignore the seller's refusal of having any information about UFFI. The salesperson cannot definitely assure the buyer about possible long-term health effects of UFFI.

45. C. A *restrictive covenant* that runs with land and has been complied with by the seller is not a valid objection to the title, provided that it does not materially affect the use and enjoyment of the property.

The scenario clearly tells us that the seller has complied with the restrictive covenants. Hence, the buyer does not have a valid objection to the title and can neither terminate the agreement nor he can sue the seller for damages. Disclosures of material facts, if any, must be made prior to a binding agreement.

Case Study - 5 Parts

46. A. Under the *Residential Tenancies Act*, the maximum amount of deposit is one month's rent or the rent for one rental period, whichever is lesser. In this scenario, the lease is for a fixed term of one year and the maximum deposit can be \$1,750, which is the amount of one month's rent.

The deposit itself is deemed a security deposit under the Act and the landlord cannot demand any additional security deposit. The '*no pet*' clause in the lease is valid in certain condominiums where the *Declaration* specifically prohibits pets in the building.

47. D. The *Agreement to Lease* form is a basic agreement between the landlord and the tenant and expects that the parties will sign a formal lease prior to commencement of the lease term. The landlord's standard lease includes the basic terms in the *Agreement to Lease* form and may have several other clauses which are appropriate for a typical residential tenancy. As long as these clauses are reasonable, the tenant has an obligation to sign that lease.

Since the tenant has already accepted the terms of the *Agreement to Lease*, including the requirement to execute the formal lease, she cannot insist on taking possession without signing

it. It is incorrect that the landlord can add any additional terms to the formal lease because these must be reasonable.

48. B. The landlord in a condominium can add a 'No Pets' clause the lease if the condominium *Declaration* prohibits pets in the building. The condominium *Declaration* takes precedence over the *Residential Tenancies Act*, which permits tenants to keep pets.

It is incorrect to state that the lease does not include a 'No Pets' clause because the landlord included it in the counter offer. It is irrelevant whether or not the tenant had a pet prior to commencement of the lease.

49. A. The landlord may charge a reasonable fee or out-of-pocket expenses for sub-letting the apartment.

Unless the lease specifies otherwise, a residential tenant is permitted to assign or sub-let the premises with landlord's consent, which the landlord cannot refuse arbitrarily (*unreasonably*). When the apartment is sub-let, the sub-tenant is liable to the tenant and the tenant remains liable to the landlord throughout the term of the lease. The sub-tenant does not have the right to occupy the apartment after the tenant's lease expires. In other words, the term if the sub-lease must not be longer than the term of the lease.

50. D. The landlord wants his mother to move into the unit and he can serve a 60 days' notice prior to the end of lease. This means that the earliest landlord's mother can move into the unit would be 1st of October.

It is incorrect that the landlord can give a 60 days' notice anytime during the term of a fixed term tenancy. This would have been possible only if it were a month-to-month lease.

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DETAILED ANSWERS

SAMPLE EXAM 2

1. **C.** Ben is a non-owner spouse of the matrimonial home and will get one half of the net increase in the value since marriage.

Other statements are incorrect. The non-owner spouse does not get one half of the ownership rights. He/she gets the right of possession and an equal share in value appreciation after marriage.

2. **B.** Every joint tenant must get ownership at the same time and through same documents. These are two of the four unities of joint tenancy.

Joint tenancy can be created between any two individuals and they do not have to be spouses. Mutual agreement is just one of the methods of terminating joint tenancy and is not the only method. Other methods are known as severance and partition. Certain exceptions exist for conversion of joint tenancy into tenancy in common.

3. **D.** Chattels of fixtures which are included or excluded in a lease need not be a part of the lease to make it legally enforceable. It is up to the parties to negotiate these items.

Other items stated herein are required for a valid lease.

4. **A.** A *Reference Plan* is required with an application for *Consent to Sever* a parcel of land. This *Reference Plan* shows the parts of land after severance.

A Plan of Subdivision (*not a Reference Plan*) is required to create a subdivision. Just having a *Reference Plan* prepared does not itself legally sever a parcel of land because necessary approvals are required. *Reference Plan* is a type of survey describing the property and it is incorrect to state that the owner wants to avoid the cost of survey.

5. **D.** The principle must take responsibility of the lawful acts of the agent and pay the agent for the services provided.

Other options are not correctly written. It is not the principal only who needs to act in good faith and disclose all information to the agent, but this applies to both the principal and the agent. The duty of loyalty and protection of best interests are owed by the agent to the principal. The duty to reimburse for services provided falls under the duty of *remuneration* and not under *indemnification*.

6. **C.** When a lease is signed, and the tenant gets an option to purchase, this does not create a legally binding contract between the landlord at the time of signing the lease. It depends whether the tenant exercises this option or not.

In an option to purchase, the tenant is not required to purchase the property and the landlord cannot sue the tenant if he/she does not purchase it. However, the landlord can sell the property in open market only when the tenant first refuses to purchase within a specified time-period.

7. **A.** Under the *Contract Law*, a contract with a minor becomes binding on the minor when an adult is a co-signor to the contract.

If an adult is representing the minor, the contract does not necessarily become binding unless it is for a necessity of life. When we say that the contract is for a living accommodation, we cannot definitely say that the accommodation is a necessity of life. If the minor avoids the contract before reaching the age of majority, it does not become binding on the minor.

8. B. When a joint tenant dies, the interest if the deceased passes on to the surviving joint tenant(s). This is known as the *Right of Survivorship*. This right has an exception when the joint tenancy is with someone other than a spouse and the property is a matrimonial home. In this case, when the owner spouse dies, the joint tenancy is deemed terminated just before the death and converts to tenancy in common. Hence, the interest of the deceased becomes estate of the deceased and passes on to the next heir, which is the non-owner spouse. In the given scenario, David would own half of the estate and Ben's estate would pass on to Jane.

This explanation makes other options incorrect.

9. D. If the buyer does not provide a list of items excluded from the sale, then all such items (fixtures, chattels, goods and other assets which are related to or connected with the business are deemed included in the sale.

The above explanation makes other options incorrect.

10. B. Registrants are permitted to advertise sales volume generated by a team provided that the advertisement clearly states that this is generated by the team and not by an individual registrant.

It is incorrect that a registrant cannot advertise sales volumes generated by his/her team and prior approval of such advertisements is not required from the Registrar of RECO.

11. A. When the life estate and future estate interests are combined, it is equivalent to a *fee simple estate*. In fact, it is the fee simple interest that is broken down into two parts.

Life estate and future estate are typically held by different persons and not by the same person. The holder of life estate does not have the right to determine the future estate holder because it is decided by the grantor of the life estate. The person holding the life estate must get the consent of the future estate holder to sell the property.

12. D. When a mortgage loan is paid off, the mortgagee executes the *Discharge of Charge/Mortgage* form and the mortgagor must register the discharge in land registry office. This removes the mortgage lien from the title of the property.

Merely paying off the loan or getting the discharge document from the lender is not sufficient. The discharge must be registered in the Land registry office. It is not necessary that any monies owing must be paid in court. The *Document General* form and the *Standard Charge Terms* form are not used for this purpose.

13. C. When the interest of the owners is not equal, the tenancy is not joint tenancy, but it is tenancy-in-common.

Kenny and Jenny are not joint tenants due to the fact that their interest is not equal. The title will not transfer to Jenny upon Kenny's death because the *Right of Survivorship* does not exist in

tenancy-in-common. Even if they acquire their interest at the same time, other unities of joint tenancy must be satisfied to create joint tenancy.

14. B. Under the *Consumer Protection Act*, a consumer can cancel a timeshare agreement within 10 days of receiving a copy of signed agreement. This time-period does not start from the date of signing.

The cooling off period (*time to cancel*) in a timeshare starts from the date of receiving a copy of signed agreement. Serina does not have 11 more months to terminate the agreement. However, if she does not receive a copy of the agreement at all, she can cancel within one year.

