

**University of Victoria Faculty of Law**  
**REAL PROPERTY TRANSACTIONS**  
**LAW 317**

<b>Unit Value</b>	<b>2.0 units</b>
<b>Term Offered</b>	<b>Spring 2011</b>
<b>Classes</b>	<b>Monday and Wednesday 8:30 to 10:20 am Room 158</b>
<b>Instructor</b>	<b>Deborah Curran</b> <b>Telephone: 250.853.3105</b> <b>Email: dlc@uvic.ca</b> <b>Office Hours: By appointment, Office 286 in library</b>

### **MAJOR EDUCATIONAL GOALS**

The single largest investment that most Canadians make is in their home, and most commercial entities buy, sell and/or lease property. These transactions are an integral part of most law practices and often serve as introductions to new clients. With the current continuing low interest rates, real property transactions are a staple to the practice of law. They are also one of the areas of law where insurance claims for lawyer errors are the highest.

In the context of the real estate market and the form-based practice of real estate law, the course provides an introduction to the legal issues that arise during residential real estate transactions. This is largely a course in advanced contracts viewed through the lens of buying and selling residential single family homes. The course walks through the stages of a transaction, from listing the property to securing a mortgage and closing the deal. If time permits, a section on strata corporations will be included.

### **COURSE OBJECTIVES**

- To understand the basic legal duties of real estate licensees and the legal implications of the listing contract;
- To become familiar with and understand the legal implications of the terms of the Contract of Purchase and Sale of real property;
- To understand the fundamentals of a mortgage of land, the significance of its common terms and the relevant legislation;
- To be able to evaluate and analyze the legal significance of problems that occur between signing the contract for purchase and sale and registration of land transfer documents in the Land Title Office;
- To be able to evaluate and strategize about breaches of the contract for purchase and sale by vendors and purchasers;
- To understand the range of potential remedies available to parties in contracts for sale of land;
- To appreciate the legal structure for closing a conveyance and understand the professional responsibilities of solicitors involved in the transaction.

## SUBJECT MATTER TO BE COVERED

- (1) Real Estate Brokering (Marketing the Property)
- (2) The Contract of Purchase and Sale
- (3) Financing (Mortgages)
- (4) Problems Pre-Closing and Closing
- (5) Remedies
- (6) Completion/Closing
- (7) Post-Closing Issues

## METHODOLOGY

**Lectures:** Lectures will outline a framework within which students can organize the detailed subject matter for the course.

**Readings:** The readings contain the detailed subject matter for the course. Students should carefully review the assigned legislation and other materials such as the sample contract of purchase and sale as much of their specific content will not be conveyed in lectures. Cases should also be read carefully, not only as a statement of the present state of the law in that area, but to identify the court's approach to the problem and the general principles expressed. The assigned articles provide excellent overviews of topic areas.

**Class discussion:** Class discussion will encourage students to critically reflect upon the materials as well as to apply knowledge from the readings and lectures to practical problems.

**In-Class Exercises:** The classroom exercises allow students to work together to apply an aspect of the course to a fact pattern where they act as counsel for a client.

**Memo and Final examination:** The memo and exam are designed to encourage students to consolidate their understanding of the material covered in the course.

## EVALUATION

The final grade for this course will be based on a memo (40% of the grade) and a two and one half hour final examination (60% of the grade):

**Memo:** On Monday February 28 in class I will distribute a fact pattern and instructions for students to write a legal memo providing advice to a client about a contract of purchase and sale. Students will have one week to complete the memo using the course materials only from weeks 3 to 5. The memo will be limited to approximately 8 pages. Please obtain mid-term code names for this memo from the law school administration. Papers submitted after the deadline without prior approval will be penalized at a rate of 1 letter grade per day or portion thereof.

Using your mid-term code name only, memos are due at 12:00 pm on Monday March 7 by email to [lawaoa@uvic.ca](mailto:lawaoa@uvic.ca). Vitaly Kazakov, Assistant to the Manager, Academic Administration and Student Services (Yvonne Lawson) will confirm receipt of your paper with you that day or on Tuesday March 8.

