Principles of Real Estate Law

IRWA Course 800

Learning Guide

Course 800 Review and Update Team
David Rein
Darryl Root, R/W-RAC
Joshua Wood, MAI

IRWA Education Staff
Amir Vafamanesh, Organizational Learning & Development Manager

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International Right of Way Association
19210 South Vermont Avenue, Building A, Suite 100
Gardena, California 90248
Tel: (310) 538-0233 - Fax: (310) 538-1471
www.irwaonline.org
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SECTION 1
Introduction
SECTION 1 - Introduction

Welcome

Welcome to the IRWA’s Course 800 - Principles of Real Estate Law. This course addresses real property law concepts and tort laws that apply to real property.

Purpose

This course presents information on contract law, tort law, land use planning, and laws applicable to condominiums.

Target Audience

While there are no prerequisites, the course will be a better learning experience if the participants have attended Course 100 - Principles of Land Acquisition.

The course is intended for agents who interact with attorneys and others on real property law issues.

Introductions

- Who you are...
- What you do...
- Where you do it...
- How long you’ve been doing it...
- Your goals for the course...

Special Instructions

While this course provides a great deal of information on contracts, torts, land use planning, and condominiums, it does not cover state-specific real estate statutes and case law. Specific applications should be evaluated with the assistance of legal counsel.
SECTION 1 - Introduction

Objectives

At the conclusion of this course, you will be able to:

- Recognize the differences between contract law and tort law;
- Identify several different specific real estate contracts and be able to discuss the major contract terms;
- Identify different land use planning methods and describe how each impacts real estate development; and
- Define a condominium and recognize the rights and obligations of condominium associations and the unit owners.

Exam

At the end of the two days, there will be a 35-question, multiple-choice/true-false exam.

IRWA Credentialing Information

This course can be applied toward any of the IRWA credentialing programs below:

- **The Professional Right of Way Certification Program**: A required course for the RWA certification;
- **The Industry-Specific Pathways Program**: A required course for the RWP certification in all four pathways in the Industry-Specific Program;
- **The Specialist Program**: A required course for the R/W-AMC certification and an elective course for the R/W-NAC certification; and
- **Recertification for any of the IRWA’s credentials**.

Housekeeping

**Classroom** – Remain in the classroom during the course unless you are going to the washroom or leaving the building.

**Washrooms** – Location.

**Course Administration** – Roster and Evaluation.

**Breaks** – Provided periodically throughout the two days.

**Lunch** – Taken at a natural break and based on participant feedback (minimum 30 minutes).

**Safety** – Exits available in the event of an emergency; rendezvous point once exiting the building.

**Health Protocol** – Masks (if applicable); hand sanitation.

**Security** – Wear the temporary security pass while in class and return the pass to the check-up counter at the end of the day as required.
SECTION 1 - Introduction

Learning in Action - KWL

What do I **know** about real estate law?

What do I **want** to know about real estate law?

What have I **learned** about real estate law?  
(Save this for the end of the class).
SECTION 2

Contract Law
SECTION 2 - Contract Law

Introduction

In general, the study of the acquisition of rights of way or real estate requires a basic knowledge of contract law. Although the parties to a transaction may not be consciously aware of this fact, contract law governs their conduct with respect to the transaction.

The procurement of a fee interest, easement, lease, license, or other real estate interests constitutes a contract between the parties. Similarly, the framework of contract law controls settlements of trespass and damage claims. *(Principles of Right of Way)*

Exercise No. 1: Definition of Contract (30 minutes)

Take a few minutes to individually develop a definition of “contract.” Then discuss your definition with your tablemates to develop a single definition that will be written on flip chart paper and taped to the wall.

Definition

A contract is an agreement between two or more parties that creates in each party a duty to do or not to do something and a right to performance of the other’s duty or a remedy for the breach of the other’s duty. Contracts are important for the orderly operation of society because they:

- Allow one to voluntarily expand one’s freedoms by taking on obligations in exchange for a bargained for right.
- Define rights and obligations.
- Provide a means for enforcing a party’s rights and obligations.

Legal obligations (binding commitments) arising out of a contract can be distinguished from moral obligations (demands of conscience). A legal obligation involves rights that can be enforced in court, while a moral obligation is enforced by a person’s ethical standards.
SECTION 2 - Contract Law

**Contract Types**

For the purposes of this course, there are four contract types: oral, written, unilateral, and bilateral.

**Oral**

A spoken contract is often called an “oral contract.” An oral contract is used in many day-to-day activities. For example, in a discussion with your teenager, he agrees to mow the lawn for $20.

**Written**

A formal, written, and signed agreement.

**Unilateral**

In a unilateral contract, one party expects to be bound to a contract by the other party’s performance of an intended action. There is no exchange of promises. For example, “I will pay you $500 when you deliver 10 cubic yards of topsoil to my property,” would be a unilateral contract.

**Bilateral**

In a bilateral agreement, each of the parties to the contract makes a promise to the other party. Courts generally favor bilateral contracts. For example, a home-buyer agrees to pay the seller $250,000 in exchange for the seller’s promise to deliver title to the property.

Contracts conveying land or interests in land must be in writing (Statute of Frauds). An exception to this general rule is leases of less than one year, which may be oral.

**Contract Elements**

There are five requirements that must be met in order to have a valid and enforceable contract. They are mutual assent (offer and acceptance), competent parties, legal purpose, definite and certain terms, and consideration.

**Mutual Assent (Offer and Acceptance)**

In order to constitute a contract, there must be an offer made by one person to another and acceptance of that offer by the person to whom the offer is made.

**Offer**

An offer is an expression of the willingness to contract on certain terms and is made with the intention that, once accepted, it will become binding. The offer must contain the essential terms of the agreement. The offer must be received by the other party. The party making the offer is the offeror and the party receiving the offer is the offeree.

- The “expression” may be verbal or in writing, as long as it communicates the basis on which the offer is being made.
- The “intention” is objectively judged by a third party (i.e., courts).
- An “expression of an intention” to enter into negotiations is not an offer. It is merely an invitation to begin bargaining.
- After receiving an offer, if the offeree presents a counteroffer, the counteroffer terminates the previous offer.
SECTION 2 - Contract Law

QUESTION:
Brenda lost her pocketbook, which contained about $200, all her identification, and family pictures. She placed an ad in the newspaper offering a $50 reward for its return. Kevin found the pocketbook but had no knowledge of the reward offer. He returned the pocketbook to Brenda. Is Kevin entitled to the $50 reward?

An offer will lapse either by its terms (e.g., “This offer is good until midnight”) or after a reasonable period of time. A reasonable period of time may depend on the nature of the transaction (e.g., the offer of a deteriorating product [e.g., ice cream cone] will be very short.)

Unless irrevocable by its terms, an offer can be revoked prior to acceptance. The notice of revocation must be received by the other party prior to acceptance.

An offer for which a payment has been received may not be revoked (e.g., an option).

QUESTION:
Susan sent Eric a letter offering to sell him a car for $5,000. Eric accepted by return letter. Before Susan received Eric’s letter, she mailed him a second letter revoking the original offer. Has Susan revoked the offer?

Acceptance
Acceptance is the agreement of the party to whom the offer is made to be bound by it. Acceptance must be communicated to the party making the offer. Acceptance must be of all terms of the offer (mirror image rule). Acceptance may be oral, written, or by an act. Silence is not acceptance.

QUESTION:
Michelle received an offer in the mail, which stated that acceptance can only be made by mail. She wrote a letter of acceptance, addressed, and stamped the envelope, and put the letter on her kitchen table with the intent to mail it on her way to work in the morning. Michelle forgot to mail the letter. Two days later, she received a second letter withdrawing the offer. She immediately posted, by certified mail, her acceptance letter. Has Michelle accepted the offer?

QUESTION:
Ever since Bill was a boy, he wanted to be the first person to swim across Lake Lago and win the $1,000 prize offered by the homeowners’ association. On his 18th birthday and in front of about 10 witnesses, he succeeded. He called Brian Reis, the president of the Lake Lago Homeowners’ Association, and asked for the $1,000 prize money. Mr. Reis refused to pay Bill, stating that no official saw Bill swim across the lake, nor had Bill told the association beforehand that he intended to swim the lake. Has Bill accepted the offer and is he entitled to the money?

Competent Parties
Each party to a contract must be legally capable of entering into the contract. Both parties must have the capacity to understand the contract terms and the consequences of the promises made. Capacity is an aspect of status and includes both natural persons and artificial persons (e.g., corporations, etc.).

Examples where capacity may not exist to form a contract, and any contracts with them will be considered void or voidable, include minor children, mentally disabled individuals, inebriates, and some corporations.
Minor Children
Individuals under the age of majority (as provided for in state law) do not have capacity to enter into a contract. They do not have the ability to understand fully the nature and consequences of their actions. There are exceptions, including minors who may, depending upon state law, enter into marriage contracts, and emancipated minors (e.g., a court may determine that a minor who is married or holds a job and acts responsibly is deemed to have contractual ability). Additionally, minors may open banking accounts; minors may contract for necessities (e.g., groceries); and minors may enter into beneficial service contracts (e.g., apprenticeship agreements).

Minors cannot be held liable to a contract even if they declared to the other party that they had reached the age of majority. Upon reaching the age of majority, the former minor may ratify a contract and thereby accept its terms and form a valid contract, or they may disaffirm it, denying its enforceability.

Note: Usually a court will appoint a guardian or conservator to act on behalf of a person who is a minor.

Mentally Disabled Individuals
Mentally disabled individuals are those who, by reason of infirmity of mind, are unable to manage their affairs. Mentally disabled individuals may enter into contracts, but they are voidable (i.e., they may be declared to be unenforceable at the request of the incompetent party if the other party knew of the incompetence at the time the contract was created).

Note: As mentally disabled individuals are vulnerable through dependency and deserve the protection of the state against the risks of abuse or exploitation, usually courts will appoint a guardian or conservator to act on their behalf.

Inebriates
Individuals under the influence of an intoxicant are in the same position as an incompetent individual. A contract entered into while a person is inebriated may be voidable. However, if the inebriate is satisfied with the contract when he or she is no longer under the influence, the contract may be ratified and continue as a valid enforceable contract. Again, necessities of life are an exception to the rule.

Some Corporations
A corporation or limited liability company is a separate legal entity and has most of the rights of an individual with respect to contracts. Generally, corporations are created pursuant to legislation dealing with the creation of corporations, or by a special act (e.g., a state legislation creating a state utility). In either case, one must look at the governing legislation to determine the powers and authorities of the corporation.

When corporations are created pursuant to general incorporating legislation, they receive a certificate of incorporation and approved articles of incorporation. Normally the documents are broadly worded, and most corporations can buy and sell property. The incorporation documents should be reviewed to determine if the corporation has the power to enter into the contract. For example, a company incorporated to sell sewing machines may not have the power to buy an oil well.

Note: Contracts may be valid and enforceable against all parties to the contract, valid and enforceable against one party to the contract but not against the other party (e.g., minors or mentally disabled individuals, etc.), or void and not enforceable against either party. If a contract is voidable by one party due to a disability, upon cessation of the disability, the party may affirm or disaffirm the contract.
SECTION 2 - Contract Law

Legal Purpose
For a contract to be valid and enforceable, it must have a legal purpose. If the purpose is illegal, the contract is voided by reason of public policy or by statute.

The classic example of an illegal contract is one in which a hit man contracts to kill another person. Such a contract will not be recognized by a court and cannot be legally enforced.

An example of a contract rendered void by reason of the operation of a statute is one between a boxer and his manager, where the manager is not licensed as required by statute.

Another example of a contract rendered void by reason of the operation of a statute is one in which legislation enacted at the outbreak of hostilities between two nations may prohibit any contracts between citizens of the hostile nations.

Definite and Certain Terms
It is essential to the existence of a contract that the parties reach agreement on the material terms. The material terms must include the parties to the contract, subject matter of the contract, price, and time to perform the contract. The four terms must be explicitly defined or provide for a method to determine the term.

QUESTION:
Frank Walters agreed to purchase a subdivision lot from Robin Kulik within 90 days based on a price to be determined. Have Frank and Robin met the definite and certain terms provision of a contract?

What if the agreement stated that within 90 days based on a price to be established by an appraisal report to be prepared by James Powell, SR/WA? Would the terms now meet the definite and certain test?

Consideration
A consideration is a central concept in a contract. A consideration is required for a contract to be enforceable. The consideration amount is not a factor, and, without other evidence (e.g., one party being misled as to the value or one party being mistaken as to the subject matter of the contract), a court will not interfere with the contract.

A consideration is a promise. The promise may be to pay money, to deliver goods, services, or property, or to perform some act or reframe from some act.

There are two common theories for consideration: the benefit-detriment theory and the bargain theory. The benefit-detriment theory holds that to constitute a consideration, the contract must be either to the benefit of the promissor or to the detriment of the promisee. The bargain theory holds that the parties view the contract to be the product of an exchange or bargain. The bargain theory predominates.
QUESTION:
A man read a newspaper advertisement offering a two-year-old Porsche Boxster S in prime condition for $250 cash. Out of curiosity, he called the advertiser. To his astonishment, he found that the advertisement was legitimate. The car was as advertised, the title was clear, and the price was $250. The woman who was selling the car accepted five brand-new $50 bills. She wrote him a receipt, signed and delivered the title, and gave the man the keys. Is the $250 consideration adequate, for contract purposes, for a two-year-old Porsche Boxster S?

The rest of the legend.
With the deal successfully concluded, the man asked the woman:
“Why is it, madam, that you have done this? This is a car worth thousands of dollars. How can you accept only $250?” “It’s quite simple,” said the woman. “My husband died recently, and in his will, he directed that I sell the car and give the proceeds to his mistress.”

Defenses to the Formation of a Contract

A party seeking to deny the existence or enforcement of a contract may claim the contract was never made or that it is unenforceable for any of several reasons. The reasons are mistake, duress, undue influence, fraud/misrepresentation, unconscionability, supervening illegality/frustration of purpose, lack of capacity, or Statute of Fraud violation.

Mistake
Either one or all of the parties to an intended contract may be mistaken as to the contract’s subject matter.

A “unilateral mistake” occurs when one party is mistaken. For example, if a property owner has both an expensive two-story house and a less expensive ranch house for sale, and has made it clear that it is the less expensive ranch house that is being contracted for but the other party mistakenly believes it is the expensive two-story house that is being purchased, the purchaser would probably not be able to rely on the mistake to void the contract. When the mistake goes to the contract’s very subject matter, the courts are reluctant to force a mistaken party into a contract that was not intended. However, a mistake as to the contract terms would not override the existence of the contract. For example, if one buys an automobile believing it to be the current year’s model, although it is never represented as or stated to be so, and it turns out to be last year’s model, the purchaser would not be able to void the contract to purchase the automobile.

Alternatively, if one party knows or should know that the agreement is ambiguous and the other party is not aware of the ambiguity, the contract will be enforced in favor of the unknowing party. For example, an automobile dealer knows that there are two current model year red Mustang convertibles on the lot. The buyer who contracts to buy the model she test drove, being unaware there is a second red Mustang on the lot, will be entitled to the one she drove.

In real estate transactions, the rule relating to unilateral mistake has given rise to a principle of caveat emptor: let the buyer beware. The principle of caveat emptor has slowly been eroded in many, if not most states. However, it is still up to the buyer to make sure that the property being purchased is exactly what he or she intended to purchase. For example, a purchaser who contracts to buy a single-family residence with the intent to divide the residence into apartments cannot complain after entering into the agreement when it is discovered that zoning does not permit apartments. If there is nothing in the agreement allowing the purchaser to void the contract if the zoning is not as required, the purchaser will be required to complete the transaction or pay damages.
A mutual mistake occurs when both parties are mistaken as to the ability to contract. The courts will conclude that no contract was ever formed. For example, where the parties agree on the sale of a cargo of pineapples being shipped from Hawaii and, unknown to both parties, the cargo has already been destroyed as the ship has sunk, there will be no enforceable contract.

**Duress**
Duress is a wrongful and usually unlawful compulsion (e.g., threats of physical violence) that induces a person to act against his or her will. Duress is a threat of actual physical harm or bodily imprisonment. A person may be able to avoid the consequences of his or her acts under the law if they were performed while under duress. For example, if a party signs a contract while a gun is pointed at his or her head, that party would be able to void the contract. However, if the contract was signed while one party held a lighted match to the other party’s residence, the contract would be valid as the threat was to the property rather than to the person.

**QUESTION:**
In the following scene from the movie, *The Godfather*, do the circumstances point to duress?

Kay: “Mike, you never told me you knew Johnny Fontane!”
Michael: “Sure...you wanna meet him?”
Kay: “Huh? Oh, well, sure!”
Michael: “My father helped him with his career.”
Kay: “He did? How? Please, Michael, tell me.”
Michael: “Well, when Johnny was first starting out, he was signed to this personal service contract with a big bandleader. And as his career got better and better, he wanted to get out of it. Now, Johnny is my father’s godson. And my father went to see this bandleader, and he offered him $10,000 to let Johnny go. But the bandleader said no. So the next day, my father went to see him, only this time with Luca Brasi. And within an hour, he signed a release for a certified check for $1,000.”
Kay: “How’d he do that?”
Michael: “My father made him an offer he couldn’t refuse.”
Kay: “What was that?”
Michael: “Luca Brasi held a gun to his head, and my father assured him that either his brains or his signature would be on the contract.”

(Coppola, 1972)

**Undue Influence**
Undue influence is the improper use by one person of a power he or she holds over another by reason of the special relationship between them.

In the case of such a relationship, the courts consider that the party holding influence over the other must show that any contract entered into with the weaker party is a proper one and that no unfair advantage was obtained. The contract is voidable at the option of the weaker party. An example of undue influence would be where a caretaker induces the elderly patient they are assisting into entering a one-sided contract such as to sell the patient’s home for a very below-market amount.
SECTION 2 - Contract Law

Fraud and Misrepresentation
Fraud occurs when a statement is known to be false by the person making it and the party to whom it is made acts upon it and does so to his or her detriment.

Misrepresentation is a statement of material fact (an important consideration for entering into the contract) by one party to another, which is false or misleading and upon which the other party is intended to rely. In the case of a contract entered into by reason of a misrepresentation, the injured party has the right, upon discovering the misrepresentation, to decide whether he or she wishes to rescind the contract or to affirm the contract and sue for damages.

Unconscionability
Due to unequal bargaining power or the overreaching by one party, a court may determine the contract is unenforceable, or if only a clause is unconscionable, invalidate that clause, provided the remaining terms of the contract are capable of being enforced. For example, it would be unconscionable for a car rental contract to require anyone not purchasing the insurance as a part of the rental to pay any and all damages prior to returning the automobile, without regard to other insurance held by the renter.

Supervening Illegality or Frustration of Purpose
Supervening illegality deals with the inability of one party to provide the other with the subject matter of the contract. In the event the purpose for the contract becomes illegal prior to the completion of the contract, the courts will not require performance of the agreement. As shown under the contract requirement “Legal Purpose” above, in the event a war breaks out between two countries and legislation enacted makes contracting with the opposing country’s citizens illegal, the defense of supervening illegality would be appropriate.

Frustration of purpose would occur when some unforeseen event destroys the purpose for entering into the contract. For example, one party agrees to sell another party a beachfront house. A hurricane washes the house away, the seller is unable to sell, and the buyer is unable to buy the intended contract item (the house). (Obviously, a different result would occur if the buyer were seeking to buy the land and raze the house).

Lack of Capacity
If at the time of entering into the contract, one party was a minor child, a mentally disabled individual, or an inebriate, the contract is voidable at the option of that party.

If a person lacks capacity and enters into a contract, it is considered voidable as to the person lacking capacity. Unless the contract is affirmed once the lack of capacity is gone or the court deems the contract to be in the best interest of the lack-of-capacity individual, the contract will not be enforced against that party. However, the court or the party lacking capacity may choose to enforce the contract against the other party.
SECTION 2 - Contract Law

Statute of Frauds Violation
If the contract is of a type that the law requires to be in writing, either party to the agreement may claim that it is unenforceable due to a failure to comply with the Statute of Frauds.
There are exceptions to the Statute of Frauds requirement.

- Once the contract has been performed, courts generally will enforce the agreement even if it required a written contract.

- Depending upon the state, part performance requires some combination of or all of the following elements to make an oral contract for the conveyance of a real property interest enforceable: possession or use of the property, payment of money, and improvements or acts referable to a contract exist (e.g., facts that tend to show a contract for the conveyance of an interest in property more than just a rental).

Termination and Discharge of Contracts

There are several methods by which a contract may be terminated or discharged. They include specific duration, rescission, discharge by performance, and breach of contract.

Specific Duration
The contract may have a time limit as a term; at the end of that time period, the contract will be completed. If there is no term limiting the duration of the contract, it is deemed to be perpetual. Some contracts may have a time period for completion and a statement that time is “of the essence.” In these circumstances, the time period is an essential term of the agreement, and failure to comply with the term could result in avoidance of the contract rather than a claim for damages for breach of the contract. In some instances, and in order to be fair to both parties, the courts will imply a time period during which the contract obligations are performed. For example, a vehicle lease, which did not contain a time period, would be deemed to have expired at the end of the useful life of the vehicle.

Rescission
Rescission is the act of putting an end to or canceling a contract. For example, with a contract for the purchase of goods, the party who paid the money would be entitled to the return of the money, and the party who delivered the goods would be entitled to the return of the goods. Rescission may take place by agreement or it may take place where such a significant breach of contract has occurred so that the wronged party is entitled to treat the contract as ended. Also, where there has been a misrepresentation, the wronged party may, upon the discovery of the misrepresentation, rescind the contract.

Discharge by Performance
A contract is discharged when its terms have been met and each party has received that to which each was entitled.

Breach of Contract
A breach of contract is a failure of one of the parties to perform the promises under the contract. If the breach is material or fundamental, the injured party will have the choice of electing to perform the contract terms and then sue for damages or rescind the contract. With a breach of contract, an injured party is entitled to sue for damages. In some cases, an injured party may sue for specific performance or a court order requiring the other party to complete the contract terms. Specific performance may be ordered when damages are not sufficient to provide a remedy to the injured party.
SECTION 2 - Contract Law

Interpretation and Construction of Contract Terms

The preference of a court is to enforce an agreement between the parties and in so doing, the court will seek to determine the intent of the parties. The court will follow two rules to understand intent — the agreement will be construed as a whole, or the court will attempt to eliminate ambiguities.