15. C. \$24,775

Solution: On first 55,000 X 0.5% = 275

On next 195,000 X 1% = 1,950

On Next 150,000 X 1.5% = 2,250

On Balance 1,015,000 X 2% = 20,300

Land Transfer Tax = 275 + 1,950 + 2,250 + 20,300 = \$24,775

16. C. The buyer of a property ultimately becomes responsible to pay *Capital Gains Tax* if the seller is non-resident and fails to pay the tax within 10 days of closing. The buyer needs to be protected from this liability. The pre-printed wording of the *Agreement of Purchase and Sale* provides that the seller can either pay the tax in advance, get a certificate from the *Minister of Revenue* and give it to the buyer or, give credit to the buyer for the amount of *Capital Gains Tax*. If these two things do not apply, and the seller is a resident of Canada, the seller is required to give a *Declaration* that he/she is not a non-resident.

This explanation makes other options incorrect.

17. D. Deed restrictions are placed on the title of a property to ensure that the property is not used for a purpose which is otherwise permitted under the current zoning by-laws. Deed restrictions, if any, take precedence over zoning provisions.

Other options do not correctly describe the purpose of deed restrictions.

18. B. When a property is sold, the standard form used to register the buyer's interest in the property is known as *Transfer/Deed of Land*.

The *Surveyor's Real Property Report* is not one of the five forms for registration purposes. Additional terms can be added to the *Schedule* which is a standard attachment to other four forms. The *Charge/Mortgage of Land* itself is a standard form for registration of a mortgage lien on the property and is distinct from the *Document General* form.

19. A. When a material fact is known but deliberately not disclosed to the buyer, it is best described as a *fraudulent misrepresentation*.

Innocent representation occurs when the parties are not aware of certain fundamental fact related to the transaction. *Unilateral mistake* occurs when one party knows that the other party is mistaken with respect to some fundamental aspect of the property but does not make the

other party aware of it. *Negligent representation* typically occurs when a registrant does not verify the information before making a statement or neglects his/her duty of care, and this information is later found to be untrue.

20 D. The representation and warranty by the seller with respect to UFFI conflicts with material facts and the buyer can take a legal action for damages.

Presence of UFFI is a material fact (*stigma*) and it must be disclosed by the sellers. The representation and warranty about UFFI in the *Agreement of Purchase and Sale* does not include the following statement:

"The parties agree that this representation and warranty shall survive and not merge on completion of this transaction but apply only to the state of the property at completion of this transaction."

The *absence* of above sentence means that the buyer may take a legal action if he finds *after* closing that the seller had installed UFFI.

21. B. A statement of profit and loss for the past 12 months or even since the seller acquired the business must be provided to the buyer prior to a binding agreement. This is one of the requirements of the *Real Estate and Business Brokers Act 2002* when a brokerage is involved in the sale. In addition to this, the seller must provide a statement of assets and liabilities of the business.

The seller need not provide a list of items included in the sale but must provide a list of items which are not included in the sale. If the seller does not provide the financial statements (statement of profit and loss and the statement of assets and liabilities, an *Affidavit of Sale of Business* can be provided to the buyer. After analyzing this statement under oath (affidavit), the buyer may sign to waiver if he still wants to complete the transaction. The salesperson involved in the sale need not witness this affidavit. A disclosure in this regard cannot be added to the *Agreement of Purchase and Sale*.

22. C. The Registrar is unlikely to order the cessation of all advertisements by the brokerage because the false advertising is done only by a particular salesperson.

Other statements are valid options for Registrar's actions when a salesperson is found in violation of Sec. 37 of the *REBBA 2002 Code of Ethics*.

23. C. The listing brokerage must get a *Mutual Release* signed by both the buyer and the seller in order to withdraw the deposits funds from the *Real Estate Trust Account* and return it to the buyer.

Buyer's deposit cannot be returned with authorization of the broker of record or merely upon a written request from one of the parties. Both parties must sign a mutual consent for this purpose.

24. A. The sellers had accepted in the agreement that the unpaid loan would be considered a deposit, and this created a legally binding contract between the parties. Deposit is a sign of faith between the parties and also constitutes a *part* of the consideration.

The agreement does not become void or voidable due to lack of consideration. At the time of acceptance, there is a promise in return of a promise and this is signed by both parties under seal. Deposit itself may not be a consideration but a legally binding contract is created because the agreement is signed under seal.

25. B. The salesperson must disclose in all advertisements the correct meaning of the term '*transaction*'. In the absence of this disclosure the general impression of the advertisement may be become false and/or misleading.

The registrant does not need prior approval from the Registrar of RECO for this advertisement. Registrants can advertise the dollar volume of their sales or the number of transactions, provided that proper disclosures are included in all advertisements. No registrant can identify any property, party, or particulars of a transaction without the prior written consent of the parties involved.

26. C. The problem with the foundation wall and leaky basement were *material latent defects* due to the fact that these problems may make the property dangerous or inhabitable for the buyer. Foundation wall is a load bearing component of the property. Since these problems were known to the seller and the listing brokerage but the buyer could not see them at the time of inspection, they may be treated as *material latent defects*. The buyer may take a legal action against the seller as well as the listing salesperson.

The above said problems with the structure are not *patent defects* but *latent defects* (defects that are not readily visible at the time of inspection). The broken window is a patent defect and neither a latent defect nor a material latent defect. The co-operating salesperson is not liable in this scenario because the duty to disclose a known material fact was the responsibility of the seller and the listing salesperson.

27. D. Under the *Land Titles Act*, if someone suffers a loss or is deprived of ownership due to human error, document forgery or fraud can make a claim and receive compensation from the *Land Titles Assurance Fund*. But such compensation *cannot* be received from any other source.

Other statements correctly describe the three principles of the Land Titles Act. The *Mirror Principle* states that the information in the *parcel register* accurately and completely describe the current facts about the property. The *Insurance Principle* states that anyone who suffers a loss due to human error or fraud must be compensated. The *Curtain Principle* states that the parcel register is the sole source of information for buyers.

28. C. Only statements 1, 2 and 4 are correct. A consumer's prior consent is necessary when a party wants to collect personal information with respect to a transaction with that consumer.

Statement 3 is incorrect because information about a *business* is not considered personal.

29. A. The buyer's salesperson should have included the dishwasher in the Chattels Included clause of the *Agreement of Purchase and Sale*. Any items that cannot be clearly qualified as a fixture or as a chattel and are likely to create confusions or disputes must be clearly identified and specifically mentioned in the agreement as included in or excluded from the sale.

Since a dishwasher is an appliance, fixed to the property, it cannot be categorized either as a chattel or as a fixture. The buyer's salesperson must have acted diligently to protect the buyer and include it in the Agreement.

30. B. Only statements 1 and 4 are correct. The property is a matrimonial home and the owner spouse and the non-owner spouse both have an equal right of possession. The owner spouse must get written consent from the non-owner spouse for encumbering the property (such as taking a mortgage loan). The non-owner spouse does not have ownership interest in this property.

Other statements are not correct. When the property is sold, Mrs. Smart must get written consent of Mr. Smart (known as *spousal consent*). Mr. Smart does not have to immediately vacate the property in case marriage breaks down. These matters are decided according to provisions of the *Family Law Act*.

31. A. The *Land Titles* system (*Land Titles Act*) is the newer of the two land registration systems and it eliminates some of the problems with the older *Land Registry* system (Land Registry Act).

The *Metes and Bounds* system of land description was in use many decades ago and has become obsolete now. But it is incorrect to say that it was used under the *Registry* system only and is not permitted under the *Land Titles* system. Both the *Registry* system and the *Land Titles* system register documents as well as maintain history of ownerships. Only the *Land Titles* system provides a guarantee for the title. A 40-year search on chain of titles was performed under the *Registry* system and is not required under the *Land Titles* system.

32. D. Since the default is in part of the buyers Mr. and Mrs. Bright, they are responsible to pay commission to their brokerage Power Realty Inc. under the terms of the Buyer Representation Agreement.

The sellers are not responsible for the commission because it was not their default. The buyers do not have any privity of contract with the listing brokerage.

33. B. In the standard *Listing Agreement*, the seller permits the listing brokerage to co-operate with other registered real estate brokerages to find a buyer and sell the property. This typically happens when the property is listed on the *MLS®* system. This is an example of delegation of duties by the agent with prior consent of the client.

When the property is listed on the *MLS®* system and the co-operating brokerage is involved in the sale, then that brokerage is not treated as a *sub-agent*. The salesperson who obtains a listing is the agent of the client, but the listing brokerage is the agent. The salesperson does not delegate his/her duties to the brokerage, but it is the brokerage which delegates its duties to its salespersons. Delegation is not permitted when the agent does not have the necessary skills or capabilities to perform the task.

