

UNIVERSITY
OF MIAMI



Property (C1 & A2)
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Caveat Emptor & Duty to Disclose

Caveat Emptor

Basic rule: no obligation to disclose defects or other factors that might affect the value of the real property being sold.

Caveat Emptor

Vision:

- Market Transactions:
 - No ethical/moral duty owed to other party
- Avoid litigation (does it really?)

Caveat Emptor

Elements of liability for lying:

- False statement
- Of Fact
- Seller knows it to be false
- Fact is material (objective/subjective)
- Intended to induce reliance
- Injury to buyer in reliance on it

Caveat Emptor

Other bases for liability:

- Partial disclosure
- Active concealment
- Ghosts/*Stambovsky* (NY)?

Duty to Disclose

Vision:

- Unethical not to disclose known defects
- Costs seller nothing to disclose
- Market efficiency – full information in transactions


Duty to Disclose

Elements:

- Fact / Defect
- Material (objective/subjective)
- Seller knows it
 - *Not* “should have known”
- Doesn't disclose
- Not in fact known to buyer
- Not readily observable (To whom? Ordinary buyer? Professional inspector?)

CE v. D2D Comparison

CE Elements as changed:

-  Same in both; ~~in CE but not D2D~~; in D2D but not CE
- ~~False statement~~
- ~~Of Fact~~
- Seller knows ~~to be false~~
- Fact is material (objective/subjective)
- Not disclosed by seller
- ~~Intended to induce reliance~~
 - (i.e., no state of mind requirement)
- Injury to buyer in reliance on it

What is the Status of CE in a D2D State?

Residential property:

- ✘ Seller has no duty to disclose
- ✓ Liability for Lying
- ✓ Liability for Active Concealment
- ✘ Liability for Partial Disclosure
(full disclosure required)

What is the Status of CE in a D2D State?

Commercial property: CE typically applies

- ✓ Seller has no duty to disclose
- ✓ Liability for Lying
- ✓ Liability for Active Concealment
- ✓ Liability for Partial Disclosure