• **An Agreement Will be Construed as a Whole**
  The entire agreement will be considered to determine the intent of the parties. The interpretation most consistent with the entire agreement is the one the court will enforce.

• **Attempt to Eliminate Ambiguities**
  In the event the terms of the agreement conflict or are ambiguous, the court will construe against the drafter/grantor, rely on word precedence, consider usage and custom, and review past practices.

Any ambiguity will be construed against the contract drafter and in favor of the non-drafting party. Deeds generally will be construed against the grantor. Exceptions are when parties receive advice of counsel and for parties that have control over the transaction.

In a contract, written terms will be given preference over word-processed terms, and word-processed terms will be given preference over printed form terms.

If the parties’ intended meaning is not clear, the court may resort to usage and custom (i.e., how others engaged in the business handle the same situation or what the customary practice by parties engaged in that type of business is).

The court may ask if the parties engaged in the same type of agreements in the past; and, if so, how they performed during those past instances. The court will equate the past performance to how the current contract should be enforced.

**Parole Evidence Rule**

When parties put their agreement in writing, all previous and current agreements merge into the writing, and a contract as written cannot be modified or changed by parole evidence.

The four corners rule applies if the court can determine the contract’s intent from the writing. The court will not allow oral testimony, parole evidence, to be introduced to explain or contradict the agreement terms. However, if the terms of the written agreement are ambiguous, terms are missing, or the parties dispute the formation of a contract, only then will the court allow the introduction of oral testimony about the contract.

If the parties intend an agreement to be the full and final extent of their agreement, the contract is said to be fully integrated, and parole evidence of prior or contemporaneous agreements will not be allowed to add to or contradict any term of the writing. If there is an integration clause, the burden of proof is on the party claiming that the agreement was not fully integrated. If an agreement is partially but not fully integrated, evidence of a prior or contemporaneous agreement may be admitted to add to the agreement’s terms.
SECTION 2 - Contract Law

Summary

In this section, we learned that a contract is an agreement between two or more parties that creates in each party a duty to do or not to do something and a right to performance of the other’s duty or a remedy for the breach of the other’s duty. We were introduced to the importance of contracts for orderly operation and the differences between legal (binding commitments) and moral obligations (demands of conscience) that arise out of a contract. We also learned about various types of contracts and their purpose, as well as the five requirements that must be met for them to be valid and enforceable. In addition, we were introduced to the defenses to the formation of a contract, as well as how contracts are terminated and discharged.
Exercise No. 2: Practicing Law Without A License (1 hour)

You will be divided up into groups of 4. Each person in your group will be assigned to one of the four scenarios provided in this exercise. Please read a scenario, develop an individual opinion, and then discuss your answer to the specific question with your tablemates. After each scenario is discussed at your table, the entire group will process the scenario. Continue until all four scenarios have been discussed.

1. Ann Shumaker owns two properties, both located on Dunn Avenue. 20 Dunn Avenue is a duplex and 22 Dunn Avenue contains four units. Michael Lawton approaches Ms. Shumaker and offers her $140,000 for 20 Dunn Avenue. Ms. Shumaker thinks that $140,000 is a good offer, and she immediately accepts Mr. Lawton’s offer. After delivery of the deed, Ms. Shumaker hands Mr. Lawton two sets of keys. Mr. Lawton asks, “Where are the other two sets?” At that moment, Mr. Lawton realizes that he purchased the duplex rather than the four-unit house.

Mr. Lawton sues Ms. Shumaker for breach of contract.

A. Is there a valid contract for sale of the four-unit building?

B. Is there a valid contract for sale of the two-unit building?

C. Would it have made any difference if Ms. Shumaker had said “Ah, that’s the duplex.” when offered the $140,000 and the agreement had been concluded on that basis?
SECTION 2 - Contract Law

2. Jason Raymond owns a 1913 Red Rooster Roadster, which is generally believed to be the only one in existence. A local mobster wants the car and offers Mr. Raymond the market value of $95,000. Mr. Raymond says that he is not interested in selling. The local mobster tells Mr. Raymond that he will tell his “lovely wife about certain ‘things,’ which perhaps it might be better if she didn’t know, if you don’t sell me the car.”

Mr. Raymond immediately agrees to sell the car, and an agreement is prepared and signed whereby Mr. Raymond agrees to sell the local mobster the only 1913 Red Rooster Roadster for its market value of $95,000. Two days after the title transfer, a farmer in Ohio discovers six 1913 Red Rooster Roadsters under the hay in one of his barn’s haymows. The Roadsters have been there since 1913, and all are in excellent condition. The market value for 1913 Red Rooster Roadsters immediately drops from $95,000 to $25,000.

A. Regarding the purchase from Mr. Raymond, could the local mobster legally force Mr. Raymond to sell the car?

B. Could the local mobster now legally force Mr. Raymond to buy the car back for $95,000?

C. Are there any other possible problems for Mr. Raymond? The local mobster?

D. What would you do if you were Mr. Raymond? The local mobster?
3. Leonard Nicholson operates a car leasing business known as Nicholson’s Rent-A-Car. One morning his friend George Lake comes to his office and says that he needs a new car for a company he is starting. Mr. Nicholson says that he will order Mr. Lake a new car. When the car arrives, Mr. Nicholson calls Mr. Lake and tells him that his car has arrived. He asks Mr. Lake to come in and sign the lease agreement. Mr. Lake goes to Nicholson’s office and is asked in what name he wants the car’s title. “Oh, it doesn’t matter, either my name or the company’s name,” Mr. Lake states. “My company’s name is High Water Enterprises Limited. I incorporated last week.” The lease agreement is prepared in the name of George Lake. Mr. Lake signs the agreement “High Water Enterprises Limited, George Lake.” Three months later, High Water Enterprises Limited files for bankruptcy and Mr. Nicholson duns Mr. Lake for two late payments.

“Sorry about that, Len,” Mr. Lake says, but as you know, that is a company car.” “No it isn’t,” replies Mr. Nicholson, “you gave me a choice and you are named as lessee on the contract. In addition, you did not sign it ‘High Water Enterprises Limited per George Lake’; you just signed your name without indicating any authority to do so.”

A. Is the company bound by Lake’s signature on the contract?

B. Is Lake individually bound by the manner in which he completed the contract?
4. Joe Spina is having a few beers in his favorite tavern. He has with him a large stuffed owl, which he has placed on the bar. A number of patrons gather around and admire the owl. The tavern owner, Sam Lowe, notices the gathering and walks over to see what is causing all the excitement. Sam is in the process of installing a new mirror over the bar and thinks the stuffed owl would look great as a centerpiece.

Sam asks Joe to step into his private office. They go in together and discuss, at some length, the possible sale of the stuffed owl. During the course of the discussion, Sam says to Joe, “I see your mug is empty, I'll get you another beer.” Sam gets and pours Joe another beer. The two continue to discuss the finer points about the stuffed owl until Joe's mug is empty again. Sam stands up and says; “I'll give you 20 bucks for the owl.”

“Not on your life,” an insulted Joe answers. “I won't take less than 50.”

“You're nuts,” Sam shouts, and as Joe gets up to leave, Sam continues, “and you owe me $2.75 for the beer.”

Joe stalks angrily off the premises. On his way home, he meets a biologist friend who recognizes the owl as a rare species and offers Joe $150. Joe says that he'll think it over.

The next day, Joe walks back into Sam's tavern and Sam throws a $50 bill on the bar. “What's that for?” Joe questions. “That's for your owl. Can I have it this afternoon?” asks Sam. “No, I won't sell it to you.” Joe gets up and walks out.

“Officer, arrest that man,” shouts Sam to a passing police officer. “He owes me $2.75 for a beer he had yesterday.”

Joe sues Sam for false arrest and Sam brings a counter claim for the stuffed owl.

A. Does Joe have to pay for the beer?

B. Is Sam entitled to the stuffed owl?
SECTION 3
Specific Real Estate Contracts
SECTION 3 - Specific Real Estate Contracts

Introduction

There are several contracts related specifically to real estate transactions. They include agreements of purchase and sale, commercial lease, easement agreement, and agency agreement.

Agreement of Purchase and Sale (Earnest Money Agreement)

There are several contracts related specifically to real estate transactions. They include agreements of purchase and sale, commercial lease, easement agreement, and agency agreement.

Because an agreement of purchase and sale for real estate (earnest money agreement) typically starts as a written offer, the formal document is often called an offer to purchase, on the theory that the purchaser will make the formal offer. The document provides a space for the seller or vendor to accept and, once accepted, the document becomes an agreement of purchase and sale, sometimes referred to as an earnest money agreement.

Typical Terms

The terms included in an agreement of purchase and sale (earnest money agreement) include the parties, legal description, purchase price, offer irrevocability, closing date, representations and warranties, marketable title, risk, and other conditions.

Parties

Each party is named and defined. The seller or vendor is the property owner. The seller has legal title to the property until such time as a deed transfers title to the purchaser. The buyer or vendee is the property buyer. The purchaser receives equitable title once the contract is formed. The purchaser may, at a later date, direct that title be taken in the name of a different party (e.g., one spouse may enter into the agreement and then direct that title be taken in the names of both spouses jointly).

Legal Description

The general rule is that the description must be sufficient to identify the property without the need to resort to parole evidence (oral testimony). A legal description (e.g., subdivision, rectangular grid, metes and bounds, or other recognized survey) is preferred; however, if the description does not meet the requirements of a legal description but unambiguously identifies the property, it will suffice for a real estate contract.

Purchase Price

The money or financial matters included in the agreement.

Offer Irrevocability

The purchase offer will specify a period of time for acceptance. For example, the offer may give the seller seven days to accept the terms offered.
SECTION 3 - Specific Real Estate Contracts

Closing Date
The date for title transfer may be a date specific or a number of days from acceptance of the offer or from some other stated event. If time is deemed to be of the essence, then completion of the transaction by the specified closing is a material term of the contract and failure to perform the terms of the contract within that time period will be considered a breach of contract.

Extensions to the closing date are amendments to the agreement and must be agreed to by the parties in writing.

Representations and Warranties
Representations and warranties must be spelled out. If they are intended to extend beyond the closing date, the contract must state that the warranty is not extinguished by merger on closing.

Caveat: The real estate contract will merge into the deed and any covenants or warranty of title must be addressed in the deed.

Marketable Title
Unless the contract specifies otherwise, a contract for the sale of real property implies that the seller will provide marketable title. Typically the agreement will provide time for searching title and an opportunity to resolve defects. If there are encumbrances on title that are not acceptable to the purchaser and cannot be removed by the seller, the purchaser may refuse to complete the transaction. Acceptance of a deed that does not provide marketable title will terminate the seller’s implied obligation to provide marketable title.

Risk
In the majority of jurisdictions, the general rule is that any risk of loss (equitable conversion) will remain with the seller until closing. That risk of loss may be shifted by the contract terms. Generally, the seller must insure the property until closing, and thereafter, insurance is the responsibility of the purchaser.

Other Conditions
Any other conditions required by the seller or buyer must be specifically written into the agreement. The conditions may include requirements on financing, zoning, building permits, potable water, inspections, environmental conditions, etc.

Commercial Lease

Definition
A lease is a contract by which a property owner conveys possession, control, use, or enjoyment of the property for a specified rent and a specified term. When the term ends, the property reverts to the owner.

A lease agreement may be concluded by oral agreement subject to the signing of a formal lease document, or it may start as an offer to lease, which is then accepted. Even if an agreement is concluded by the offer to lease document, both parties should subsequently sign a formal lease document. Leases for more than one year must be in writing to comply with the Statute of Frauds.
SECTION 3 - Specific Real Estate Contracts

Typical Terms

The terms included in a lease agreement include the parties, description, term, purpose, leasehold improvements, rental, other payments, repairs, assignment, damage/risk/insurance, holdover, lessor covenants, and lessee covenants.

Parties
Each party is named and defined. The lessor or landlord is the property owner. The interest held by the lessor is the leased fee. The lessor also has a reversionary right of possession that becomes effective upon the termination of the lease. The lessee or tenant has the right to possess and occupy the property under the lease terms.

Description
The leased premises must be sufficiently described to identify the property the lessee has the right to use and occupy.

Term
Typical commercial leases have a term of one or more years, starting on a specific date and ending on a specific date. The term may have renewal provisions, which typically require that notice of the renewal be given to the lessor within a certain number of days prior to the lease expiration.

Purpose
The use of the leased premises is limited to the purposes specified in the lease. For example, the lease might state that the use is for retail purposes. Should the lessee wish to use the leased premises for other purposes, the lessee would be prohibited from doing so without the lessor’s approval.

Leasehold Improvements
The lease may identify improvements to be made to the property by either the landlord or the tenant and the responsibility for payment of the cost of the improvements, maintenance of the improvements, and their disposition at the end of the lease.

Rental
The lease consideration will usually be specified on an annual basis with monthly, but sometimes quarterly or annual, payments in advance. Rents may also be based on or added to by percentage of gross sales, display footage, or other means.

Other Payments
In addition to the rental payments, the lease may set out other payment obligations of the parties. The payments may be for property taxes, insurance, utilities, etc.

Repairs
As a general rule, the lessee is required to make repairs, “reasonable wear and tear excepted.” Essentially, the lessee is not expected to repair the type of normal wear that the premises would be expected to suffer with the type of activity being carried on by the lessee.
SECTION 3 - Specific Real Estate Contracts

Assignment
Usually, commercial leases will have a provision that the lease is not assignable without the prior written permission of the lessor. The permission to assign “may not be unreasonably withheld” unless the lessor specifically requires that the lease is not assignable. Without a right of assignment in the lease, the lessee may not assign it.

Damage, Risk, and Insurance
In addition to requirements for either the lessor or lessee to provide liability and property insurance, two other clauses addressing who bears the loss of uninsured risks may be included. A force majeure clause relieves one or both parties from performing the lease agreement in the event of a force majeure (e.g., flood, earthquake, volcanic activity, wind, drought, riot, insurrection, sabotage, war, etc.). An indemnity clause will identify which party will bear the loss in the event one party causes harm, either willfully or negligently.

Holdover
Most leases have a provision addressing the consequences of a lessee remaining in possession of the premises after the expiration of the term.

Lessor Covenants
The lessor may agree to perform specific tasks or be obligated to make particular payments. For example, the lessor may agree to pay property taxes.

Lessee Covenants
The lease may identify the uses for which the premises have been let and that other uses are forbidden without the lessor’s written permission or place conditions on additional uses.

Easement Agreement

Definition
An easement is a non-possessory interest one has in the property of another for a specific purpose (Principles of Right of Way) or which may restrict the owner’s use. In an easement appurtenant, the property subject to the burden of the easement is the servient tenement. The property receiving the easement benefit is the dominant tenement.

In an easement in gross, there is no dominant tenement, as the benefit of the easement is not for a particular land parcel, but rather for a particular person or entity. An easement conveyance by a formal contract is an express grant.

Typical Terms
The terms included in an easement agreement include the parties, description, duration, consideration, purpose, and terms and conditions.

Parties
Each party is named and defined. The grantor is the party granting the easement and the owner of the servient estate. The grantee is the party receiving the easement and the owner of the dominant estate.
SECTION 3 - Specific Real Estate Contracts

Description
In order to meet the Statute of Frauds requirement, the conveyance of an easement must describe the servient estate sufficiently that oral testimony will not be required to determine the intent of the parties. Although the law allows blanket easements, which establish the width and location of the easement by use, a description of the easement itself should be included in the document. A description of the dominant tenement should also be made for an appurtenant easement, especially if the grantor seeks to limit the easement to only a portion of the grantee’s land.

Duration
Unless the term is limited to a stated period, it is usually in perpetuity. Occasionally the easement may be terminable upon the occurrence of a stated event, such as if the easement is not used for a specified time, or upon the completion of construction.

Consideration
The consideration may be a lump sum or stated periodic payments. Also, there may be clauses for additional rights that receive a specific consideration (e.g., additional pipeline clauses).

Purpose
The purpose clause identifies what purposes the easement owner may use the servient estate. For example, an easement that only allows the owner to construct, operate, and maintain a pipeline may be deemed not to allow removal and replacement with a larger pipeline.

Terms and Conditions
The easement document may establish limitations or conditions that the parties must honor. For example, a road easement may require one party to pay all maintenance expenses even though both the easement owner and the owner of the servient estate use the roadway equally.

Agency Agreement

Definition
For this course, agency is the relationship which arises when one person or entity (the principal) authorizes another person (the agent) to act on the principal’s behalf. Such acts often take the form of entering into contracts for the principal. An agent can only do that which the principal could have done.

Agency Agreement Creation
Agency agreements can be created by express words of appointment, by implication, or by ratification.

Express Words of Appointment
Examples of express words of appointment are Power of Attorney, letter of instruction, and a real estate listing agreement.

Implication
An example of an agency agreement by implication is when a bank becomes bound to a loan agreed by a manager who, while purporting to have authority to enter into the agreement, actually exceeds his or her loan approval authority.
SECTION 3 - Specific Real Estate Contracts

Ratification
An example of an agency agreement by ratification is when a person purchases property purportedly on behalf of another party but without the express authority to do so. The purported purchaser would not be bound by the purchase but may agree to be bound by the purchase terms by subsequently ratifying the agency agreement.

Summary
Section 3 introduced us to various contracts that relate specifically to real estate transactions, including: agreements of purchase and sale, commercial lease, easement agreement, and agency agreement. We also learned about the typical terms that are included in these agreements.

Exercise No. 3: Lease Agreement Negotiations (15 minutes)

In negotiating a commercial lease agreement, the following exchange occurs:

1. The Tenant offers to lease 2,500 square feet of space at $2,250 per month plus 2% of net profits for three years. The Landlord will pay all taxes and maintenance.

2. The Landlord counteroffers with 2,000 square feet of space at $2,250 per month plus 5% of net profits for two years. The Landlord will pay all taxes but the Tenant will pay $125 per month for maintenance.

3. The Tenant counteroffers with 2,000 square feet at $2,000 per month plus 3% of net profits for two years. The Landlord will pay the taxes and the Tenant will pay $125 per month for maintenance.

4. The Landlord counteroffers with 2,000 square feet at $2,250 per month plus 2% of net profits for two years. The Landlord will pay the taxes and the Tenant will pay $125 per month for maintenance.

Have the parties entered into a valid contract? Why or why not?
Recap Day One/
Introduce Day Two
Recap Day One

Specifically, we:

• Looked at contract law;
• Examined contract types, contract elements, defenses in their formation, how they are terminated and discharged, and contract construction;
• Looked at specific real estate contracts; namely, purchase agreements, commercial leases, easements, and agency agreements; and
• Completed three exercises.

Introduce Day Two

Specifically, we will:

• Look at tort law, general and specific torts relating to real estate;
• Look at land use planning; specifically, planning legislation, comprehensive plans, zoning ordinances, subdivision regulations, and environmental regulations;
• Look at various aspects related to condominiums;
• Complete three more exercises; and
• Do a course review and take the exam.
SECTION 4

Tort Law
SECTION 4 - Tort Law

Introduction

While contract law protects expectations arising from promises, tort law protects a person’s interest in his or her bodily security, tangible property, financial resources, or reputation. One whose personal interests have been violated is entitled to compensation, usually money damages.

Definition

A tort is an injury to one person for which the person who caused the injury is legally responsible.

Examples of torts include assault, battery, conversion, defamation/slander, inducing breach of contract, misrepresentation/fraud, negligence, nuisance, product liability, and trespass.

A tort can be intentional (e.g., punching someone in the nose), but a tort is far more likely to result from carelessness or negligence (e.g., riding a motorcycle on the sidewalk and hitting a pedestrian). While the injury that forms the basis of a tort is usually physical, this is not a requirement; libel, slander, and the intentional infliction of mental distress are also torts.

Compensation

Tort law arises from common law principles to compensate for harm suffered by individuals. The principle establishes who should bear the loss: the injured party, the party causing the harm, or a group that may benefit from the activity causing the harm.

The prime resource is compensation rather than punishment. For example, a drunk driver involved in a motor vehicle accident may be sued in tort for the damage caused to another party (compensation) and may also be charged criminally (punishment) for drunk driving.

Compensation for Indirect or Consequential Damages

The courts began to expand the entitlement to compensation beyond damages caused by direct violent injury. Compensation was expanded to cover indirect or consequential damages. For example, if an object fell from a vehicle and struck someone, the vehicle driver would be liable for the direct injury. If something fell off the vehicle and lay in the road rather than directly striking someone, under the expanded view of torts, the vehicle driver would still be liable to someone who came along later and was injured.

But, the vehicle driver is not likely to have to compensate the injured party who is brought to the hospital for a broken leg and the cast is applied too tightly, which causes circulation to be cut off, and the leg has to be amputated. Although there might be a cause against the medical staff, the vehicle driver will not likely be required to compensate for those damages.
SECTION 4 - Tort Law

Tort Law

There are generally three broad categories of torts: (1) intentional torts; (2) strict liability torts; and (3) negligent torts.

Intentional Torts
A tort can be intentional (e.g., punching someone in the nose) but a tort is far more likely to result from carelessness or negligence (e.g., riding a motorcycle on the sidewalk and hitting a pedestrian).

While the injury that forms the basis of an intentional tort (or any tort for that matter) is usually physical, this is not a requirement; libel, slander, and the intentional infliction of mental distress are also torts.

We will discuss Specific Torts Relating to Real Estate. Some of these are intentional torts.

Strict Liability Torts
Initially, common law principles required that anyone who caused direct, violent injury to another to pay compensation. No inquiry was made as to the reasons for the injury or whether or not the actions of the injuring party were justified.

Gradually, the courts introduced the concept of fault. Courts began to inquire as to how the harm had occurred. Although a party may have been harmed, if the other party had not caused the damages (i.e., had not been at fault), the harm would not be compensated and the loss would fall on the person suffering the injury.

But, the concept of strict liability is still present today for some torts. For example, when a person owns a known-to-be-dangerous Rottweiler and allows it to escape, the owner will be strictly liable for any damage. A second example of strict liability would be if a property owner stores hazardous materials on a property. In either example, the defendant’s intention or the amount of care that the defendant took is not relevant.

