

LESSON NO. 3

Land Ownership and the Law of Tort

REQUIRED READING

1. UBC Real Estate Division. 2005. *Real Estate Salesperson's and Sub-Mortgage Broker's Pre-Licensing Course Manual*. Vancouver: UBC Real Estate Division.
Chapter 5: The Professional Liability of Real Estate Licensees

RECOMMENDED READING

1. Bennett, T., Brady, G., and Mangan, M.M. 2005. *What if...? Problem Solving for Real Estate Salespeople*. Vancouver: UBC Real Estate Division.
Evaluation Letters (p. 1.4)
Changes to Standard Form Contract (p. 2.9)
Misleading or Incorrect Contracts (p. 2.13-2.14)
2. Case Law — (Links are available on the Course Resources webpage under "Course Materials"):
Rogers v. Landmark — trespass, damages
Houweling v. Imperial Equestrian Centre — agents liability, negligent misrepresentation

GENERAL OBJECTIVES

The student should gain a general understanding of the law of negligence and tort, particularly in those areas which affect licensees. The two main areas of focus in this chapter are negligence on the part of salespeople and agents in performing their duties, and torts which are concerned with land, such as trespass and nuisance. In discussing negligence, emphasis is placed in particular on negligent misrepresentation, which is the number one cause of errors and omissions insurance claims by salespeople and agents.

LEARNING OBJECTIVES

Upon completion of this Lesson a student should be able to:

1. Provide examples of the three types of trespass, and explain the three major characteristics of that tort;
2. Explain who can sue for trespass;
3. List the defences to trespass;
4. Explain what remedies are available to the victim of trespass;
5. Describe private nuisance;
6. Compare nuisance and trespass;
7. Discuss the significance of the occurrence of physical damage in an action for nuisance;
8. Name who is liable for nuisance;
9. Describe the valid defences to nuisance and be able to give examples of two or three excuses that are not valid defences;
10. Explain what remedies are available to the victim of nuisance;
11. List the three elements of negligence and give an example of a negligent act which might arise in a real estate licensee's daily activities;
12. Discuss the principle of vicarious liability and its significance to real estate agents;
13. List the elements of negligent misrepresentation and give an example of this tort;

14. Describe the tort of deceit and distinguish between deceit and negligent misrepresentation;
15. Describe the liability of an occupier at common law to each category of entrant upon land; and
16. Explain how the Occupiers Liability Act has altered the common law, and give an example of how a real estate licensee might incur liability under this Act.

INSTRUCTOR'S COMMENTS

Real estate salespeople are responsible for handling the most important transaction in many people's lives — the purchase and sale of their home. They must be careful, indeed flawless, in each and every transaction to protect the interests of their clients. Real estate licensees have a moral and legal duty to use care in these matters, and this chapter will examine the legal nature of that duty.

There is also a degree of responsibility which people assume simply by owning land. The degree of responsibility of the owner or occupier depends on the circumstances under which others are on their land. For example, what happens if a prospective purchaser gets hurt while looking at a house and it is because of the homeowner's negligence? What if it is because of a licensee's negligence? What if the salesperson hurts him or herself because of the homeowner's negligence? Licensees need to be aware of the potential liability associated with the occupation or ownership of land so that they can avoid problems which could lead to a lawsuit.

Also discussed in this chapter are the torts of nuisance, where the reasonable use and enjoyment of a person's land has been interfered with, and trespass, where someone has wrongfully entered or placed something on another person's land. The torts described above and in this chapter relate to possession or ownership of land, or to the way in which a real estate licensee conducts his or her professional activities. However, it is important to remember when reading Chapter 5 that there are other torts not dealt with here. They include such things as assault, invasion of privacy, intentional infliction of mental suffering, and one which may be encountered by any professional: inducing breach of contract. As with all risk management issues generally, this Chapter points at the importance of being aware of the way in which such torts might occur, the type of liability which might result, and how to avoid such problems.

REVIEW AND DISCUSSION QUESTIONS

Choose 5-10 questions from your *Examination Study Guide* that are from Chapter 5. Please note that the corresponding Chapter number for each question is listed in the back of the Examination Study Guide in the Answer section. It is a good idea to do these review questions now so that you become familiar with the types of questions that you will see on your examination.

