

PROPERTY PRACTICE QUESTIONS

ANSWER 22

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Caveat: The outline of the answer below provides guidance regarding the main issues which you should address in your answer. The answer is *not* designed to be a model answer.

Rob v. Andrew

Validity of Rob's Contract with Andrew

- To recover any damages from Andrew, Rob would first need to prove that his contract with Andrew was valid
- In Texas, for the residential real estate contract to be valid, it must meet the following requirements:
 - *Contract must be in writing*
 - The contract in our hypothetical was in writing
 - *Signed by the party to be bound*
 - The contract in our hypothetical was signed by both parties
 - *Must have a disclosure in bold, uppercase, 14 point type font stating that the contract is final and cannot not be contradicted by prior or simultaneous contract provisions*
 - The contract in our hypothetical contained such a disclosure
- To prove that there was a valid agreement to sell the land, the real estate contract must contain the following elements in writing:
 - *Description of the property*
 - Contract in our hypothetical contained an incomplete description of property

- However, all that is required for a valid property description is that a person familiar with the locality could identify it
 - In our hypothetical this requirement was met
 - *Identities of the parties*
 - The contract in question named the parties
 - *Terms*
 - *Price and date of sale*
 - The contract in question contained the price and date of sale provision
- Because all the elements above are satisfied, it looks like the contract was valid

Termination of Rob's Contract with Andrew

- **In real estate contracts, time is presumed NOT to be of the essence even if the contract states a specific time for performance UNLESS:**
- *The contract specifically states that time is of the essence OR*
 - Rob and Andrew's contract stated the time for performance but did not state that the time was of the essence
 - *Courts determine from the surrounding circumstances that the time is of the essence*
 - *E.g. an unstable real estate market in the area*
 - In the contract in question the house value went down by \$10,000 during the time that Andrew was trying to obtain proper financing due to the fact that halfway houses were being built in the area
- If the court determines that the real estate market was unstable due to the building of the halfway houses, it may conclude that the time provision in Rob and Andrew's contract was of the essence. But, it is problematic whether a \$10,000 change is sufficient to constitute market instability.

- If the court concludes that the time provision was of the essence, it will likely find that Rob's contract with Andrew had indeed terminated due to Andrew's nonperformance

Downpayment

- *The seller can keep the downpayment in case of the breach of contract by the buyer, if the contract contained a provision for liquidated damages*
 - Rob and Andrew's contract contained a liquidated damages provision
- If the court decides that Andrew breached the contract, it will likely allow Rob to keep Andrew's \$15,000 downpayment

Benefit of the Bargain

- *The seller has always been allowed to obtain the "benefit of the bargain" damages in case of a breach of contract by the buyer*
 - Rob will seek the benefit of the bargain damages because while Andrew was seeking to obtain financing the house value declined by \$10,000
- If the court decides that Andrew had breached the contract, it will likely award Rob the benefit of the bargain in the amount of \$10,000

Damage to the Wooden Floor

- *The standard real estate contract form provisions in Texas state that the seller is responsible for restoring the premises to their original condition*
 - Rob had used a standard Texas real estate contract form and thus it is likely that the contract contained the above provision
- The courts are likely to enforce the standard form provision because Rob and Andrew did not agree to anything different
- Rob is most likely responsible for the water damage repairs to his wooden floor

Andrew v. Rob

- Andrew may counterclaim stating that it is Rob, and not Andrew who breached the contract by signing a contract with Angela without subjecting it to Andrew's previous contract

- If the court finds that the time was not of the essence despite the unstable market in the area, Andrew may win on his claim of breach of contract against Rob
- If Andrew wins on his breach of contract claim against Rob, he will probably get back his \$15,000 deposit
- However, if the court finds that because of the unstable market time was of the essence, then Andrew will likely lose on his claim and will have to pay damages to Rob