Negligence
In a tort based upon negligence, there are three elements the injured party (plaintiff) must prove in order to establish a right to compensation from the alleged wrongdoer (defendant). They are as follows: duty/standard of care, foreseeability/proximate cause, and injury or harm.

Duty of care is a policy decision of the courts as to how wide the net will be cast for the activities of a wrongdoer. For example, should an automobile driver be liable not only for the injuries suffered by the driver of another automobile involved in a collision but also for the heart attack suffered by someone who witnessed the accident from the 23rd floor of a high-rise building adjacent to the accident site? Should someone who negligently hits a ball in a park be liable not only for injuries to those in the park but also to someone who happens to be hit while walking along a street outside of the fenced area?

A difficulty with duty of care that the courts have had to deal with is what standard should be applied in determining whether or not to find that the defendant’s activities broke a duty of care. For example, when a “Good Samaritan” stops at an accident scene to help a victim, a duty of care may be established between the victim and the caregiver, but should the standard of care be the same if the caregiver is a laborer or a doctor? If we impose a higher standard of care on doctors, will it stop them from being Good Samaritans? The courts require that the Good Samaritan act reasonably having regard to all of the circumstances.
Foreseeability/proximate cause is a concept that the courts have applied in determining whether or not a duty of care owed to someone is foreseeable. To make the analysis more objective, the courts apply a concept of reasonableness. Thus, the defendant would only owe a duty to those whom it was reasonably foreseeable would be harmed by the activities. For example, the operators of a ship at dock with a cargo of fuel would be liable to the boat owner or the dock owner if the ship exploded. However, the operators of the ship might not be liable to another company, which was late in supplying goods to a distributor because of the traffic congestion resulting from the incident.

A decision must be made as to where to cut off the consequences of the defendant’s activities. Thus, using the earlier example of the leg injury above, the court may conclude that the driver of the automobile is liable only for the pain and suffering resulting from the broken leg; the doctor or hospital may be liable for the amputation. To determine whether or not causation is established, the courts apply a concept of proximity and determine if the defendant’s activities are the proximate cause of the injuries.

Harm results if the defendant breached the duty of care and the result of the plaintiff’s activities were foreseeable. The burden of proof is on the plaintiff to show that the injury was caused by the defendant’s breach of a duty.

**Contributory or Comparative Negligence**

Circumstances may arise where the injured party may have some responsibility for the injuries suffered. In this situation, the courts have developed a notion of contributory or comparative negligence, in which compensation by the defendant can be restricted to a portion of or all of the damages suffered. For example, an award may be reduced when a party injured in a motor vehicle accident was not wearing a seat belt, or a plaintiff may be barred entirely from any compensation if found to be 51% liable.

Today, it is not unusual that there may be two or more defendants who may owe a duty of care to an individual and break that duty of care and cause injury. The injured party may have some responsibility for the injuries suffered. In these circumstances, by using the principle of contributory or comparative negligence and statutory provisions dealing with the apportionment of damages between defendants, the courts have been provided with a means of dividing the damages among the various responsible parties.

**Joint and Several Liability**

As a general rule, individuals responsible for the harm suffered by the plaintiff will be jointly and severally liable for the damages. Consequently, one defendant may be required to compensate the plaintiff for the full amount of the harm and will then have to seek contributions from the other defendants (joint tortfeasors).

**Summary**

This section explained that tort law protects a person’s interest in their bodily security, tangible property, financial resources, or reputation. This means, if an individual’s personal interests were violated, they are entitled to compensation, usually money damages. We also learned about the three broad categories of torts: (1) intentional torts; (2) strict liability torts; and (3) negligent torts.
Exercise No. 4: Torts (15 minutes)

Disclaimer: The following vignettes are for illustration only and are not presented as universal in their application. Also, the offered solutions are only one person’s opinion.

This exercise is meant to move quickly. Please take a minute or two to read a story and then form an opinion as to liability. After a few minutes, the entire group will discuss the story. This process will continue until all six stories have been discussed.

Story No. 1
Roger Thompson, on his delivery route, drives 50 miles out of his way to purchase and consume a specially brewed beer. On his return, his vehicle hits Florence Lee.

A. Is Roger’s company liable?

Roger, on his delivery route, stops for lunch. While driving through the drive-thru, Roger hits Florence.

B. Is Roger’s company liable?

Story No. 2
Ken Pulver decides to dry his laundry outside in the fresh air. Ken hangs a line 10 feet off the ground. His friend, Bill Wadsworth, comes to visit Ken on his novelty bicycle that is eight feet high. Bill hits the clothesline and is injured when he becomes entangled in Ken’s laundry.

Is Ken liable?
SECTION 4 - Tort Law

Story No. 3
A doctor is walking down the street and witnesses a car accident. The doctor keeps on walking.

Has the doctor engaged in negligent behavior?

Story No. 4
As a prank, Fran Nelson pulls the chair from under Charlie Wagner as Charlie is about to sit down. Charlie falls on the floor and injures himself.

A. Is Fran liable?

Continue on please…

As a prank, Fran Nelson pulls the chair from under Charlie Wagner as Charlie is about to sit down. On his way down, Charlie grabs at a table and a very valuable vase falls and breaks.

B. Is Fran liable for the broken vase’s value?
**SECTION 4 - Tort Law**

**Story No. 5**
Marsha Pierce is walking down the street and steps into a pothole. Marsha has osteoporosis. Although a healthy individual would have only sprained his or her ankle, Marsha breaks her hip.

Is the city responsible for all of Marsha’s injuries?

**Story No. 6**
Mickey Henderson, an experienced skier, skies down a slope that has numerous moguls. Although Mickey has skied the slope many times and the slope was no different than expected, Mickey loses concentration and injures a knee on one of the moguls.

Is the ski resort liable for Mickey’s injuries?
Specific Torts Relating to Real Estate

Introduction
Specific torts relating to real estate include occupier liability, attractive nuisance, nuisance, trespass, hazardous activities, and misrepresentation/fraud.

Occupier Liability
In common law jurisdictions, general tort principles have been applied to the real estate occupiers. In these situations, tort principles have become tied to some specific principles relating to real property law. The issue that must be resolved is the status of the injured person and his or her right to be at or on the subject premises.

Common law principles define three categories of property visitors. There are invitees, licensees, and trespassers. At common law, the standard of care owed by the occupier to each of the three visitor types is less as one moves from an invitee to a licensee to a trespasser.

Invitee
The highest obligation is owed to an invitee. An invitee is a person permitted or invited by the occupier to enter on the property. The occupier obtains some material benefit from the invitee’s presence. For example, a customer entering a retail store is an invitee. At common law, the duty owed by an occupier to an invitee is to take care to prevent injuries from hazards of which the occupier is aware or, as a reasonable person, ought to be aware.

Licensee
A licensee is a person who enters the premises with the tacit or express permission of the occupier. A licensee, rather than the occupier, benefits. The distinction between an invitee and a licensee is often blurred.

For example, an invitee of a tenant may, while passing through the common area, be a licensee of the landlord. Also, the determination of who is receiving the benefit may be difficult. For example, when a visitor is invited to dinner, who receives the benefit: the visitor or the host? The common law duty of an occupier to a licensee is to remove known dangers.

Trespasser
A trespasser is one who enters the occupier’s premises without invitation or permission. The common law duty of an occupier to a trespasser is minimal. The occupier must not set out to deliberately harm the trespasser or recklessly disregard the fact that the occupier’s acts may injure a trespasser.

Thus, the occupier must not set traps, such as stringing wire across a field to stop snowmobilers.

Attractive Nuisance
An attractive nuisance is one that by its very nature attracts trespassers (e.g., gravel pit in a residential neighborhood), particularly children who do not fully understand the consequences of their actions. If an attractive nuisance exists on a property, the property owner is held to a higher standard of care and must make reasonable efforts to prevent trespass.
SECTION 4 - Tort Law

Nuisance
At common law, the term “nuisance” is descriptive of a condition or activity that unduly interferes with the use or enjoyment of land. Nuisances are classified as either public or private.

Public Nuisance
A public nuisance is an act that endangers the lives, safety, health, property, or comfort of the public or by which the public is obstructed in the exercise of any right enjoyed in common.

Examples of public nuisances include obstructing a highway, running a public gaming house, throwing fireworks, and indecent exposure. Because of their nature, the responsibility for pursuing the offending party is left to the government through the enactment of legislation (e.g., criminal or environmental laws).

An individual may bring an action arising out of a public nuisance, but only where the individual is obstructed in the exercise of a public right and only to the extent that damages are incurred that are not shared with the rest of the community.

Private Nuisance
A private nuisance concentrates on the damage rather than on the events or actions that caused the damage. Thus, a private nuisance may consist of an unwarranted encroachment upon land, physical damage to land or property, or undue interference with the enjoyment of land. Liability may arise out of an intentional or negligent interference or upon conduct that is out of place with the surroundings.

Nuisance has also been found to arise out of the carrying on of inherently dangerous activities.

Chances of a Nuisance Action Succeeding
Whether or not an action for nuisance will succeed depends on a number of factors, including the reasonableness of the sensitivity level of the person or operations that have sustained the damage, the duration of the objectionable activity, the necessity of the conduct, the utility of the conduct, legislative authority for the conduct, the character of the neighborhood, and the presence of malice on the part of the offending party.

Thus, damages may not be recoverable for the effect of otherwise tolerable conditions upon an abnormally sensitive plaintiff, nor for the effect of such conditions upon sensitive operations (e.g., orchid growing).

Objectionable activities or conditions of very brief duration (e.g., noises, vibrations) may not be actionable, depending upon their severity and whether or not they cause physical damage. Similarly, one may have to put up with brief inconvenience due to construction or demolition by a neighbor, so long as the time and precautions taken are reasonable. Unpleasant by-products of undertakings of public benefit (e.g., freeways, power plants, etc.) may have to be tolerated for the greater good.

In addition, where an activity has legislative sanction (e.g., garbage dumping), no action will be maintainable so long as the activity is not done negligently. A plaintiff who resides in an industrial neighborhood may not complain of an activity that might be unreasonable in a residential neighborhood. A defendant who maliciously enters into unnecessary activities may be held liable for conduct that would otherwise be considered reasonable.
Trespass
Common law trespass has been defined as the act of entering on the lands of another without consent or lawful right or, after a lawful entry, refusing to leave when ordered to do so by the owner. An owner can prevent trespassers by putting up a fence and may use reasonable force to eject trespassers. The owner may also bring an action in trespass and the remedy will normally be injunctive relief prohibiting the offending person from trespassing. Damages will be nominal unless actual harm is done to the property.

Hazardous Activities
Some activities are inherently dangerous, regardless of the care taken. In these cases, an argument can be made that a person carrying on such an activity should be strictly liable, regardless of fault. As a policy matter, those involved in these activities normally have insurance and, by imposing strict liability, the responsibility for compensating victims is placed on the insurer regardless of any fault.

Liability in these cases is still determined on the basis of tort principles, but the standard of care is raised depending on the nature of the activity. Thus, in addition to scenarios involving inherently dangerous materials such as explosives, strict liability has been imposed when water had been stored in a reservoir and then allowed to discharge causing damage to neighboring properties. The use of electricity and combustible fuels has also given rise to the application of strict liability when the products were allowed to escape and cause damage.

Misrepresentation or Fraud
Damages may be recovered for negligent misrepresentation or misstatement. Depending on the jurisdiction, the liability for misrepresentation may vary from innocent to negligent to intentional misrepresentation. Limitations on the use of the tort arise out of the basic principles of duty of care and foreseeability. Thus, someone whose reliance on the misrepresentation that was not foreseeable would not have a cause of action.

Any professional who provides information that may be relied on by a third party may be liable for any negligent misrepresentation.

Fraud is a knowing, intentional misstatement or a statement made with a reckless disregard for the truth of the statement.
Exercise No. 5: Real Estate Torts (30 minutes)

At your tables, please read and discuss the following three situations. We will debrief afterwards as a class.

1. Your company, the Power Company, owns a tract of land that it intends to develop as a generation site. Development is currently on hold. One of your electric distribution lines crosses the property. On your annual property inspection, you found that soil erosion has created access to a cave. The cave has become a sleeping area for the homeless. Unfortunately, several teenagers on motorcycles have begun to harass the homeless individuals. Your maintenance supervisor suggested: (1) stringing a cable from trees on either side of the access drive to the property, (2) placing boards with embedded nails to flatten the motorcycles tires, and (3) erecting a chain link fence with a locked gate.

What category of visitors are the homeless and the motorcyclists? Do you owe them a duty of care? What are your responses to the maintenance supervisor’s suggestions?

2. You work in the Sewer Company’s main office building. A sinkhole has undermined the sidewalk that leads from the visitor parking area to the customer service office.

What classes of visitor would you expect to use that sidewalk and what duty of care do you owe them? Does the fact that it is a sinkhole raise any issues? What should be done about the situation?
SECTION 4 - Tort Law

3. A licensed engineer inspects, but does not open all the boxes’ panels, on a humming utility company transformer box at the corner of your property. The engineer concludes that the humming is just random noise and that it doesn’t have any effect on safety. You tell a prospective purchaser what the engineer told you. The person buys the property and is subsequently electrocuted.

Are there negligence or fraud or misrepresentation issues? If so, what are they? Who seems to be responsible?
SECTION 5

Land Use Planning
Introduction

Land use planning is an example of how law, in a particular area, has developed from common law principles to statutory regulation. Two common law mechanisms to control or regulate land use are the action for nuisance (previously discussed) and contract covenants.

As society became more industrialized and communities grew, it became apparent that common law principles and reliance on individuals to enforce property rights were insufficient. As a result, there are now many statutes relating to ownership, transfer, or land use. Two legislative actions that will be examined are planning and environmental legislation.

Before we discuss the government actions (planning and environmental legislation) to control land use, we will discuss the common law control not already examined: contract covenants.
Covenants

A covenant is a promise within a contract for the performance or nonperformance of a particular act. In a real estate context, a covenant is typically a promise relating to the transfer, possession, or ownership of real property.

Restrictive or Affirmative
Covenants may be restrictive or affirmative. Restrictive covenants limit the use of property (e.g., an agreement to limit property use to single-family residential).

Affirmative covenants place a duty on the property owner to perform certain obligations (e.g., to pay condominium fees and special assessments). Generally, restrictive or affirmative clauses are contained in deeds or are recorded in Covenants, Conditions, and Restrictions (CCRs).

Personal Covenants and Covenants that Run with the Land
Covenant enforcement may either be personal (i.e., enforcement is between the original parties to the contract) or run with the land (i.e., enforceable against successors in interest). While personal covenants are enforceable between the contracting parties, they are not, as a general rule, enforceable by successors in interest.

With a covenant that runs with the land, the original parties must agree that the covenant is to run with the land and that it is binding on successors in interest. This agreement could be explicit, or the law may imply such agreement. The parties agree to do or not do something with relation to the land that they occupy (e.g., to maintain a fence or not cut down trees). As the term implies, the agreement remains in force even when ownership changes hands. Notice of a covenant is given to all persons who acquire the land by the recordation of the instrument containing the covenant.

Only an owner of the benefited land may enforce covenants that run with the land. Enforcement of a restrictive covenant is an equitable right. However, the covenant may be defeated by equitable defenses (i.e., the plaintiff’s acquiescence to or participation in the prohibited acts or by conduct inconsistent with the expected observance of the covenant [the “unclean hands” defenses]) or by a delay in seeking relief (laches).

Courts may also decline to enforce facially valid covenants for a variety of reasons. Enforcement of the covenant may be precluded by a change in the neighborhood’s character that results in the restriction becoming meaningless, especially if the attempt to enforce the restrictive covenant is motivated by malice or avarice rather than the original purpose of the covenant. Likewise, a court may determine that the covenant has been waived if a significant number of properties subject to the covenant are in violation.

Finally, restrictions on alienability (i.e., transfer) on the basis of race, creed, color, or nationality have been held void at common law and are prohibited by constitutional or statutory law.

Planning Legislation

As society became more complex, government, through the use of police power, began to regulate land use and development to protect the public’s health, safety, welfare, and morals.
SECTION 5 - Land Use Planning

Some of the perceived societal problems or concerns that may have required government intervention in land use and development include public health (density of residential uses and proximity to noxious land uses), safety (traffic and proximity to dangerous land uses), morals (preservation of areas with historical, cultural or aesthetic value) and general welfare (urban blight / redevelopment).

Land use is generally controlled by the various state governments rather than the federal government. The state’s land use power is typically delegated to lesser governmental units (cities and counties) by the state constitution, by city charters, or by enabling legislation.

All 50 states have adopted legislation based on the Standard Zoning Enabling Act originally advanced by the U.S. Department of Commerce in 1922. While the states have made modifications to the Act, all continue to follow its basic framework.

There are two major spheres of land use control: planning and environmental. The three ways that local governments use planning legislation to control land use are comprehensive plans, zoning, and subdivision regulations.

Comprehensive Plans
A comprehensive plan describes the long-term direction and vision for the community’s growth and development. The plan assesses the issues and opportunities that a community will face over the long term. The plan discusses how the community plans to deal with problems and make the most of opportunities. The plan may include a number of subplans, including development, population, economic base, land use, capital (e.g., streets, highways, schools, hospitals, utilities, public facilities, parks, wetlands, to meet the specific objectives of making a better community.

The local government, with public input, prepares the comprehensive plan. Once a public hearing process is completed, the plan is adopted by the appropriate governmental agencies (e.g., planning and zoning boards or other commissions) and is submitted for legislative consideration, if necessary in that jurisdiction.

Because the comprehensive plan sets out the overall goal for long-term development of a community, the plan also serves as the basis for evaluation of proposed rezoning. Rezoning that is consistent with the general plan is more likely to be approved.

Zoning Laws or Ordinances
Zoning ordinances provide for the community’s planned and coordinated growth. The ordinances control development and help maintain the health, safety, and quality of life of the community members. Zoning laws can function with or without a comprehensive plan.

Some examples are restricting (or even prohibiting) certain land uses (e.g., construction in wetland areas), controlling building construction (e.g., type, size, external design features, location on the parcel, land-to-building ratios, etc.), and establishing the rules and regulations relating to the issuance of building and occupancy permits.
SECTION 5 - Land Use Planning

**Traditional Zoning Use Descriptions**
The uses authorized within a zoning district are called “permitted uses.” For example, a single-family dwelling district may permit a single-family residence or a duplex. Unless the use is a permitted use, it is prohibited.

Conditional uses, special uses, or special exceptions may be authorized within a zoning district, and typically require an application or satisfaction of certain statutory requirements.

A land use that is not permitted is called a “non-conforming use.” Non-conforming uses are treated differently in different states. Often they are protected against the retroactive effect of a zoning ordinance. If the lands affected by a new zoning ordinance are already being lawfully used (or, in some cases, if a building permit has already been issued for a use prohibited by the new zoning ordinance), the new ordinance will not apply as long as the existing use continues. This non-conforming use benefit may run with the land and pass to subsequent owners. The owner’s right to continue to enjoy a non-conforming use and whether or not the owner may expand the non-conforming use can vary significantly based on the jurisdiction and the fact pattern.

A variance allows a property owner to use land for a use that is in contravention of the zoning ordinance. In order for the variance application to be successful, the applicant typically must show that the variance will not be contrary to the public interest, that the enforcement of the ordinance will not result in unnecessary hardship, and that the general intent and purpose of the ordinance will be maintained.

**Zoning Trends**
While there are numerous zoning trends, Planned Unit Developments (PUDs), flexible zoning, conditional zoning, and Transferable Development Rights (TDRs) will be discussed further.

Planned Unit Developments (PUDs) are cluster developments that allow the development of a large tract to include a mix of uses, or different zoning standards (e.g., lot sizes, setbacks, side yard setbacks, etc.) that would not otherwise be authorized in a zoning district. Requirements of the PUD are generally found in the zoning ordinance. In order to receive PUD approval, the developer typically must have site plans that show the development and its features (e.g., building locations, ancillary buildings and their locations, open space areas, roads, etc.).

Flexible zoning allows a property owner to develop property to a greater density than that established in the district. In exchange for the concession, there may be an obligation on the property owner to develop public infrastructure or amenities.

A zoning ordinance may establish a flexible zone for specific uses without immediately identifying the precise location of the district. For example, a PUD is often authorized as a flexible zone. Under this classification, a property owner must make application, which, if approved, anchors the zone at a specific site.

As part of a rezoning process to a lesser restricted zoning classification, a local government may apply conditions (hence the term conditional zoning) that limit or reduce the permitted uses within the district or apply more restrictive zoning standards. For example, a developer may seek a rezoning from a neighborhood business district to a general business district in order to construct a private school, which is a permitted use under the general business district but not allowed under the neighborhood business district. The local government may authorize the rezoning to general business district but limit the use of the property to a private school, which precludes future development for other permitted uses in the general business district.
SECTION 5 - Land Use Planning

A developer may be authorized to limit the use of one property by Transferring the Development Rights (TDRs) from that property to another property. For example, an ordinance may authorize the owner of a property in a historic preservation district to transfer the right to construct additional floors on the historic property to another property in exchange for keeping the historic property intact.

Subdivision Regulations

A third land use planning tool to implement land use control is subdivision regulations.

Typically, the authority to regulate land subdivision is delegated by state statute to local governments. Usually, the statutes provide that proposed subdivisions must have plat plan approval. Failure to comply with the platting requirements may render the subdivision void and subject the developer to fines. Exceptions may be made for lot splits or small subdivisions (e.g., less than a specified number of lots) or for properties that already have suitable access and other required improvements.

Most subdivision statutes or ordinances require the submittal of a preliminary plan for review and approval by the local government planning staff. Usually the subdivision ordinance requires the preliminary plan to include the subdivision’s location; the location, widths and even sometimes the names of proposed streets; proposed building setbacks and other building restrictions; the present uses of adjoining lands, and existing natural features (e.g., watercourses, drainage, wetlands, topography, soils and their porosity, woodlands, etc.) and artificial features (e.g., buildings, railways, highways, utilities including water and sewer systems, etc.).

