

TABLE OF CONTENTS

<i>Table of Cases</i>	xi
Introduction	1
Chapter 1: The Agreement of Purchase and Sale	5
The Classification of Statements in a Contract – Introduction	5
The Nature of the Major Remedies	6
Contract Statements as Promises	9
The Classification of Misrepresentations	11
The Cause of Action for Rescission	13
Negligent Misrepresentations	15
The Hierarchy of Promises and Representations	17
Distinguishing “Conditions” as Contingencies and as Promises	20
The Nature of Conditions Precedent	25
Turney v. Zhilka and the Birth of the True Condition Precedent	27
The Development of the Law of True Conditions Precedent	30
Dynamic Transport Ltd. v. O.K. Detailing	32
Discretionary Conditions Precedent	37
An Illustration of the Importance of Contract Term Classification	38
Contract Terms and Caveat emptor – Introduction	41
“Merger”, Doctrine of Equitable Conversion and Closing a Transaction	43
Merger, Caveat Emptor, Fraser-Reid v. Droumtsekas, and Nesbitt v. Redican	45
Nesbitt v. Redican	49
Fraser-Reid v. Droumtsekas, Continued	50
Current Law on Caveat Emptor	51
Caveat Emptor Case Law	53
Exceptions to Caveat Emptor	54
Disclaimer Clauses and Exculpatory Provisions	56

Lord Denning's Debunked Theory of the Fundamental Breach.....	57
Tercon Contractors Ltd. v. B.C. and Exculpatory Provisions	59
Chapter 2: Transfer of Title.....	65
The Problematic of the Transfer of Title	65
The Statute of Frauds.....	66
A Description of the Standard Form Agreement of Purchase and Sale.....	67
A Digression about How Purchasers Pay the Purchase Price.....	70
The Standard Form Agreement of Purchase and Sale, a Description Continued	72
The Title Provision of the Agreement of Purchase and Sale.....	76
The Obligation to Convey Good and Marketable Title.....	84
Patent and Latent Defects and Title Objection	85
The Stieglitz Case.....	86
Stefanovska v. Kok	88
The Contextuality of Materiality	91
LeMesurier v. Andrus.....	92
The Vendors and Purchasers Act.....	98
Types of Title Requisitions.....	100
Majak Properties Ltd. v. Bloomberg	107
The Rescission, Annulment, or Cancellation Clause	110
Latent and Patent Defects of Title and of Quality	113
Tony's Broadloom and Floor Covering Ltd. v. NCM Canada Ltd.	113
Disclosure of Defects and Exceptions to Caveat Emptor	116
Lessons from Phinny v. Macaulay.....	118
Chapter 3: Real Estate Agents	125
The Role of Real Estate Agents	125
The Statutory Regulation of Real Estate Agents	128
The Law's Regulation of Real Estate Agents.....	132
The Fiduciary Obligations of a Real Estate Agent	137
D'Atri v. Chilcott.....	139
Code of Ethics.....	141
The Watershed Case of Knoch Estate v. Jon Picken Ltd.	144
Phillips v. R.D. Realty Ltd.....	150
The Relationship between the Vendor's Agent and the Purchaser	156
Olsen v. Poirier	157

Table of Contents

Claims against Vendor's Agents and Vendors	158
The Relationship between the Purchaser and its Agent, Continued	159
Soulos v. Korkontzilas	160
Calandra v. B.A. Cleaners Ltd.	166
Jung v. Ip	167
Krawchuk v. Scherbak	168
 Chapter 4: The Registry Act	175
Introduction to the Registry Act	175
The Registry Act Problematic	177
The Registry Act Solution	181
Constructive and Actual Notice under the Registry Act	187
Overriding Interests and Special Cases	191
Sheltering	193
Investigation of Title under the Registry Act	193
Battison v. Ferrell	201
Ontario Hydro v. Tkach	202
Fire v. Longtin	204
1387881 Ontario Inc. v. Ramsay	209
 Chapter 5: The Land Titles Act	213
Introduction to the Land Titles Act	213
The Nature of Title under the Land Titles Act	215
Boundaries under the Land Titles Act	219
Actual Notice under the Land Titles Act	220
United Trust Co. v. Dominion Stores	222
Actual Notice under the Land Titles Act, Continued	225
Bank of Montreal v. Smith	228
Subsequent Registrations	230
The Treatment of Frauds and Forgeries under the Land Titles Act	232
Lawrence v. Wright	237
Amendments to the Land Titles Act to Address Fraud	239
Durrani v. Augier	239
Toronto-Dominion Bank v. Jiang	242
Rabi v. Rosu	242
Home Trust Co. v. Zivic	244
 Chapter 6: The Planning Act	247
Introduction to the Planning Act	247