More review questions and answers can be found on your Course Resources webpage under "Course Materials".

ASSIGNMENT NO. 3

CHAPTER 5
Land Ownership and the Law of Tort

Marks: 1 mark per question.

1. Swarna, a real estate licensee, held an open house one weekend at her vendor's home. Another licensee, Janis, brought a purchaser to inspect the house. During their tour of the house, Swarna noticed a banana peel on the floor. Which one of the following statements is TRUE?
 - (1) Since persons attending the open house are adults, neither Swarna nor the vendor need concern themselves about this "unexpected danger."
 - (2) If the purchaser slips on the peel, both Swarna and Janis could be liable under The Occupiers Liability Act.
 - (3) Swarna has a statutory duty under the Occupiers Liability Act to immediately remove the banana peel which is a potential danger to all visitors to the house.
 - (4) None of the above is true.

2. Which of the following constitutes trespass?
 - A. Charles sells magazines from door to door. When he approaches the Jones' house, he sees a "No Soliciting" sign on the gate but he goes up to the door anyway.
 - B. In order to avoid a mud puddle, Julie leaves the sidewalk and makes a small circle onto Marilyn's property.
 - C. When he was hiking in the park, Williams lost his bearings and wandered around for hours. Without realizing it, he wandered onto Graham's land.
 - D. Joyce was asked by the owner to leave the local store, which she did as quickly as possible.
 - (1) A, B, C and D
 - (2) A, B and C only
 - (3) A and B only
 - (4) A only

3. Sandra attended an open house at a lovely Tudor style house held by Adele, the listing salesperson. Sandra loved the house but the price was at the very limit of her budget so she wanted to be certain there would be no major repairs necessary to the house. She explained her concerns to Adele who immediately said, "Don't worry, this house is as solid as the rock of Gibraltar, it is in A-1 mechanical shape!" Six months after Sandra bought the house, the foundation on one side collapsed involving \$15,000 worth of repairs to make the house habitable. Which of the following statements are TRUE?
- A. Adele cannot be liable to Sandra because Adele was the agent of the vendor and not the purchaser.
 - B. Adele's comments to Sandra involved opinions and not statements of fact and therefore no liability for negligent misrepresentation can be imposed on Adele.
 - C. On the basis of the facts in this problem, Adele may very likely be liable to Sandra for negligent misrepresentation.
 - D. If Adele had told Sandra that she should not rely on Adele's opinion because Adele did not have knowledge of the condition of the house, then Sandra could not hold Adele liable for negligent misrepresentation.
- (1) A, B and D only
 - (2) C and D only
 - (3) C only
 - (4) B and D only.
4. Which of the following constitutes a trespass?
- A. John enters the corner grocery store owned and operated by Fred. After John accidentally tips over a carton of fruit, Fred asks John to leave. John apologizes for his mistake and continues to shop.
 - B. Kevin parachutes out of a plane. Unfortunately, Kevin misses his target field and lands on the roof of Fred's corner grocery store.
 - C. Cathy lives next door to Fred. On Cathy's land is an old water tower that she has negligently let deteriorate into disrepair. Finally, the water tower collapses, falling directly onto Fred's store and damaging the roof.
 - D. Steven, a baseball player, hits a ball so hard that it leaves the baseball stadium and lands harmlessly on the front steps of Fred's store.
- (1) Only A, B and C are examples of trespass.
 - (2) Only A and B are examples of trespass.
 - (3) Only A, B and D are examples of trespass.
 - (4) All of the above are examples of trespass.