**Final Exam:** The first half hour of the exam is a reading period. Students will be permitted to write for two hours. The exam will cover approximately 2/3 of the course materials (all materials except the topic of the contract of purchase and sale covered in weeks 3 to 5). The final examination is currently scheduled for Friday April 8 2011. It is your responsibility to check the final exam schedule for the date, time and location of the exam. The exam will be open book. You may bring any notes and materials you have prepared, as well as the course materials (cases, articles, legislation, and rules). No library reference or practice materials will be allowed in the examination room. Please obtain your final code names from the law school administration.

The Faculty's grading system will be used to translate numerical grades to letter grades. The relevant equivalencies between numerical and letter grades are as follows:

Letter Grade	Grade Point Value	Percentage Value	Narrative Description
A+	9	90-100%	Exceptional, outstanding, and excellent performance, normally achieved by a minority of students. These grades indicate a student who is self-initiating, exceeds expectation, and has an insightful grasp of subject matter.
A	8	85-89%	
A-	7	80-84%	
B+	6	75-79%	Very good, good, and solid performance, normally achieved by the largest number of students. These grades indicate a good grasp of subject matter or excellent grasp in one area balanced with satisfactory grasp in the other area.
B	5	70-74%	
B-	4	65-69%	
C+	3	60-64%	Satisfactory or minimally satisfactory performance. These grades indicate a satisfactory performance and knowledge of subject matter.
C	2	55-59%	
D	1	50-54%	Marginal performance. A student receiving this grade demonstrates a superficial grasp of subject matter.
F	0	49 or below	Unsatisfactory performance.

## REQUIRED MATERIALS

### Location

Most materials for the course can be accessed online through the course Moodle page or through this course description by web link. Print materials are on reserve. In particular please note the following three sources of information:

1. Pdf of course materials;
2. Notes, available under each week's topic on the Moodle site, which provide an overview of the week's topic so that you have some background information before beginning the readings because there is no textbook for the course. I recommend that you read them

- and any substantive articles (e.g. from the Real Property Reporter) first, before reading the case law;
3. Lecture outlines for ease of note taking. These will either be emailed to you or available from the Moodle site.

There are also several excellent practice resources available (see below under Legal Information) should you need further clarification of the subject matter.

## RESOURCES

### Legislation

Updates BC legislation is now available online for free at [www.bclaws.ca](http://www.bclaws.ca).

British Columbia:

Business Practices & Consumer Protection Act

Homeowner Protection Act

Land Title Act

Land Transfer Form Act

Law and Equity Act

Local Government Act

Mortgage Brokers Act

Property Law Act

Property Transfer Tax Act

Real Estate Development Marketing Act

Real Estate Services Act

Real Estate Services Act Rules – <http://www.recbc.ca/consumer/rules.htm>

Strata Property Act

Canada:

Criminal Code - <http://www.canlii.org/ca/sta/c-46/>

Interest Act - <http://www.canlii.org/ca/sta/i-15/>

### Legal Information:

British Columbia Real Estate Law Guide, CCH Canada, KEB230 C33 1998 (on reserve for this course)

Continuing Legal Education, B.C. Real Estate Practice Manual

<http://online.cle.bc.ca/PracticeManual/Content.aspx?strBookID=42776&Current=12:20:39.8735879>

Law Society of B.C., Professional Conduct Handbook -

[http://www.lawsociety.bc.ca/publications\\_forms/handbook/handbook\\_toc.html](http://www.lawsociety.bc.ca/publications_forms/handbook/handbook_toc.html)

### Other Information:

B.C. Real Estate Association - <http://www.bcrea.bc.ca/index.htm>

Real Estate Institute of BC - <http://www.reibc.org/>

## OTHER

**Regulations:** Students should obtain and review all regulations and policies contained in the University of Victoria Calendar, 2010-2011 (“U Vic Calendar”), both generally and specifically for the Faculty of Law. The Undergraduate Academic Regulations of the UVic Calendar set out the University’s expectations about attendance and assignments (<http://web.uvic.ca/calendar2010/FACS/UnIn/UARe/index.html>).

