CONTENTS

Preface	xxiii
Acknowledgments	XXV
Chapter 1 Market Context for Real Estate Transactions	1
A. Types of Real Estate Transactional Practice	5
Problem 1A	8
B. Market Choices and Profits	9
C. Risk and Return	10
D. Value, Utility, and Comparative Advantage	10
Problem 1B	11
E. Categories of Costs	12
Problem 1C	13
F. Transactional Misbehavior	14
G. Categories of Market Risk	15
1. Temporal Risk	15
2. Transactional Risk	17
Problem 1D	18
H. Lawyers' Professional Responsibilities	19
Marsh v. Wallace	20
Problem 1E	24
Chapter 2 Real Estate Brokers	27
A. Brokers' Roles in the Market	27
B. Types of Broker Representation	28
Problem 2A	31
C. The Listing Agreement	31
Problem 2B	32
D. Brokers' Duties to Parties	32
Rangel v. Denny	33
Greif v. Sanin	36

xii		Contents
E.	Brokers' Commissions	42
	1. When the Commission Is Earned	42
	Oxford Business Brokers, Inc. v. Moriarty	44
	Problem 2C	45
	2. Commission, Competition, and Minimum Service Laws	46
	Colorado Real Estate Commission v. Vizzi	47
F.	Brokers and Lawyers	50
	1. Unauthorized Practice of Law	50
	Problem 2D	51
	Problem 2E	51
	2. Lawyers Acting as Brokers	52
	Problem 2F	52
Ch	apter 3 Preparing to Contract	53
A.	Real Estate Transactions Timeline	54
В.	Understanding the Consequences of Simple Rules	57
	Problem 3A	57
C.	Letters of Intent and Options	58
	GMH Associates, Inc. v. Prudential Realty Group	60
	Problem 3B	69
	American Canadian Expeditions, Ltd. v. Gauley River Corporation	70
	Problem 3C	73
Ch	apter 4 Executory Contracts	75
A.	Ensuring Contract Enforceability	76
	1. The Statute of Frauds	76
	Sterling v. Taylor	77
	2. Part Performance of an Oral Contract	81
	Problem 4A	81
	3. Other Contract-Law Requirements	82
	Problem 4B	83
	Moran v. Erk	83
В.	Equitable Conversion and Allocation of Risk	86
	Brush Grocery Kart, Inc. v. Sure Fine Market, Inc.	89
	Problem 4C	92
	Problem 4D	92
	Problem 4E	93

Contents		xiii
C.	Major Contract Conditions	93
	Problem 4F	95
	1. Financing Conditions	96
	Louisiana Real Estate Commission v. Butler	98
	Walsh v. Catalano	99
	Problem 4G	100
	Problem 4H	101
	2. Inspection Conditions	102
	Bourland, Heflin, Alvarez, Minor & Matthews, PLC v. Heaton	103
	Problem 4I	107
Ch	apter 5 Condition of the Property	109
A.	Quantity	109
	Perfect v. McAndrew	109
	Problem 5A	113
В.	Quality	114
	1. Express Allocations of Risk of Quality	114
	Clair v. Hillenmeyer	114
	Problem 5B	116
	2. Disclosing Inaccurate Information	117
	Petrillo v. Bachenberg	117
	Ridge Seneca Plaza, LLC v. BP Products North America	123
	Problem 5C	127
	3. Material Defects and Duty to Disclose	128
	Bloor v. Fritz	129
	Milliken v. Jacono	132
	Problem 5D	137
	Problem 5E	138
	4. Implied Warranties	138
	Lofts at Fillmore Condominium Association v. Reliance Commercial Construction, Inc.	139
	Problem 5F	143
Ch	apter 6 Closing the Contract	145
A.	Attorneys' Duties	145
	Problem 6A	146
	St. Louis v. Wilkinson Law Offices, P.C.	146
	Problem 6B	150

χiν		Contents
В.	The Doctrine of Merger	150
	Panos v. Olsen	151
	Problem 6C	155
C.	The Role of the Notary	156
	Scheible v. Brown	157
D.	Escrows	160
	Problem 6D	162
	Miller v. Craig	163
	Problem 6E	165
E.	Wire Transfers	166
	Choice Escrow & Land Title, LLC v. BancorpSouth Bank	167
	Problem 6F	169
Ch	apter 7 Contract Remedies	171
A.	Measuring Contract Damages	171
	Uzan v. 845 UN Limited Partnership	173
	Problem 7A	177
В.	Equitable Remedies	178
	Oliver v. Ball	180
	Problem 7B	184
	Rigoli v. 44 Monroe Marketing, LLC	184
	Problem 7C	187
C.	Slander of Title and Lis Pendens	188
	Executive Excellence, LLC v. Martin Brothers Investments, LLC	188
	Problem 7D	192
D.	Tort Remedies Related to the Contract	192
	Sexton v. St. Clair Federal Savings Bank	192
	Problem 7E	195
Ch	apter 8 Allocating Title Risk	197
A.	Title Under the Real Estate Contract	197
	Problem 8A	199
	1. Encumbrances and Encroachments	199
	Staley v. Stephens	200
	Problem 8B	202
	2. Effect of Public Regulation on Title Contingencies	202
	Scott v. Turner	202
	Problem 8C	204