34. C. Jamie cannot refuse expropriation but can demand reasonable damages (financial compensation) over and above the compensation paid by the municipality.

Other options are not correct. Jamie cannot refuse expropriation of his property merely on the grounds that he would lose parking space and business income. The compensation for expropriated land is determined by the municipality on the basis of fair market value. It is

incorrect that Jamie is no right to ask for any payment in addition to the compensation paid. If an owner's rights are interfered or reduced (loss of parking space), then the owner may be entitled to compensation for *injurious affection*.

35. D. The student's answer is unacceptable because he did not describe that the buyer must receive a list of items (fixtures, chattels, goods or other assets) which are not included in the sale. If such a list is not provided, then all such items are deemed included in the sale.

The above explanation makes other options incorrect.

36. A. When drafting the *Agreement of Purchase and Sale* for a buyer, the salesperson must act diligently and specifically include those items in the agreement which do not seem to fit in either fixtures or chattels category. This would help the parties avoid any confusions and disputes at a later date.

The salesperson should not leave the Fixtures Excluded and the Chattels Included clauses blank and leave it to the parties to decide later. There is no need to seek legal advice for these matters but depends on what the sellers want to exclude from the sale and what the buyers are expecting to be included. Built-in chattels are not always included in the sale.

37. B. A promise for inducement is permitted under REBBA 2002 if the promise is made in writing and delivered to the person to whom it is made. This would allow the party (buyer or seller) to take a legal action if the registrant fails to keep the promise.

It is incorrect to state that promises can only be made to buyers and not sellers. A registrant can make a promise to a buyer to purchase that buyer's property as an inducement to purchase another property, but this must be in writing.

Case Study - 3 Parts

38. C. Individual unit owners in a condominium are not responsible for the mortgage payments of other unit owners when they default on their mortgage payments. This is because a mortgage on a condominium unit is a first mortgage, independent from mortgage of other units, and there is *no joint liability* of unit owners for the blanket mortgage on the entire condominium building.

Other statements given by the salesperson are correct and there is no error.

39. D. There are common elements in a co-operative building and monthly maintenance fee is payable. Unit owners in a condominium cannot reduce their proportionate share of maintenance fee if they are not using any of the common elements.

Other statements given by the salesperson are correct and there is no error.

Case Study – 3 Parts

40. A. Since the laneway was being used over a long period of time, the neighbor has probably acquired a legal right of way by *prescription*. This is one of the methods by which an easement may be legally created.

The above explanation means that an easement need not necessarily be registered on the title to be legally valid. Only those owners have riparian rights whose properties are on shore lands. These rights are not for all property owners. An easement binds to land (stays with land) and is not extinguished (does not cease to exist) when the property is sold.

41. D. Bruce is in violation of a deed restriction, which appears to be valid, so he may have a problem. Bruce is the current owner and he must not use the property for any business activity, which is prohibited in the deed restriction.

Deed restrictions take precedence over zoning provisions, which means that even if zoning permits a specific use of property, a deed restriction may still prohibit that use. It does not matter after completion of sale whether the seller had complied with the deed restriction or not. Currently, Bruce is not complying with the deed restriction. Deed restrictions bind to the land and stay with the property even if the property is sold.

42. B. The *Income Tax Act* requires that non-resident sellers must pay Capital Gains Tax on sale of property in Canada. If the seller fails to pay the tax within 10 days of completion of transaction, then the buyer becomes responsible. Therefore, the buyer must make sure before the completion that the seller pays the necessary tax either before the completion date or by giving a credit to the buyer for the amount of tax owed.

This makes other options incorrect. It does not matter whether the transaction with non-resident seller is at arm's length or not, the seller must pay it and if the seller fails to pay, the buyer becomes responsible.

Case Study – 3 Parts

43. A. In the standard *Agreement of Purchase and Sale*, three options are available to the buyer for paying deposit. These are 'Herewith', 'Upon Acceptance' and 'As Otherwise Described in this Agreement'. When the buyer does not have sufficient funds to pay 'Herewith' or 'Upon Acceptance', the third option 'As Otherwise Described in this Agreement' can be inserted along with an appropriate clause in the Schedule.

The buyer should not be provided any advice mentioned in other options because they are not acceptable under the terms of the agreement.

44. C. The *Consumer Reports* clause in the *Agreement of Purchase and Sale* notifies the buyer that the brokerage and/or the seller may obtain credit information on the buyer if it is appropriate for this transaction.

Other statements are incorrect with respect to the *Consumer Reports* clause in the *Agreement of Purchase and Sale*.

45. B. The representation and warranty clause includes an additional statement to ensure that the representation and warranty survives the completion date and does not merge on completion. Further, this statement provides that the warranty *applies to the state of the property at completion of transaction*. This means that there would be no warranty after the completion date.

Other options are incorrect. The warranty does not cease to exist at the time of completion, does not permit the buyer to have another inspection before closing and does not make the agreement conditional.

Case Study - 5 Parts

46. D. The buyers ultimately decide whose names would be registered on the title of the property.

The buyers' lawyer does not make this decision and a property need not be registered in the name of only one spouse and it can still be a matrimonial home. In this case, the other spouse becomes the non-owner spouse.

47. A. In the *Documents and Discharge* clause of the *Agreement of Purchase and Sale*, the buyer agrees to accept the seller's lawyer's personal undertaking to discharge the mortgage lien out the sale proceeds. Therefore, seller's existing mortgage does not prevent closing of the transaction.

A mortgage is an encumbrance on the property title can become a valid objection to title if adequate arrangement is not made to discharge it prior to the closing date. The buyers do not have to assume seller's existing mortgage.

48. D. This would be a concern for the buyers because the *Future Use* clause does not provide any warranty to the buyer whether the intended future use by buyers would be lawful or not.

Buyers cannot insert the future use of the property in the *Present Use* section of the Title clause, which is meant to describe the current permitted use of the property. This clause permits the buyer's solicitor to search the title and verify whether the buyer can lawfully continue the present use but has no provision to verify the legality of the future use. The seller is not responsible to get necessary consent for the intended future use unless specifically provided for in the agreement.

49. B. The Insurance clause in the *Agreement of Purchase and Sale* provides that if significant damage occurs to the property before completion, the buyer may either terminate the agreement or may take proceeds from seller's insurance and complete the transaction. This means that the buyer may walk away from the deal (terminate the agreement) and this will not constitute any breach of the contract

This explanation makes the other options incorrect. The buyer does not have to take proceeds from his own insurance because it does not exist before completion.

50. C. The acknowledgement section in the *Agreement of Purchase and Sale* confirms that the parties have received signed copies of accepted agreement. This section must be signed by all parties to the agreement after the *Confirmation of Acceptance* has been signed.

Other statements are not entirely correct. *Acknowledgement* must be signed by all parties and not just one of the buyers or sellers. This section must be completed within a reasonable time after the *Confirmation of Acceptance* and not any time after this. This section *does affect* the agreement and absence of this acknowledgement may create legal troubles at a later date.

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DETAILED ANSWERS

SAMPLE EXAM 3

1. B. Every joint tenant must have an equal and identical interest. If there are four joint tenants, each must have equal ownership interest. This is one of the four unities in joint tenancy, others being possession, time and title.

The four unities in joint tenancy are *Possession, Interest, Time* and *Title*. A property in joint tenancy may be leased. In tenancy-in-common, there is only one unity of undivided possession.

2. A. *Real Property* includes the physical real estate, any improvements, permanently installed fixtures and the bundle of rights of the owner. *Real Property* is immovable in nature and includes both *tangible* (land and improvements) and *intangible* (bundle of rights) aspects of the property. Chattels are considered *Personal Property* because these are personal movable items of the owner.

3. C. The purpose of placing deed restrictions on the title of the property is to prohibit a specific use of the property which is otherwise permitted under the existing zoning provisions. Once registered on the title, these restrictions take precedence over the zoning provisions.

Other statements do not correctly describe the purpose of deed restrictions.

4. B. It depends whether or not the buyers completed all legal formalities for registration of property in their name. Merely registration of deed under the land registry office may or may not be an adequate proof of ownership.

It is incorrect to state that the deed need not be registered, or it must be registered under a specific system (*Registry* system or *Land Titles* system).

5. B. Under the *Agency Law*, an *agent* is that person or entity which owes *fiduciary duties* to the client. Under REBBA 2002, the term *agency* has been replaced with *representation*.