**Classroom Climate:** An inclusive, respectful, and diverse classroom environment is crucial to our work in this course. To ensure that all class members feel welcomed and equally able to contribute to class discussions, both I as instructor and you as students must endeavour to be respectful in our language, our examples, and the manner in which we conduct our discussions. We have both an ethical and legal obligation to support this kind of environment (see the University’s Discrimination and Harassment Policy ([http://www.uvic.ca/shared/shared\\_usecc/docs/policies/GV0205\\_1150\\_.pdf](http://www.uvic.ca/shared/shared_usecc/docs/policies/GV0205_1150_.pdf)), and the Faculty is committed to promoting, providing and protecting a positive, supportive and safe learning and working environment for all its members. If you have any concerns about the climate of the class, please contact me.

**Academic Integrity:** As part of the academic community of both the Faculty of Law and the University as a whole, academic integrity is centrally important in the work of faculty and students. Please consult the University Calendar for policies respecting paraphrasing, plagiarism, and cheating. If you have any concerns or questions, or require clarification, do not hesitate to drop by my office or to send me an e-mail. The policy on academic integrity can be found on the web at the following address: <http://web.uvic.ca/calendar2010/FACS/UnIn/UARe/PoAcI.html>.

**Students with a Disability:** If you have any type of disability, there are support systems, resources, and accommodation actions available to you. If you wish to access any of these supports, resources or accommodations, I encourage you to contact the Associate Dean or the Resource Centre for Students with a Disability (<http://rcsd.uvic.ca/about.html>) and I would be more than happy to work with you to ensure your success in this course.

**Accommodation of Religious Observances:** The University of Victoria and the Faculty of Law have policies guaranteeing accommodation for those students who are unable to participate in a class or an aspect of the course owing to a religious holiday. If you will be missing a class, know that you will be unable to complete an assignment or exam, or otherwise require accommodation on account of a religious holiday please speak with me so that we can work out some satisfactory form of accommodation.

## COURSE OUTLINE

<p>Week 1</p> <p>January 10</p>	<p><b>A. Context and Introduction</b></p> <ol style="list-style-type: none"> <li>1. The Real Estate Market and the Business of Law</li> <li>2. Course Summary             <ol style="list-style-type: none"> <li>2.1. Transaction – agents, vendor/purchaser</li> <li>2.2. Financing – mortgages</li> <li>2.3. Enforcement</li> </ol> </li> <li>3. Regulatory Context – Aboriginal Rights and Title, Torrens System</li> <li>4. Definitions</li> <li>5. Process of a Residential Real Estate Transaction</li> <li>6. Acting for Both Parties</li> </ol> <p>Surinder Nijjar, Residential Real Estate: Pitfalls and Tips. Continuing Legal Education Society of B.C. December 2009</p> <p>James Stewart, Expanding Your Practice to Commercial Real Estate (It's Mostly About Style). Continuing Legal Education Society of B.C. December 2008</p> <p>Land Title Act ss. 20, 22-29, 33</p> <p>Law Society of B.C. Professional Conduct Handbook, <a href="#">Appendix 3: Real Property Transactions</a></p> <p>Law Society of BC: <a href="#">Residential Conveyance Procedure Checklist</a></p> <p>BC Real Estate Practice Manual: <a href="#">Referenced Forms and Precedents</a> (skim)</p>
<p>Week 2</p> <p>January 17</p>	<p><b>B. Marketing the Property</b></p> <ol style="list-style-type: none"> <li>1. Regulatory Framework</li> <li>2. Real Estate Licensees             <ol style="list-style-type: none"> <li>2.1. Relationship with Principal</li> <li>2.2. Duties to Principal, from Principal to Licensees, to Third Parties</li> <li>2.3. Remuneration</li> </ol> </li> <li>3. Listing Agreements</li> </ol> <p>Paul Perell, The Duties of Real Estate Agents 19 R.P.R. (4th) 20 (2004)</p> <p>Real Estate Services Act ss.1-4, 35</p> <p><a href="#">Real Estate Services Act Rules</a> 3-3, 3-4, 5-1(1-2) to 5-13, 6-1, 6-2</p> <ul style="list-style-type: none"> <li>▪ DeJesus v. Sharif (BCCA 2010) 2010 CarswellBC 524</li> <li>▪ Price v. Malais (BCSC 1982) 1982 CarswellBC 130</li> <li>▪ Baillie v. Charman (BCCA 1992) 1992 CarswellBC 242</li> <li>▪ Bango v. Holt 1971 (BCSC 1971) CarswellBC 161</li> </ul>