Once the preliminary plan has been approved, the developer prepares a final plan and plat (i.e., a subdivision map that has been prepared for approval by the appropriate authority and is suitable for recording or filing).

The subdivision approval process includes the regulation of the format, content, and submission of the subdivision plan and plat; the approval of street layout and design criteria; the design criteria for utilities and other public facilities; and the construction plan.

The final plat will usually include dedication statements by the owner, approval by mortgagees and other lien holders, acceptance by the local government authority, and the surveyor or engineer registration and seal information.

The approving authority may require exactions (i.e., land dedication, installation of municipal services, and fee payments to help defray subdivision utility connection costs to the existing utilities) from the developer as a condition of approval. Both the U.S. Supreme Court and state courts have upheld the validity of exactions, within reason. The U.S. Supreme Court has held that as long as there is an “essential nexus” between the exaction and the public impacts of the development and that the exaction is in “rough proportionality” between the burden exacted and the likely effects of the development, the exaction will be upheld.

Finally, the subdivision plat is recorded or filed with the appropriate office.
SECTION 5 - Land Use Planning

Environmental Regulations

So far, we have discussed two common law mechanisms (nuisance and contract covenants) and one governmental action (planning legislation) used to implement land use controls. The second major legislative action to implement land use control is environmental legislation.

Introduction
While the substantial environmental approval and enforcement processes are beyond the scope of this course, the following are a few introductory points regarding land use planning and environmental regulations.

Environmental regulation concerns development that potentially impacts the natural environment, including wetlands, coastal zones, hazardous waste contamination, pollution discharge, navigable waterways, habitat preservation for endangered species, and other related issues. Enforcement may be through federal, state and local government agencies.

Proper due diligence for acquiring property includes an analysis of the environmental condition of the property, especially when intended for new construction or redevelopment. A purchaser may insist on a warranty that there is no contamination or other environmental condition that could carry liability. Questions regarding the environmental status of a site are generally resolved by an examination by a professional. There are various levels of environmental examinations (i.e., Environmental Audits and Environmental Site Assessment).

Summary

Section 5 introduced us to land use planning and that it is an example of how law can develop from common law principles to statutory regulation. Two common law mechanisms to control or regulate land use are the action for nuisance and contract covenants. The two legislative actions we examined to control land use were planning and environmental legislation.
Exercise No. 6: The Liquor Store (15 minutes)

Please read the scenario below and then answer the questions.

Celeste Doyle owns three lots. She sells one lot to Carl Haskell with a covenant that states that the covenant runs with the land. The covenant specifies that no alcohol of any type may be sold on the property. Ms. Doyle then sells the remaining two lots to Diane Pulaski and Michael Kraus, as tenants in common. Three years later, Pulaski and Kraus agree that they will not use their properties for commercial purposes. Three more years pass, and Pulaski and Kraus sell to Larry Patterson. Mr. Patterson builds a liquor store.

Can Celeste Doyle, Carl Haskell, Diane Pulaski, and/or Michael Kraus obtain an injunction to stop the use of the property for a liquor store? Can any of them prevent the property from being used as a commercial establishment?
SECTION 6

Condominiums
SECTION 6 - Condominiums

Definition

A condominium is a real property ownership interest that is characterized by ownership of portions of the property (i.e., the ownership of a unit plus the joint ownership of the complex’s common areas) with an administrative framework to manage the entire property.

Condominium Statutes

All 50 states have enacted legislation governing the creation and operation of condominiums. The statutes codify the concept of a single piece of land being divided on either vertical or horizontal planes into individually owned units held in fee simple together with the common areas, titled as tenants in common. An owners’ association administers the property and governs transfers according to a declaration or master deed, articles of incorporation, by-laws, and rules.

The Horizontal Regimes or the Common Ownership Interest Act governs the creation and operations of condominiums. Generally, statutes are either based on the Horizontal Regimes Act or, more recently, on the Common Ownership Interest Act.

Many states have passed disclosure laws that obligate the owner to provide prospective purchasers with financial and legal information on the condominium association. The disclosures include the amount of monthly common expense; unpaid common expense or special assessment; reserves for capital expenditures; the balance sheet; income and expense statements; the current operating budget; unsatisfied judgments against the association; pending suits involving the association; violation of the declaration; health or safety, fire, or building codes; other laws or ordinances; limitations on the amount a unit owner may receive upon sale; condemnation; casualty loss to the unit or the common interest community; or termination of the common interest community.

How Condominiums Work

Declarations and Master Deeds

Typically, a developer will establish a condominium through a declaration or master deed. The declaration sets out, among other items, the proportions of units and common elements, each unit’s undivided interest in the common areas, its share of common expenses, designation of limited common elements, and management and ownership of the common areas. Also, the master deed may contain restrictions on the use and transferability of units and common elements, as well as maintenance and repair obligations. Often, covenants, conditions, and restrictions applicable to the property are included in the declaration or master deed.

Survey plans and plats contain the land survey and structure plans; specifications and diagrams showing extent, shape, and location of each unit; the common and limited common elements; and descriptions of any interests attaching to the land.
SECTION 6 - Condominiums

Most declarations and statutes provide for corporate ownership of the common areas by an owners' association. Owners of the individual units are members of the owners' association with voting rights determined by the declaration.

The statutes provide mechanisms that provide for the effective means of transferring, leasing, or mortgaging each individual unit, together with the interest in the common elements, enforcing payment by unit owners of the pro-rata share of the common expenses, problem resolution, and the addition of the common elements and acquiring other assets for the use of the unit owner.

Owners’ Associations
Each condominium project may have its own owners’ association, or it may be under a master association that manages several individual condominium projects.

Generally, the owners’ association is incorporated; however, if allowed under state law, the association may be unincorporated. If the association is incorporated, it will have articles of incorporation and a certificate of registration. The owners’ association’s members elect a board of directors, which in turn elects officers. The officers control, manage, and administer the common elements and assets of the association and enforce owner compliance of the rules. The day-to-day physical management may rest with a separate management company.

The by-laws govern details of the functioning of the condominium association. Generally, the by-laws are passed by the directors of the association and confirmed by a majority vote of the unit owners. Among other provisions, the by-laws provide for the assessment and collection of common expenses, administration of a reserve fund to cover major repairs, replacement of the association’s capital assets, and the payment of taxes and insurance.

Expenses for the operation, repair, and maintenance of the condominium are normally divided between the owners’ association and the unit owners. The owners’ association is responsible for the expense of operating the condominium project and repairs to and maintenance and replacement of the common areas, limited common areas, and the building structure. Common expenses will be assessed to the individual units based on each unit’s undivided interest in the common area.

To the extent the common expenses are not covered by the assessments, or an extraordinary expense not covered by insurance occurs, the association may require unit owners to pay special assessments established by the board of directors.

Individual Unit Owners
Each unit owner is entitled to exclusive ownership and use of a specific unit and may make reasonable use of the common areas. Ownership of the unit is most often fee simple; however, it may be a leasehold. Responsibility for the repair and maintenance of the individual units is normally placed on the individual unit owners.

In addition to their unit, owners may have specific limited common elements set aside for their exclusive use, such as parking or storage areas.

The owner of a unit may only use the common areas in accordance with the rules of the association and shares such usage rights with all other unit owners.
SECTION 6 - Condominiums

Summary

This section defined a condominium as a real property ownership interest that is characterized by ownership of portions of the property (i.e., the ownership of a unit plus the joint ownership of the complex’s common areas) with an administrative framework to manage the entire property. We gained an understanding of how condominiums are established, specifically through declarations and master deeds. We also learned about owners’ associations and individual unit owners, and what they are entitled to.
SECTION 7

Conclusion
SECTION 7 - Conclusion

Review Objectives

Now, you should be able to:

- Recognize the differences between contract law and tort law.
- Identify several different specific real estate contracts and discuss the major contract terms.
- Identify different land use planning methods and describe how each impacts real estate development.
- Define a condominium and recognize the rights and obligations of condominium associations and the unit owners.

Learning in Action - Revisiting the ‘L’

Now let’s revisit the KWL from the beginning and fill in the ‘L’ - What have you learned?

What have I **learned** about the real estate law?
SECTION 7 - Conclusion

Exam

We will now be taking a 35-question, multiple choice/true or false exam. You will need a score of a 75% or better on the exam to pass the course. If you are taking this course for IRWA recertification, you will not need to take the exam. Thank you for attending!

Course Evaluation

The Course Coordinator will distribute, collect, and forward the evaluations to IRWA HQ.

Reference

Appendix A

Forms
Form No. 1

Real Estate Purchase Contract
(Residential)

STATE OF ______________________________________________________________
COUNTY OF ____________________________________________________________

1. PARTIES: ______________________ (Seller) agrees to sell and convey to ___________ (Purchaser), and Purchaser agrees to buy from Seller the Property described below.

2. PROPERTY: Land: Address: _________________________________
   (insert full address) or more specifically described as _________________________________
   __________________________________________
   or as described in the attached exhibit. Improvements: The house, garage and all other fixtures and improvements attached to the above-described real property, including without limitation, the following permanently installed and built-in items, if any: all equipment and appliances, valances, screens, shutters, awnings, wall-to-wall carpeting, mirrors, ceiling fans, attic fans, mail boxes, television antennas and satellite system and equipment, heating and air-conditioning units, security and fire detection equipment, wiring, plumbing and lighting fixtures, chandeliers, water softener system, kitchen equipment, garage door openers, cleaning equipment, shrubbery, landscaping, outdoor cooking equipment, and all other property owned by and attached to the above described real property. Accessories: The following described related accessories, if any: window air-conditioning units, stove, fireplace screens, curtains and rods, blinds, window shades, draperies and rods, controls for satellite dish system, controls for garage door openers, entry gate controls, keys, mailbox keys, aboveground pool, swimming pool equipment and maintenance accessories, and artificial fireplace logs. Exclusions: The following improvements and accessories will be retained by Seller and excluded:

_____________________________________________________________________

The land, improvements and accessories are collectively referred to as the “Property.”
3. **PURCHASE PRICE:** The Total Price shall be $__________, payable as follows:
   Earnest money: (Receipt of which is hereby acknowledged) $__________
   Cash or certified funds due at closing: $_______________________________

4. **FINANCING:** The portion of Sales Price not payable in cash will be paid as follows: (Check applicable item below.)
   - **Third-Party Financing:** One or more third party mortgage loans in the total amount of $_______. If the Property does not satisfy the lenders’ underwriting requirements for loan(s), this contract will terminate and the earnest money will be refunded to Purchaser.
   - **Assumption:** The assumption of the unpaid principal balance of one or more promissory notes described in the attached Loan Assumption Addendum.
   - **Seller Financing:** A promissory note from Purchaser to Seller of $_______ bearing _____% interest per annum, secured by a mortgage, and containing the terms and conditions described in the attached Seller Financing Addendum.

5. **TITLE INSURANCE:** Seller agrees to furnish to Purchaser a standard form title insurance commitment, issued by a company qualified to insure titles in __________(state), in the amount of the purchase price, insuring the mortgagee against loss on account of any defect or encumbrance in the title, unless herein excepted; otherwise, the earnest money shall be refunded. Said property is sold and is to be conveyed subject to any mineral and mining rights not owned by the undersigned Seller and subject to present zoning classification.

6. **PRORATIONS AND HAZARD INSURANCE:** The taxes, as determined on the date of closing, are to be pro between Seller and Purchaser as of the date of delivery of the deed. Seller shall keep in force sufficient hazard insurance on the property to protect all interests until this sale is closed and the deed delivered. If the property is destroyed or materially damaged between the date hereof and the closing and Seller is unable or unwilling to restore it to its previous condition prior to closing, Purchaser shall have the option of canceling the contract and receiving back the earnest money, or accepting the property in its damaged condition, any insurance proceeds otherwise payable to Seller by reason of such damage shall be applied to the balance of the purchase price otherwise be payable to Purchaser.

7. **CLOSING COSTS AND DATE:** The sale shall be closed and the deed delivered within sixty (60) days from the execution of this Agreement by all parties, except Seller shall have a reasonable length of time within which to perfect title or cure defects in the title to the said property. The Seller agrees to pay the cost of deed preparation and a mortgagee’s title insurance policy, all other closing costs shall be paid by Purchaser. Purchaser agrees to allow Seller to remain in possession of said property subject to separate terms of a month-to-month lease agreement to be executed at closing for a lease period not to extend beyond __________________________.
   (insert month/day/year)
Appendix A - Forms

8. CONVEYANCE: Seller agrees to convey a good merchantable title and General Warranty Deed of said property insuring that property is free of all encumbrances, except as hereinafter set out and Seller and Purchaser agree that any encumbrances shall be paid in full at the time of closing from sales proceeds.

9. CONDITION OF PROPERTY: General Provisions and Obligations of Parties: Seller agrees to deliver heating, cooling, plumbing and electrical systems and any built-in appliances in operable condition at the time of closing. It shall be the responsibility of Purchaser, at Purchaser’s expense, to satisfy himself/herself that all conditions of this contract are satisfied before closing. Said sale is contingent upon a satisfactory inspection the property to be completed and reported to Seller prior to or on _______, 20___, and this contract shall only be renegotiable upon a major defect with an individual repair cost in excess of $500.00. At closing, all conditions of the property, as well as any aforementioned items and systems, are the responsibility of the Purchaser and shall be deemed purchased as is. Lender Required Repairs and Treatments: Unless otherwise agreed in writing, neither party is obligated to pay for lender required repairs, which includes treatment for wood-destroying insects. If the parties do not agree to pay for the lender-required repairs or treatments, this contract will terminate and the earnest money will be refunded to Purchaser. If the cost of lender-required repairs and treatments exceeds 5% of the Sales Price, Purchaser may terminate this contract and the earnest money will be refunded to Purchaser. Completion of Repairs and Treatments: Unless otherwise agreed in writing, Seller shall complete all agreed repairs and treatments prior to the Closing Date. All required permits must be obtained, and repairs and treatments must be performed by persons who are licensed or otherwise authorized by law to provide such repairs or treatments. At Purchaser’s election, any transferable warranties received by the Seller with respect to the repairs and treatments will be transferred to Purchaser at Purchaser’s expense. If Seller fails to complete any agreed repairs and treatments prior to the Closing Date, Purchaser may do so and receive reimbursement from Seller at closing. The Closing Date will be extended up to 15 days, if necessary to complete repairs and treatments.

Environmental Matters:

Purchaser is advised that the presence of wetlands, toxic substances (including asbestos and wastes or other environmental hazards), or threatened or endangered species or its habitat may affect Purchaser’s intended use of the Property. If Purchaser is concerned about these matters, an addendum required by the parties should be used.

10. SELLER’S WARRANTIES: Seller warrants that Seller has not received notification from any lawful authority regarding any assessments, pending public improvements, repairs, replacements or alterations to said premises that have not been satisfactorily made. These warranties shall survive the delivery of the above deed.

11. EARNEST MONEY: The Earnest Money as paid by Purchaser as set forth in Paragraph 3 hereof shall be deposited by Seller only upon the execution of this contract. The Earnest Money shall be nonrefundable to Purchaser except for the occurrences of Paragraphs 5, 6, or 12.
12. **DEFAULT:** If Purchaser fails to comply with this contract, Purchaser will be in default, and Seller may (a) enforce specific performance, (b) seek such other relief as may be provided by law, or both, or (c) terminate this contract and receive the earnest money as liquidated damages, thereby releasing both parties from this contract. If due to factors beyond Seller’s control, Seller fails within the time allowed to make any non-casual repairs, Purchaser may (a) extend the time for performance up to 15 days and the Closing Date will be extended as necessary or (b) terminate this contract as the sole remedy and receive the earnest money. If Seller fails to comply with this contract for any other reason, Seller will be in default and Purchaser may (a) enforce specific performance, seek such other relief as may be provided by law, or both, or (b) terminate this contract and receive the earnest money, thereby releasing both parties from this contract.

13. **MEDIATION:** Any dispute between Purchaser and Seller related to this contract that is not resolved through informal discussion (choose one) will will will not be submitted to a mutually acceptable mediation service or provider. The parties to the mediation shall bear the mediation costs equally. This paragraph does not preclude a party from seeking equitable relief from a court of competent jurisdiction.

14. **SURVIVAL OF CONTRACT:** All terms, conditions and warranties not performed at the time of delivery of the deed shall survive such delivery.

15. **COMMISSION FEES:** Purchaser and Seller agree that said contract was negotiated at arms length with assistance of any real estate agents or brokers and that no such fees shall be paid by either party in connection with this contract or sale.

16. **ADDITIONAL PROVISIONS:** Any additional Provisions set forth on the reverse side, initialed by all parties, are hereby made a part of this contract and this contract states the entire agreement between the parties and merges in this agreement all statements, representations, and covenants heretofore made, and any agreements not incorporated herein are void and of no force and effect.

17. **SUCCESSORS AND ASSIGNS:** This contract shall be binding upon any heirs, successors and assigns Seller or Purchaser.

18. **REVOCATION OF OFFER BY PURCHASER:** This contract has been first executed by Purchaser and is accepted by all parties by noon on _____, 20____, this offer shall be void.

19. **DISCLOSURES:** ___________________________________
_________________________________

(The Seller should note any disclosures about the property that may be required under Federal or state law. Consult an attorney if uncertainty exists as to which disclosures may be required.)


**Appendix A - Forms**

**PURCHASER:**

_Date______________________________

(Purchaser’s signature above/printed below)

**SELLER:**

_Date______________________________

(Seller’s signature above/printed below)
Form No. 2

Commercial Lease Agreement

This Commercial Lease Agreement (“Lease”) is made and effective_____, by and between ______________________ (“Landlord”) and ______________________ (“Tenant”). Landlord is the owner of land and improvements commonly known and numbered as ______________________ and legally described as follows (the “Building”): ______________________. Landlord makes available for lease a portion of the Building designated as ______________________ (the “Leased Premises”). Landlord desires to lease the Leased Premises to Tenant, and Tenant desires to lease the Leased Premises from Landlord for the term, at the rental and upon the covenants, conditions and provisions herein set forth.

THEREFORE, in consideration of the mutual promises herein, contained and other good and valuable consideration, it is agreed:

1. Term

A. Landlord hereby leases the Leased Premises to Tenant, and Tenant hereby leases the same from Landlord, for an “Initial Term” beginning ______________________ and ending ______________________. Landlord shall use its best efforts to give Tenant possession as nearly as possible at the beginning of the Lease term. If Landlord is unable to timely provide the Leased Premises, rent shall abate for the period of delay. Tenant shall make no other claim against Landlord for any such delay.

B. Tenant may renew the Lease for one extended term of ______________________. Tenant shall exercise such renewal option, if at all, by giving written notice to Landlord not less than ninety (90) days prior to the expiration of the Initial Term. The renewal term shall be at the rental set forth below and otherwise upon the same covenants, conditions and provisions as provided in this Lease.

2. Rental

A. Tenant shall pay to Landlord during the Initial Term rental of _________________ per year, payable in installments of __________________ per month. Each installment payment shall be due in advance on the first day of each calendar month during the lease term to Landlord at __________________________ or at such other place designated by written notice from Landlord or Tenant.

The rental payment amount for any partial calendar months included in the lease term shall be prorated on a daily basis. Tenant shall also pay to Landlord a “Security Deposit” in the amount of ______________________.

B. The rental for any renewal lease term, if created as permitted under this Lease, shall be ______________________ per year payable in installments of __________________ per month.
Appendix A - Forms

3. Use

The use of the Leased Premises is solely for the purposes of___________. Should the Tenant desire to make additional uses of the Lease Premises, the Tenant must make the request in writing to Landlord. Notwithstanding the forgoing, Tenant shall not use the Leased Premises for the purposes of storing, manufacturing or selling any explosives, flammables or other inherently dangerous substance, chemical, thing or device.

4. Sublease and Assignment

Tenant shall have the right without Landlord’s consent to assign this Lease to a corporation with which Tenant may merge or consolidate, to any subsidiary of Tenant, to any corporation under common control with Tenant, or to a purchaser of substantially all of Tenant’s assets. Except as set forth above, Tenant shall not sublease all or any part of the Leased Premises, or assign this Lease in whole or in part without Landlord’s consent, such consent not to be unreasonably withheld or delayed.

5. Repairs

During the Lease term, Tenant shall make, at Tenant’s expense, all necessary repairs to the Leased Premises. Repairs shall include such items as routine repairs of floors, walls, ceilings, and other parts of the Leased Premises damaged or worn through normal occupancy, except for major mechanical systems or the roof, subject to the obligations of the parties otherwise set forth in this Lease.

6. Alterations and Improvements

Tenant, at Tenant’s expense, shall have the right following Landlord’s consent to remodel, redecorate, and make additions, improvements and replacements of and to all or any part of the Leased Premises from time to time as Tenant may deem desirable, provided the same are made in a workmanlike manner and utilizing good quality materials. Tenant shall have the right to place and install personal property, trade fixtures, equipment and other temporary installations in and upon the Leased Premises, and fasten the same to the premises. All personal property, equipment, machinery, trade fixtures and temporary installations, whether acquired by Tenant at the commencement of the Lease term or placed or installed on the Leased Premises by Tenant thereafter, shall remain Tenant’s property free and clear of any claim by Landlord. Tenant shall have the right to remove the same at any time during the term of this Lease provided that all damage to the Leased Premises caused by such removal shall be repaired by Tenant at Tenant’s expense.
Appendix A - Forms

7. Property Taxes

Landlord shall pay, prior to delinquency, all general real estate taxes and installments of special assessments coming due during the Lease term on the Leased Premises, and all personal property taxes with respect to Landlord’s personal property, if any, on the Leased Premises. Tenant shall be responsible for paying all personal property taxes with respect to Tenant’s personal property at the Leased Premises.

8. Insurance

A. The Leased Premises or any other part of the Building is damaged by fire or other casualty resulting from any act or negligence of Tenant or any of Tenant’s agents, employees or invitees, rent shall not be diminished or abated while such damages are under repair, and Tenant shall be responsible for the costs of repair not covered by insurance.

B. Landlord shall maintain fire and extended coverage insurance on the Building and the Leased Premises in such amounts as Landlord shall deem appropriate. Tenant shall be responsible, at its expense, for fire and extended coverage insurance on all of its personal property, including removable trade fixtures, located in the Leased Premises.