An *agent* is simply someone (*agent*) acting on behalf of another (*principal/client*) and may not have greater expertise than the principle for the particular task. An agent does not necessarily have to be an *independent contractor* or a real estate salesperson representing his/her brokerage.

6. C. In the standard *Listing Agreement*, the seller permits the listing brokerage to co-operate with other registered real estate brokerages to find a buyer and sell the property. This typically happens when the property is listed on the *MLS®* system. This is an example of delegation of duties by the brokerage with prior consent of the client.

The salesperson who obtains a listing is the agent of the client, but the listing brokerage is the agent. The salesperson does not delegate his/her duties to the brokerage, but it is the brokerage which delegates its duties to its salespersons. Delegation is not permitted when the agent does not have the necessary skills or capabilities to perform the task. A co-operating brokerage is not treated as a sub-agent of the listing brokerage.

7. D. In simple words, the term *Non Est Factum* means that '*it is not his/her deed*'. This mostly happens when someone is induced by fraudulent or other improper means into a contract,

which is fundamentally different from what that person has contemplated. In such a situation, the contract is not binding on that person. The person, in fact, never intended to sign the contract but somehow, he/she was convinced to sign it.

This explanation makes other options incorrect.

8. A. When it is not clear whether an item is a fixture or a chattel, the salesperson should not be negligent. Whatever items are included or excluded, these must be specifically written in the agreement. This simple rule helps avoid confusions or disputes at a later date.

It is not necessary that a fixture is always included, or a chattel is always included in the sale price. Further, items included in the sale price need not be attached permanently to the property.

9. C. *Expropriation* is the act of taking private property by the government for public use, with fair compensation to the owner. This is done according to the *Right of Eminent Domain* under the *Expropriations Act*.

Expropriation is not used as a remedy for non-payment of municipal property tax. The requirements to use a property for a specific purpose is regulated under the local zoning provisions. *Police Power* is one of the government limitations on bundle of rights and refers to regulating the division, development and use of land.

10. A. A condominium is created after registration of the condominium corporation by way of *Declaration* and *Description*. Once a condominium is registered, it creates a legal framework for registration of deed for individual units.

The *Condominium Act* regulates the entire framework related to creation of the corporation, its operation and termination procedures. The purpose of the condominium is not to hold the unit title on behalf of the unit owners. Only the buyers of new condominium units get a 10-day period to cancel their agreement.

11. B. *Offer and Acceptance (mutual agreement)* is one of the essential elements of a contract. When a party (*offeree*) wants to accept an offer made by the other party (*offeror*), it must be communicated to that party. This is one of the requirements for acceptance.

Other options are not correctly worded. A *seal* is not essential but when it is used, the consideration may or may not exist to make the contract valid. It can be used as a substitute for consideration. The *consideration* need not be of equal value and a past consideration is not acceptable.

12. C. A *restrictive covenant* must be reasonable in nature and must not be arbitrary/contrary to public interest.

A *restrictive covenant* cannot be positive because its purpose is to restrict the use of a property for a specific purpose. Restrictive covenants are typically *private deed restrictions* and are not included in zoning by-laws. Since restrictive covenants are used to prohibit the use of a property in a specific manner, they are typically used for enhancement of all properties located within a sub-division.

13. C. The historic *feudal system* of holding land was replaced with ownership based on the concept of estate.

Other options are incorrect with respect to the feudal system of tenure. Ownership by the Crown, the concept of tenancy did not replace the system.

14. D. The interest of the life estate holder ends upon death of that person. A higher interest than which is granted cannot exist. Hanna's death terminates the lease she had granted to the tenant and Diego can now obtain vacant possession of the cottage. The grantor of life estate typically specifies the rights and obligations of the life estate holder.

The cottage does not become Hanna's estate after her death. The lease will terminate irrespective of the remaining term of the lease.

15. B. The Land Titles system is more efficient than the Land Registry System because only current and valid records related to land are maintained in the Land Titles Register (Parcel Register). This is the sole source of information for buyers and they need not search 40-years' history. The land titles register accurately and completely reflects the current status of a property.

Title by possession (adverse possession or prescription) is not possible under the Land Titles Act. Title Insurance can be purchased under both the Land Registry Act and the Land Titles Act.

16. D. The duty of *loyalty* means that the interests of the client must be protected and ahead of agent's own interests and the interests of third parties. This is one of the *fiduciary duties* owed to a client.

The duty to disclose material facts pertaining to the property and the transaction is the duty of *full disclosure*. The agency relationship is not terminated if the agent's interests conflict with the interests of the client provided that the disclosure with respect to conflict of interest is made. The duty of *loyalty* is not owed to customers, which is a non-agency relationship.

17. D. The seller does not necessarily have to provide an affidavit with respect to various matters related to the business. The *Sale of Business Affidavit* is required *only* when the seller does not provide financial statements to the buyer.

Other statements correctly describe the documents that must be provided to the buyer before a binding agreement takes place.

18. B. The developer wants you to represent him for a transaction with a private seller. You should discuss agency relationships with the developer and ask him to sign a Buyer Representation Agreement. This will ensure that confidential information of the developer, such as his identity, are protected.

Other statements are incorrect as these are not the best way to proceed with the given situation.

19. D. The objectives for creating a condominium corporation are to maintain the property and to manage the condominium assets.

The purpose of creating a condominium are not to limit the liability of the unit owners (*unit owners do not have limited liability*), to hold title to all units (*unit owners hold title to their own units*) or to sell the shares of the corporation.

20. C. Misrepresentations of information with respect to a trade in real estate typically fall under the provisions of the *Real Estate and Business Brokers Act 2002*.

The error made by the salesperson does not fall under the *Consumer Reporting Act* or the *Income Tax Act*. The *Consumer Protection Act* is applicable to real estate registrants when they make representations in provision of services. *Listing Agreement* and *Buyer Representation Agreement* may fall under this Act.

21. B. An agent is someone who represents a principal/client in a business transaction with a third party.

Other statements are not correct. The agent is required to follow only lawful instructions of the client. The agent is not a servant of the client and must not substitute his/her good judgement when there is no agreement with client's instructions.

22. A. When a contract is breached, the injured party who suffers a loss, must make reasonable efforts to reduce the loss. This is known as *mitigating* the damages wherein the injured party tries to reduce the debt of the other party.

The injured party may or may not receive payment for the part of contract that has been performed. This depends on the nature of the contract and individual circumstances. Merely breach of a contract is not adequate to sue the breaching party for *damages* (financial compensation). If there is no actual loss, no damages can be claimed. If the loss is proven, the compensation to the injured party may include the actual loss and other costs.

23. B. Under the *Residential Tenancies Act*, a landlord is not permitted to demand postdated cheques for rent as a condition for renting to a tenant.

It is incorrect to state that the landlord cannot demand last month's rent as deposit if the tenant agrees to provide postdated cheques. This explanation makes other statements incorrect.

24. D. According to the *marriage contract* they signed, Ben would not have any ownership interest but has an equal right of possession because it is a matrimonial home.

Ben would not be entitled to 50% of the value of the home due to the *marriage contract*. Since Ben has a right of possession, it is incorrect to state that he has *no right whatsoever* in the property.

25. C. Only this statement provides a correct list of the standard registration documents under the *Land Registration Reform Act*. The five documents are-

- *Form 1: Transfer/Mortgage of Land,*
- *Form 2: Charge/Mortgage of Land,*
- *Form 3: Discharge of Charge/Mortgage,*
- *Form 4: Document General, and*
- *Form 5: Schedule.*

Other statements include names of some documents which are not standardized under the said Act. The number of standard forms is five and not four or six.

26. A. The items given in this scenario are the bar and the set of bar stools. These are chattels because they are not permanently fixed to the property. Chattels are typically excluded from the sale unless specifically included in the agreement.

An item listed on the feature sheet is not necessarily included in the purchase price. The seller has the right to remove them if not specifically included in the agreement. Since the bar and set of stools were not attached to the property, they are personal movable property of the seller. Chattels are not fractional interests.

27. B. Only statements 2, 3 and 4 describe the required information included in the Sale of Business Affidavit.

Statements 1 and 5 are incorrect because the affidavit does not provide information on assets or the shareholders of the business.

28. D. A contract may be verbal, oral or written. Under the *Contract Law*, a contract need not necessarily be in writing.

