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A SYNOPSIS OF THE LAW CONCERNING THE ENFORCEMENT OF CONTRACTS FOR THE SALE OF REAL ESTATE

By

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The law of Pennsylvania defining the conditions under which the parties to an agreement for the sale of real estate may enforce the agreement, the extent to which they may enforce it, and the manner in which they may enforce it, differs in many important particulars from the law prevailing in other states. These differences, to some extent due to capricious judicial decision, result as the more or less immediate consequences of the following three legal propositions:

(1) The common law courts of Pennsylvania administer equitable principles in common law forms of action;

(2) the jurisdiction of the equity courts in Pennsylvania depends entirely upon statutory enactments and is not general but confined to certain specifically enumerated subjects;

(3) the fourth section of the Statute of Frauds is not a part of the law of Pennsylvania.

REMEDIES IN EQUITY

Purchaser's Remedies

(1) A purchaser is not entitled to specific performance of an oral contract. (*Hare on Contracts*, 392). (11 *Dickinson Law Review* 171. *Haskell v. Heathcote*, 363 Pa. 184).

(2) A purchaser is not entitled to specific performance of a written contract which is not signed by the vendor, even though it is signed by the purchaser. (*Hare on Contracts*, 393). (*Axe v. Potts*, 349 Pa. 345, 348; *Everhart v. Dolph*, 133 Pa. 628).

(3) A purchaser is entitled to specific performance in either of the above cases, (1) or (2), if there has been sufficient part performance by him. The essential elements of this part performance have been variously stated. (*Jermyn v. McClure*, 195 Pa. 245).

(4) A purchaser is entitled to specific performance of a written contract, if the contract is signed by the vendor, even though it is not signed by the purchaser. (*Hare on Contracts*, 391). (*McFarsons Appeal*, 11 Pa. 503; *Levy v. Parkway Baking Company*, 331 Pa. 360, 365).

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Vendor's Remedies

(1) A vendor is not entitled to specific performance where the object of the bill is simply to obtain payment of the purchase price. This rule applies whether the contract is oral or written. (*Kaufman's Appeal*, 55 Pa. 383; *Deck's Appeal*, 57 Pa. 467; *Smaltz's Appeal*, 99 Pa. 310; *Dorff v. Schmunk*, 197 Pa. 300; *Heights Land Company v. Swengel's Estate*, 319 Pa. 298, 300). For a criticism of this rule see 13 *Dickinson Law Review* 217.

(2) A vendor is entitled to specific performance where the decree sought is not merely for the payment of the purchase money but for specific relief which a court of equity alone can furnish. (*Tierman v. Roland*, 15 Pa. 429; *Finley v. Aiken*, 1 Grant 84; *Kaufman's Appeal*, 55 Pa. 383; *Heights Land Company v. Swengel's Estate*, 319 Pa. 298).

The same rules as to the requirements of the statute of frauds which apply where an action at law is brought to recover the purchase price apply here. (See *infra*, Vendor's Remedies at Law Rules (1), (2), (3), and (4).

REMEDIES AT LAW

Purchaser's Remedies

(1) A purchaser is entitled to recover damages for the breach of the contract. The general rule may be stated: a vendee in a contract for the sale of land may recover damages for the loss of his bargain if his contract is in writing, and the vendor in bad faith refuses to convey, or if the contract is in parol and was obtained by fraud. In all other cases of contracts for the sale of land, whether written or parol, vendees are limited to the money paid with interest and expenses. (*Seidlek v. Bradley*, 293 Pa. 379; *In re Craven's Estate*, 169 Pa. Super 94). (56 *Dickinson Law Review* 251; 33 *Dickinson Law Review* 87; 45 *Dickinson Law Review* 149).

(2) A purchaser is entitled to recover possession of the land sold, if withheld from him by the vendor, in an action of ejectment. The requirements of the statute of frauds are the same as in the case where the purchaser seeks specific performance in equity. See *supra*, Remedies of Purchaser in Equity rules (1), (2), and (4). (*Hawn v. Norris and Brown*, 4 Binney 78; *Penn Anthracite Mining Company v. Anthracite Miners of Pennsylvania*, 318 Pa. 401, 409). (13 *Dickinson Law Review* 211).

(3) A purchaser is entitled to recover a verdict for the value of the land or such other sum as will compel the vendor to make a deed rather than pay the damages. The verdict is subject to the condition that it will be released upon the making of a deed within a specified time and the payment of costs. The requirements are the same as when a vendee sues in equity. Although this procedure was once frequently used, no recent cases have been discovered which employ this method. (*Irvine v. Bull*, 7 Watts 323; *Stevenson v. Kleppinger*, 5 Watts 420; *Decamp v. Feecy*, 5 S. & R. 323; *Findlay v. Keim*, 62 Pa. 116; *Wolfziner v. Roth*, 93 Pa. 443). (13 *Dickinson Law Review* 212).

Vendor's Remedies

(1) A vendor is not entitled to recover the purchase price where the contract is oral. (*Meason v. Kane*, 63 Pa. 335; *Ellet v. Paxson*, 2 W. & S. 418; *Wilson v. Clarke*, 1 W. & S. 554; *Heights Land Company v. Swengel's Estate*, 319 Pa. 298). (11 *Dickinson Law Review* 201).

(2) A vendor is not entitled to recover the purchase price where the contract is in writing and signed by the purchaser but not by the vendor. See cases cited (1), *supra*. (*Hare on Contracts*, 390). (*Levy v. Parkway Baking Company*, 331 Pa. 360, 364).

(3) A vendor is entitled to recover the purchase price where the contract is written and signed by the vendor but not by the purchaser. (*Lowry v. Mehaffy*, 10 Watts 387; *Tripp v. Bishop*, 56 Pa. 429; *Levy v. Parkway Baking Company*, 331 Pa. 360).

(4) A vendor is entitled to recover the purchase price even though the contract is oral, if the purchaser by part performance has placed himself in a position to demand specific performance. There are no Pennsylvania cases on point but it seems to follow from the reasoning. (101 A.L.R. 923). (11 *Dickinson Law Review* 197).

(5) A vendor may recover damages for the breach of an oral contract or for the breach of a written contract which is signed by the purchaser but not by the vendor. The measure of damages is the difference between the value of the land at the time of the breach and the sum agreed upon in the contract. (*Bowser v. Cessna*, 62 Pa. 148; *Pepper v. Deakyne*, 212 Pa. 181, 185; but see *Carner v. Peters*, 9 Pa. Super. 29). (11 *Dickinson Law Review* 202).

(6) A vendor who has retained title but parted with possession may maintain ejectment against a purchaser in possession. The contract to sell is not a defense to the action unless it is specifically enforceable at the suit of the vendee, in which case it is so far a defense that the verdict, although for the vendor, is subject to the condition that it will be defeated if within a certain time the purchaser performs his duties under the contract. If within the time named the purchaser does not perform these duties, his equities under the contract become extinct. (*Eberly v. Lehman*, 100 Pa. 542, 545; *Riel v. Gannon*, 161 Pa. 289). (11 *Dickinson Law Review* 99; 13 *Dickinson Law Review* 213).

NOTE: The foregoing is a synopsis of the law regulating the enforcement of contract for the sale of, and for interests in, real estate under the Act of March 21, 1772, 1 Sm. L. 389. *The Landlord and Tenant Act of 1951* (Act of April 6, 1951, P.L. 69) has repealed the Act of 1772 insofar as leases are concerned and has adopted a statute of frauds which appears to change the requirements for an enforceable lease, but as yet we have had no Pennsylvania cases interpreting this section of the act.