C. Tenant and Landlord shall, each at its own expense, maintain a policy or policies of comprehensive general liability insurance with respect to the respective activities of each in the Building with the premiums thereon fully paid on or before due date, issued by and binding upon some insurance company approved by Landlord, such insurance to afford minimum protection of not less than $1,000,000 combined single limit coverage of bodily injury, property damage or combination thereof. Landlord shall be listed as an additional insured on Tenant’s policy or policies of comprehensive general liability insurance, and Tenant shall provide Landlord with current Certificates of Insurance evidencing Tenant’s compliance with this Paragraph. Tenant shall obtain the agreement of Tenant’s insurers to notify Landlord that a policy is due to expire at least (10) days prior to such expiration. Landlord shall not be required to maintain insurance against thefts within the Leased Premises or the Building.

9. Utilities

Tenant shall pay all charges for water, sewer, gas, electricity, telephone and other services and utilities used by Tenant on the Leased Premises during the term of this Lease unless otherwise expressly agreed in writing by Landlord. In the event that any utility or service provided to the Leased Premises is not separately metered, Landlord shall pay the amount due and separately invoice Tenant for Tenant’s pro rata share of the charges.

Tenant shall pay such amounts within fifteen (15) days of invoice. Tenant acknowledges that the Leased Premises are designed to provide standard office use electrical facilities and standard office lighting. Tenant shall not use any equipment or devices that utilizes excessive electrical energy or which may, in Landlord’s reasonable opinion, overload the wiring or interfere with electrical services to other tenants.
10. Signs

*Following Landlord’s consent, Tenant shall have the right to place on the Leased Premises, at locations selected by Tenant, any signs, which are permitted by applicable zoning ordinances and private restrictions. Landlord may refuse consent to any proposed signage that is in Landlord’s opinion too large, deceptive, unattractive or otherwise inconsistent with or inappropriate to the Leased Premises or use of any other tenant.*

*Landlord shall assist and cooperate with Tenant in obtaining any necessary permission from governmental authorities or adjoining owners and occupants for Tenant to place or construct the foregoing signs. Tenant shall repair all damage to the Leased Premises resulting from the removal of signs installed by Tenant.*

11. Entry

*Landlord shall have the right to enter upon the Leased Premises at reasonable hours to inspect the same, provided Landlord shall not thereby unreasonably interfere with Tenant’s business on the Leased Premises.*

12. Parking

*During the term of this Lease, Tenant shall have the non-exclusive use in common with Landlord, other tenants of the Building, their guests and invitees, of the non-reserved common automobile parking areas, driveways, and footways, subject to rules and regulations for the use thereof as prescribed from time to time by Landlord. Landlord reserves the right to designate parking areas within the Building or in reasonable proximity thereto, for Tenant and Tenant’s agents and employees. Tenant shall provide Landlord with a list of all license numbers for the cars owned by Tenant, its agents and employees. Separated structured parking, if any, located about the Building is reserved for tenants of the Building who rent such parking spaces. Tenant hereby leases from Landlord _____ spaces in such structural parking area, such spaces to be on a first-come-first-served basis. In consideration of the leasing to Tenant of such spaces, Tenant shall pay a monthly rental of ______________________________ per space throughout the term of the Lease. Such rental shall be due and payable each month without demand at the time herein set for the payment of other monthly rentals, in addition to such other rentals.*
Appendix A - Forms

13. Building Rules

Tenant will comply with the rules of the Building adopted and altered by Landlord from time to time and will cause all of its agents, employees, invitees and visitors to do so; all changes to such rules will be sent by Landlord to Tenant in writing. The initial rules for the Building are attached hereto as Exhibit “A” and incorporated herein for all purposes.

14. Damage and Destruction

Subject to Section 8 A. above, if the Leased Premises or any part thereof or any appurtenance thereto is so damaged by fire, casualty or structural defects that the same cannot be used for Tenant’s purposes, then Tenant shall have the right within ninety (90) days following damage to elect by notice to Landlord to terminate this Lease as of the date of such damage. In the event of minor damage to any part of the Leased Premises, and if such damage does not render the Leased Premises unusable for Tenant’s purposes, Landlord shall promptly repair such damage at the cost of the Landlord. In making the repairs called for in this paragraph, Landlord shall not be liable for any delays resulting from strikes, governmental restrictions, inability to obtain necessary materials or labor or other matters which are beyond the reasonable control of Landlord. Tenant shall be relieved from paying rent and other charges during any portion of the Lease term that the Leased Premises are inoperable or unfit for occupancy, or use, in whole or in part, for Tenant’s purposes. Rentals and other charges paid in advance for any such periods shall be credited on the next ensuing payments, if any, but if no further payments are to be made, any such advance payments shall be refunded to Tenant. The provisions of this paragraph extend not only to the matters aforesaid, but also to any occurrence which is beyond Tenant’s reasonable control and which renders the Leased Premises, or any appurtenance thereto, inoperable or unfit for occupancy or use, in whole or in part, for Tenant’s purposes.

15. Default

If default shall at any time be made by Tenant in the payment of rent when due to Landlord as herein provided, and if said default shall continue for fifteen (15) days after written notice thereof shall have been given to Tenant by Landlord, or if default shall be made in any of the other covenants or conditions to be kept, observed and performed by Tenant, and such default shall continue for thirty (30) days after notice thereof in writing to Tenant by Landlord without correction thereof then having been commenced and thereafter diligently prosecuted, Landlord may declare the term of this Lease ended and terminated by giving Tenant written notice of such intention, and if possession of the Leased Premises is not surrendered, Landlord may reenter said premises. Landlord shall have, in addition to the remedy above provided, any other right or remedy available to Landlord on account of any Tenant default, either in law or equity. Landlord shall use reasonable efforts to mitigate its damages.
16. Quiet Possession

Landlord covenants and warrants that upon performance by Tenant of its obligations hereunder, Landlord will keep and maintain Tenant in exclusive, quiet, peaceable and undisturbed and uninterrupted possession of the Leased Premises during the term of this Lease.

17. Condemnation

If any legally constituted authority condemns the Building or such part thereof which shall make the Leased Premises unsuitable for leasing, this Lease shall cease when the public authority takes possession, and Landlord and Tenant shall account for rental as of that date. Such termination shall be without prejudice to the rights of either party to recover compensation from the condemning authority for any loss or damage caused by the condemnation. Neither party shall have any rights in or to any award made to the other by the condemning authority.

18. Subordination

Tenant accepts this Lease subject and subordinate to any mortgage, deed of trust or other lien presently existing or hereafter arising upon the Leased Premises, or upon the Building and to any renewals, refinancing and extensions thereof, but Tenant agrees that any such mortgagee shall have the right at any time to subordinate such mortgage, deed of trust or other lien to this Lease on such terms and subject to such conditions as such mortgagee may deem appropriate in its discretion. Landlord is hereby irrevocably vested with full power and authority to subordinate this Lease to any mortgage, deed of trust or other lien now existing or hereafter placed upon the Leased Premises of the Building, and Tenant agrees upon demand to execute such further instruments subordinating this Lease or attorning to the holder of any such liens as Landlord may request. In the event that Tenant should fail to execute any instrument of subordination herein required to be executed by Tenant promptly as requested, Tenant hereby irrevocably constitutes Landlord as its attorney-in-fact to execute such instrument in Tenant’s name, place and stead, it being agreed that such power is one coupled with an interest. Tenant agrees that it will from time to time upon request by Landlord execute and deliver to such persons as Landlord shall request a statement in recordable form certifying that this Lease is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as so modified), stating the dates to which rent and other charges payable under this Lease have been paid, stating that Landlord is not in default hereunder (or if Tenant alleges a default stating the nature of such alleged default) and further stating such other matters as Landlord shall reasonably require.
19. Security Deposit

The Security Deposit shall be held by Landlord without liability for interest and as security for the performance by Tenant of Tenant’s covenants and obligations under this Lease, it being expressly understood that the Security Deposit shall not be considered an advance payment of rental or a measure of Landlord’s damages in case of default by Tenant. Unless otherwise provided by mandatory non-waivable law or regulation, Landlord may commingle the Security Deposit with Landlord’s other funds. Landlord may, from time to time, without prejudice to any other remedy, use the Security Deposit to the extent necessary to make good any arrearages of rent or to satisfy any other covenant or obligation of Tenant hereunder. Following any such application of the Security Deposit, Tenant shall pay to Landlord on demand the amount so applied in order to restore the Security Deposit to its original amount. If Tenant is not in default at the termination of this Lease, the balance of the Security Deposit remaining after any such application shall be returned by Landlord to Tenant. If Landlord transfers its interest in the Premises during the term of this Lease, Landlord may assign the Security Deposit to the transferee and thereafter shall have no further liability for the return of such Security Deposit.

20. Notice

Any notice required or permitted under this Lease shall be deemed sufficiently given or served if sent by United States certified mail, return receipt requested, addressed as follows:

If to Landlord to:

_______________________________________________
(Landlord)

_______________________________________________
(Landlord’s Address)

If to Tenant to:

_______________________________________________
(Tenant)

_______________________________________________
(Tenant’s Address)

Landlord and Tenant shall each have the right from time to time to change the place notice is to be given under this paragraph by written notice thereof to the other party.
21. Brokers

Tenant represents that Tenant was not shown the Premises by any real estate broker or agent and that Tenant has not otherwise engaged in any activity which could form the basis for a claim for real estate commission, brokerage fee, finder’s fee or other similar charge, in connection with this Lease.

22. Waiver

No waiver of any default of Landlord or Tenant hereunder shall be implied from any omission to take any action on account of such default if such default persists or is repeated, and no express waiver shall affect any default other than the default specified in the express waiver and that only for the time and to the extent therein stated. One or more waivers by Landlord or Tenant shall not be construed as a waiver of a subsequent breach of the same covenant, term, or condition.

23. Memorandum of Lease

The parties hereto contemplate that this Lease should not and shall not be filed for record, but in lieu thereof, at the request of either party, Landlord and Tenant shall execute a Memorandum of Lease to be recorded for the purpose of giving record notice of the appropriate provisions of this Lease.

24. Headings

The headings used in this Lease are for convenience of the parties only and shall not be considered in interpreting the meaning of any provision of this Lease.

25. Successors

The provisions of this Lease shall extend to and be binding upon Landlord and Tenant and their respective legal representatives, successors and assigns.

26. Consent

Landlord shall not unreasonably withhold or delay its consent with respect to any matter for which Landlord’s consent is required or desirable under this Lease.
Appendix A - Forms

27. Performance

If there is a default with respect to any of Landlord’s covenants, warranties or representations under this Lease, and if the default continues more than fifteen (15) days after notice in writing from Tenant to Landlord specifying the default, Tenant may, at its option and without affecting any other remedy hereunder, cure such default and deduct the cost thereof from the next accruing installment or installments of rent payable hereunder until Tenant shall have been fully reimbursed for such expenditures, together with interest thereon at a rate equal to the lesser of twelve percent (12%) per annum or the then-highest lawful rate. If this Lease terminates prior to Tenant’s receiving full reimbursement, Landlord shall pay the unreimbursed balance plus accrued interest to Tenant on demand.

28. Compliance with Law

Tenant shall comply with all laws, orders, ordinances and other public requirements now or hereafter pertaining to Tenant’s use of the Leased Premises. Landlord shall comply with all laws, orders, ordinances and other public requirements now or hereafter affecting the Leased Premises.

29. Final Agreement

This Agreement terminates and supersedes all prior understandings or agreements on the subject matter hereof. This Agreement may be modified only by a further writing that is duly executed by both parties.

30. Governing Law

This Agreement shall be governed, construed and interpreted by, through and under the Laws of the State of ________________.

IN WITNESS WHEREOF, the parties have executed this Lease as of the day and year first above-written.

__________________________________________
(Landlord)

__________________________________________
(Tenant)
Appendix A - Forms

Form No. 3

Easement Agreement

The Grantor, __________________, for and in consideration of the sum of Ten Dollars and other good and valuable consideration, does hereby convey and warrant to _______________ Grantees, whose address is __________________________, and Grantees’ heirs, successors, and assigns, forever, an appurtenant easement for driveway purposes upon, over, and across the following described land owned by Grantors within the ______________________, State of __________________ to wit: __________________________

EASEMENT LOCATION: The land constituting the easement extends across the above described land and is more particularly described as follows: ____________________________________________

________________________________________________________

An easement __________ feet in width, __________________________

feet on each side of a centerline more particularly described as follows: __________________________

________________________________________________________

________________________________________________________

The exterior limits of said easement shall be elongated or shortened so as to terminate at the northerly and westerly boundaries of said Lot ________________________________.

The easement contains __________ acres, more or less.

PROPERTY BENEFITED BY THE EASEMENT. The easement shall be appurtenant to and for the benefit of the following described real property:

________________________________________________________

________________________________________________________

GRANTEES’ RIGHT TO USE. The Grantees shall have the right to use the easement for construction, operation, maintenance, and repair of a driveway for vehicular and pedestrian access to the real property benefited by the easement.
Appendix A - Forms

GRANTORS’ RIGHT TO USE. The Grantors shall have the right to use the easement for purposes which will not interfere with the Grantees’ full use and enjoyment of grantees’ rights granted by this Easement.

OWNERSHIP OF IMPROVEMENTS. All improvements made by the Grantees shall remain the property of the Grantees, removable at Grantees’ option.

GRANTORS’ COVENANTS OF TITLE. Grantors hereby covenant with Grantees that the Grantors have good title to the Grantors’ land described above and covenant that Grantees shall have quiet and peaceable enjoyment of the easement across Grantors’ land.

ENTIRE AGREEMENT. It is understood and agreed that this agreement as written covers all the agreements and stipulations between the parties and that no statements or representations, oral or written, have been made modifying, adding to, or changing the terms of this Easement.

IN WITNESS WHEREOF, Grantor has caused his/her hand, this _________day of ___________ , 20________.

GRANTOR

AFFIDAVIT

STATE OF _______________________) ss.

COUNTY OF ____________________)

THIS IS TO CERTIFY that on this______day of__________, 20___, before me, the undersigned, a Notary Public in and for the State of __________, duly commissioned and sworn as such, personally appeared ____________________, to me known to be the individual who executed the above and foregoing instrument and acknowledged to me that the same was signed as a free act and deed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year written above.

____________________________________
Notary Public in and for  _________________

My Commission Expires: __________________________
Form No. 4

GENERAL POWER OF ATTORNEY

NOTICE: THE POWERS GRANTED BY THIS DOCUMENT ARE BROAD AND SWEEPING. THIS DOCUMENT DOES NOT AUTHORIZE ANYONE TO MAKE MEDICAL AND OTHER HEALTH-CARE DECISIONS FOR YOU. YOU MAY REVOKE THIS POWER OF ATTORNEY IF YOU LATER WISH TO DO SO.

I, ______________________, residing at ______________________ hereby appoint ______________________ of ______________________, as my Attorney-in-Fact (“Agent”). If my Agent is unable to serve for any reason, I designate ______________________, of ______________________, as my successor Agent.

I hereby revoke any and all general powers of attorney that previously have been signed by me. However, the preceding sentence shall not have the effect of revoking any powers of attorney that are directly related to my health care that previously have been signed by me.

My Agent shall have full power and authority to act on my behalf. This power and authority shall authorize my Agent to manage and conduct all of my affairs and to exercise all of my legal rights and powers, including all rights and powers that I may acquire in the future. My Agent’s powers shall include, but not be limited to, the power to:

1. Open, maintain or close bank accounts (including, but not limited to, checking accounts, savings accounts, and certificates of deposit), brokerage accounts, and other similar accounts with financial institutions.

a. Conduct any business with any banking or financial institution with respect to any of my accounts, including, but not limited to, making deposits and withdrawals or obtaining bank statements, passbooks, drafts, money orders, warrants, and certificates or vouchers payable to me by any person, firm, corporation, or political entity.

b. Perform any act necessary to deposit, negotiate, sell or transfer any note, security, or draft of the United States of America, including U.S. Treasury Securities.

c. Have access to any safe deposit box that I might own, including its contents.
2. Sell, exchange, buy, invest, or reinvest any assets or property owned by me. Such assets or property may include income-producing or non-income-producing assets and property.

3. Purchase and/or maintain insurance, including life insurance upon my life or the life of any other appropriate person.

4. Take any and all legal steps necessary to collect any amount or debt owed to me, or to settle any claim, whether made against me or asserted on my behalf against any other person or entity.

5. Enter into binding contracts on my behalf.

6. Exercise all stock rights on my behalf as my proxy, including all rights with respect to stocks, bonds, debentures, or other investments.

7. Maintain and/or operate any business that I may own.

8. Employ professional and business assistance as may be appropriate, including attorneys, accountants, and real estate agents.

9. Sell, convey, lease, mortgage, manage, insure, improve, repair, or perform any other act with respect to any of my property (now owned or later acquired) including, but not limited to, real estate and real estate rights (including the right to remove tenants and to recover possession). This includes the right to sell or encumber any homestead that I now own or may own in the future.

10. Prepare, sign, and file documents with any governmental body or agency, including, but not limited to, authorization to:
   a. Prepare, sign, and file income and other tax returns with federal, state, local, and other governmental bodies.
   b. Obtain information or documents from any government or its agencies, and negotiate, compromise, or settle any matter with such government or agency (including tax matters).
   c. Prepare applications, provide information, and perform any other act reasonably requested by any government or its agencies in connection with governmental benefits (including military and social security benefits).

11. Make gifts from my assets to members of my family and to such other persons or charitable organizations with whom I have an established pattern of giving. However, my Agent may not make gifts of my property to the Agent. I appoint_______________________, of __________ ______________________________, ______________________________, as my substitute Agent for the sole purpose of making gifts of my property to my Agent, as appropriate.

12. Transfer any of my assets to the trustee of any revocable trust created by me, if such trust is in existence at the time of such transfer.
13. Disclaim any interest, which might otherwise be transferred or distributed to me from any other person, estate, trust, or other entity, as may be appropriate.

This Power of Attorney shall be construed broadly as a General Power of Attorney. The listing of specific powers is not intended to limit or restrict the general powers granted in this Power of Attorney in any manner.

Any power or authority granted to my Agent under this document shall be limited to the extent necessary to prevent this Power of Attorney from causing: (i) my income to be taxable to my Agent, (ii) my assets to be subject to a general power of appointment by my Agent, and (iii) my Agent to have any incidents of ownership with respect to any life insurance policies that I may own on the life of my Agent.

My Agent shall not be liable for any loss that results from a judgment error that was made in good faith. However, my Agent shall be liable for willful misconduct or the failure to act in good faith while acting under the authority of this Power of Attorney.

I authorize my Agent to indemnify and hold harmless any third party who accepts and acts under this document.

My Agent shall be entitled to reasonable compensation for any services provided as my Agent.

My Agent shall be entitled to reimbursement of all reasonable expenses incurred in connection with this Power of Attorney.

My Agent shall provide an accounting for all funds handled and all acts performed as my Agent, if I so request or if such a request is made by any authorized personal representative or fiduciary acting on my behalf.

This Power of Attorney shall become effective immediately and shall not be affected by my disability or lack of mental competence, except as may be provided otherwise by an applicable state statute. This is a Durable Power of Attorney. This Power of Attorney shall continue effective until my death. This Power of Attorney may be revoked by me at any time by providing written notice to my Agent.

Dated ______________________, 20____ at _________________________,

______________________________
Signature

______________________________
Printed Name
Appendix A - Forms

Witness Signature

Printed Name

ACKNOWLEDGEMENT

STATE OF ____________________________

COUNTY OF __________________________

The foregoing instrument was acknowledged before me this ____________ day of ____________________________, 20____ by ________________________, who is personally known to me or who has produced ____________________________ as identification.

____________________________________________________
Signature of person taking acknowledgment

____________________________________________________
Name typed, printed, or stamped

____________________________________________________
Title or rank

____________________________________________________
Serial number (if applicable)
Appendix B
Canadian and United States Glossary
Appendix B - Canadian and United States Glossary

**Abandonment:** 1. The relinquishment of all rights and interests in real property without intention to reclaim. 2. A conveyance of a portion of a highway right of way or facility by a governmental agency to another party.

**Abandonment of proceedings:** The discontinuance of an action by the plaintiff after the filing of a complaint, either as provided by law or by implication.

**Abstract of title:** A document which shows the condensed history of a property’s title. It may include portions of prior conveyances and/or other pertinent instruments relating to the estate or interest in the property and all liens, charges, encumbrances and releases.

**Abutter’s rights:** The right of one property owner in the property of another by virtue of their sharing a common property line.

**Acceptance:** 1. The formal acceptance of a document by resolution. 2. The certificate of such resolution. 3. With private parties, voluntarily agreeing to the terms of an offer.

**Access control:** Government’s power to restrict or control a property owner’s right to enter on and exit from a public road.

**Access rights:** The right of ingress to and egress from one’s property to a public road. The right may be actual or implied. Access is a private right as distinguishable from the public’s rights.

**Accession:** An equitable or fairness doctrine which results in a property owner gaining title to additions or improvements that are attached to the owner’s property, either by nature or construction.

**Accord and Satisfaction:** A contract law term by which one party, having complied with its obligation under a contract, accepts some type of compensation from the other party (usually money, but in any case compensation less than the contract originally called for) in lieu of enforcing the contract and holding the other party to the obligation. This discharges the contract.

**Accretion:** An increase or extension of land boundaries by natural action, such as wind or water. The riparian property owner, unless statutes state otherwise, acquires title to the increases or extensions.

**Acknowledgment:** The act by which a party executing a legal document appears before an authorized officer or notary public and declares the execution to be a voluntary act.

**Acquired land:** Federal real property that normally has been purchased from private owners as opposed to original Crown Land.

**Acquisition:** A transaction that adds new real property rights to a governmental inventory by purchase, lease, license, exchange, gift, easement, expropriation, or any other means.

**Administrative law:** 1. Natural justice. 2. The body of laws which applies to hearings before quasi-judicial or administrative tribunals.
Appendix B - Canadian and United States Glossary

Administrative tribunal: A hybrid adjudicating authority between the government and the courts. It operates as a government policy-making body at times but also exercises a licensing, certifying, approval or other adjudication authority, which is quasi-judicial, because it directly affects the legal rights of a person.