This explanation makes other options incorrect. Capacity of parties is the first essential element of a legally binding contract. The terms '*binding*' and '*valid*' are synonymous because only a valid contract can be legally binding.

29. A. Only statement 3 describes a valid reason for termination. Non-payment of rent on agreed terms is a valid reason for the landlord to serve a notice of termination before the end of lease term.

For the circumstances stated in other options, the landlord can serve a notice of termination at least 60 days prior to the end of the lease term.

30. B. The said property is a matrimonial home and the non-owner spouse must give consent for the sale. Only this statement made by Mr. Bright is correct.

Other statements are not correct. If a family has only one home, it is a deemed matrimonial home and need not be specifically *designated*. Marriage does not automatically make the spouses joint owners of a property. Since the non-owner spouse has the right of possession in a matrimonial home, it is incorrect to state that Mrs. Bright has no interest in the property.

31. C. The tenant would be able to refuse signing of the final lease and get the deposit back because the landlord misrepresented the property to the tenant. The landlord is required to include the basic terms in the *Agreement to Lease* in the final lease.

There is a clause in the Agreement to Lease which requires the tenant and the landlord to sign the landlord's formal lease. The landlord must adhere to the terms in the Agreement to Lease and by not providing a clear access to the take-out window, as shown in the site plan, the landlord is deviating from the agreed terms. The *Agreement to Lease* does not constitute a legally binding lease because it merely sets out the basic and fundamental terms of the final lease.

32. D. Only statements 2 and 3 can be misrepresentation of facts. This is because the salesperson must verify the facts with respect to Urea Formaldehyde Foam Insulation and legality of the basement apartment before giving such information to the buyer. Statement 1 may be considered an advice but not a misrepresentation.

This explanation makes other options incorrect. Material facts related to the property must not be misrepresented to either client or a customer.

33. A. Only statements 1, 2 and 4 are correct. REBBA 2002 includes many obligations on part of the agent and the client which were developed several years ago as common law duties. Some examples are *accounting*, *competence*, *indemnification*, etc. Maintaining a *Real Estate Trust Account* is a part of the duty of *accounting*. Educational requirements are a part of the *duty of competence* because the agent must have necessary education, knowledge and skills to provide services. The requirements to have representation agreements relates to the common law principles of having definite terms for creating a legally binding contract.

Statement 3 is not correct. The duty of *indemnification* (payment of commission to the brokerage) specifically does not apply in real estate because the client owes the duty of *remuneration*, which is set out as commission in representation agreements.

34. D. REBBA 2002 requires that a registrant must convey (*present*) all written offers to the clients. In the given scenario, the seller is *client* and the buyer is a *customer*. Moreover, since the communicated of the offer has already taken place (*to the sellers' agent*), it cannot be revoked by the buyer. As part of due diligence, the salesperson must inform the buyer about his/her obligation to present the offer to his client and, at the same time, inform the seller of what has taken place.

As stated above, the offer must be presented to the seller client. If the salesperson does not present the offer, he would be in violation of his duties to the seller client.

35 A. \$3,125

Solution: On first 55,000 X 0.5% = 275

On next 195,000 X 1% = 1,950

On next 150,000 X 1.5% = 2,250

On Balance 132,500 X 2% = 2,650

Total Land Transfer Tax = 275 + 1,950 + 2,250 + 2,650 = \$7,125

Less Rebate of \$4,000

Actual Land Transfer Tax Payable = 7,115 – 4,000 = \$3,125

36. C. The *Future Use* clause in the *Agreement of Purchase and Sale*, specifically mentions that the seller or the brokerages do not provide any assurance whether or not the intended use of the property by the buyer would be lawful.

The lawful use of the property depends on zoning provisions and deed restrictions, if any. It is not a matter of mutual agreement between the seller and the buyer.

37. D. In case the tenant does not want to return and occupy the unit anytime during the term of the lease, the best option is to assign the lease to another tenant. Generally, the original tenant would be released from lease obligations and will be responsible only up to the time of assignment.

Other options are not advisable. It is incorrect to state that the tenant does not have any options. In subletting, the original tenant remains responsible to the landlord throughout the term of the lease. Abandonment of premises is never a good advice at all.

38. B. in a *right-to-use* timeshare interest, the buyer obtains a contractual notice of lease that designates the specific period of time they will occupy the unit.

Other statements are not correct. A condominium corporation need not be registered in case of a *right-to-use* timeshare development. The title to the units remains with the developer and no shares are given to the buyers.

39. C. Only statements 2, 3 and 5 are correct. The developer needs to create and register a condominium corporation in case of a fee ownership timeshare. Individual weeks are registered under the unit and timeshare are governed under the *Consumer Protection Act*.

Statements 1 and 4 are incorrect because timeshare agreements are not governed under REBBA 2002.

Case Study – 2 Parts

40. D. The *Turnover Meeting* is held by the condominium corporation to transfer the control of the corporation from the *Declarant* to the unit owners. The operational documents of the corporation are transferred to the board of directors in this meeting.

The first board of directors is appointed by the *Declarant* and not by unit owners. The unit owners appoint the members of the board of directors. The by-laws of the condominium corporation are made by the board of directors and not by the *Declarant*.

41. A. Only statements 1 and 3 are correct. The *Declarant* must set aside a *First Reserve Fund* until a *First Reserve Fund Study* is completed. This study must be completed within one year of the condominium registration. The corporation keeps aside certain part of common expenses for contribution to the *Reserve Fund*.

Case Study - 3 Parts

42. B. The property is a matrimonial home where Lisa, the non-owner spouse, has a right of possession. Peter must obtain spousal consent from Lisa to sell the home.

This makes other options incorrect. According to the provisions of the Family Law Act, the primary residence of a family is a *deemed* matrimonial home and need not be *designated* as such. The non-owner spouse has the right of possession but does not ownership share.

43. C. The *Family Law Act* provides for equal division of net family property when a marriage breaks down. Peter and Lisa would equalize the net increase in the value of home after marriage and any other assets they acquired during their marriage.

This explanation makes other options incorrect.

44. B. Peter could have signed a marriage contract with Lisa before marriage which would allow him to retain a greater portion of the value of the home and other assets in the event of marriage breakdown.

It is incorrect that Peter had no options or that Peter could register a statutory declaration with respect to equalization of assets. Placing a substantial mortgage on the home would only have complicated the matter and increased Peter's liability.

Case Study - 3 Parts

45. D. The salesperson's answer is unacceptable because he did not describe that the buyer must receive a list of items (fixtures, chattels, goods or other assets) which are not included in the sale. If such a list is not provided, then all such items are deemed included in the sale. This explanation makes other options incorrect.

46. A. The *Sale of Business Affidavit* (described here as *statement under oath*) waives the requirement of providing financial statements to the buyer. This affidavit does not waive the requirement of providing a list of items that are not included in the sale.

Other statements given by the student are correct.

47. D. In case the business being sold is a franchise business, it is not necessary that the franchisor would demand the franchise fee again. The franchise fee is typically a one-time fee and is already paid. It is incorrect to state that the franchisor would make the sale void if the franchise fee is not paid again.

Other statements provided by the salesperson are correct.

Case Study – 3 Parts

48. C. Since the salesperson did not violate her duty to protect the buyers by including the appliances in the agreement, the buyers have the duty to indemnify the salesperson and her brokerage. They would only have a valid claim against the sellers because ultimately, the privity of contract (Agreement of Purchase and Sale) is between the sellers and buyers.

49. B. The REBBA 2002 Code of Ethics requires registrants to take reasonable steps to determine and disclose facts about the property. It was salesperson's legal obligation to be aware of improvements in the neighbourhood and advise the buyers accordingly. She should have known these the local improvements in the neighbourhood, which were obviously noticeable, may impact the assessment values and property taxes.

Even though the listing brokerage is primarily responsible to provide accurate information on a listed property, the buyer brokerage still has an obligation to verify the facts for their buyer client.

As a buyer's representative, Jenny had a duty to protect their best interests and she cannot make an excuse that it was not her responsibility.

50. C. The buyers seem to have a valid claim because the value of residential properties is typically based on frontage of the lot.

This cannot be termed as a *fraudulent misrepresentation*, unless it is proven that the discrepancy is due to a fraudulent activity by the buyer's salesperson. The Buyers may have a valid claim against the sellers because their contract (agreement) is primarily with them. The listing brokerage may also be held responsible for the inaccurate lot size because this measurement should have been verified before being advertised.