Contents XV	
-------------	--

	3. Buyer's Remedies for Title Defects	204
	Donovan v. Bachstadt	204
	Problem 8D	207
В.	Deed Covenants of Title	208
	1. Warranty Deeds and Quitclaim Deeds	208
	Egli v. Troy	210
	2. Types of Covenants	211
	Problem 8E	213
	Rowe v. Klein	213
	Problem 8F	217
	Problem 8G	217
Ch	napter 9 Land Descriptions	219
A.	Types of Descriptions	219
	Problem 9A	224
В.	The Survey	225
	Mitchell G. Williams & Harlan J. Onsrud, What Every	
	Lawyer Should Know About Title Surveys	225
	Problem 9B	232
C.	Legal Adequacy of Description	232
	1. Descriptions in Contracts of Sale	233
	Butler v. Benefield	233
	Problem 9C	234
	2. Descriptions in Deeds and Other Recorded Instruments	235
	Walters v. Tucker	<i>235</i>
	McGhee v. Young	240
	Problem 9D	241
	Problem 9E	242
Ch	napter 10. Public Records	243
A.	Title Search Process	243
	1. Index Systems	244
	2. Electronic Title Searching	245
	3. Sample Search	246
В.	Types of Recording Acts	249
	Problem 10A	251
	Problem 10B	252

χv	i	Contents
C.	Bona Fide Purchaser Status	253
	1. Notice from Records	253
	Pelfresne v. Village of Williams Bay	25 <i>3</i>
	Problem 10C	257
	2. Defects in Recorded Instruments	258
	In re Simpson	258
	Problem 10D	262
	3. Notice from Possession	263
	In re Weisman	263
	Problem 10E	267
	4. Shelter Rule	268
	Nampa Highway District No. 1 v. Knight	268
	Problem 10F	271
	5. Payment of Value	272
	Problem 10G	273
D.	Special Problems: Interests That Are Hard or Impossible to Find	273
	MidCountry Bank v. Krueger	275
	Problem 10H	281
Ch	napter 11 Title Products	283
A.	Title Abstracts	283
	Problem 11A	285
В.	Attorneys' Title Opinions and Certificates	285
	North Bay Council, Inc., Boy Scouts v. Bruckner	286
	Problem 11B	290
C.	Title Insurance	291
	1. The Commitment and the Policy	293
	2. Making a Claim Under the Policy	295
	Vestin Mortgage, Inc. v. First American Title Insurance Company	295
	Jericho State Capital Corp. of Florida v. Chicago Title	299
	Problem 11C	304
	3. Title Insurance and the Contract of Purchase	304
	Problem 11D	305
	4. Ethical Problems: Conflicts and Confidentiality	305
	Problem 11E	306
	Problem 11F	307

Coı	ntents	xvii
Ch	apter 12 Improving the Efficiency of the Title System	309
A.	Title Standards	310
	Lewis M. Simes & Clarence B. Taylor, Model Title Standards	
	(1960)	311
	United States v. Morales	312
В.	Title Curative Acts	316
	Guttman v. Wells Fargo Bank	317
	Problem 12A	320
C.	Marketable Title Acts	321
	Lyday v. Myakka Valley Ranches Improvement Association	322
	Problem 12B	324
	Problem 12C	324
D.	Torrens System: Title Registration	325
	Problem 12D	326
E.	Electronic Land Records	326
	Problem 12E	327
Ch	apter 13 Housing Products	329
A.	Equal Opportunity for Housing	329
	1. Discrimination Based on Race	330
	M & T Mortgage Corp. v. White	330
	Texas Department of Housing and Community Affairs v. Inclusive	
	Communities Project, Inc.	336
	Problem 13A	342
	2. Discrimination Based on Disability	343
	United States v. Edward Rose & Sons	344
	Austin v. Town of Farmington	346
	Problem 13B	349
В.	Subdivisions and Planned Communities	350
	Reiner v. Ehrlich	351
	Turudic v. Stephens dba Susan Estates Residents' Association	354
	Problem 13C	360
C.	Condominiums	361
	Harvey v. Landing Homeowners Association	362
	Problem 13D	368