Control of Subdivision under the Planning Act	248
The Scheme for Subdivision Control.....	249
The Planning Act Reference Case.....	254
Planning Act: Example Problems	256
The Prospective and the Retrospective Operation of the Planning Act	262
Planning Act: More Example Problems	263
Curative Provisions	267
Chapter 7: Remedies	271
Remedies for Abortive Real Estate Transactions	271
The Anticipatory Breach	272
Johnson v. Agnew.....	273
The Measure of Damages.....	283
100 Main Street Ltd. v. W.B. Sullivan Construction	285
Calculations of Damages: Examples.....	288
100 Main Street Ltd. v. W.B. Sullivan Construction, Continued	290
The Role of the Deposit	292
Purchasers' Damage Claims.....	293
Examples of Purchaser's Claim for Damages.....	296
The Anticipatory Breach Problem	297
Other Heads of Damages	298
Advantages and Disadvantages of Specific Performance	300
Paradigm Shift: The Availability and Effect of Specific Performance	303
Domowicz v. Orsa Investments Ltd.....	303
The Future of Specific Performance	309
306793 Ontario Ltd. v. Rimes	311
Semelhago v. Paramadevan.....	314
Cases after the Paradigm Shift	318
John E. Dodge Holdings Ltd. v. 805062 Ontario Ltd.....	319
Southcott Estates Inc. v. Toronto Catholic District School Board.....	321
Time of the Essence	322
The Rule from King v. Urban & Country Transport Ltd.....	330
Tender	332
Domicile Developments Inc. v. MacTavish.....	335
Synopsis	340

Chapter 8: Mortgage Remedies	355
The Equity of Redemption and the Development of Mortgage Remedies.....	355
Taking Possession of the Mortgaged Premises.....	361
The Private or Contractual Power of Sale	361
Section 6(1) of the Land Registration Reform Act	363
Second Mortgages	364
Comparative Advantages and Disadvantages of Mortgage Remedies	366
Comparing Sale with Foreclosure.....	368
Bank of Nova Scotia v. Dorval.....	370
Sale after Foreclosure Discharges the Debt.....	373
Action on the Covenant	373
Griffin v. Gibbons	378
Ongoing Liability and Novation.....	378
Malaviya v. Lankin	379
Financeamerica Realty Ltd. v. Holloway.....	381
National Trust Co. v. Fuciarelli.....	382
Examples of the Exercise of Mortgage Remedies	383
Examples involving Second Mortgages	385
Power of Sale	386
Service of the Notice of Power of Sale	389
Moratorium During Redemption Period	391
Assignment of the Mortgage after Notice of Sale	393
Resort to the Security	393
The Anti-Acceleration Provisions of the Mortgages Act.....	396
Taking Possession of the Mortgaged Premises.....	400
Completing the Power of Sale and the Standard of Care	401
Impeaching the Power of Sale and Professed Compliance	404
Professed Compliance and Botiuk v. Collison	407
 Chapter 9: Lawyer's Professional Responsibilities, Duty of Care, and Fiduciary Duties	 413
Lawyer's Professional Responsibilities: Introduction.....	413
General and Special Retainers	414
Joint Retainers	416
When Independent Legal Representation is Required.....	420
When Independent Legal Advice is Recommended	421
When Independent Legal Representation or Independent Legal Advice is Required.....	422

Real Estate Transactions

Duties to Clients	422
Duties to Non-Clients.....	427
Conflicts of Interest	428
Solicitor's Negligence Claims	429
Outaouais Synergist Inc. v. Keenan	437
Lawyer's Fiduciary Duties	440
Strother v. 3464920 Canada Inc.....	443
Breaches of Fiduciary Duty	446
Doing Business with a Client	446
<i>Bibliography</i>	449
<i>Index</i>	453