

## Checklists

### Licensees:

- S.2, RESA – person who provides services must be licensed
- S.35, RESA – professional misconduct and conduct unbecoming results if L breaches the duties listed
  
- Who does L owe duty to as fiduciary?
  - Guerrin: test in real estate context – nature, not category
  - Charman: rely on or purpose trust in L – act in their best interests
  - Sharif: presumption that L is fiduciary – onus on L to rebut
  
- Duties and Obligations:
  - Ocean City Realty: burden of proof to show transaction was fine
  
  - Duty of care to verify material facts
    - Real Estate Council Act, s.3.3 – duties of L, act in best interest of client, with their instruction and with reasonable care and skill
      - S3.4 – act honestly with reasonable care and skill
    - Charman: Agency law, duty of care and skill
    - Fletcher: duty to verify material facts and disclose them, duty to make further inquiries about accuracy of representations by V
    - Price: duty of care and skill in preparing K
  
  - Duty of Full Disclosure:
    - Ocean City Realty: disclose everything known about subject matter and property that is likely to influence P's behaviour
      - Reasonable person test
  
  - Duty to 3<sup>rd</sup> Party:
    - Rule 3-13: disclose latent defects to all other parties
    - Duty to exercise care in giving advice that would be reasonably relied on
      - Williams: lot was potential building site
      - Sussex Realty: L's realized renovations weren't up to building codes
      - Holt: didn't disclose inability to have multi-dwelling house

- Claims against L
  - Breach of Fiduciary Duty
    - Sharif: no COI with principle, no secret profit and full disclosure
      - Presumption: if interest in property, they have breached duties as fiduciary
  - Negligent Misrepresentation
    - Cognos: Test
      - Holt: honest but negligent is still basis for damages, duty owed with special skills
      - Becker: L must know basic requirements of muni bylaws and building codes
  - Fraudulent Misrepresentations
    - Hobbis: Test
      - Holt: failing to check condition
- Claims against a Vendor:
  - General
  - S.24, Law and Equity
    - General principle for remedies
  - Cardwell: Caveat Emptor applies except in certain situations
  - Define patent and latent defects
  - If there is PDS:
    - Arsenault: doesn't warrant state of affairs, just knowledge
    - Redican: if want to rely on conditions of property, should be expressly contained in K
    - Thandi: if professional opinion about property, liability shifts from V to inspector
      - Hanslo: shift depends on circumstances of each case, not an automatic shift
  - Breach of Warranty:
    - CE applies except if there is EIS or fraud or express W
    - Clause 18
      - Bains: Must bring to attention to rely on it
      - Montex: Written claims can be collateral W post closing
    - Clause 8
    - Fraser-Reid: one party knows truth of W, other does not
      - If incomplete home, implied W
      - If complete home, express W

- Fraudulent Misrepresentation
  - Hobbs: Test
  - Schlamp: Active concealment is fraud
  - Allen: fraudulent material induces P to K and wouldn't have if they knew the true state
  - Lenz: PDS isn't warranty but can have recourse if statement is false or reckless
  
- Negligent Misrepresentation
  - Cognos: Test
  - Hanslo: if PDS isn't incorporated, can still recover for negligent statements in it
    - Enough that statements caused damage to those that relied on it – don't have to relate to latent defects
  
- EIS
  - Smith, Charris estate: something totally different OR mutual fundamental mistake
  - McCutcheon: suspected latent defects
  
- Remedies Pre Closing:
  - General:
  - S.24, Law and Equity
  - Election: affirm or disaffirm K
  
  - Anticipatory breach:
    - Roy: can bring action before breach
  
  - SP:
    - Semelhago: not granted as matter of course, must be unique
      - Must be able to tender at all times
    - Semelhago, Serebrennikov: uniqueness must be proven
      - Burden on party claiming SP
    - John E. Dodge: damages are inappropriate
    - 696966: 3 questions to show evidence for
    - Norfolk: must be ready willing and able at all times to complete or cannot get SP
    - Baud Corporation, Toronto School Board: must take reasonable steps to mitigate loss
    - Semelhago: can convert SP to claim for damages at any time up to trial

- Remedies Post Closing
  - Damages:
    - Bowman: put P in same place as if K had been performed
    - Ansdell: no fixed rule for when to fix damages, usually at time of breach but court has discretion
      - Bowman: could be date of trial
      - Hargreaves: obligation of innocent party to mitigate losses
      - Wade: claim for out of pocket damages must have been incurred as result of V's actions