

BUSI 111

Answer Guide 1

Chapter 1: Fundamentals of Law Chapter 2: 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: 4

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. A judgment creditor can register a judgment in the land title office against the debtor's title, but must apply to a court (not the registrar) for a judicial sale.

3. Answer: 4

A disclosure statement must be in the form required by the Superintendent of Real Estate but it need not contain a certificate from a lawyer. The other options 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

While the Council has the responsibility of administering the Real Estate Services Act, the Regulation, the Rules, and the Bylaws, which includes enforcing breaches of the Rules, it is the Superintendent of Real Estate that has the power make rules respecting licensees or regulating licensees in relation to the provision of real estate services. Options (2), (3), and (4) are all true statements.

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

Answer 4 is incorrect because an examination for discovery is different from a discovery of documents. Discovery of documents is the process under which each party is required to provide all relevant documents to the other party. Examination for discovery is a “mini-trial” that takes place between the parties to the dispute and their lawyers. Each party can examine the opposite party under oath, and the evidence is recorded by a court reporter.

8. Answer: 3

Option (1) is false because there is no experience requirement associated with obtaining a representative level licence in British Columbia. Option (2) is false because the key responsibilities of associate brokers and representatives are found in section 3-2 of the Rules. Some of those responsibilities include the duty to keep one’s managing broker informed of the business activities that he or she performs on behalf of the brokerage and the duty to promptly respond to any inquiry that is addressed to the associate broker or representative by his or her managing broker. Option (4) is false because all licensed team members must be licensed with the same brokerage.

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 (as this falls within the definition of professional misconduct). 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; therefore, they are not the same as legal fees. 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: 2

Option (2) is false because the Indemnity Plan will cover a licensee's liability up to a limit of \$1 million. Option (3) is false because the Real Estate Errors and Omissions Insurance Corporation has the right to settle a claim without the consent of the licensee. Option (4) is false because the Indemnity Plan does not provide coverage for any fines, sanctions, or penalties imposed on a licensee by the Real Estate Council.

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.

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.

20 Total Marks