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DETAILED ANSWERS

SAMPLE EXAM 4

1. D. *Fee Simple with Conditions* type of estate rarely exists these days because the conditions may be contrary to existing federal or provincial laws, or against public policy.

In a *Fee Simple with Conditions*, the conditions are imposed on the person receiving the estate and not on the grantor of the estate. This estate is not granted for lifetime and does not go to any third party. The term '*remainder*' is used in *Life Estates* where the title passes on to the *Future Estate* holder after the end of the *Life Estate*.

2. B. A *Concession* is a strip of land, usually 100 chains wide that passes through the entire township.

Other options are incorrect. A *Concession* is not a roadway, not a section of land or a lot with 200 acres. *Sections* of land are used in *Sectional* township system. Lots are smaller parcels of land within a larger parcel of land called *concession*.

3. D. A commercial lease is more likely to have a 'Continuous Use' clause, but such a clause is not included in the residential tenancies. This clause in commercial leases requires the tenant to continuously use the premises, maintain it, fully stock the merchandise and have adequate staff to run the business.

Other statements are incorrect. The tenant in a residential tenancy is not required to vacate the premises after expiry of the lease. The tenant may become a month-to-month tenant if the lease is not renewed. There is rarely any clause in a residential lease to terminate the lease if the tenant sublets the premises. Landlords cannot demand any additional security deposits from the residential tenants. The rent for the last rental period or the amount equal to one-month rent, whichever is lesser, is considered a deposit.

4. C. The completion of *Acknowledgement* section verifies that the communication of acceptance has taken place before the expiry of the irrevocable time. By signing this section, the parties acknowledge that they have received signed copy of the accepted agreement.

Other options do not correctly state the benefit or purpose of completing the *Acknowledgement* section. This section is not meant for payment of balance amount and has no provision to insert the exact time of acceptance. The *Statute of Frauds* does not specifically require completion of this section.

5. A. The *Reserve Fund* is maintained by the condominium corporation for major repairs or replacement of common elements. The funds are collected from the regular common expenses paid by the unit owners and held in a trust account.

The Reserve Fund is not used for regular maintenance and is not used to offset default in payment of common expenses by the tenants. This fund is also not used to prevent mortgage default and subsequent *power of sale* of any unit.

6. B. *Consideration* is one of the essential elements of a contract. It is incorrect to state that one of the parties must receive something. The correct statement would be that each party must

receive something to make a contract legally binding. Furthermore, if the contract is signed under *seal*, it does not require the consideration element.

Other options correctly state some of the essential elements of a contract.

7. D. Transfer of real estate upon death of a spouse to the surviving spouse is exempted from *Land Transfer Tax*.

Other statements are incorrect. Sale of chattels may be subject to applicable taxes. *Land Transfer Tax* for vacant land follows a graduated scale and is not at a fixed rate of 1.5%. The purchase price of land and building are separated for calculation of *Land Transfer Tax*.

8. C. The first rent charged from a tenant is not regulated under the *Residential Tenancies Act (RTA)*. Whatever rent is agreed between the landlord and the tenant becomes the *lawful rent* for that particular tenant.

Other statements correctly describe some of the provisions of the *Residential Tenancies Act*.

9. A. The *Agreement to Sale* is different from the standard *Agreement of Purchase and Sale*. This agreement is typically used when there is some financial arrangement between the buyer and the seller. This agreement gives the buyer a right of possession (contractual interest in the property) but the seller retains the title until the conditions are fulfilled by the buyer.

The *Agreement of Sale*, in fact, provides more security to the seller and not to the buyer. This is because the seller is providing financial assistance to the buyer and wants to protect his/her interests. This agreement is not used for assignment of an *Agreement of Purchase and Sale*. The form used for assignment is different.

10. B. The Statute of Frauds requires that certain contracts, including those for real estate, must be in writing to be enforceable at law. This modifies the common law of contract which does not require that contracts must be in writing.

This statute does not require real estate contracts to be in compliance with the *Vendors and Purchasers Act*. The legal age for an individual to enter into a contract is 18 years and not 21 years. It is not mandatory that all contracts for sale of real estate must use an *OREA®* form. *OREA®* forms can be used only by the members of organized real estate and are typically for resale properties.

11. D. The purpose of a life lease project is to provide lifetime tenancies to seniors. These projects are usually non-profit developments.

Other statements are not correct. Maintenance fee is payable in life lease units, the monthly rent is not fixed for lifetime but may vary and the unit holder does not get fee simple interest in the unit.

12. C. The names and/or addresses of previous landlords is considered personal information and the salesperson cannot require the prospective tenants to disclose this information. However, the salesperson may obtain addresses of the previously leased properties.

The *Residential Tenancies Act* permits landlords or their agents to ask for references. The *Consumer Reporting Act* is applicable to real estate registrants and agency duties do not

override the provisions of the Act. The landlord or landlord's agent may approach the previous landlord to obtain information on prospective tenants provided that written consent is obtained for this purpose.

13. A. The *Consumer Protection Act* is applicable to real estate registrants when they make statements (representations) about their services. *Listing Agreements* and *Buyer Representation Agreements* may fall under the provisions of this Act. If a salesperson has obtained a listing or has signed a buyer representation by making false, misleading or deceptive representations or has done any unconscionable representation with respect to services, the client has the right to cancel the agreement.

The other laws or statutes are not specifically applicable to the given scenario.

14. C. If the spouses have registered the property as joint tenants and one spouse dies, the surviving spouse acquires whole interest in the property. This is known as the *Right of Survivorship*.

Other statements are incorrect. Each joint tenant has an equal and identical interest in the property. Lisa's interest does not become her estate but would automatically transfer to Peter. The *Right of Survivorship* takes precedence over Will of the deceased.

15. D. The only correct statement is that all condominiums and subdivisions must be registered under the *Land Titles* system.

Statements 1, 3 and 4 are not correct. There is no need to go back to registry system for title search of a farm lot. The title search is performed during conversion from the *Registry* system to the *Land Titles* system. The guarantee of title is provided under the *Land Titles* system but was not available under the *Registry* system. Property indexing in *Registry* system was based on description of land.

16. B. A brokerage owes fiduciary duties are owed to its clients and third-party duties to third parties who may be clients of a different brokerage. Cram Realty Inc. created agency relationship with the seller when the Listing Agreement was signed and hence, owes fiduciary duties to the seller client. Similarly, Power Realty Inc. created agency relationship with the buyer when the Buyer Representation Agreement was signed and hence, owes fiduciary duties to the buyer client. The buyer is a third-party for Cram Realty Inc. and the seller is a third-party for Power Realty Inc.

The above explanation makes other statements incorrect.

17. C. Leased items are not personal property of the seller and cannot be included in the *Agreement of Purchase and Sale*. In the given scenario, the buyer has no reason to complain because the freezer was owned by the seller. However, the salesperson should have made the buyer aware of this fact. She has clearly breached her duty of exercising due care and skill by not making enquiries from the seller and not disclosing this fact to the buyer.

The buyer definitely has good reason to complain because he might have been under the impression that the freezer is included in the sale. The client's duty of indemnification does not apply because the salesperson has breached her duty of care. Salesperson is supposed to have above average skills and diligence than the client.

18. B. A legally binding agreement does not exist because the terms of the offer were not definite and clear and there was no complete meeting of minds. The seller did not clarify in the beginning that he was expecting the buyer to assume the existing mortgage or to extend the closing date. The seller should have disclosed these facts before entering into a contract with the buyer. In other words, the terms of the contract were not *definite and clear* because certain essential terms were left unconcluded in the contract.

There is no such requirement that the buyers and sellers must use the standard *Agreement of Purchase and Sale*. The buyer does not have to agree to assume the seller's mortgage or to extend the closing date and hence because these terms were not clarified earlier, a legally binding contract does not exist due to absence of essential terms. It is not necessary that a legally binding contract exists only if the buyer makes the offer.

19. D. *Injunction* is used as a remedy for breach of contract when the contract is *to refrain from doing something*. The lease prohibits the tenant from selling cigarettes from the convenience store, but the tenant started selling these items. This is a breach of lease contract in which the court is likely to use *injunction (stop order)* to restrain the tenant from further breaching the lease terms.

