

## Appendix 6-1: Discovery Sequence Exercises

### *Duty to Disclose Discovery Sequence Exercise*

#### Instructions:

The general rule is that contracting parties do not have a duty to speak regarding the subject of a contract; in other words, there is no general duty to disclose material facts to the other party. Below you will find 17 hypotheticals. For each one, I have stated whether the seller would have a duty to disclose. Your task is to determine the four principles governing when a seller does have a duty to disclose based on reviewing the hypotheticals and conclusions and then deriving the principles. Write your four principles in the space provided.

#### Exercise:

1. Sophie Seller entered into negotiations with Betty Buyer to sell Seller's house to Buyer. If Seller knows a murder was committed in the house five years ago, must Seller disclose that fact to Buyer? (Answer: *No*, Seller would not have a duty to disclose under these circumstances).
2. Assume the facts are the same as in hypothetical # 1 except Seller also is Buyer's regular lawyer. Must Seller disclose the fact to Buyer? (Answer: *Yes*, Seller would have a duty to disclose under these circumstances).
3. Assume the facts are the same as in hypothetical # 1 except Seller also is Buyer's mother. Must Seller disclose the fact to Buyer? (Answer: *Yes*, Seller would have a duty to disclose under these circumstances).
4. Assume the facts are the same as in hypothetical # 1 except Seller had raised Buyer since she was a child and had been Buyer's chief advisor with respect to all matters since Buyer was fifteen years-old. Must Seller disclose the fact to Buyer? (Answer: *Yes*, Seller would have a duty to disclose under these circumstances).
5. Assume the facts are the same as in hypothetical # 1 except Seller also is a friend of Buyer, although Seller never has rendered any advice or help to Buyer. Must Seller disclose the fact to Buyer? (Answer: *No*, Seller would not have a duty to disclose under these circumstances).
6. Assume the facts are the same as in hypothetical # 1 except Seller also is Buyer's employee, although Seller never has rendered any advice or help to Buyer. Must Seller disclose the fact to Buyer? (Answer: *No*, Seller would not have a duty to disclose under these circumstances).
7. Sophie Seller entered into negotiations with Betty Buyer to sell Seller's house to Buyer. If Seller knows that Buyer does not know the house is riddled with termites, must Seller disclose that fact to Buyer? (Answer: *Yes*, Seller would have a duty to disclose under these circumstances).
8. Sophie Seller entered into negotiations with Betty Buyer to sell Seller's house to Buyer. If Seller knows the neighbors are noisy on Saturday nights, must Seller disclose this fact to buyer? (Answer: *No*, Seller would not have a duty to disclose under these circumstances).