<p>Week 3</p> <p>January 24</p>	<p><b>C. Contract of Purchase and Sale</b></p> <ol style="list-style-type: none"> <li>1. Standard Form Contract</li> <li>2. Written Form</li> <li>3. Elements of an Agreement <ol style="list-style-type: none"> <li>3.1. Offer, Acceptance, Intention</li> <li>3.2. Good Faith</li> <li>3.3. Options</li> </ol> </li> <li>4. Problems of Real Estate Contract <ol style="list-style-type: none"> <li>4.1. Vagueness &amp; Uncertainty - Parties, Property, Price</li> <li>4.2. Evidentiary</li> </ol> </li> </ol> <p>Law and Equity Act ss.54, 59</p> <ul style="list-style-type: none"> <li>▪ Larsen v. Charron (BCSC 2006) 2007 CarswellBC 1063 (skim facts and focus on para. 81 onwards)</li> <li>▪ Golden Properties Ltd. v. Imbook Properties Ltd. (BCCA 1991) 1991 CarswellBC 676</li> <li>▪ Adesa Auctions of Canada Corp. v. Southern Railway of BC (BCSC 2001) 2001 CarswellBC 2258</li> <li>▪ Hahn v. Hanson (BCSC 1994) 1994 CarswellBC 2082</li> <li>▪ Nicol v. Weigel (BCCA 1991) 1991 CarswellBC 99</li> <li>▪ Arnold Nemetz Engineering v. Tobien (BCCA) 1971 CarswellBC 107</li> <li>▪ Zhilka v. Turney (SCC 1959) 1959 CarswellOnt 81</li> <li>▪ Caplan v. Coles (BCSC 1982) 1982 CarswellBC 395</li> </ul> <p>Standard Form Contract (Handout)</p>
<p>Week 4</p> <p>January 31</p>	<p><b>C. Contract of Purchase and Sale Continued</b></p> <ol style="list-style-type: none"> <li>5. Deposit</li> <li>6. Interim Period</li> <li>7. Conditions</li> </ol> <p>Don Manderscheid, Contractual Conditions and the Sale of Land: Life After Turney v. Zhilka 2 R.P.R. (4th) 233 (2002)</p> <p>Local Government Act ss. 903, 911</p> <ul style="list-style-type: none"> <li>▪ Winley Investments Inc. v. Milore Sales Ltd. (BCSC 1991) 1991 CarswellBC 668</li> <li>▪ Williamson Pacific Developments Inc. v. Johns, Southward, Glazier, Walton &amp; Margetts (BCCA 2000) 2000 CarswellBC 2412</li> <li>▪ Agosti v. Winter (BCCA 2009) 2009 CarswellBC 3006</li> <li>▪ Moberg v. Cleveland (BCSCBCSC) 2010 CarswellBC 2477</li> <li>▪ A&amp;W Food Services of Canada Ltd. v. Knight &amp; Day Restaurants Ltd. (BCSC 1987) 1987 CarswellBC 1583</li> </ul>