Other statements provide some situations where the contract is *for doing something*. If any party breaches the terms of the lease contract, the court is unlikely to use *injunction* as a remedy for breach of contract.

20. A. Deed restrictions which are complied with by the seller are not a valid objection to the title. The buyer must complete the transaction and, at the same time, cannot lawfully convert the home into a duplex due to deed restrictions.

Deed restrictions, which are registered on title, take precedence over zoning for a specific use of a property. Once registered, they bind to the land (*stay with the property*) and are not terminated when the property is sold. These deed restrictions, if complied with by the seller, need not be disclosed in the standard *Agreement of Purchase and Sale*.

21. D. The *Consumer Protection Act* is applicable to real estate registrants when they make representation during the process of selling their services such as obtaining representation agreements with the seller or the buyer. If a salesperson knowingly makes a false statement that the buyer is required by provincial laws to sign a representation agreement before showing any property, this activity would fall under the provisions of the Act.

The other representations provided here relate to promotion of properties and may not fall under the *Consumer Protection Act* but under the provisions of the *Real Estate and Business Brokers Act 2002*.

22. B. Only statements 1 and 4 are correct. The buyer of a unit in a co-operative building is in fact buying shares of the co-operative corporation. The buyer must assume the proportionate share of the blanket mortgage and arrange a secondary mortgage. The buyer must also accept and sign the occupancy agreement before getting the possession of the unit.

Statements 2, 3 and 5 are incorrect. In a co-operative, the buyer may not need approval from the board of directors, the buyer must pay the *Land Transfer Tax* and the title of the unit is not transferred to the buyer because he is getting an occupancy agreement and not ownership.

23. C. When the lender provides the *Discharge of Charge/Mortgage* document, the mortgagor needs to register it in the land registry office to remove the mortgage lien from the title.

Other options are incorrect. Merely paying off the debt is not sufficient because the *Discharge of Charge/Mortgage* document must be registered in land registry office. This is done by the mortgagor and not by the mortgagee. The *Schedule* form is a standard attachment to other forms and cannot be used for discharge of a mortgage lien.

24. B. If the interests of the owners are not equal, the tenancy is essentially a *tenancy-in-common*. Hence, Michael and Harry are *tenants-in-common* and not *joint-tenants*.

Joint tenancy requires four unities – equal *interest*, undivided *possession*, same *time* and same *title*. When Michael dies, the title to the commercial property would not be automatically transferred to Harry because the *Right of Survivorship* does not exist in *tenancy-in-common*. Instead, Michael's interest would become the *estate of deceased*.

25. A. An agent is expected to work in good faith and disclose all facts to the client. Salesperson Jenny breached her fiduciary duty of good faith and full disclosure owed to her seller client. She is also in violation of her obligation under REBBA 2002 with respect to disclosure of indirect interest in the property.

The duties of indemnification, competence and confidentiality do not apply in the given scenario.

26. C. *Implied agency* may be created when a client *believes* that an agent is working for him/her in a transaction. Salesperson Kim may have created an implied agency with the seller. This is because the salesperson provided competent service, gave advice on the offer and helped the seller with counter offer. The seller might have believed that the salesperson is working as his agent.

Other statements are not correct. The scenario does not point to creation of sub-agency or a customer service relationship. *Dual agency* is also not created because the salesperson and the seller did not formally enter into an agency relationship. *Dual agency* is known as *Multiple Representation* under REBBA 2002.

27. D. When the agreement fails, the deposit can only be returned to buyer if the two parties sign a mutual release. In the absence of mutual release, the buyer can try to obtain a court order for release of the deposit.

The listing brokerage is not obligated to return the deposit just because the agreement has failed. We cannot say that the parties must sign the mutual release because the sellers may raise a dispute. The sellers do not *automatically* get the right to forfeit the deposit when the agreement fails.

28. A. The court is likely to closely scrutinize the fact whether the intentions of the seller were genuine or not. Genuine intention is one of the essential elements of a legally binding contract and the given scenario indicates that it is missing because the seller misrepresented the facts.

Other elements of a contract given in the options are not correct.

29. D. It is taxpayer's responsibility to report the profit as a regular business income or as a capital gain. If challenged by *Canada Revenue Agency*, the onus of proof is on the taxpayer. If Smart claim be considered valid argument only if he can adequately support his claim.

It is not necessary for *Canada Revenue Agency* to accept a taxpayer's claim and simply accept what the taxpayer is reporting. The profit from sale of capital properties is *not always* treated as capital because there are certain qualifying criteria for this. The taxpayer cannot get an order from Tax Court of Canada to have his claim considered as capital gain.

Case Study - 2 Parts

30. B. The seller must complete a Sale of Business Affidavit if financial statements are not provided to the buyer and this must be done before a binding agreement takes place.

It is not necessary for the seller to provide three to five-year history of financial statements. The sale of Business Affidavit does not provide information on assets of the business but must disclose the liabilities. The affidavit includes information of sub-lease of the premises, if any. Sub-lease may not get terminated upon sale of a business in leased premises.

31. A. The *statement of profit and loss* for the preceding 12 months or since the seller acquired the business and the *statement of assets and liabilities* are financial statements of the seller's business. If the seller does not provide these statements before a binding agreement, then REBBA 2002 requires the seller to provide an appropriate statement (*affidavit*) concerning various matters related to the business. When the buyer signs the *waiver* part of this affidavit, this requirement does not apply.

There is no such requirement that financial statements are not required if the business has been operating for less than three years. Merely completing the *Sale of Business Affidavit* by the seller is not sufficient as the buyer must also sign the waiver. These statements are provided before a binding agreement and not within three months of the closing.

Case Study - 3 Parts

32. C. Under the common law of contract, a '*statement of opinion*' may not be recognized as a representation and may not give rise to a legal remedy when the statement turns out be false. But under the *Consumer Protection Act*, a '*statement of opinion*' is considered a representation and the consumer has legal remedies if the statement is false.

This explains why providing an opinion is not an acceptable practice under the statute law (*Consumer Protection Act*) but may have been acceptable under the common law. Both exaggerations as well as misleading opinions are prohibited under the *Consumer Protection Act*. Ethical standards for real estate registrants are set out in *REBBA 2002 Code of Ethics* and not in *Consumer Protection Act*.

33. D. The Consumer Protection Act specifically states that failing to state a material fact falls under the definition of false, misleading or deceptive representation.

Other statements are not correct because of the way they have been worded.

34. B. The '*Unconscionable Representation*' covered under the *Consumer Protection Act* includes certain elements which are also covered under the *Contract Law*. This section closely relates to some of the essential elements of the *Contract Law* wherein the consumer is protected if a party to the contract tries to take undue advantage of the other party. This may be limited capacity of the other party to enter into a contract, the party is under duress or undue influence.

Other elements of the *Contract Law* given here do not directly relate to the '*Unconscionable Representation*' section of the *Consumer Protection Act*.

Case Study - 3 Parts

35. A. The Title clause of the *Agreement of Purchase and Sale* includes a provision that the buyer will not have an objection to a registered deed restriction if such restriction has been complied with. As such, these restrictions need not be disclosed in the agreement.

It is incorrect to state that all deed restrictions must be disclosed in the agreement. Only those deed restrictions need to be disclosed which have not been complied with or which materially affect the use of the property. This does not mean that the buyer *cannot* use any deed restriction as an objection or that he *can* use any deed restriction as an objection to the title.

36. D. The buyer has agreed to accept the title of the property subject to minor easements, which do not materially affect the use of the property. A 15 feet easement for the storm sewer is not minor and must have been disclosed in the agreement.

This makes other statements incorrect. The buyer has not accepted the title subject to any and all easements, but only subject to minor easements.

37. A. The *Documents and Discharge* clause of the *Agreement of Purchase and Sale* clarifies that the seller is required to produce only those documents which are under his possession or control.

This makes other statements incorrect. The seller cannot be made to pay for or provide a current survey to the buyer if it is not in seller's possession or control. The cost of arranging a current survey is not a part of closing adjustments. However, if the buyer wants the seller to provide a current survey of the property, an appropriate clause can be inserted in the Schedule.

Case Study - 3 Parts

38. C. Martin should have waited until all parties have signed the *Acknowledgement*. He acted in a hurry and it is not a recommended practice. *Acknowledgement* is a confirmation that acceptance of agreement has taken place. It is an essential element of a legally binding contract.