9. Sophie Seller entered into negotiations with Betty Buyer to sell Seller's house to Buyer for \$350,000. If Seller knows that the building and safety department has issued a warning to Seller that Seller must enclose Seller's septic tank (at a cost of \$2,000) or face substantial fines (as much as \$500 per day), must Seller disclose that fact to Buyer? (Answer: *No*, Seller would not have a duty to disclose under these circumstances).
10. Sophie Seller entered into negotiations with Betty Buyer to sell Seller's restaurant to Buyer for \$75,000. If Seller knows that the health department has issued repeated warnings to Seller that Seller must make expensive improvements to the restaurant (at a cost of as much as \$50,000) or the health department will close the restaurant, must Seller disclose that fact to Buyer? (Answer: *Yes*, Seller would have a duty to disclose under these circumstances).
11. Sophie Seller entered into negotiations with Betty Buyer to sell Seller's house to Buyer for \$350,000. If Seller knows that the house has a well-established reputation for being inhabited by ghosts, must Seller disclose that fact to Buyer? (Answer: *No*, Seller would not have a duty to disclose under these circumstances).
12. Sophie Seller, seeking to induce Betty Buyer to purchase Seller's house and land, tells Buyer that the house "has no problems." Unknown to Seller, all of the electrical wiring in the house is a fire hazard and needs to be replaced. If Seller then learns of the electrical wiring problem, must Seller disclose that fact to Buyer? (Answer: *Yes*, Seller would have a duty to disclose under these circumstances).
13. Sophie Seller, seeking to induce Betty Buyer to purchase Seller's house and land, tells Buyer that Gary Frank, a world-renowned architect, designed Seller's house. After escrow closes and Buyer takes possession, Seller learns that Frank's daughter actually designed the house after Frank died. Must Seller disclose that fact to Buyer? (Answer: *No*, Seller would not have a duty to disclose under these circumstances).
14. Sophie Seller, seeking to induce Betty Buyer to purchase Seller's house and land, tells Buyer that the house "has only a few problems" and gives Buyer a list labeled "Problems With Betty's House." If Seller knows that, in addition to the problems she listed, the house needs a new roof, must Seller disclose that fact to Buyer? (Answer: *Yes*, Seller would have a duty to disclose under these circumstances).
15. Assume the facts are the same as in hypothetical # 14 except Seller did not tell Buyer that the house had any problems at all. If Seller knows that the house needs a new roof, must Seller disclose that fact to Buyer? (Answer: *No*, Seller would not have a duty to disclose under these circumstances).
16. Sadie Spouse entered into negotiations with Crafty Creditor to pay off her husband's debts. If Creditor knows that Creditor, without expressly saying so, has given Spouse the incorrect impression that Spouse's husband will be arrested imminently if Spouse does not agree to Creditor's demands, must Creditor disclose the true facts to Spouse? (Answer: *Yes*, Seller would have a duty to disclose under these circumstances).
17. Assume the facts are the same as in hypothetical # 16 except Creditor did nothing to give Spouse the impression that Spouse's husband would be arrested imminently. Must Creditor disclose the true facts to Spouse? (Answer: *No*, Seller would not have a duty to disclose under these circumstances).

*The Four Circumstances in Which Parties Have a Duty to Disclose*

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## *Binding vs. Persuasive Authority Discovery Sequence Exercise*

### Instructions:

Review each of the hypothetical questions and answers below. Each hypothetical question involves a question of whether, assuming both courts were addressing the same legal question based on facts that were identical in every non-trivial way, the first court decision would be binding on the second court decision. The answers are in parentheses. After you have reviewed all the questions and answers, try to derive the legal rules that explain all of the questions and answers.

### Exercise:

- Hypo 1: A decision of the Kansas Supreme Court on a decision of a trial court sitting in the Kansas 7th Judicial District (located in Douglass County). (binding)
- Hypo 2: A decision of a trial court sitting in the Kansas 3rd Judicial District (located in Shawnee County) on a decision of the Kansas Court of Appeals. (not binding)
- Hypo 3: A decision of the United States Tenth Circuit Court of Appeals made by judges sitting in Denver, Colorado on a decision of a United States District Court, District of Kansas court. (binding)
- Hypo 4: A decision of the United States Tenth Circuit Court of Appeals on another decision of the United States Tenth Circuit Court of Appeals. (binding)
- Hypo 5: A decision of the United States Ninth Circuit Court of Appeals on a decision of the United States Tenth Circuit Court of Appeals. (not binding)
- Hypo 6: A decision of a trial court sitting in the Kansas 7th Judicial District on a decision of another trial court sitting in the Kansas 7th Judicial District. (not binding)
- Hypo 7: A decision of a court sitting in the Jefferson City, Missouri location of the United States District Court, Western District of Missouri on another decision of a court sitting in the Jefferson City, Missouri location of the United States District Court, Western District of Missouri. (not binding)
- Hypo 8: A decision of the Kansas Court of Appeals on a decision of a trial court sitting in the Kansas 3rd Judicial District. (binding)
- Hypo 9: A decision of the United States Ninth Circuit Court of Appeals on a decision of a United States District Court, District of Kansas court. (not binding)
- Hypo 10: A decision of the Kansas Supreme Court on a decision of the United States Supreme Court as to a question of whether a provision of the Kansas Constitution violates the United States Constitution. (not binding)
- Hypo 11: A decision of the United States Supreme Court on a decision of the Kansas Court of Appeal as to whether a contract for the sale of land located in Kansas must be in writing to be valid. (not binding)