Administrator: A person appointed by a probate court to settle a deceased person’s affairs.

Adverse possession: A claim made against the property of another by virtue of actual, continuous (for a time period established by statute), exclusive, hostile, notorious (the other ownership claimant has notice of the possession and its extent), open and under claim of title.

Advocacy: Representing the interest of another.

Affidavit: A voluntarily written declaration or statement confirmed by the oath or affirmation, sworn to before an officer who has the authority to administer the oath or affirmation.

Agreement: A word used to describe a common opinion of two or more people regarding each party’s rights and obligations related to the agreement.

Agreement of sale: A written contract where the purchaser agrees to buy certain property and the seller agrees to sell, according to the terms and conditions set forth in the agreement.

Air rights: The right to use and control a designated airspace above a real estate parcel.

Allodial: A type of land ownership that is absolute. It supposes no obligation to another.

Alluvion: Soil deposited by accretion.

Alternate dispute resolution: A range of processes to resolve a disagreement For example, administrative settlements and mediation.

American Land Title Association: A national trade association of the abstract and title insurance industry. Members search, review and insure titles to protect buyers and mortgage lenders who invest in real estate.

Answer: A written statement made by a defendant in a suit, in which the defendant endeavors to resist the plaintiff’s demands.

Appeal: The complaint to an appellate court of an injustice done or error committed by a trial or lower court, whose judgment or decision the appellate court is called on to correct or reverse.

Appellant: The party who takes an appeal from one court or jurisdiction to another.

Appellate: Pertaining to or having cognizance of appeals. Often used to indicate the distinction between the original jurisdiction (trial court) and appellate jurisdiction (appeal court).

Appellee: The party in a cause against whom an appeal is taken.
Appendix B - Canadian and United States Glossary

**Appropriation:** The taking of property for public use.

**Appurtenance:** An item of property accessory to or incidental to other property. Title usually passes with title to the principal property.

**Arbitration:** An alternative dispute resolution method by which an independent, neutral third person or arbitrator hears and considers the merits of a dispute and renders a final and binding decision.

**Assign:** To give or transfer responsibility to another.

**Assignee:** One who receives an assignment. For example, the assignee of a mortgage.

**Assignment:** The method by which a right or contract or property is transferred from one person to another.

**Assignor:** One who makes an assignment. For example, the assignor of a mortgage.

**Attorn, Attornment:** To consent, implicitly or explicitly, to a transfer of a right. Often used to describe a situation where a tenant, by staying on location after the sale of the leased property, accepts to be a tenant of the new landlord. (*Duhaime’s Law Dictionary*).

**Attorney:** 1. A person who is legally permitted to transact business on another’s behalf. 2. A person who advises and represents clients as to legal rights and obligations.

**Attorney-in-Fact:** A person who is authorized to act for another person under a power of attorney. The power of attorney may be limited to a specific act or it may be broader.

**Avigation easement:** The right granted by a property owner for the use of the airspace above a specific height for aircraft flight. The easement prohibits the property owner from using the land for structures, trees, signs, stacks, etc. higher than the altitude specified in the avigation easement. The degree of restriction will vary depending on the glide angle plane necessary for the safe use of an airfield’s runway.

**Avulsion:** The sudden removal of soil by natural action, usually water, from one property and the depositing of the soil on the property of another.

**Bargain and sale deed:** A deed in which the grantor does not warrant the title in any respect.

**Barrister:** A litigation specialist; a lawyer that restricts practice to the courtroom. In Canada, there is no legal distinction between the advising and litigating roles.

**Beneficial interests:** 1. Benefits, profits, or advantages resulting from a contract. 2. The ownership of an estate as distinct from the fee ownership or control of a property.

**Beneficiary:** A person for whom a trust has been created.

**Bill of sale:** A written agreement by which title to chattels is transferred.
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**Bona vacantia:** Property that belongs to no person and which may be claimed by a finder.

**Breach:** The breaking or violating of a law, right, or duty, either by commission or omission.

**Building code:** A governmental entity’s ordinances, rules and regulations relating to the construction, use, repair and remodeling of buildings.

**Bundle of rights:** All the rights of real estate ownership. A fee ownership of a real estate parcel that includes possession, enjoyment, disposal, etc. Any one, or several, of the rights, may be transferred or conveyed to another, with the owner retaining any rights not conveyed.

**Burden of proof:** The necessity or duty of providing the facts in dispute on an issue raised between the parties in a cause.

**Canadian Environmental Protection Act:** Proclaimed in 1988, the Canadian Environmental Protection Act is the country’s most extensive federal environmental legislation. The Act governs such areas as ocean dumping, the release, import and export of toxic substances and international air pollution. Regulations and amendments under the Act include those governing the storage, treatment, destruction and export of polychlorinated biphenyls (PCBs) materials, as well as regulations relating to the use and consumption of ozone depleting substances.

**Caveat:** A formal warning. A document containing a notice, warning, or caution that there are persons other than the registered owner interested in the property and which is registered against title to the property.

**Certificate of title:** A document based on a title search stating that the title or interest in property is vested in a designated person and showing outstanding liens, charges, or other encumbrances, if any.

**Chain of title:** A history of conveyances and encumbrances affecting the title from the time the original patent was granted to the present time.

**Chattel (personal):** Personal property.

**Chattel (real):** All real property estates that do not constitute a freehold or fee estate. For example, a lease.

**Client:** The party or parties who engage another, by contract or employment.

**Closing statement:** A listing of the debits and credits of the seller and buyer in the settlement of a real estate transaction.

**Clouder Title:** An irregularity, possible claim, or encumbrance that, if valid, would adversely affect or impair title.

**Code of Federal Regulations:** A document that codifies all rules of the executive departments and agencies of the federal government.

**Color of title:** That which appears to be good title but which, in fact, contains some defect.
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**Commissioner for Oaths:** An individual empowered by statute to administer oaths and take and receive affidavits, declarations and affirmations.

**Common law:** 1. The body of customs, usages and practices developed and administered by the Anglo-Saxons. 2. The body of English Law as distinguished from Roman Law, Canon Law and other legal systems. 3. The unwritten law founded on customs and precedents as distinguished from statute law.

**Common property:** 1. A tract of land considered the property of the public, in which all persons enjoy equal rights. 2. Property not owned by individuals or governments, but by groups, tribes, or informal villages.

**Community property:** All property acquired by either husband or wife or both during their marriage, excluding property acquired by gift or inheritance and which belongs to both as a community and not to each individually.

**Compensable damages:** Damages for which compensation must be paid under eminent domain.

**Compensable interest:** A property right, which if acquired for public purposes, would entitle the owner to receive just compensation.

**Complaint:** The plaintiff’s presentation in an action, setting forth the claim on which relief is sought.

**Conclusive presumption:** A statement of facts that must be accepted as conclusive evidence because the law will not permit its contradiction.

**Condemnation:** 1. The process by which property is acquired for public purposes under the power of eminent domain following due process of law and on the payment of just compensation. 2. The act of a federal, state, county, or other government or district or public utility or corporation vested with the right of eminent domain to take private property for public use when a public necessity exists.

**Condemnee:** The owner of the property or the property right acquired under eminent domain.

**Condemnor:** The agency acquiring property under the right of eminent domain.

**Condition precedent:** A contract condition that suspends the coming into effect of a contract unless or until a certain event takes place. Many residential real estate contracts have a condition precedent, which states that the contract is not binding until and unless the property is subjected to a professional inspection, the results of which are satisfactory to the purchaser.

**Condition subsequent:** A contract condition that causes the contract to become invalid if a certain event occurs. The happening of a condition subsequent may invalidate a contract which is, until that moment, fully valid and binding.

**Conditions, covenants and restrictions:** A list of uses and restrictions usually contained in the conveyance, to which property can or cannot be put. Commonly used by land subdividers.
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**Consensus ad idem:** An agreement or meeting of the minds between the parties where all understand the commitments made by each. This is a basic requirement for each contract.

**Consent to dismiss and waiver of deposit:** A formal document where a defendant in a condemnation action gives consent to the dismissal of the action and waives all claims to money that may have been deposited.

**Consequential damages:** Loss in value to real estate, no part of which is acquired, resulting from a public improvement.

**Conservation easement:** A restriction that limits future property use to conservation or preservation.

**Conservator:** A court appointed individual assigned to protect and preserve the property of a person physically incapacitated or otherwise unable to handle the incapacitated person’s affairs.

**Consideration:** The inducement, generally monetary, that moves a party to enter into a contract.

**Constructive notice:** 1. The accessibility of public records; notice is assumed by the existence of the records. *(The Dictionary of Real Estate Appraisal).* 2. Notice of title conditions as found on the public records.

**Contract:** A legally enforceable agreement between two or more people or parties.

**Contract rent:** The amount of rent provided for under the terms of the lease.

**Control of access:** The condition where the right of access is fully or partially controlled by the government.

**Convey:** The act of deeding or transferring title to another.

**Conveyance:** A written instrument by which a title, estate, or interest in property is transferred.

**Convenant:** A written agreement in conveyance or other instruments setting forth assurances by the grantor.

**Crown Land:** Land, whether or not it is covered by water, or an interest in land vested in the Crown by virtue of the British North America Act.

**Crown Reserve Land:** Frontier land in respect of which no interest is in force.

**Cuius est solum, ejus est usque ad caelum et ad inferos:** The party who owns the land, owns down to the center of the earth and up to the heavens.

**Damages:** In condemnation, the loss in value to the remainder property as a result of a partial taking. Generally, it is the difference between the value of the property before the acquisition and the value of the property after the acquisition.

**Declaration of a service:** The affidavit made by a party who serves defendant(s) in a condemnation case with the summons and complaint given as proof that the service was made in the manner required by the Code of Civil Procedure.
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Dedication: The setting apart by the owner and acceptance by the public of property for public use, in accordance with statute or common law. No compensation is paid by the public.

Deed: A written instrument, usually under seal, by which the ownership interests in real estate are transferred from one party to another.

Deed of trust: An instrument used in many jurisdictions in place of a mortgage. Property is transferred to a trustee by the borrower (trustor) in favor of the lender (beneficiary) and reconveyed upon payment in full.

Deed quitclaim: A conveyance where whatever interest the grantor possesses is conveyed to the grantee, without warranty of title.

Deed restriction: A limitation which passes with the property regardless of ownership, most commonly limiting the type of use or intensity of real estate use.

Deed with full covenant: A conveyance where the grantor warrants forever the title to the premises.

Default: Failure to perform a duty or to discharge an obligation in accordance with an agreement or a contract.

Defendant: The person defending or denying; the party against whom relief or recovery is sought in an action or suit.

Deficiency judgment: In a foreclosure sale, the difference between the sale price and the indebtedness sued for, if the foreclosure sale does not cover the debt.

Delivery: The placing of the property in the actual or constructive possession of the grantee. Usually accomplished by delivery of the deed to the grantee or by recordation.

Demonstrative evidence: Evidence in the form of objects (e.g., maps, diagrams, or models) that has in itself no probative value but is used to illustrate and clarify the factual matter at issue.

Demurrer to complaint: A disputation of the sufficiency in law of the plaintiff’s complaint. In effect, an allegation that even if the facts stated in the complaint are true, there is still no cause of action.

Deposition: The written testimony of a witness taken under oath.

Descent: 1. Ownership succession by inheritance, or by any act of law, as distinguished from purchase. 2. The title by which one person, on the death of another, acquires the real estate of the latter as the heir at law.

Devise: Real estate left by will.

Devisee: A person to whom real estate is given by will.

Devisor: A testator who leaves real estate.

Direct damages: Payment for property or an interest in property actually acquired for a public improvement.
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**Discovery:** The methods used by parties to a civil or criminal action to obtain information held by the other party that is relevant to the action.

**Dispossess:** 1. To put out of possession or occupancy. 2. To evict.

**Distraint:** The right of a landlord to seize a tenant’s property which is in the rented premises as collateral against a tenant who has not paid the rent or who has otherwise defaulted on the lease.

**Divest:** To deprive or dispossess oneself of property through divestiture.

**Dominant estate:** The property that benefits from an easement.

**Dominant tenement:** The land which benefits from or has the advantage of an easement.

**Donation:** The voluntary conveyance by the owner of private property to public ownership and use without compensation.

**Drainage easement:** The right to drain surface water from one property owner’s property across another’s property.

**Due diligence:** The care that a prudent person might be expected to exercise in the examination and evaluation of risks affecting a transaction.

**Easement:** A nonpossessory interest held by one person in property of another where the first person is accorded partial use of the property for a specific purpose. An easement restricts but does not abrogate the fee owner’s rights to the use and enjoyment of the property.

**Easement appurtenant:** An easement for the benefit of another property. The easement passes with the property transfer.

**Easement, aviation:** The right granted by a property owner for the use of the airspace above a specific height for aircraft flight. The easement prohibits the property owner from using the land for structures, trees, signs, stacks, etc. higher than the altitude specified in the aviation easement. The degree of restriction will vary depending on the glide angle plane necessary for the safe use of an airfield’s runway.

**Easement by prescription:** The right to use the property of another, which is established by exercising this right over a period of time.

**Easement, drainage:** The right to drain surface water from one property owner’s property across another’s property.

**Easement, highway:** The right to use the property of another for the construction, operation and maintenance of a highway.

**Easement in gross:** An easement for the benefit of a person or entity. Commonly, public utility easements.
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**Easement of necessity:** A court-granted easement when it is determined that the easement is essential for the use and enjoyment of the property.

**Easement, overhead:** The right to use the space at a designated distance above the surface of the land as for power lines, aviation and air rights.

**Easement, pipeline:** The right to use the property of another for the construction, operation and maintenance of a pipeline.

**Easement, planting:** An easement for reshaping roadway areas and establishing, maintaining and controlling plant growth.

**Easement, scenic:** An easement for conservation and development of roadside views and natural features.

**Easement, sight:** An easement for maintaining or improving sight distances.

**Easement, subsurface:** The right to use the space at a designated distance below the surface of the land as for pipelines and storage facilities.

**Easement, surface:** The right to use the surface of the land as for access and flowage.

**Eminent domain:** The right or power of public and quasi-public agencies to take private property for public purposes without the owner’s consent on payment of just compensation and following due process of law.

**Encroachment:** An improvement (e.g., structure, sign, wall, or fence) that illegally intrudes on another’s property.

**Encumber:** To burden a parcel of land with a lien or charge (e.g., mortgage).

**Encumbrance:** A charge, claim, liability, or lien attached to real property.

**Escheat:** The reversion of property to the state in a case when an individual dies intestate and without heirs.

**Escrow:** A procedure whereby a disinterested third party controls the legal documents and funds on behalf of a seller and buyer.

**Estate:** A right or interest in property.

**Estate for years:** 1. An interest in real property by virtue of a contract, possession of which is for a definite and limited time. 2. A type of lease.

**Estoppel:** A bar, in law, that precludes a person from asserting rights in contradiction of a previous position or representation.

**Ethics:** 1. A set of moral principles or values. 2. The principles of conduct governing an individual or a group.
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Eviction: A process to oust a person from the possession of property.

Examiner: A title company employee charged with the duty of interpreting and passing upon the validity of documents dealing with real property.

Excess condemnation: The condemnation of property in excess of that which is actually required for the proposed public use.

Execution sale: The sale of property, as a legal remedy, for the enforcement of a judgment.

Executor: A person designated in a will or appointed by the probate court to carry out the terms of a will.

Expert witness: 1. A person who by reason of education and/or experience gives evidence. 2. A person who is recognized by the court as an expert on the subject matter in question.

Expropriation: Pursuant to statute, the compulsory acquisition of property, by the Crown or by one of its authorized agencies.

Federal Crown Land: Crown Land under the administration and control of Her Majesty in right of Canada.

Fee simple estate: 1. The highest real estate ownership interest. 2. Absolute ownership unencumbered by any other interest or estate.

Fee tail: A form of tenure under the feudal system that could only be transferred to a lineal descendant. If there were no lineal descendants upon the death of the tenant, the land reverted to the lord.

Fiduciary: A position of trust and confidence, regarding financial transactions.

Final order of condemnation: The closing order of a court in a condemnation action. Made after the requirements of the final judgment have been satisfied. It passes property title to the condemnor.

First Nation Land: Reserve land to which a land code applies and includes all the interests in and resources of the land that are within the legislative authority of Parliament.

Fixture: An item that was once a chattel but is now an integral part of the real estate.

Foreclosure: A legal proceeding to extinguish a property owner’s rights, title and interest in order to sell the owner’s property to satisfy a lien.

Freehold: A special right granting the full use of real estate for an indeterminate time. It differs from leasehold, which allows possession for a limited time. There are varieties of freehold such as fee simple and fee tail.

Freehold land: Land not owned by the Crown.

General benefit: The advantage accruing from a given public improvement to the community as a whole.
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**General warranty deed:** A deed in which the grantor warrants the title against defects arising at any time, either before or after the grantor acquired title to the property.

**Graduated lease:** A lease that provides for certain rental adjustments at one or more points during the lease term.

**Grant:** A transfer of property or an interest in property.

**Grant deed:** A document that transfers title.

**Grantee:** 1. One to whom property is conveyed. 2. The buyer.

**Grantor:** 1. One who conveys property. 2. The seller.

**Gross lease:** A lease of property where the lessor pays all property charges regularly incurred through ownership.

**Ground lease:** A lease which gives the right to use land.

**Guarantee title:** A title, the validity of which is insured by an abstract, title, or indemnity company.

**Guardian:** A person who is entitled or legally appointed to the care and management of the person or property of another.

**Habendum:** The “to have and to hold” clause that usually follows the granting part of the deed, defining the extent of the estate granted.

**Heir:** One who by operation of law inherits the property and especially the real property of a person who dies without leaving a valid will.

**Heirs and assigns:** Terminology used in a deed, which states the interest the grantee is receiving.

**Hereditaments:** 1. The largest classification of property, including lands, tenements and incorporeal property. 2. Anything capable of being inherited.

**Highway easement:** The right to use the property of another for the construction, operation and maintenance of a highway.

**Hold harmless agreement:** A legal agreement in which the liability of one party is assumed by another party.

**Holdover tenant:** A tenant who remains in possession of leased property after the expiration of a lease.

**Implied contract:** A contract created by the actions of the principals, rather than by oral or written agreement.

**In gross:** A personal right rather than a right attached to real estate.
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**In rem:** Pertaining to property.

**Incorporeal:** Intangible legal rights.

**Incorporeal rights:** Intangible rights (e.g., legal actions) rather than property rights.

**Indefeasible:** A right or title in property that cannot be voided, defeated or canceled by any past event, error or omission in the title.

**Indenture:** A deed in which the grantor and grantee enter into reciprocal and corresponding grants or obligations.

**Injunction:** A writ issued by a court of equity whereby one is required to do or to refrain from doing a specified act.

**Injurious affection:** The reduction in market value caused to the remaining land of the owner by the acquisition or by the construction of the works or by the use of the works or by any combination of them and such personal and business damages, resulting from the construction or use, or both, of the works as the statutory authority would be liable for if the construction or use were not under the authority of a statute. (*The Expropriations Act*).

**Instrument:** Any legal document (e.g., deed, lease, mortgage, will).

**Intangible asset:** A non-physical asset, including but not limited to franchises, trademarks, patents, copyrights, goodwill, equities, securities and contracts, as distinguished from physical assets (e.g., facilities and equipment). (*USPAP*)

**Intangible property:** A non-physical asset, including but not limited to franchises, trademarks, patents, copyrights, goodwill, equities, securities and contracts, as distinguished from physical assets (e.g., facilities and equipment). (*USPAP*)

**Interrogatories:** A series of written questions about a court case submitted by one party to the other party.

**Intestate:** Without leaving a will.

**Inverse condemnation:** The legal process by which a property owner may claim and receive compensation for the taking of, or damages to, property as a result of a public improvement.

**Involuntary conversion:** The conversion of real estate into personal property (money) without the voluntary act of the property owner.

**Involuntary lien:** A lien imposed against property without the consent of an owner (e.g., taxes, special assessments, federal income tax).

**Irrevocable:** 1. Incapable of being recalled or revoked. 2. Unchangeable. 3. Unalterable.
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**Joint and several liability:** 1. Under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) this legal concept relates to the liability for Superfund site cleanup and other costs on the part of more than one potentially responsible party. If there were several owners or users of a site that became contaminated over the years, they could all be considered potentially liable for cleaning up the site. 2. Liability of more than one person for which each person may be sued for the entire amount of damages done by all. (*Duhaime’s Law Dictionary*).

**Joint tenancy:** A tenancy in which two or more parties hold equal and simultaneously created interests in the same property and in which title to the entire property is to remain to the survivors upon the death of one of them, as a spouse and so on to the last survivor.

**Judgment:** 1. A formal decision or determination on a matter or case by a court. 2. In a condemnation case, a decision as to the damages suffered by the condemnee.

**Judgment lien:** A lien acquired against the property of a debtor by a creditor upon obtaining a favorable judgment.

**Jus spatandi et manendi:** A legal right of way granted to the public but only for the purposes of recreation or education, such as upon parks or public squares. (*Duhaime’s Law Dictionary*).

**Jurisdictional exception:** 1. An assignment condition that voids the force of a part or parts of USPAP, when compliance with part or parts of USPAP is contrary to law or public policy applicable to the assignment. (*USPAP*). 2. An assignment condition that voids the force of a part or parts of The Standards, when compliance would be contrary to law or public policy and only that part shall be void and of no force or effect in that jurisdiction. (*CUSPAP*)

**Just compensation:** 1. The compensation for property acquired under eminent domain that places a property owner in the same position as before the property is taken. It is usually the fair market value of the property acquired.

**Laches:** Neglect to do something at a proper time, especially such delay as will bar a party from bringing a legal proceeding. For example, an inexcusable delay in forwarding a claim.

**Land contract:** An installment contract for the sale of property. The seller (vendor) retains title until paid in full by the buyer (vendee).

**Land record:** An assemblage of legal property title documentation.

**Land registry system:** A system of title record provided by provincial law. It is a system for the registration of current land titles.

