

SAMPLE MIDTERM EXAMINATION  
Real Estate Transactions Law 667

This is a one-hour examination; however, you may take the entire class period to finish. Please pace yourself accordingly; I suggest that you outline your answers before writing. Legible handwriting is greatly appreciated. Please be sure to read each question carefully before you begin to write. I **will not read** anything that is not in the space provided so be sure to complete your answer in that space.

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Question 1. 50 points

Garage Services entered into a contract with Traders Wholesale Co. in March of 2004 to purchase an undeveloped 81,000-square-foot lot at Weldon and Rickard Streets, San Francisco (the subject property) for \$850,000. Garage Services intended to construct a mini-storage facility on the subject property, which lay adjacent to a five-acre parcel owned by the State of California where the California Department of Transportation (Caltrans) stored some equipment.

Bill Broker acted as Traders Wholesale's agent for purposes of the transaction. A few days before the contract was signed, Bill Broker met with Paula Purchase of Garage Services. Paula asked Bill if Caltrans had an interest in buying the subject property. Evidence of the state's interest in the subject property, and Bill Broker's knowledge of that interest, may be outlined as follows:

Bill Broker's testimony about what was said follows: **Q.** "Did Paula Purchase at that March 13, 2004, meeting expressly ask you whether there was any interest of Caltrans in the subject property? **A.** Yes. I believe she did. **Q.** What did you tell her? **A.** There was none. **Q.** You told her that there was no interest of Caltrans in the subject property; is that your testimony? **A.** In my experience there wasn't, no. **Q.** You meant no interest in trying to acquire or use the subject property; is that your testimony? **A.** That's correct. **Q.** You affirmatively represented to Paula Purchase that Caltrans had no interest; is that your testimony? **A.** As my experience with Caltrans, there was no interest. **Q.** The question is, did you affirmatively represent that Caltrans had no interest to Paula Purchase at that March 13th meeting? **A.** To the best of my knowledge at that time, that's correct .... **Q.** Did you tell Paula Purchase at that March 13th meeting that the state had no interest at all in purchasing the property? **A.** At the time of that meeting, that's correct .... **Q.** You in fact affirmatively told her that Caltrans wasn't interested in the property; didn't you? **A.** At that time, that's correct. **Q.** Are you saying you sort of qualified it and said, 'they're not interested at this time'? **A.** Because my relationship with them earlier than that - **Q.** No. I'm asking you, sir, did you - is it your testimony that at that meeting with Paula Purchase, you said, 'there's no Caltrans interest at this time'? **A.** As I said earlier, that was my answer when she asked me the question."

Bill Broker had been the listing agent for the subject property since March of 2003, and he had been talking with Caltrans' personnel about the subject property two or three times a month since July of 2003. A Caltrans employee in Caltrans' acquisition section, Sonny State, phoned Bill Broker in July of 2003 to inquire about the subject property. Sonny State indicated to Bill Broker that Caltrans was studying relocation of a maintenance station and that "if the studies so indicated, we would most likely be interested in purchasing the property." Thereafter, through at least March of 2004, Sonny State was in "constant contact" with Bill Broker regarding the status of the state's studies and its interest in acquiring the subject property. During that time Sonny State never informed Bill Broker that the state was not interested in the subject property. To the contrary, Sonny State "indicated that the study was progressing and we were attempting to get the

necessary approvals." After each of his discussions with Caltrans Bill gave a complete update to Traders Wholesale.

Garage Services testified that they would not have entered into the contract if they had known that the state was studying the subject property for possible acquisition or had any interest in acquiring it. Garage Services gave a deposit of \$10,000 when the Agreement of Sale was signed in March 2004 and proceeded with arrangements to develop the subject property. Closing was set for September 20, 2004. Designs were drawn, site development work was performed and planning commission approval was obtained. Caltrans' interest surfaced in an August 31, 2004, letter from Sonny State to Traders Wholesale, expressing the state's desire to purchase the subject property and its willingness, if necessary, to proceed by way of eminent domain. Garage Services thus learned of the state's intention to acquire the subject property prior to the scheduled closing date.