5. Eli was anxious to sell his house because he knew it was badly infested with termites. Sydney expressed an interest in buying the property after inspecting it but before making an offer, she asked Eli whether there were any problems she should know about. Eli, elated at the thought of getting the termite-infested home off his hands, assured Sydney that the structure was sound and free of any defects. Sydney subsequently bought the house and within one month discovered that the damage caused by the termites had seriously threatened its structural soundness, requiring thousands of dollars worth of repair work. Which of the following statements is TRUE?
- (1) Sydney can sue Eli under both tort and contract law.
 - (2) Eli cannot be held liable for his misrepresentation because he is not a professional real estate licensee.
 - (3) As there was no special relationship between Eli and Sydney giving rise to a duty of care, Eli cannot be held liable.
 - (4) Sydney's remedies are limited to those provided for under contract law.
6. Interested in constructing a Piano Hall of Fame, Schroeder inspected a 10 acre piece of property which was listed for sale by the owner. After looking over the property, he sought the advice of his friend Lucy who was a licensed real estate salesperson. Lucy stated that the area would be an excellent location for a tourist attraction, but advised Schroeder not to rely on her opinion, as she was unsure about the development restrictions applicable in the area. Without checking any further into the matter, Schroeder promptly bought the property for the express purpose of the building the Hall of Fame; he subsequently learned that the land was located in an agricultural land freeze area and could not be developed for the purpose of a tourist attraction. Which of the following statements is TRUE?
- (1) Lucy owed no duty of care to Schroeder because she was only giving advice as a friend.
 - (2) Lucy's qualification of her statement effectively released her from any liability.
 - (3) Schroeder can successfully sue Lucy for negligent misrepresentation because she had a duty, as a professional in the area, to take all reasonable care that the information she supplied to him was correct.
 - (4) Schroeder cannot sue Lucy for negligent misrepresentation because there was no contractual relationship between them.
7. Licensees have been found to be negligent in which of the following situations?
- A. A licensee does not verify information in the listing agreement.
 - B. A licensee fails to conduct a title search of the listed property.
 - C. A licensee fails to recommend to the purchaser that the purchaser insert a "subject to financing" clause in an offer to purchase.
 - D. A licensee fails to disclose material facts to the vendor about the purchaser's ability to buy the property.
- (1) A, C and D only.
 - (2) A, B and C only.
 - (3) B and D only.
 - (4) A, B, C and D.

8. Emilia lives in a house which she has leased from Johan while he is on an exchange program in Finland. Recently, Anika, a boarder in the house, noticed that their neighbour, Sloppy Joe, had entered the property to repair a hole in the fence through which his dog had a habit of escaping. After the repairs were made, a pile of lumber, some tools, and a can of nails remained on the property leased by Emilia. While the presence of these objects has caused no damage to the property, Anika finds them unsightly and has asked for your opinion. Which of the following are correct?
- A. Johan, as owner of the property, can bring an action in trespass against Joe for wrongfully entering the property and leaving the objects behind.
 - B. Emilia will most likely succeed in a trespass action against Sloppy Joe for the wrongful placing of the materials on the land she has leased.
 - C. Anika, as a boarder, has a right to bring an action in trespass against Joe.
 - D. Because Joe's actions had a legitimate purpose, he is not liable in trespass.
- (1) Only A, B and C are correct.
 - (2) Only A is correct.
 - (3) Only B is correct.
 - (4) Only D is correct.
9. Indicate which of the following disciplinary actions might occur when a real estate licensee has breached a provision of the Real Estate Act or the Regulations, or has breached the Code of Ethics and Standards of Business Practices.
- A. The licensee may be required to pay the costs of any hearing of the real estate board.
 - B. His or her licence may be cancelled by the Real Estate Council of BC.
 - C. The real estate board of which the licensee is a member may expel the licensee from the board.
 - D. The real estate board of which the licensee is a member may suspend his or her licence.
- (1) A, B, C and D
 - (2) A, B and C
 - (3) B and D
 - (4) C and D