**Land tenements and hereditaments:** Currently, the most technical and all inclusive real estate description.

**Land use control:** Broadly, any legal restriction (e.g., zoning ordinance, restrictive covenant) that controls the uses to which real estate can be put.
**Land use regulation:** Broadly, any legal restriction (e.g., zoning ordinance, restrictive covenant) that controls the uses to which real estate can be put.

**Landlocked parcel:** A parcel of land surrounded entirely by privately owned land, without access to any type of public or private access. Often associated with the partial taking of land for highway purposes.

**Landlord:** The person from whom another holds tenancy.

**Larger parcel:** In condemnation, the portion of a property that has unity of ownership, contiguity and unity of use, the conditions that establish the larger parcel for valuation purposes. In many jurisdictions, contiguity is sometimes subordinated to unity of ownership and unity of use.

**Lawyer:** 1. A person who is legally permitted to transact business on another’s behalf. 2. A person who advises and represents clients as to legal rights and obligations.

**Lease:** A contract where the owner transfers the right of possession and use of the real estate to another for a specified time period and on payment of a consideration, usually rent.

**Lease tender:** The process by which the Crown invites bids from property owners to lease property.

**Leased fee estate:** 1. The landlord’s interest. 2. The right to receive consideration, usually rent and the right to recapture the real estate at the end of the lease term. 3. The present (discounted) value of the contract (lease) rent plus the present (discounted) value of the reversion. 4. The use and occupancy of a property conveyed to another.

**Leased fee interest:** 1. The right to receive consideration, usually rent and the right to recapture the real estate at the end of the lease term. 2. The present (discounted) value of the contract (lease) rent plus the present (discounted) value of the reversion.

**Leasehold estate:** 1. The lessee’s interest. 2. The right to possess, use and quietly enjoy the real estate for the lease term. 3. The present (discounted) value of the difference between market rent and contract rent.

**Leasehold improvement:** An improvement and/or addition to leased property made by the lessee.

**Leasehold interest:** 1. The right to possess, use and quietly enjoy the real estate for the lease term. 2. The present (discounted) value of the difference between market rent and contract rent.

**Lease-in:** A lease type when the agency acquires space for its use.

**Lease-out:** A lease type when the agency leases to another party for a consideration.

**Legal access:** A right that an owner of property that abuts a road has to use the road for ingress and egress.

**Legal description:** A method, acceptable in court, that geographically locates property.

**Lessee:** The party to whom a lease is given in return for a consideration, usually rent.
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**Lessor:** The party who gives a lease in return for a consideration, usually rent.

**Letters patent:** An instrument from a government granting property to an individual.

**License:** A personal privilege to do some act on the land of another.

**Lien:** A hold or claim that one party has on the property of another (e.g., security for a debt or a charge, judgment, mortgage, tax, etc.).

**Life estate:** An estate in property for the duration of a specific person’s life. Upon that person’s death, the estate reverts to the grantor to a remainder interest.

**Life tenant:** The beneficiary of a life estate.

**Lis pendens:** A notice recorded which indicates that a legal action is pending affecting real estate in the jurisdiction where the notice is recorded.

**Litigation:** A formal court action; a lawsuit.

**Littoral rights:** The right of the owner of property with contiguous shoreline to use and enjoy the shore.

**Majority:** The age at which a person is no longer a minor and is legally entitled to contract and enjoy civil rights.

**Marketable title:** 1. Title that is subject to no reasonable doubt as to its validity or freedom from encumbrance and that can be reasonably sold, purchased, or mortgaged. 2. Title of such quality that a purchaser under contract should be compelled to accept it.

**Master lease:** A lease controlling subsequent leases.

**Mechanic’s lien:** A lien allowed by statute to secure payment priority for the value of the work performed and materials furnished in the repair or construction of improvements.

**Mediation:** The intervention between conflicting parties to promote reconciliation, settlement, or compromise.

**Merger of title:** The absorption of a lesser estate into a greater one.

**Mitigation of damages:** A legal obligation on an injured party to attempt to minimize damages to property after an event or action.

**Moiety:** Half of something. For example, a joint tenancy holds a moiety in property.

**Mortgage:** 1. A pledge of real property as security for the payment of a debt. 2. A written document by which property is given as security for a debt with the right of redemption.

**Mortgage deed:** A deed that has the effect of a mortgage and imposes a lien on the grantee’s estate.
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**Mortgage, purchase money:** A mortgage given by a purchaser to the seller in lieu of cash and as a part of the price paid for property.

**Mortgagee:** The party who lends money and receives the mortgage.

**Mortgagor:** The party who borrows money and gives the mortgage.

**National Environmental Policy Act of 1969:** Applies to all federal agencies and many activities it manages, regulates, or funds that affect the environment. It requires all agencies to disclose and consider the environmental implications of a proposed action. Necessity: When used in relation to eminent domain, refers to reasonable necessity of the property for public purposes.

**Net ground lease:** A lease of unimproved land, which provides that the lessee pay all property charges regularly incurred.

**Net lease:** A lease of property where the lessee pays all property charges regularly incurred.

**Nonconforming use:** A use that was lawfully established and maintained but which, because of the application of a zoning ordinance, no longer conforms to the use regulations of the zone in which it is located.

**Notary:** A legal officer with specific judicial authority to attest to legal documents usually with an official seal.

**Notary Public:** A legal officer with specific judicial authority to attest to legal documents, usually with an official seal.

**Notice to plead:** A formal notice given to the defendant that an answer to a complaint must be given within a prescribed time.

**Notice to quit:** A notice given by a landlord to a tenant to vacate property.

**Null and void:** Not legally binding.

**Oath:** A solemn affirmation to tell the truth.

**Offer to lease:** An expression of interest to lease which includes a delineation of the price and terms.

**Operating lease:** A lease in which the lessor does not transfer substantially the entire benefits and risks incident to ownership of property.

**Option to lease:** A contract given, for a consideration, at an agreed price and terms, for a stipulated period of time.

**Order of immediate possession:** An order of the court allowing the condemnor possession and use of the property being condemned before a judgment is rendered, on deposit with the court by the condemnor of reasonably adequate security for payment of just compensation.
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**Overhead easement:** The right to use the space at a designated distance above the surface of the land as for power lines, avigation and air rights.

**Parcel:** A piece of land of any size in one ownership. (*The Dictionary of Real Estate Appraisal*).

**Parcel plat:** 1. A map of a single parcel of property or a portion of the property, showing the boundaries, areas, remainder, improvements, access, ownership and other pertinent information. 2. A map that illustrates clearly and accurately the relative location of project features to the affected property and which provides sufficient information to meet the needs of project participants.

**Parent property:** In condemnation, the portion of a property that has unity of ownership, contiguity and unity of use, the conditions that establish the larger parcel for valuation purposes. In many jurisdictions, contiguity is sometimes subordinated to unity of ownership and unity of use.

**Partial interest:** Divided or undivided rights in real estate that represents less than the whole. (*The Dictionary of Real Estate Appraisal*).

**Partial release:** A release of a portion of property covered by a mortgage. Partial taking: The acquisition of a part of a real estate parcel or a real property interest for public or quasi-public use under eminent domain.

**Patent:** 1. A grant of some privilege, property, or authority made by the government or sovereign of a country to one or more individuals. 2. A document or title issued by a government or state for the conveyance of some portion of the public domain to an individual.

**Percentage lease:** A lease, which provides that part or all of the rent will be based on a percentage of the volume of business, usually associated with a guaranteed minimum rent.

**Permanent easement:** 1. An easement conveyed in perpetuity. 2. An easement that lasts forever.

**Personal property:** 1. Property that is movable. 2. Property that is not permanently attached to, or part of, the real estate. 3. Identifiable tangible objects that are considered by the general public as being “personal” for example, furnishings, artwork, antiques, gems and jewelry, collectibles, machinery and equipment. (*USPAP*). 4. All tangible property that is not classified as real estate. (*USPAP*).

**Pipeline easement:** The right to use the property of another for the construction, operation and maintenance of a pipeline.

**Plaintiff:** A person who brings an action. In condemnation cases it is the condemnor.

**Planting easement:** An easement for reshaping roadway areas and establishing, maintaining and controlling plant growth.

**Plat:** An individual property map that shows property lines and other features (e.g., buildings and topographic elements).

**Police power:** 1. The right of government to restrict property rights to protect public health, safety and welfare.
**Appendix B - Canadian and United States Glossary**

**Potentially responsible party:** Any individual or company including owners, operators, transporters or generators, potentially responsible for or contributing to a spill or other contamination at a Superfund site.

**Power of attorney:** An instrument containing an authorization for one to act as the agent of the person who grants the power of attorney.

**Power of sale:** A clause inserted in a will, deed of trust, or trust agreement authorizing the sale or transfer of land in accordance with the terms of the clause.

**Prescription:** The acquisition of property rights by an adverse user.

**Prescription easement:** The right to use the property of another, which is established by exercising this right over a period of time.

**Pretrial conference:** A conference preceding a trial attended by the judge and counsels where an effort is made to simplify and expedite disposition of the case by clarifying the issues and other technical matters.

**Profit a prendre:** A license to enter property of another combined with a grant of the right to take and remove some natural product (e.g., mineral deposits) from that property.

**Property:** Anything, real or personal, that is owned.

**Proximity damage:** 1. Damage to a property arising as a consequence of the nearness or proximity of a project (e.g., highway) to the property. 2. The diminution in property value as a result of the proximity of a highway or other construction project to a property.

**Public hearing:** A formal meeting where officials hear and consider the public’s views and concerns about an action, project, or proposal.

**Public use:** A use benefiting the entire community.

**Purchase money mortgage:** A mortgage given by the purchaser to the seller in lieu of cash as a part of the price paid for property.

**Quantum meruit:** A principle under which a person should not be obliged to pay, nor should another be allowed to receive, more than the value of the goods or services exchanged.

**Quasi:** Having some resemblance, usually by possession of certain attributes.

**Quiet enjoyment:** A covenant that the tenant or grantee of an estate shall enjoy the possession of the premises in peace and without disturbance by defective title or hostile claimants.

**Quiet title:** A court action brought to establish ownership Quitclaim deed: A deed conveying, without warranty, any title, interest, or claim the grantor may have in the property conveyed.
Appendix B - Canadian and United States Glossary

**Real property:** 1. The interests, benefits and rights inherent in the ownership of real estate. (*USPAP*). 2. The bundle of rights.

**Real property transaction:** Any acquisition or disposal under the Federal Real Property and Federal Immovables Act.

**Record of Decision:** A public document that explains which cleanup alternatives will be used at National Priorities List sites where, under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), Trust Funds pay for the cleanup.

**Recordation:** The process of filing a copy of a deed or other document concerning land that creates a public record of changes in ownership of all property.

**Redeem:** 1. To buy back. 2. To free from a lien by payment of the secured amount. 3. To remove an obligation by payment. 4. The act of buying back property after a mortgage foreclosure, tax foreclosure, or other execution of sale.

**Release:** Any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment of a hazardous or toxic chemical or extremely hazardous substance.

**Release clause:** A stipulation that upon payment of a specific amount of money to the holder of a trust deed or mortgage that the lien on a specific property will be removed from the blanket lien on the entire involved area.

**Relinquishment:** 1. The release or quitclaim of an easement to the underlying fee property owner. 2. The conveyance of a portion of a transportation facility from a state transportation agency to another government agency for transportation purposes. (*The Dictionary of Real Estate Appraisal*).

**Renewal option:** The right of a lessee to extend the lease for an additional period of time under specific terms.

**Reservation:** A right retained by a grantor in conveying property.

**Resolution ordering acquisition:** A formal resolution adopted by the governing board of the condemning agency. It is a prerequisite to filing a condemnation action and is conclusive evidence of the necessity of the public improvement and the necessity of the specific property being acquired.

**Respondent:** 1. In the appeal of a case, the party who contends against the appeal. 2. The party who prevailed in the lower court.

**Response action:** 1. Generic term for actions taken in response to actual or potential health threatening environmental events (e.g., spills, sudden releases and asbestos abatement and management problems). 2. A Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) authorized action involving either a short-term removal action or a long-term removal response. This may include but is not limited to: removing hazardous materials from a site to an Environmental Protection Agency approved hazardous waste facility for treatment, containment or treating the waste on-site, identifying and removing the sources of ground-water contamination and halting further migration of contaminants.
Appendix B - Canadian and United States Glossary

**Restriction:** The restrictions and prohibitions placed on the property owner from doing certain things relating to the property.

**Restrictive covenant:** An agreement restricting the use of property which constitutes part of the conveyance and which is binding on subsequent purchasers.

**Resumption:** In some Crown grants, the right of the Crown to recapture property or some part of it for certain purposes (e.g., road construction).

**Retrocession:** Return of administration and control of property to its original Crown owner once it is no longer required to support its specified program use.

**Revaluation lease:** A lease that provides for a periodic review of rent based on a reevaluation of the property.

**Revenue lease:** A lease type when the agency leases to another party for a consideration.

**Reversion:** 1. The right of the lessor to receive the property back at the end of the lease term or at the end of the holding period. 2. The lump sum benefit that the investor will receive at the end of the investment.

**Right:** The interest one has in real estate.

**Right of access:** The right of ingress to and egress from one’s property to a public road. The right may be actual or implied. Access is a private right as distinguishable from the public’s rights.

**Right of entry:** The right to enter on the property of another for construction purposes prior to the completion of the acquisition process.

**Right of immediate possession:** The right to occupy property for public purposes, after preliminary steps for acquisition have been taken but before final settlement.

**Right of survey entry:** The right to enter on property temporarily to perform surveys and other investigations (e.g., soil boring) for a proposed public improvement.

**Right of way:** 1. The right to pass across the lands of another. 2. Land or property, or an interest in land or property for transportation purposes (e.g., roads, public transport, utilities, etc.).

**Riparian rights:** The rights of an owner of water fronting property to use the water.

**Sandwich lease:** A lease in which an intermediate, or sandwich, leaseholder is the lessee of one party and the lessor of another. (*The Dictionary of Real Estate Appraisal*).

**Scenic easement:** An easement for conservation and development of roadside views and natural features.

**Seisin:** The legal possession of property by a freeholder.

**Service:** Legal notice delivered to one, which provides notice of a legal action or other proceeding.
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**Servient estate**: The property subject to an easement.

**Servient tenement**: The land which suffers or has the burden of an easement.

**Setoff rule**: The rule governing the setting off of benefits. The federal courts and those of some states allow setoff of benefits against both the value of the property taken and the damages to the remainder property. In other jurisdictions the rule allows the setting off of benefits against only the damages to the remainder property.

**Severance damages**: Damages to the remaining property caused by a partial taking.

**Sight easement**: An easement for maintaining or improving sight distances.

**Slope easement**: An easement for cuts or fills.

**Solicitor**: 1. A person who is legally permitted to transact business on another’s behalf. 2. A person who advises and represents clients as to legal rights and obligations.

**Sovereign**: The supreme powers of a state that are totally independent and free from any outside political control or authority over their decisions.

**Special provisions**: Special directions, provisions, or requirements peculiar to the project under consideration and not otherwise thoroughly or satisfactorily detailed or set forth in the specifications.

**Special warranty deed**: A deed in which the grantor warrants the title against defects arising after purchase but not against defects arising before that time.

**Specific performance**: An action that compels a person to carry out the terms of the agreement or contract.

**Specifications**: A general term covering all directions, provisions and requirements contained within a specifications manual.

**Spot zoning**: A zoning provision that permits limited and specific modifications to allow uses that would otherwise not be permitted.

**Statute**: A law approved by a legislature or parliament.

**Statute of limitations**: A statute prescribing time limitations on the right of action in certain causes.

**Statutory right of way**: A right of access on, over, or under real property defined in legislation.

**Stipulated judgment**: A judgment that results from an agreement by the parties rather than from a court decision.

**Stipulated settlement**: A negotiated settlement that is reached after the initiation of condemnation proceedings but before trial.
**Subordination clause:** A clause in a junior or second lien acknowledging the superiority of priority for prior liens. A subordination clause may be used in a first deed of trust permitting it to be subordinated to subsequent liens as, for example, the liens of construction loans.

**Subsurface easement:** The right to use the space at a designated distance. Summons: An initial document giving the defendant notice of the claim and an opportunity to defend against it.

**Superfund:** The program operated under the legislative authority of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) and the Superfund Amendments and Reauthorization Act (SARA) that funds and carries out Environmental Protection Agency solid waste emergency and long-term removal and remedial activities. These activities include establishing the National Priorities List, investigating sites for inclusion on the list, determining their priority and conducting and/or supervising cleanup and other remedial actions.

**Surface easement:** The right to use the surface of the land as for access and flowage.

**Taking:** The process of obtaining right of way by negotiation or through eminent domain to construct or support a project.

**Temporary easement:** An easement granted for a specific use for a limited time.

**Tenancy at sufferance:** An estate in real estate in which a person who formerly held an estate in the property wrongfully continues in possession after the estate’s termination.

**Tenancy at will:** An estate in real estate that has no specific duration and is terminable at the will by either the landlord or tenant. The relationship is personal in its nature and terminates at the death of either party.

**Tenancy by the entirety:** An estate in real estate created by a conveyance to husband and wife, where each becomes seized and possessed of the entire estate. Upon the death of one, the surviving spouse owns the whole.

**Tenancy from period to period:** An estate in real estate that automatically renews at the end of each period unless, prior to the end of any given period, appropriate notice to terminate has been given.

**Tenancy in common:** An estate in real estate held by two or more people, each having equal and undivided interest but without any right of survivorship.

**Tenancy in severalty:** An estate in real estate held by one owner.

**Tenant:** One who holds possession of the real estate of another.

**Tenure:** The type of interest and the associated rights in real property outlined in an agreement.

**Term:** A length of time for which money is loaned.

**Testament:** 1. A written document providing for the disposition of a person’s property after death. 2. A will.

**Testate:** The condition of leaving a will at death.
Testator: One who makes or has made a testament or will.

Time is of the essence: The requirement of punctual contract performance.

Title: 1. The evidence of a person’s right to own or possess property. 2. The quality of ownership as determined by a body of facts and events.

Title, certificate: A document based on a title search stating that the title or interest in property is vested in a designated party and showing outstanding liens, charges, or other encumbrances, if any.

Title guarantee: A title, the validity of which is insured by an abstract, title, or indemnity company.

Title insurance: Insurance against loss or damage resulting from defects or failure of title.

Title opinion: An analysis and interpretation of a title search concerning present ownership, encumbrances, clouds on title and other infirmities. (The Dictionary of Real Estate Appraisal).

Title report: A report showing the condition of title before a sale or loan transaction.

Title search: An investigation of public records and documents to ascertain the history and present status of title to a property, including ownership, liens, charges, encumbrances and other interests.

Torrens land registration system: A system of land registration in which the government authority issues title certificates covering the ownership of property which tend to serve as title insurance.

Torrens title: A certificate of title issued by a public authority under a system where all deeds and documents affecting real property are registered.

Township: A territorial subdivision six miles square and containing 36 sections.

Trade fixtures: Articles placed in or attached to rented buildings by a tenant to help carry out the trade or business of the tenant. (USPAP).

Trespass: Unlawful interference with another’s property.

Trust deed: An instrument used in many jurisdictions in place of a mortgage. Property is transferred to a trustee by the borrower (trustor) in favor of the lender (beneficiary) and reconveyed upon payment in full.

Unauthorized occupancy: The sustained use of property without authority.

Underlying fee owner: The owner of fee title to a parcel encumbered by an easement.

Undivided interest: The interest of a tenant in common.
Appendix B - Canadian and United States Glossary

**Unity of title:** The rule, both in federal and state courts, that states that to be considered part of the remainder property, the property must be held by the condemnee under the same quality of ownership as that from which the taking occurs.

**Unity of use:** The rule, both in federal and state courts, that states that to be considered part of the remainder property, the property must be devoted to the same use as the parcel from which the taking is made.

**Valid:** Having binding force. Legally sufficient and authorized by law.

**Venue:** The location of a judicial action, hearing, or proceeding.

**Void:** Having no force or effect.

**Voidable:** That which is enforceable, valid and binding until adjudged void.

**Waiver:** 1. An intentional relinquishment of some right or interest. 2. The renunciation, abandonment or surrender of some claim.

**Warranty deed:** A deed warranting that the grantor has a good title free and clear of all encumbrances and will defend the grantee against all claims.

**Water rights:** The right to use, extract, or dispose of water on a property.

**Witness:** To subscribe one’s name to a deed, will, or other document for the purpose of attesting to its authenticity.

**Will:** A written and signed statement, made by an individual, which provides for the disposition of the person’s property upon death.

**Words of limitation:** Words in a conveyance or in a will, which set the duration of an estate.

**Writ:** An official court document, which commands the person to whom it is addressed to do something specific. That “person” is typically either a sheriff, who may be instructed to seize property, or a defendant, who is commanded to answer the charges in a legal action.

**Zoning by-law:** A law controlling the use of land and the improvements on the land.

**Zoning ordinance:** A law—generally city, village, town, or county—controlling the use of land and the improvements on the land.
Appendix C

Exercise Answers
Appendix C - Exercise Answers

Exercise No. 1

Take a few minutes to individually develop a definition of “contract.” Then discuss your definition with your teammates to develop a single definition that will be written on flip chart paper and taped to the wall.

A contract is an agreement between two or more parties that creates in each party a duty to do or not to do something and a right to performance of the other’s duty or a remedy for the breach of the other’s duty.

Exercise No. 2

Practicing Law Without a License

You will be divided up into groups of 4. Each person in your group will be assigned to one of the four scenarios provided in this exercise. Please read a scenario, develop an individual opinion, and then discuss your answer to the specific question with your teammates. After each scenario is discussed at your table, the entire group will process the scenario. Continue until all four scenarios have been discussed.

1. Ann Shumaker owns two properties, both located on Dunn Avenue. 20 Dunn Avenue is a duplex and 22 Dunn Avenue contains four units. Michael Lawton approaches Ms. Shumaker and offers her $140,000 for 20 Dunn Avenue. Ms. Shumaker thinks that $140,000 is a good offer, and she immediately accepts Mr. Lawton’s offer. After delivery of the deed, Ms. Shumaker hands Mr. Lawton two sets of keys. Mr. Lawton asks, “Where are the other two sets?” At that moment, Mr. Lawton realizes that he purchased the duplex rather than the four-unit house. Mr. Lawton sues Ms. Shumaker for breach of contract.