xviii	Contents
D. Cooperative Housing	369
40 West 67th Street v. Pullman	371
Problem 13E	375
Problem 13F	375
E. Time-Share Housing	376
O'Connor v. Resort Custom Builders, Inc.	377
Problem 13G	380
Chapter 14 Possession and Use of Mortgaged Property	381
A. Possession by Mortgagor: Doctrine of Waste	385
Blunier v. Staggs	386
Problem 14A	388
B. Possession by Mortgagee	388
Woodview Condominium Association v. Shanahan	389
Problem 14B	392
C. Receivers	392
Jordan v. Nationstar Mortgage, LLC	393
Problem 14C	400
Chapter 15 Residential Mortgage Products	401
A. Access to Mortgage Markets	401
B. Structure of Different Types of Mortgage Loans	403
1. High Loan-to-Value Loans and Mortgage Insurance	404
2. Loan Charges: Points, Premiums, and APR	406
Problem 15A	406
3. The Fixed-Rate, Self-Amortizing Home Mortgage Loan	407
4. Adjustable-Rate Mortgage Loans	409
Berghaus v. U.S. Bank	410
5. Cost of Capital and Timing Issues	415
6. Balloon Payment	415
7. Creative Mortgage Structures	416
Problem 15B	418
C. Primary and Secondary Mortgage Markets	418
1. Primary Mortgage Market	418
Problem 15C	420
2. Secondary Mortgage Market	420
Problem 15D	424

Co	ntents	xix
	3. Riskier Mortgage Loans	424
	Problem 15E	425
	4. The Foreclosure Crisis	426
	Federal Home Loan Mortgage Corporation v.	
	SFR Investments Pool 1, LLC	428
D.	Government Regulation and Market Reform	433
	1. UDAAP	434
	2. Mortgage Disclosures	435
	3. Skin in the Game	435
	4. Lender/Servicer Oversight	435
	5. Primary and Secondary Market Restrictions	436
	6. Home Appraisals	436
	7. Ability to Pay	436
	Consumer Financial Protection Bureau v. Gordon	437
	Problem 15F	442
Ch	napter 16 Mortgage Obligations	445
A.	Payment of the Debt	445
	1. Usury	445
	Ross v. Peyerk	447
	Problem 16A	450
	2. Late Payment	450
	Problem 16B	452
	3. Prepayment	452
	Lopresti v. Wells Fargo Bank, N.A.	454
	Problem 16C	459
В.	Nondebt Obligations	459
	Pawtucket Institution for Savings v. Gagnon	460
	Problem 16D	462
C.	Assumptions and Taking Subject to Mortgage Obligations	463
	Problem 16E	465
	First Interstate Bank of Washington v. Nelco	465
D.	Restrictions on Transfer by Mortgagor	467
	Levine v. First National Bank of Commerce	469
	Problem 16F	474
E.	Default Clauses	474
	Problem 16G	475

xx	Contents
F. Acceleration	477
Problem 16H	479
Chapter 17 Foreclosure	481
A. Types of Foreclosure	482
1. Strict Foreclosure	482
2. Judicial Foreclosure	483
English v. Bankers Trust Company of Co	alifornia, N.A. 484
Problem 17A	485
3. Nonjudicial Foreclosure	486
Problem 17B	487
B. Foreclosure Sale Prices	488
First Bank v. Fischer & Frichtel, Inc.	488
1. Statutory Mortgagor Protections	494
2. Statutory Redemption	495
Reverse Mortgage Solutions, Inc. v. Gold	wyn 496
Problem 17C	499
C. Residential Foreclosure Oversight	500
1. Lender Foreclosure Abuses and Response	s 500
In re Carrsow-Franklin	503
Problem 17D	508
2. Residential Foreclosure's Economic and S	ocial Impacts 508
Windward Bora LLC v. Cohen	512
D. Loss Mitigation and Deed in Lieu of Foreclos	sure 515
GMAC Mortgage, LLC v. Dyer	517
E. Equitable Subrogation	520
New York Mortgage Trust v. Deely	520
Problem 17E	524
Chapter 18 Mortgage Substitutes	525
A. Sales and Disguised Mortgages	526
Smith v. Harding	527
Problem 18A	530
B. The Negative Pledge	531
Tahoe National Bank v. Phillips	532
Problem 18B	537
C. Installment Land Contracts	537
Petersen v. Hartell	540
Problem 18C	544

Contents	xxi
Chapter 19 Junior Mortgages	547
Problem 19A	549
A. Protecting the Junior Mortgage	550
In re Martin	551
Problem 19B	554
B. Mortgage Subordination and Seller Financing	554
Ranier v. Mount Sterling National Bank	556
Problem 19C	558
C. Wraparound Mortgage	559
Carroll v. Miller	559
Problem 19D	560
Problem 19E	561
Chapter 20 Basic Commercial Real Estate	563
A. Selecting a Development Entity	563
Problem 20A	564
B. Commercial Lending and Article 9 of the UCC	564
Problem 20B	565
C. Commercial Financing	566
1. Construction Loans	566
French Broad Place, LLC v. Asheville Savings Bank	569
Problem 20C	575
2. Permanent Loans	575
3. Take-Out Arrangements and Three-Party Agreements	576
Problem 20D	580
Teachers Insurance & Annuity Association v. Ormesa Geothermal	581
Problem 20E	586
4. Loan Participations	586
Sun American Bank v. Fairfield Financial Services, Inc.	586
Problem 20F	590
D. Leases as Financing Devices	591
Problem 20G	593
Table of Cases	595
Index	603