10. Quin owned acreage in Langley which he leased to Abu Nidal as a training camp for freedom fighters. Jane operated a mink farm on the property next to Quin's land. As a result of gunfire and explosions taking place at Abu Nidal's training camp, every year for 3 years in the breeding seasons Jane's minks became distraught and died. Which of the following statements is TRUE?
- A. Quin is liable to Jane in nuisance because he leased the property to Abu Nidal for a purpose which would necessarily cause a nuisance to Jane.
 - B. Quin cannot be responsible for the nuisance created by Abu Nidal, because Quin is the landlord.
 - C. Quin is not liable for nuisance because he has no control over what Abu Nidal does on the leased property.
 - D. Abu Nidal is responsible for the nuisance and will be liable to Jane for her losses.
- (1) A and D only
 - (2) A and B only
 - (3) C and D only
 - (4) B and C only
11. Which of the following statements is FALSE?
- (1) The duty of care owed under the Occupiers Liability Act applies to the condition of, and activities occurring on, the premises.
 - (2) The Occupiers Liability Act provides injured parties with a statutory remedy against the registered owner of the unsafe premises.
 - (3) The Occupiers Liability Act does not relieve occupiers of any duty to exercise a higher standard of care which the law might impose on them than is outlined in the Act.
 - (4) Under the Act it appears that the circumstances under which a visitor enters a premises is relevant to the degree of safety that an occupier must provide.
12. Carmela has an absolute hatred for visible electric service wires. She is only willing to live in a house that has underground service wiring. She goes to an open house being held by Beatrice and tells Beatrice that she likes the house very much, but is quite disturbed by the electrical wires, which are particularly visible from the family room and kitchen windows. Beatrice informs Carmela that the city encourages homeowners to move their wires underground as part of its beautification project by paying half the cost, and that the charges to Carmela would therefore be minimal. Carmela buys the house and is horrified when she learns from the city clerk that the entire cost of burying the wires must be borne by her and that the cost could exceed \$5,000. Which of the following statements is TRUE?
- (1) Carmela has no right to sue Beatrice because she was only giving her opinion and did not tell Carmela that she could rely on it.
 - (2) If Beatrice made her statement to Carmela knowing that it was false, then she would be liable for damages for deceit.
 - (3) For a "special relationship" giving rise to a duty of care to exist, it is necessary for there to be a contractual relationship between the parties.
 - (4) All of the above statements are true.

13. Jane moved to a rural area home and installed a hot tub in the side yard. She filled the tub with water in anticipation of using it. Her property was, however, invaded by hundreds of bees apparently seeking water. As a result of these bees, Jane and her friends and family cannot safely use the hot tub or the side yard from April to September of each year. Silver Maple Apiaries, a licensed honey farm, is located in the area. Silver Maple places its bee hives on the property it leases from Gus who is Jane's neighbour. Jane is now suing both Gus and Silver Maple. Which one of the following is TRUE?
- (1) Because Silver Maple is licensed to raise and keep bees it is not liable to Jane.
 - (2) Because Silver Maple leases the land from Gus, it is liable to Jane under the Occupiers Liability Act.
 - (3) Gus is liable to Jane in trespass.
 - (4) Silver Maple may be liable to Jane under the tort of private nuisance.
14. Francesca built an Olympic-size swimming pool in her back garden. All the children in her neighbourhood began to come over and swim in the pool, often without asking permission and on occasions when Francesca was not at home. Francesca then built an 8 foot solid wood fence around the pool which she kept padlocked except when she was using the pool. One day while Francesca was at work Willard, a 9 year old boy, climbed over the fence and while diving off the side of the pool, slipped and hit his head on the edge of the pool, suffering a serious concussion. Which of the following statements is FALSE?
- A. By building a tall fence and locking it Francesca probably fulfilled her duty to child-trespassers under the BC Occupiers Liability Act.
 - B. At common law the duty owed by an occupier to children is higher than that owed to adults.
 - C. Francesca was negligent in not ensuring that it was impossible for an unauthorized person such as Willard to gain access to the pool.
 - D. If Francesca were not the owner of the property, but only a tenant, she could not be liable under the Occupiers Liability Act.
- (1) A only
 - (2) A and D only
 - (3) C and D only
 - (4) A, B and D only.
15. Which of the following statements is TRUE?
- (1) The definition of an "occupier" in the Occupiers Liability Act includes people who may have temporary control over the premises.
 - (2) The Occupiers Liability Act specifically preserves the common law distinction between an invitee and a licensee.
 - (3) The Occupiers Liability Act specifies the different standards of care that are required in different circumstances.
 - (4) The common law required an occupier to take greater care for the safety of a trespasser than for a child.