A. Is there a valid contract for sale of the four-unit building?

There was not a contract to sell 22 Dunn Avenue, the 4-unit building. There was never “meeting of the minds” between Ms. Shumaker and Mr. Lawton for the sale of that property. Mr. Lawton approached Ms. Shumaker and offered her $140,000 for 20 Dunn Avenue. There was no indication that Mr. Lawton was really wanting to buy 22 Dunn Avenue and no indication of misrepresentation on the part of Ms. Shumaker. Lawton made a unilateral mistake that Ms. Shumaker would not have been aware of. Furthermore, the concept of “caveat emptor” applies as Mr. Lawton could’ve inspected both properties to check the addresses to make sure he was purchasing the 4-unit building.

B. Is there a valid contract for sale of the two-unit building?

After delivery of the deed, 20 Dunn Avenue, the 2-unit building, is sold. If there was a contract, it has been fulfilled. Whether or not there was a contract, the property has been sold. Once the deed is delivered, the sale is complete. Lawton now is the owner and there is no pending contract to sell it to anyone.

C. Would it have made any difference if Ms. Shumaker had said “Ah, that’s the duplex,” when offered the $140,000 and the agreement had been concluded on that basis?

If Ms. Shumaker had made that statement, it would have made it very difficult for Mr. Lawton to argue a mistake defense to the sale of 20 Dunn Avenue. The statement would’ve made it much easier for Ms. Shumaker to argue there had been “a meeting of the minds” and that Mr. Lawton had intended to purchase 20 Dunn Avenue.
Appendix C - Exercise Answers

The statement would have made it much easier for Ms. Shumaker to argue there had been “a meeting of the minds” and that Mr. Lawton had intended to purchase 20 Dunn Avenue.

2. Jason Raymond owns a 1913 Red Rooster Roadster, which is generally believed to be the only one in existence. A local mobster wants the car and offers Mr. Raymond the market value of $95,000. Mr. Raymond says that he is not interested in selling. The local mobster tells Mr. Raymond that he will tell his “lovely wife about certain ‘things,’ which perhaps it might be better if she didn’t know, if you don’t sell me the car.”

Mr. Raymond immediately agrees to sell the car, and an agreement is prepared and signed whereby Mr. Raymond agrees to sell the local mobster the only 1913 Red Rooster Roadster for its market value of $95,000. Two days after the title transfer, a farmer in Ohio discovers six 1913 Red Rooster Roadsters under the hay in one of his barn’s haymows. The Roadsters have been there since 1913, and all are in excellent condition. The market value for 1913 Red Rooster Roadsters immediately drops from $95,000 to $25,000.

A. Regarding the purchase from Mr. Raymond, could the local mobster legally force Mr. Raymond to sell the car?

It is very unlikely that the mobster could compel Mr. Raymond to sell the car. While the mobster could argue that he has a written contract to purchase it, the deal was only agreed to after the mobster indicated that he would tell Mr. Raymond’s wife “certain things” she is better off not knowing. This statement indicates the mobster is trying to exercise undue influence and unconscionable behavior over Mr. Raymond through blackmail. Mr. Raymond could easily use this as a defense to contract formation.

B. Could the local mobster now legally force Mr. Raymond to buy the car back for $95,000?

No. Even if the initial agreement was deemed valid despite the undue influence, title to the car was transferred to the mobster before the drop in value. The agreement is now complete and Mr. Raymond has no responsibility to cover any loss in value.

C. Are there any other possible problems for Mr. Raymond? The local mobster?

The agreement describes the car as “the only 1913 Red Rooster Roadster,” in existence, which in fact, it wasn’t. The mobster could allege that Mr. Raymond hasn’t delivered on his half of the bargain, because he did not sell “the only 1913 Red Rooster Roadster.” But Mr. Raymond could probably successfully argue that both parties believed it was the only one, so, he fulfilled the contract as it was understood at the time. In the alternative, he could argue there was no contract formed on the grounds of mutual mistake, as neither party was aware of the other Red Rooster Roadsters.

D. What would you do if you were Mr. Raymond? The local mobster?

If Mr. Raymond had a sentimental attachment to the car he sold the mobster and he wanted it back, he may argue that the agreement for the car was made under the mobster’s undue influence and unconscionable behavior. Therefore, no contract was ever formed and he should get the car back. (Of course, Mr. Raymond would have to give the mobster back the $95,000 payment.) If Mr. Raymond wanted to keep the $95,000, he might decide to acquire one or more of the newly discovered roadsters for $25,000 a piece.
Appendix C - Exercise Answers

3. Leonard Nicholson operates a car leasing business known as Nicholson’s Rent-A-Car. One morning his friend George Lake comes to his office and says that he needs a new car for a company he is starting. Mr. Nicholson says that he will order Mr. Lake a new car. When the car arrives, Mr. Nicholson calls Mr. Lake and tells him that his car has arrived. He asks Mr. Lake to come in and sign the lease agreement. Mr. Lake goes to Nicholson’s office and is asked in what name he wants the car’s title. “Oh, it doesn’t matter, either my name or the company’s name,” Mr. Lake states. “My company’s name is High Water Enterprises Limited. I incorporated last week.” The lease agreement is prepared in the name of George Lake. Mr. Lake signs the agreement “High Water Enterprises Limited, George Lake.” Three months later, High Water Enterprises Limited files for bankruptcy and Mr. Nicholson duns Mr. Lake for two late payments.

“Sorry about that, Len,” Mr. Lake says, but as you know, that is a company car.” “No it isn’t,” replies Mr. Nicholson, “you gave me a choice and you are named as lessee on the contract. In addition, you did not sign it ‘High Water Enterprises Limited per George Lake;’ you just signed your name without indicating any authority to do so.”

A. Is the company bound by Lake’s signature on the contract?

Before answering this question, it would be helpful to know whether the articles of incorporation or other documents for High Water Enterprises Limited gave George Lake the authority to lease a vehicle for the corporation. If the company gave express authority to Lake to lease the car on its behalf, it could be bound. In this event, Mr. Nicholson could argue that Lake was acting as an expressly appointed agent for the company. This is specially true since Mr. Lake stated that the car was for company use and stated the car could be titled in his company’s name. Conversely, if the company did not give Lake this express authority, it might not be bound.

However, even if Lake did not have this formal corporate authority, it might be alleged that Lake had apparent or implied authority to lease the car on behalf of the company due to his ownership of the corporation, which he discussed with Mr. Nicholson. If the court found this to be true, the company could be bound.

Ultimately, since the company is in bankruptcy court, the bankruptcy judge will decide the matter.

B. Is Lake individually bound by the manner in which he completed the contract?

Mr. Nicholson could argue that Lake included his own name on the signature line of the lease contract and that the lease was prepared with Lake named personally as the lessee. Furthermore, Nicholson would argue that Lake had stated that it was okay to prepare the lease in his name only. Therefore, Nicholson would state Lake is individually bound.

However, Lake could argue that he was not acting in a personal capacity when he executed the agreement and that Nicholson was fully informed of that. Specifically, Lake stated that the car was for company use. Lake may also argue that since the contract was signed “High Water Enterprises Limited, George Lake” he is not personally liable because the company’s name was included on the signature line. However, Mr. Nicholson argues that Lake did not indicate the lease was being signed in a corporate capacity as the lease was not signed “High Water Enterprises Limited, per George Lake”.

Again, since the company is in bankruptcy court, the bankruptcy judge will ultimately decide the matter.
4. Joe Spina is having a few beers in his favorite tavern. He has with him a large stuffed owl, which he has placed on the bar. A number of patrons gather around and admire the owl. The tavern owner, Sam Lowe, notices the gathering and walks over to see what is causing all the excitement. Sam is in the process of installing a new mirror over the bar and thinks the stuffed owl would look great as a centerpiece.

Sam asks Joe to step into his private office. They go in together and discuss, at some length, the possible sale of the stuffed owl. During the course of the discussion, Sam says to Joe, “I see your mug is empty, I’ll get you another beer.” Sam gets and pours Joe another beer. The two continue to discuss the finer points about the stuffed owl until Joe’s mug is empty again. Sam stands up and says; “I’ll give you 20 bucks for the owl.”

“Not on your life,” an insulted Joe answers. “I won’t take less than 50.”

“You’re nuts,” Sam shouts, and as Joe gets up to leave, Sam continues, “and you owe me $2.75 for the beer.”

Joe stalks angrily off the premises. On his way home, he meets a biologist friend who recognizes the owl as a rare species and offers Joe $150. Joe says that he’ll think it over.

The next day, Joe walks back into Sam’s tavern and Sam throws a $50 bill on the bar. “What’s that for?” Joe questions. “That’s for your owl. Can I have it this afternoon?” asks Sam. “No, I won’t sell it to you.” Joe gets up and walks out.

“Officer, arrest that man,” shouts Sam to a passing police officer. “He owes me $2.75 for a beer he had yesterday.”

Joe sues Sam for false arrest and Sam brings a counter claim for the stuffed owl.

A. Does Joe have to pay for the beer?

As per the exercise, during the course of the discussion, Sam says to Joe, “I see your mug is empty, I’ll get you another beer.” Sam refills the beer on his own accord and at no time does Joe order the refill. Sam’s refilling of Joe’s mug is more of a gift and not the result of an agreement to pay for the beer. Sam only asks for payment after Joe refuses to sell the owl to him, not before. Although it could be argued that Joe did drink the refill and may have a moral duty to pay for it, moral obligations are not the same as legal ones. Therefore, it appears Joe does not legally have to pay for the beer.

B. Is Sam entitled to the stuffed owl?

As per the exercise, after both Sam and Joe have been drinking, Sam stands up and says; “I’ll give you 20 bucks for the owl.” “Not on your life,” an insulted Joe answers. “I won’t take less than 50.” “You’re nuts,” Sam shouts.

The discussion between Sam and Joe about the sale of the owl comes about after both men have been drinking. Therefore, either one or both of them may have been inebriated at the time. If either or both were inebriated, neither one may be competent to make an agreement. Furthermore, Sam’s offer to pay $20 bucks for the owl and Joe’s response are more like an “expression of an intention” to enter into negotiations. It is merely an invitation to begin bargaining and not a final agreement as no firm price has been agreed to. Thus, no final deal was reached. Sam is not entitled to the stuffed owl.
Exercise No. 3

Lease Agreement Negotiations
In negotiating a commercial lease agreement, the following exchange occurs:

1. The Tenant offers to lease 2,500 square feet of space at $2,250 per month plus 2% of net profits for three years. The Landlord will pay all taxes and maintenance.

2. The Landlord counteroffers with 2,000 square feet of space at $2,250 per month plus 5% of net profits for two years. The Landlord will pay all taxes but the Tenant will pay $125 per month for maintenance.

3. The Tenant counteroffers with 2,000 square feet at $2,000 per month plus 3% of net profits for two years. The Landlord will pay the taxes and the Tenant will pay $125 per month for maintenance.

4. The Landlord counteroffers with 2,000 square feet at $2,250 per month plus 2% of net profits for two years. The Landlord will pay the taxes and the Tenant will pay $125 per month for maintenance.

Have the parties entered into a valid contract? Why or why not?

As was discussed earlier, an offer is an expression of the willingness to contract on certain terms and is made with the intention that, once accepted, it will become binding. The offer must contain the essential terms of the agreement. The offer must be received by the other party. The party making the offer is the offeror and the party receiving the offer is the offeree.

The tenant and landlord have made four statements during their lease negotiations that meet the above criteria. However, after receiving an offer, if the offeree presents a counteroffer, the counteroffer terminates the previous offer. Once an offer is terminated, it no longer exists.

In this exercise, there are a series of three counteroffers that terminate previous offers made by the parties. But there is no final offer that is accepted by both the landlord and tenant. Therefore, the parties are still negotiating and have not entered into a valid contract.

Exercise No. 4

Torts
Disclaimer: The following vignettes are for illustration only and are not presented as universal in their application. Also, the offered solutions are only one person’s opinion.

This exercise is meant to move quickly. Please take a minute or two to read a story and then form an opinion as to liability. After a few minutes, the entire group will discuss the story. This process will continue until all six stories have been discussed.

Story No. 1
Roger Thompson, on his delivery route, drives 50 miles out of his way to purchase and consume a specially brewed beer. On his return, his vehicle hits Florence Lee.
Appendix C - Exercise Answers

A. Is Roger’s company liable?

A. Roger’s company is probably not liable. Roger’s “frolic” had no relationship to the scope of his employment.

Roger, on his delivery route, stops for lunch. While driving through the drive-thru, Roger hits Florence.

B. Is Roger’s company liable?

B. Probably yes. Stopping for lunch while on a delivery route is incidental to Roger’s job, and Roger’s employer may be held liable for any injury caused by Roger during his detour.

The overriding question is: Was Roger’s activity within the scope of employment?

For the wrongs to be imputed, they must have occurred within the scope of employment. Activities are within the scope of employment if they occur within the course of carrying out job requirements. Some activities are clearly within the scope of employment, while other activities are ancillary to the scope of employment.

Story No. 2

Ken Pulver decides to dry his laundry outside in the fresh air. Ken hangs a line 10 feet off the ground. His friend, Bill Wadsworth, comes to visit Ken on his novelty bicycle that is eight feet high. Bill hits the clothesline and is injured when he becomes entangled in Ken’s laundry.

Is Ken liable?

Probably not. Ken has provided reasonable care, because it was not foreseeable that somebody would ride an eight-foot bicycle onto his property.

Story No. 3

A doctor is walking down the street and witnesses a car accident. The doctor keeps on walking.

Has the doctor engaged in negligent behavior?

Probably not. The doctor is under no duty to act to assist others who need assistance. A failure to assist is not a breach of the duty of reasonable care, and therefore, it is not negligence. However, while there is no duty to assist others, once an individual begins to assist, he/she may become liable if he/she fails to follow through. Failure to follow through in assisting is known as a “failed rescue.” The duty to follow through with a rescue arises from the idea that other would-be rescuers may not attempt a rescue if they see someone else attempt the rescue first. Additionally, some states have Good Samaritan statutes that protect medical and rescue personnel from liability in the event that injury to the person being rescued does occur.

One more point: Family members owe other members of their family a “duty of rescue” if the assistance does not endanger the life of the rescuing family member. Similarly, operators of public transportation, such as airlines, owe customers a duty of rescue. The reason for holding operators of public transportation liable is that they have taken their customers into their care and have great control over the customers’ surroundings and well-being.
Appendix C - Exercise Answers

Story No. 4
As a prank, Fran Nelson pulls the chair from under Charlie Wagner as Charlie is about to sit down. Charlie falls on the floor and injures himself.

A. Is Fran liable?

A. But for Fran’s action, Charlie would not have been injured. Therefore, Fran is most probably liable. This is an example of causation in fact, which means that Fran’s actions were a direct cause of the injury.

Continue on please...

As a prank, Fran Nelson pulls the chair from under Charlie Wagner as Charlie is about to sit down. On his way down, Charlie grabs at a table and a very valuable vase falls and breaks.

B. Is Fran liable for the broken vase’s value?

B. While Fran’s prank is likely to be found the causation in fact of the broken vase (i.e., but for Fran’s actions the vase would not have been broken), to determine whether or not Fran should be held liable for the damage, it must be decided whether or not Fran was the proximate cause (i.e., the court must decide if it is just or fair to hold Fran liable for the vase falling to the floor). A court may consider whether or not a reasonable person could have foreseen that the vase would fall as a result of Fran’s action. Alternatively, a court may consider whether or not the damage to the vase was a natural result of Fran’s pulling the chair out from under Charlie.

Story No. 5
Marsha Pierce is walking down the street and steps into a pothole. Marsha has osteoporosis. Although a healthy individual would have only sprained his or her ankle, Marsha breaks her hip.

Is the city responsible for all of Marsha’s injuries?

In the case that an injured party has a condition that makes him or her susceptible to injury that is in excess of what an ordinary person might incur, the city is probably liable for all injuries that result.

Story No. 6
Mickey Henderson, an experienced skier, skies down a slope that has numerous moguls. Although Mickey has skied the slope many times and the slope was no different than expected, Mickey loses concentration and injures a knee on one of the moguls.

Is the ski resort liable for Mickey’s injuries?

The resort is probably not liable for Mickey’s injury because Mickey knowingly and voluntarily engaged in the risk of skiing on the slope. There is an implied assumption of risk that Mickey knew about.
Appendix C - Exercise Answers

Exercise No. 5

Real Estate Torts

At your tables, please read and discuss the following three situations.

1. Your company, the Power Company, owns a tract of land that it intends to develop as a generation site. Development is currently on hold. One of your electric distribution lines crosses the property. On your annual property inspection, you found that soil erosion has created access to a cave. The cave has become a sleeping area for the homeless. Unfortunately, several teenagers on motorcycles have begun to harass the homeless individuals. Your maintenance supervisor suggested: (1) stringing a cable from trees on either side of the access drive to the property, (2) placing boards with embedded nails to flatten the motorcycles tires, and (3) erecting a chain link fence with a locked gate.

What category of visitors are the homeless and the motorcyclists? Do you owe them a duty of care? What are your responses to the maintenance supervisor’s suggestions?

You owe each visitor a duty of care. That duty will vary depending upon who is visiting. In this case, the homeless and the teenagers are both trespassers so you owe each of them the duty to not set traps. The first suggestion of stringing a cable from trees on either side of the access drive to the property depends whether the cable is visible and strung at a height typical for stopping cars and trucks from access (probably meets the duty of care) as opposed to stringing it at a higher level with the intention of “clotheslining” someone with the intention to knock the teenagers off of their bikes (likely breaches the duty of care).

The second suggestion of placing boards with embedded nails is more like setting a trap and is likely to breach the duty of care. The third suggestion of adding a fence with a locked gate likely meets the duty of care.

2. You work in the Sewer Company’s main office building. A sinkhole has undermined the sidewalk that leads from the visitor parking area to the customer service office.

What classes of visitor would you expect to use that sidewalk and what duty of care do you owe them? Does the fact that it is a sinkhole raise any issues? What should be done about the situation?

Here you would expect invitees arriving for meetings with employees, customers to pay a bill or otherwise do business with the company in person to use the sidewalk near the sinkhole. The company owes the highest duty of care to prevent injuries from the sinkhole. The company should restrict the area around the sinkhole, post warning signs, and may even want to have someone monitor the area during the times of the day when an invitee would visit the company, until the property is repaired.

The company should expect licensees such as vendors seeking to sell a product or service to the company to use the sidewalk as well. The company owes these individuals a duty to remove known dangers. The company is not likely able to simply remove the sinkhole, but it can and should restrict the area around the sinkhole, post warning signs, and take reasonable efforts to repair the property.

The company should also expect trespassers to use the sidewalk near the sinkhole, but its only duty to these individuals are not to set traps.
Appendix C - Exercise Answers

3. A licensed engineer inspects, but does not open all the boxes’ panels, on a humming utility company transformer box at the corner of your property. The engineer concludes that the humming is just random noise and that it doesn’t have any effect on safety. You tell a prospective purchaser what the engineer told you. The person buys the property and is subsequently electrocuted.

Are there negligence or fraud or misrepresentation issues? If so, what are they? Who seems to be responsible?

Licensed engineer: We are left to assume that a reasonable licensed engineer would open each of the panels on the box and that if he or she had done so, the engineer would have reached a different conclusion. If this is true, then there is a good argument that the licensed engineer was negligent. Based on this information, it would be difficult to say that the licensed engineer acted fraudulently.

You: not likely to be liable because you tell the prospective purchaser what the engineer tells you. Your liability changes if you actually know that what the licensed engineer tells you is wrong, but there is not indication that occurred here.

Exercise No. 6

The Liquor Store

Please read the scenario below and answer the questions.

Celeste Doyle owns three lots. She sells one lot to Carl Haskell with a covenant that states that the covenant runs with the land. The covenant specifies that no alcohol of any type may be sold on the property. Ms. Doyle then sells the remaining two lots to Diane Pulaski and Michael Kraus, as tenants in common. Three years later, Pulaski and Kraus agree that they will not use their properties for commercial purposes. Three more years pass, and Pulaski and Kraus sell to Larry Patterson. Mr. Patterson builds a liquor store.

A. Can Celeste Doyle, Carl Haskell, Diane Pulaski, and/or Michael Kraus obtain an injunction to stop the use of the property for a liquor store?

A. The question is what restrictions apply to the Patterson lots. Remember, only an owner of the benefited land may enforce covenants that run with the land — it is not a general right.

Liquor store. The statement of facts never mentions that any grantor (Doyle, Pulaski or Krauss) ever restricted alcohol sales use on the Patterson lots. Haskell never owned the Pulaski lots. Any argument by any of those four that liquor store sales are prohibited is unlikely to succeed.

B. Can any of them prevent the property from being used as a commercial establishment?

Commercial use. Pulaski and Kraus agreed not to use the Patterson lots for commercial purposes. The statement of facts does not say that this was a covenant, much less that it was a covenant that runs with the land. This appears to be nothing more than a personal covenant at best. (And it may not even have been that. Who was the promise made to? Was there any consideration?) It does not appear to be a covenant running with the land. It would not be enforceable on future owners of the property, and Pulaski and Kraus would not likely be able to prevent commercial use of the property. Doyle never made any promise with respect to the Patterson lots, and Haskell never even owned the Patterson lots, so neither of them would likely have any enforceable rights with respect to limiting such use.
Implied negative reciprocal covenants. Note: in some cases courts have implied covenants where they were not expressly created. This is a special situation and does not appear to apply here. Where a single owner of land undertakes a subdivision and evinces an intention to create a general scheme of development for that entire property in which the vast majority of the subdivided lots are expressly subject to certain restrictive covenants, future buyers of other non-restricted lots in that subdivision who have constructive knowledge of the restrictions can be held to those restrictions. Imagine a large subdivision where mobile homes are expressly prohibited on 11 of the 12 otherwise identical sections. The homeowners in the 11 expressly-restricted part of the subdivision have a colorable case that mobile homes should likewise be prohibited in the 12th section. However, the fact pattern in this case does not support the application of this doctrine (there is no general scheme of development for the entire property, nor do the vast majority of lots have the same restrictions).
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