39. A. In the beginning itself Martin should have kept a more reasonable time period for the irrevocability of the offer.

Salespersons cannot sign the *Acknowledgement* in the agreement or any other document on behalf of the clients. Asking the buyers to sign the *Acknowledgement* at the time of signing the offer is not an acceptable practice and may constitute a fraudulent activity.

40. B. Existence of a *Lawful Object* is an essential element to create a legally binding contract. In this scenario, the transfer of interest in a parcel of land is the object of the contract. The *Planning Act* clause of the *Agreement of Purchase and Sale* provides that the agreement would be effective to create an interest in the subject parcel of land only if it complies with section 50 of the *Planning Act* and that the seller will get necessary consents, at seller's own expense, before completion. Since the sellers could not get the *Consent to Sever*, the agreement does not become a legally binding contract.

This explanation makes other options incorrect.

Case Study – 5 Parts

41. C. Statements 1, 2 and 4 are correct. The *Irrevocability* clause gives the sellers a reasonable time period to consider the offer and accept it or make a counter offer. The offer automatically becomes null and void when this time period expires. The Buyers cannot withdraw their offer until the date and time given in this clause. However, if the offer has not been communicated to the sellers yet, the buyers may withdraw it by giving specific instructions to their salesperson.

Statements 3 and 5 are incorrect. The *Irrevocability* clause does not provide time to the buyers but to the sellers. It is not necessary that the sellers *must* accept the offer before the irrevocable time period.

42. B. The *Residency* clause in the *Agreement of Purchase and Sale* is for the protection of the buyers so that they do not become responsible for seller's *Capital Gains Tax* when the seller is a non-resident. This clause gives three options to the seller – (i) pay the tax in advance and deliver a certificate from the *Minister of Revenue* to the buyer, or (ii) credit the buyer for the amount of *Capital Gains Tax*, or (iii) provide a *statutory declaration* that the seller is not a non-resident.

This makes other statements incorrect. When the seller has some options with respect to the *Capital Gains Tax*, we cannot state that the seller must pay the tax in advance. It is not true that all sellers must provide a declaration that they are not non-residents. This requirement is only for those sellers who want to assure that buyers that they are residents of Canada.

43. D. Although the *Present Use* section within the *Title Search* clause is optional and can be left blank, this does not mean that it does not affect the agreement. When left blank, the pre-printed wording in this clause applies which states that the present use of the property may be lawfully continued by the buyers and that the buyers will be able to get fire insurance. If the buyers find out before completion that they cannot continue the present use lawfully, they have the option of terminating the agreement.

Since the *Present Use* section is not mandatory, leaving it blank does not make the agreement null and void. As mentioned earlier, leaving this section blank does affect the agreement. This section does not provide a warranty to the buyers that they can use the property in any way they want. That would be a future use of the property, which is addressed in the *Future Use* clause.

44. A. The Insurance clause provides that the sellers would be responsible to keep the property insured until the completion date and that if there is a significant damage before completion,

they buyers may either terminate the agreement or take proceeds from *sellers'* insurance to complete the transaction.

Other statements are not correct. The sellers' insurance is not transferred to the buyers upon closing because the buyers must arrange their own insurance. In the event of significant damage, the agreement does not automatically become null and void because it is up to the buyers to decide how to deal with the situation. The sellers do not take this decision.

45. B. In the absence of a survey, the buyers may obtain Title Insurance and proceed with completion of the transaction. Title insurance may cover some of the issues with property after the completion. But it is important to note that *Title Insurance* may not cover all issues related to the property. Title insurance is not a substitute for an up-to-date survey.

The buyers cannot require the sellers to order a current survey at their cost after the agreement becomes binding, unless an appropriate clause is included in the agreement. The buyers cannot even terminate the agreement based on the pre-printed clause (*Documents and Discharge*) because this clause does not require the sellers to produce a survey if it is not in their possession or control.

Case Study – 5 Parts

46. D. Salesperson Jenny failed to establish proper relationship with the buyers. She did not even discuss the agency relationships. This may increase any liability she might have with respect to non-disclosure of defects with the property.

Other statements are not correct. Salespersons should not have assumed that the buyers were customers and she only had to answer their questions. Even if the buyers were customers, the registrant has a duty to disclose material facts related to the property. A *Buyer Customer Service Agreement* cannot be added as a schedule to the Agreement of Purchase and Sale, but it is a separate document. Jenny not only displayed questionable ethics but might have serious legal problems due to her conduct (the way she obtained the offer).

47. B. As explained for previous question, salesperson Jenny had a *duty of care* towards the buyers. She also displayed questionable ethics by using improper means to obtain the offer from the buyers. She insisted that the buyers should make an unconditional offer and should pay a large deposit.

Other statements are incorrect. As given in the scenario, clear evidence does exist that the salesperson concealed defects in the property from the buyers. The Inspection clause in the *Agreement of Purchase and Sale* merely makes the buyers aware that if they do not include a home inspection clause, they would not get an opportunity to have an inspection report after a binding agreement is takes place. It was salesperson's duty to explain this clause to the buyers instead of insisting that they make an unconditional offer. The common law principle of '*Buyers Beware*' does not give an excuse to any registrant to neglect their ethical duties.

48. A. REBBA 2002 requires a registrant to provide information on agency relationships and service alternatives to prospective buyers and sellers before entering into any agreement with them. Salesperson Jenny should have done this and asked the buyers how they would like her to work with them.

Registrants must not insist or require that prospective buyers or sellers should sign either representation agreement or customer service agreement with them. This decision must be left with them. Based on the information provided, it would be incorrect to assume that the buyers were *obviously* customers.

49. D. Based on the information provided in the scenario, a court may determine that the advice given to the buyers made them believe that they were clients. In other words, an *implied agency* may have been created with the buyers due the conduct of the salesperson.

There is no information to suggest that the buyers were customers. The buyers would have become customers only if they had signed a *Buyer Customer Service Agreement* with the brokerage. Obviously, the relationship with the buyers was not created by *express agreement*. Due to possibility of an *implied agency* with the buyers, it would be incorrect to state that the buyers were neither clients nor customers.

50. C. Salesperson Jenny had an obligation to ask the buyers if they had already signed a representation agreement with another brokerage. Not doing so may possibly cause legal troubles or commission disputes later.

Based on the information provided in this scenario, we cannot say whether the claim for commission by the other brokerage has some legal merit or not. However, salesperson Jenny clearly violated her duties by not making adequate enquiries from the buyers. However, the other brokerage will not be able to make a claim against Jenny's brokerage because there is no privity of contract between the two brokerages.

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10 TIPS FOR THE EXAM

1. **RELAX!** Too much anxiety, panic, stress and fear are big distractions. Focus on the question and choose the best answer.
2. **GAME OF WORDS.** All multiple-choice exams are merely variation of words. If you know your course materials, it's only a matter of interpreting the question and then selecting a correct option.
3. **EASY ONES FIRST.** In this exam the first 10 questions are easy, simple and straightforward questions. Do these questions first. If math is your weakness start with these easy the questions.
4. **READ ALL OPTIONS.** Even if you think A is the correct answer, read options B, C and D to make sure they are incorrect.
5. **MANAGE YOUR TIME WISELY.** Divide it according to marks for each question. Do not spend too much time on 1-mark questions. Skip the question that you think is difficult to answer. Mark it for review and proceed to the next one.
6. **EXTREME PHRASES.** Beware of absolute words in any option such as *ALL, NONE, ALWAYS, NEVER, MUST, EVERY, EXACTLY, ONLY*, etc. In most cases, the options that include any of these words are rarely correct.
7. **HEDGE PHRASES.** When a question asks you to conclude something and includes words such as *MAYBE, LIKELY, OFTEN, ALMOST, USUALLY, GENERALLY, TYPICALLY, SOMETIMES*, etc. Do not pick any answer that does not leave any room for exception.
8. **ALWAYS** read the question twice. You must know what information is given and exactly what is being asked. More than one choice may seem to be correct if you do not understand the question properly. If that is the case, use the method of elimination.
9. **REMEMBER** that your first instinct is mostly a correct answer. Be careful when changing your answer but don't be afraid if you have to change it.
10. **REVIEW.** Make sure you did not skip any question and the answer sheet is neatly filled in. Never mark more than one answer. If you need to change a marked answer erase the previous one nicely. Otherwise, the machine may not be able to scan your answer.

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