16. Jim recently lost his job and is finding it difficult to make the mortgage payments on his house. As a result, Jim decides to sell the home and hires the services of Carol, a licensed real estate agent. In an effort to make his Burnaby house more attractive, Jim immediately starts to repair the fence which surrounds his yard. Jim is not the most organized handyman and often leaves tools, boards and scrap material around the fence. One night Carol arrives with John and Sarah Middleton, a newly married couple looking for a reasonably priced home. After looking at the house, the Middletons indicate to Jim that they are very interested in Jim's house and that they would like to return to discuss matters further in the morning when they can see what the house looks like in daylight. As John and Sarah leave the yard and walk down the sidewalk to their car, Sarah steps on a board full of nails and injures herself.

Which of the following is NOT necessary to establish Jim's liability to Sarah in negligence?

- (1) Jim did not take the care that a reasonable person would have taken in the circumstances.
 - (2) It is reasonably foreseeable that a person might step on the board full of nails and suffer injury.
 - (3) Sarah's actions represented a reasonable use of the sidewalk.
 - (4) Jim owed Sarah a duty to take care.
17. Chuck owns a retail store. The floor of the store is checked 4 times a day and there are many spot cleanups during the course of the day. In fact, the majority of Chuck's time is spent touring the store to ensure, among other things, that the floors are clear. However, 15 minutes after the last complete floor check, Manjit slips on a small hard-coated candy lying on the floor of the store. Manjit sues Chuck. Which of the following statements is TRUE?
- (1) Because Chuck is aware of the danger created by objects lying on the floor, he is liable for Manjit's injuries.
 - (2) By entering the store, Manjit has willingly accepted the risk that she might fall and therefore is not protected by the provisions of the Occupiers Liability Act.
 - (3) Chuck may be protected by the Occupiers Liability Act because his housekeeping provisions are reasonably intended to prevent this type of injury.
 - (4) All of the above.

18. In which of the following situations would Louisa be considered a licensee at common law?
- A. Louisa, a door-to-door vacuum cleaner salesperson, is given ten minutes to demonstrate her product in Ken's home, during which time a chandelier falls on her.
 - B. While driving over to Ken's home, Louisa spills hot coffee down the front of her shirt and stops at a gas station washroom to clean herself up.
 - C. Louisa goes to Barbie's salon for a haircut and is attacked by Barbie's guard dog who has escaped from the back room.
 - D. Louisa, though not invited, drops in on her friend Ken and walks around to the rear entrance which is Ken's usual entrance; unfortunately, Louisa slips on a skateboard which was left by the back stairs and breaks her arm.
- (1) Situations B and D only.
 - (2) Situation B only.
 - (3) Situations A and C only.
 - (4) All of the above situations.
19. Larry Licensee entered a listing agreement with Vera Vendor and subsequently obtained an offer for Vera's property from Paulina Purchaser. Delighted to find a buyer so soon, Vera immediately accepted the offer. One week before the date of completion, Terry Takeover approached Larry with an offer to buy the property from Paulina at a higher price. Paulina accepted Terry's offer and Larry, without informing Vera, arranged the resale once the original transaction closed. Vera has just found out about these dealings and is refusing to pay Larry his commission. Which of the following statements is TRUE?
- A. Larry can successfully sue Vera for his commission because he satisfied his obligation under the listing agreement by selling the property.
 - B. Larry was obligated to inform Vera of Terry's offer.
 - C. If Larry brings a court action against Vera, he will have the burden of proving that he fulfilled his duties under the listing agreement and under common law.
 - D. In no situation would Larry be able to receive two commissions from the consecutive sale of the same property without breaching the Real Estate Act.
- (1) Only A is true.
 - (2) Only B is true.
 - (3) Only B and C are true.
 - (4) Only C and D are true.
20. Dermot owns a flower shop and his deliveries are made by his employee, Gus. While picking up fish and chips to take home for his evening meal, Gus fell asleep at the wheel of his van and injured Molly. Which of the following statements correctly describes Molly's rights?
- (1) Molly can sue Gus for nuisance.
 - (2) Molly can sue Dermot for Gus' negligence under the principle of vicarious liability.
 - (3) Molly can sue only Gus in negligence because the accident occurred when Gus was doing something outside the ordinary scope of his employment.
 - (4) Dermot's liability would change if Gus were an independent contractor.