	<ul style="list-style-type: none"> <li>▪ Rich v. Krause (BCSC 1974) 1974 CarswellBC 237</li> <li>▪ Wile v. Cook (SCC 1986) 1986 CarswellNS 96</li> <li>▪ Martin Commercial Fueling Inc. v. Virtanen (BCCA 1997) 1997 CarswellBC 600</li> <li>▪ Wiebe v. Bobsien (BCCA 1985) 1985 CarswellBC 193</li> <li>▪ Zhilka v. Turney (review)</li> <li>▪ Dynamic Transport Ltd. v. O.K. Detailing Ltd. (SCC 1978) 1978 Carswell Alta 62</li> <li>▪ Gulston v. Aldred (BCSC 2010) 2010 CarswellBC 439</li> </ul>
<p>Week 5</p> <p>February 7</p>	<p><b>C. Contract of Purchase and Sale Continued</b></p> <p>7. Conditions Continued  8. Warranties &amp; Representations  9. Class Exercise</p> <ul style="list-style-type: none"> <li>▪ Griffin v. Martens (BCCA 1988) 1988 CarswellBC 212</li> <li>▪ Tau Holdings Ltd. v. Alderbridge Development Corp. (BCCA 1991) 1991 CarswellBC 248</li> <li>▪ Jung v. GNR Property Management Inc. (BCSC 2006) 2006 Carswell BC 2e Saxe, 783</li> <li>▪ Cox v. Alley (BCSC 1991) 1991 CarswellBC 677</li> <li>▪ Tchilinguirian v. Thandi (2009 BCSC) 2009 CarswellBC 3598</li> <li>▪ Suomalainan v. Jernigan (2004 BCSC) 2004 CarswellBC 774 (reversed in 2004 CarswellBC 3079 by consent of parties)</li> </ul>
<p>Week 6</p> <p>February 14</p>	<p><b>D. Financing the Purchase – Mortgages</b></p> <p>1. Introduction – Nature of Mortgage  2. Elements of a Mortgage  2.1. Legal Mortgage  2.2. Equitable Mortgage  2.3. Common Elements  3. Unexpressed Terms</p> <p>Land Title Act ss.33, 176, 189, 224-231  Land Transfer Form Act ss.9-10  Law and Equity Act s.36  Property Law Act ss.20-24</p> <ul style="list-style-type: none"> <li>▪ Richmond Savings Credit Union v. Nijjer (2000 BCSC) 2000 CarswellBC 1566 (affirmed by the BCCA 2002 CarswellBC 316)</li> <li>▪ Royal Bank of Canada v. Mesa Estates Ltd. (BCCA 1985) 1985 CarswellBC 407</li> <li>▪ Kreick v. Wansbrough (SCC 1973) 1973 CarswellSask 61</li> <li>▪ Blackaby v. Rabson (BCCA 1994) 1994 CarswellBC 939</li> </ul>

February 21	<b>Reading Week</b>
Week 7  February 28  <b>Memo distributed February 28 in class</b>	<b>D. Mortgages Continued</b>  4. Statutory Protections 4.1. Federal 4.2. Provincial 5. Enforcement 6. Mortgage Funding Process 7. Discharge of Mortgage 8. Mortgage Fraud  Interest Act, ss.6-10 Criminal Code s.347  <ul style="list-style-type: none"> <li>▪ Kilgoran Hotels v. Samek (SCC 1967) 1967 CarswellOnt 78</li> <li>▪ Reliant Capital Ltd. v. Silverdale Developments (BCCA 2006) 2006 CarswellBC 1090</li> <li>▪ Degelder Construction Co. v. Dancorp Developments Ltd. (SCC 1998) 1998 CarswellBC 2246</li> <li>▪ Gill v. Bucholtz (BCCA 2009) 2009 CarswellBC 841</li> </ul>
Week 8  March 7  <b>Memo due March 7 at 12:00 pm via email</b>  <b>No class March 9</b>	<b>E. Pre-Closing and Closing Problems</b>  1. Title 2. Condition of Property 3. Misrepresentations 4. Purchase Price 5. Time is of the Essence  Paul Perell, Size Matters 26 R.P.R. (4th) 175 (2005) Paul Perell, Refusing to Close a Real Estate Transaction 7 R.P.R. (4th) 230 (2003)  Land Title Act ss.185-186, 231 Law and Equity Act s.31 Property Law Act ss.1-7  <ul style="list-style-type: none"> <li>▪ Norfolk v. Aikens (BCCA 1989) 1989 CarswellBC 221</li> <li>▪ Seguss v. Fawcus (BCCA 1993) 1993 CarswellBC 64</li> <li>▪ Chen v. Hsu (BCSC 1997) 1997 CarswellBC 428 (affirmed by 1998 CarswellBC 85)</li> <li>▪ Shaw Industries Ltd. v. Greenland Enterprises Ltd. (BCCA 1991) 1991 CarswellBC 49</li> <li>▪ Salama Enterprises v. Grewal (BCCA 1992) 1992 CarswellBC 90</li> <li>▪ Ambassador Industries v. Kastens (BCSC 2001) 2001 CarswellBC 927</li> </ul>