The state filed its action of eminent domain against Traders Wholesale September 19, 2004. On this date the value of the property was \$1,000,000 (amount to be paid to Traders by the State). Traders Wholesale then filed a motion for a declaratory judgment against Garage Services to rescind the agreement of sale. Garage Services, in turn, cross-complained against Traders Wholesale for breach of contract and against Bill Broker for fraud and negligent misrepresentation. Throughout this time, Garage Services remained willing and able to complete the 2004 purchase contract "if and when Traders Wholesale could perform as agreed."

**READ BEFORE ANSWERING QUESTIONS:**

- Please do NOT discuss any civil procedure issues—focus only on the real estate aspects of the questions
- Specific citation of California law is NOT required. Discuss common law and/or statutory law generally. If there is a majority/minority distinction feel free to discuss.
- 1500 word TOTAL (all four parts) maximum

Question 1a. (12 points) Did Caltrans have the right to take the property by means of eminent domain?

Question 1b. (8 points) Why did Traders Wholesale bring an action to order rescission against Garage Services?

Question 1c. (15 points) Analyze the merits of Garages Services claims against Bill.

Question 1d. (15 points) Assuming Garage Services is successful in its breach of contract claim against Traders Wholesale what damages are they entitled to?

**Multiple choice-5 points each**

Remember: if you choose the right answer and write nothing, you get all of the points. If you choose the wrong answer, but write a valuable comment you may get some of the points. If you choose the right answer but write an erroneous comment, you get none of the points.

1. Murphy and Tanner decide to form an entity to develop a shopping center. Murphy's specialty is leasing while Tanner is an operations expert. Both have substantial income from other (unrelated) real estate ventures. What would be the best choice for them?

- a) A Joint Venture so that they can split profits and losses 50/50.
- b) A Limited Liability Partnership so that that can differentiate the profit and loss allocation
- c) An S corporation so that they will avoid the passive loss restrictions
- d) A Limited Liability Company provided the relevant state statute is acceptable

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2. Doreen is driving in the country one day and sees a farm. She wonders whether this would be a good site for her next housing development. She approaches farmer Sam and inquires whether he is interested in selling. She is not sure whether the zoning is appropriate but wants to prevent Sam from selling to another buyer while she conducts her due diligence. They enter into an option agreement where Doreen gives Sam \$2,000 in exchange for keeping his offer to sell open for 14 days. On day 15 Doreen calls Sam and tells him she is not exercising her option.

- a) Sam does NOT have to refund her \$2,000 as the option price was non-refundable compensation for holding the property off the market for 14 days.
- b) Sam does NOT have to refund her \$2,000 because she did not draft the zoning condition into the contract.
- c) Sam does NOT have to refund her \$2,000 because she did not comply with the 14 day time limit
- d) Sam DOES have to refund her \$2,000 because acceptable zoning was a condition precedent to her obligation to perform.

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3. Colin enters into an Agreement to buy Graham's house for \$10,000 and gives him a \$1,000 down payment. Graham's house is a row house identical in design to every house on the block. The day before closing Graham informs Colin that he has changed his mind. In reality Graham has realized that his home is actually worth \$50,000 and wants out of his deal with Colin.

- a) Colin should sue Graham for compensatory and punitive damages to discourage other sellers from breaching their agreements.
- b) Since there is such a wide disparity between the contract price and the actual value this contract fails for lack of consideration. Graham should simply return the \$1,000
- c) Colin should sue for specific performance since the row house is unique
- d) Colin should sue for rescission and get back his \$1,000.

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4. The town of Happyville has experienced uneven growth. While some sections of the city are growing in population some remain stagnant or even are declining. The town officials are concerned about the uneven strain on the infrastructure. Therefore they impose a moratorium on building permits throughout the town while they conduct an infrastructure assessment. Donny Developer owns land in the slow growth section of Happyville that now he must keep vacant.

- a) The town of Happyville must pay Donny the value of his property since this is a taking
- b) The town of Happyville does not have to compensate Donny since this is not a taking
- c) To receive compensation Donny must prove his property value is reduced to zero because the moratorium serves no public purpose
- d) To receive compensation Donny must prove the officials of Happyville are treating some landowners disparately because the growth is not even across the town

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5. Larry Moe and Curly are brothers. After the death of their other brother, Shep, they inherit his house. Larry and Moe want to sell the house. Curly does not. Larry calls Moe and suggests they go ahead and sell it without informing Curly stating, "What does he know? He's a Stooge!". They sell the house to the Marx family who 5 years later sell it to the Wayans. Curley comes back to town and claims his ownership. When they bought the house the Wayans' lender made them purchase a lender's title insurance policy.

