

CHAPTER 1 & 2: Fundamentals of Law and the Real Estate Services Act

Marks: 1 mark per question.

1. Answer: 4
Appeals from the small claims level are heard in the BC Supreme Court which is not subject to any monetary limitations. At the BC Court of Appeal level, no evidence is reheard, only matters of law are considered. While Small Claims Courts have jurisdiction to hear cases involving monetary amounts up to \$25,000, the Supreme Court has jurisdiction to hear cases involving any amount, including cases for claims of less than \$25,000.

2. Answer: 3
A writ of execution cannot be issued by the judgment creditor. At the request of the judgment creditor, the court issues a writ of execution to the sheriff directing the sheriff to seize and sell enough of the debtor's assets to pay the judgment. Where a third person owes money to the judgment debtor, the plaintiff can obtain that money by means of a garnishing order. However, the plaintiff cannot obtain all of an employee's wages. Seventy percent of the wages are exempt from seizure.

3. Answer: 4
A disclosure statement must be in the form required by the Superintendent of Real Estate but it neednot contain a certificate from a lawyer. The other responses are all true.

4. Answer: 4
A judgment creditor may apply to court for a judicial sale of the land. Registering a judgment against land does not prevent the subsequent sale of the land; garnishment is only available against a portion of a judgment debtor's wages; and, seizure and sales is not personally effected by a private judgment creditor, but rather through the sheriff's office.

5. Answer: 1
Active brokerages may employ representatives to work for them but they are responsible for the acts of such employees while carrying out their duties. If she has any restrictions on her licence they will also apply to her representatives. In addition, brokerages must prove annually that they have complied with the provisions in the Act for the maintenance of accounting records.

6. Answer: 4
The federal government is responsible for criminal matters. The provincial government is responsible for civil rights. Municipal governments receive their power to legislate from the provincial government, and residual powers not specifically covered in the Constitution are the responsibility of the federal government. To answer a legal question, the courts first look at any relevant legislation. If no legislation exists, the court must then rely on case law alone.

7. Answer: 2
The examination for discovery is part of the pleading process, and therefore would not take place until after the response to civil claim is filed. A judge does not preside over an examination for discovery. Only the parties, their lawyers and the court reporter are present. Each party gives evidence under oath. However, because parties can observe the strength and weaknesses of their respective cases, an offer to settle often results from such proceedings; therefore, Option (2) is the correct choice.
8. Answer: 3
Brokerages will be held vicariously liable regardless of any contractual terms between them and their representatives. A purchaser who has suffered damage because of a representative's misrepresentation may sue not only the representative, but also the brokerage — even if the brokerage was not aware of the misrepresentation.
9. Answer: 2
The Real Estate Services Act (s. 37) permits the Real Estate Council to conduct an investigation to determine whether a licensee has committed professional misconduct or conduct unbecoming a licensee. Such investigations can be initiated on the Council's own initiative or on receipt of a complaint, and could be initiated because of a misleading statement on an accountant's report. For the purposes of an investigation the Act authorizes the Council to inspect the records kept on the licensee's business premises at any time during business hours.
10. Answer: 1
Court costs do not automatically get awarded against the losing party, but rather, are awarded at the discretion of the court and may be awarded to either party. Court costs are meant to partially reimburse the legal expenses of the party to whom they are awarded. Where a decision is reversed on appeal, the court costs might be reversed as well, meaning this party might then be required to pay the court costs of both courts. Court costs discourage people from bringing or defending weak cases before the courts.
11. Answer: 3
Option (1) is incorrect because the municipal governments derive their power from the provincial governments, not from the federal government. Option (2) is not applicable as this is a municipal matter governed by the relevant legislation. Finally, and of particular importance to you as a future real estate licensee, ignorance of the law is never a defence.
12. Answer: 3
Under the Real Estate Services Act, decisions of the Council and of the Superintendent can be appealed to the Financial Services Tribunal. This includes a decision by the Real Estate Council to discipline a licensee. To appeal a decision, a party must send notice of appeal to the Tribunal within 30 days of the date of the decision.
13. Answer: 4
The overall purpose of the Act is to protect the public and this is achieved in two ways. First, the Act ensures that people wanting to enter the real estate profession (that is, to obtain a real estate licence) must have particular knowledge and be of good character. Second, to ensure that the licensees remain competent, the Act provides disciplinary options to the Real Estate Council for a licensee's failure to live up to certain standards of performance and ethics. These options include the possibility of an order to take further education or training.

14. Answer: 1
In discovery, each party is examined under oath by the other party's lawyer. When commencing the action, the injured party consults with a lawyer. The lawyer prepares a notice of civil claim naming the injured party as plaintiff. The defendant answers by serving the plaintiff with a response to civil claim. Both the notice of civil claim and the response to civil claim are part of the written pleadings of the case. At trial, a judge hears all the evidence and makes a decision, or judgment, either at the close of the trial or at a later date.
15. Answer: 1
By following Roger's advice, Marie breached her contract with Joshua. The Act (and the common law) prohibits Roger from inducing someone to breach a contract with one person in order to contract with another person. It is irrelevant that Roger is not acting for Joshua.
16. Answer: 2
A brokerage holds deposit money as a stakeholder and not on account for either party to a real estate transaction. Prior to completion of a transaction, a deposit is held in a brokerage's trust account and cannot be released in the situations in options (1), (3) or (4). Sections 28 and 33 of the Real Estate Services Act apply to deposit fund release and only option (2) is true.
17. Answer: 3
The Real Estate Development Marketing Act requires a developer to prepare a disclosure statement prior to selling lots in a subdivision. A bank acquiring a bankrupt developer's rights would also be a "developer" as defined by the Act. The regulations exempt certain transactions from the disclosure requirements including where all units in a development property are sold in a single transaction. Other exemptions apply to subdivisions located in a municipality, however the subdivision bylaw must have been complied with in its entirety.
18. Answer: 4
All of the options are true statements.
19. Answer: 4
A licensee is not prohibited by the Real Estate Services Act from agreeing to charge a rate of commission that is lower than that common in the community. All the other statements are true.
20. Answer: 4
All of the options describe real estate services that could be subject to the requirements of the Real Estate Services Act.
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- 20 Total Marks