	<ul style="list-style-type: none"> <li>▪ Sorensen v. Carriage Lane Fine Homes Ltd. (1998 BCSC) 1998 CarswellBC 2800</li> </ul> <p>Law Society of B.C. Insurance Issues: Risk Management (No. 3 October 2005) <a href="#">Real Estate Fraud: A Prevention Primer</a></p>
<p>Week 9</p> <p>March 14</p>	<p><b>F. The Collapsing Deal</b></p> <ol style="list-style-type: none"> <li>1. Anticipatory Repudiation</li> <li>2. Tender</li> <li>3. Election</li> <li>4. Remedies for Failure to Complete       <ol style="list-style-type: none"> <li>4.1. Vendor</li> <li>4.2. Purchaser</li> </ol> </li> <li>5. Suing in Contract and Tort – Negligent Misrepresentation</li> </ol> <p>Joseph LoPresti, The Evolution of Specific Performance: A Discussion of Specific Performance and Equitable Damages before and after Semelhago v. Paramadevan 49 R.P.R. (3d) 88 (2002)</p> <ul style="list-style-type: none"> <li>▪ Semelhago v. Paramadevan (SCC 1996) 1996 CarswellOnt 2737</li> <li>▪ Serebrennikov v. Sawyer’s Landing Investments 1 Ltd. (2010 BCSC) 2010 CarswellBC 2415</li> <li>▪ Mavretic v. Bowman (BCCA 1993) 1993 CarswellBC 16</li> <li>▪ Fraser-Reid v. Droumtsekas (SCC 1979) 1979 CarswellOnt 652</li> <li>▪ Cherris Estate v. Bosa Development Corp. (BCCA 2001) 2001 CarswellBC 830</li> <li>▪ Curtin v. Blewett (BCSC 1999) 1999 CarswellBC 2404</li> <li>▪ Aldred v. Colbeck (BCSC 2010) 2010 CarswellBC 112</li> <li>▪ Gronau v. Schlamp Investments Ltd. (ManQB 1974) 1974 CarswellMan 120</li> </ul>
<p>Week 10</p> <p>March 21</p>	<p><b>G. Closing/Completion: Conveyance and Registration</b></p> <ol style="list-style-type: none"> <li>1. Undertakings</li> <li>2. Preparing Documents</li> <li>3. Risk Management &amp; E-Filing</li> </ol> <p>Beverly Ellingson &amp; Virginia Wigmore, Red Flag Issues: Practice Management/Ethics. Continuing Legal Education Society of B.C. June 2010</p> <p>CBA Standard Form Undertakings (Handout)</p> <p>Law Society of B.C. Insurance Issues: <a href="#">Risk Management Curbing Risk in Real Estate Practice</a> (No. 2 March/April 2006)</p> <p>Class Exercise</p>

<p>Week 11</p> <p>March 28</p>	<p><b>H. Post-Closing Problems</b></p> <ol style="list-style-type: none"> <li>1. Merger &amp; Rescission</li> <li>2. Other Relief</li> <li>3. Implied Covenants <ul style="list-style-type: none"> <li>▪ Redican v. Nesbitt (SCC 1923) 1923 CarswellOnt 92</li> <li>▪ Hyrsky v. Smith (OntHC 1969) 1969 CarswellOnt 174</li> <li>▪ Allen v. McCutcheon (BCSC 1979) 1979 CarswellBC 17</li> <li>▪ Roberts v. Montex Development Corp. (BCSC) 1979 CarswellBC 684</li> <li>▪ Hargreaves v. Brar (BCCA 2010) 2010 CarswellBC 3208</li> </ul> </li> </ol>
<p>Week 12</p> <p>April 4</p>	<p><b>I. Strata Property Transactions</b></p> <ol style="list-style-type: none"> <li>1. Strata Defined</li> <li>2. Disclosure</li> <li>3. Documents &amp; Registration</li> </ol> <p>Adrienne Murray, The Basics of Strata Property Law. Continuing Legal Education Society of B.C. 2006</p> <p>Practice Exam</p>