- a) The Wayans have a valid claim for title insurance for loss or damage due to the Curley's claim
- b) The Wayans have a valid claim if they can prove an accurate survey would not have disclosed this defect
- c) The Wayans have a valid claim since title insurance is prospective
- d) The Wayans do not a valid claim

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6. Anna has agreed to purchase Peter's condo. There is no written agreement but they have been friends since childhood and completely trust each other. The week before the closing, Anna calls Peter and asks if he would allow her interior decorator access to the condo as Anna was getting new window treatments made. "They are really expensive but they will be gorgeous!" Anna exclaims. Peter said "sure" and the next day when the decorator arrived he watched as she took all of the relevant measurements. The day of closing Peter decides he is not selling to Anna and informs her that there is nothing in writing to compel his performance. Anna's best argument is:

- a) The Statute of Frauds does not apply to condominiums as they are not unique
- b) The Statute of Frauds does not apply because this is the sale of real property not personal property
- c) There is an exception to the Statute of Frauds for equitable estoppel
- d) There is an exception to the Statute of Frauds for partial performance

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7. Stan Slumlord is selling an apartment building. This building has been cited on numerous occasions for fire and safety code violations. Naïve Ned has just moved to town and sees the building is for sale. His broker tells him about the history of the property. He buys the property “as is” and waives his right to conduct an inspection. After he purchases the property he discovers the roof is about to cave in. Ned sues Stan for material misrepresentation.

- a) Ned will lose because of caveat emptor
- b) Ned will lose because he could have reasonably discovered the defect
- c) Ned will win because a seller is obligated to disclose all defects that materially impair the value of the property
- d) Ned will win because his waiver was ineffective.

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8. John buys a site that was formerly used as an oil refinery. The seller has owned the property since long before any environmental protection laws were enacted. The Agreement of Sale states: “Seller warrants that the property is free from environmental contamination. Such warranty shall survive the signing of the deed.” Just to be sure John drafts a condition in the contract that will permit him to be released from contractual obligation if the property does not pass a Phase II examination. It does pass and the closing is held as scheduled. A month later environmental contamination is found on the property.

- a) John has a valid contract claim against the seller
- b) John can only successfully sue the seller if he can prove the seller knew his statements were false when they were made
- c) John’s success in bringing suit depends on whether he is in a strong or weak merger state
- d) John’s only cause of action is against the engineer who performed the (faulty) Phase II analysis.

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9. Sadville is trying to entice businesses back to its Central Business District. The Sadville Redevelopment Authority is thinking about using Tax Increment Financing as a lure for development in abandoned areas. You are a landowner in Sadville who owns the property next to the proposed development.

- a) you oppose the TIF because it violates the principle of horizontal and vertical tax equity
- b) you oppose the TIF because it will increase your property taxes
- c) you agree with the TIF; you will suffer no economic harm because it is only the incremental taxes that are used for bond repayment
- d) you agree with the TIF; blighted areas need tax relief.

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10. After months on the market Brittany and Kevin finally found a buyer for their property. The housing market in their area was actually quite robust. However, this house was difficult to sell because while it was 4,000 square feet (*if you don't know-- this is a big house*), it looked like a giant trailer (complete with the mangy dog in the back and the Chevy on blocks in the front yard). Whitney and Bobby agreed to pay \$500,000. However, Whitney and Bobby breached. On that day the value of the house was \$29.99.

- a) Whitney and Bobby can obviously make good use of the intoxication defense
- b) Brittany and Kevin can challenge Whitney and Bobby to a smack down and the proceeds from Pay-Per-View should be their damage claim
- c) The seller is entitled to the difference between contract and value at time and place of breach (if you choose this answer you have NO sense of humor)
- d) I am so far removed from pop culture I have no idea why this question is even remotely humorous.

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END OF EXAM