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card the ancient concept of nonrecognition of the trust estate has made this economic enterprise an exception to this policy. Beginning in 1893 with *Miller v. Smythe* up to the year 1951, when New Mexico became the seventh state to adopt the Uniform Trusts Act, there has been a very definite trend toward the imposition of primary liability upon the trust estate. By so doing the potential liability in the operation of the active trust will be borne in the same manner as that of practically every other type of commercial enterprise. It is submitted that such alignment is in complete accord with modern legal policy.[68]

REAL ESTATE BROKERAGE UNDER UNILATERAL TYPE LISTINGS, WHERE THE CUSTOMER ACTS TO DEPRIVE THE BROKER OF HIS COMMISSION

This note concerns the plight of the real estate broker in cases where, being under a mere unilateral listing employment, he finds that a customer to whom he has shown property has, subsequently, in order to save the amount of the commission, dealt clandestinely with the seller. In order to fully understand the reasons for the existence of this problem and properly to evaluate the legal approaches toward its solution, one ought to be familiar with the real estate brokerage business and more particularly the practices prevailing under unilateral type listings. An attempt, therefore, shall first be made to illustrate some of the more practical incidents of unilateral listings, to explain why those listings are indispensable to the real estate brokerage business, and then to depict the resultant abuses for which the law has yet failed to grant a remedy.

Unilateral Listings

The broker falls within a class of agents known as special agents; that is, he is an agent employed merely to perform certain specific

[68] ". . . there is . . . no other situation [other than an active trust] where one may assume to carry on any type of economic enterprise without imposing on the capital embarked in it the cost of compensating for its expense or for the tortious acts committed by those who are engaged in carrying it on. Not only has this been the traditional policy of the law in the application of the doctrine of *respondeat superior,* but we have in recent years seen a very marked extension of it by workmen's compensation acts, the underlying principle of which is that the economic enterprise should carry the burdens of loss occasioned by the tortious acts of those engaged in it." Stone, *supra* note 4, at 529.

acts for the principal.[1] His employment relationship stems from some form of agreement with the principal, and generally, the specific act which he must perform is the promotion of a sale of property. Today, the most common form of real estate brokerage agreement, the unilateral listing,[2] is not even a contract but a mere offer made by the seller calling for an act as acceptance.[3] The act called for is the broker's effectuation of a sale of the property. The seller in effect says to the broker, "I will pay you a standard commission if, before I sell or any other broker sells the property, you produce a purchaser ready, willing and able to buy at the terms which I will hereby state as follows. . . ." [4] It should be noted that under such an offer the seller reserves the right to sell the property himself or through another broker without incurring liability to the offeree for a commission, and that until the offeree procures a buyer, he has entered into no contractual relationship with the seller.[5]

The broker working under such an employment engagement is in a rather precarious position. Not only must he expend efforts and money in attempting to accept the offer but, as shall later be explained, he is literally at the mercy of the buyer whom he must produce. Buyers, who are usually aware of the insecurity of the broker's situation, frequently find that an amount which would represent the broker's commission is the sole barrier to their arrival at a mutually suitable purchase price. All too often they will attempt to hurdle the barrier by hurdling the broker and in many cases such poor sportsmanship is sanctioned by the law.[6]

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[1] 1 MECHEM, THE LAW OF AGENCY 44 (2d ed. 1914).

[2] *See* Ingalls v. Streeter, 67 N. Y. S. 2d 351, 354 (Syracuse Munic. Ct. 1946); see 2 MECHEM, *op. cit. supra* note 1, at 1998.

[3] See Note, *Unilateral Offers—Real Estate Broker's Listings,* 28 ORE. L. REV. 248 (1949); 2 MECHEM, *op. cit. supra* note 1, at 1998, 2048-2063. In the case of Martin v. Crumb, 216 N. Y. 500, 111 N. E. 62 (1916), however, the court seems to treat such a listing as a contract. The defendant therein contended that since the broker had but a mere offer for a listing, the broker's proposal of a purchaser at a less than listed price amounted to a counter offer and thus revoked the listing. Judge Cardozo, in refuting that argument stated that the ". . . contract of employment became complete when the plaintiff undertook to act as broker, and to use his best efforts to find a buyer." *Id.* at 506, 111 N. E. at 64.

[4] See 2 MECHEM, *op. cit. supra* note 1, at §§ 2428-2432, 2435, 2440, 2441.

[5] Mechem, *The Real Estate Broker and His Commissions,* 6 ILL. L. REV. 145, 146 (1911).

[6] The following are examples of judicial statements which, taken out of context, would seem to condone a customer's maneuvering to avoid the commission: "A purchaser has the right to choose the broker through whom he wishes to negotiate. That a broker may have been the first to bring the property to the attention of the buyer or that he may have initiated negotiations does not give the broker the right to a commission. . . ." Newberry & Co. v. Warnecke & Co., 267 App. Div. 418, 421, 46 N. Y. S. 2d 438, 440 (1st Dep't), *aff'd mem.,* 293 N. Y. 698, 56 N. E. 2d 585 (1944); "If [the customer] saw fit to buy directly from [the seller] he had a right to do so. If [the seller] was willing to ignore his agent and sell to [the customer], that act did not

The Popularity of Unilateral Listings

One may very well inquire why a broker conducts business under the unilateral offer type of listing. It may be said that if he chooses to do so, the law should not strive to protect him. It is indisputable that under our system of freedom of contract, parties are often left by the courts to the consequences of a harsh bargain. The real estate brokerage business, however, has emerged through the years as a necessary and useful commercial activity. Its current methods and practices are the product of the influences of the law, time, usage and competitive enterprise. In order more fully to appreciate why the unilateral listings have become an indispensable incident of modern brokerage, a review of the influences seems warranted.

We are told that the ancient Chinese, when dealing in trade, invariably employed intermediaries through whom they bargained; their reasons for so doing were probably as follows. Parties engaged in negotiations contemplating a sale of property must place their economic self-interest ahead of the ordinary attitude of fellowship and generosity attendant to social contacts. Legal expression describes this form of negotiation as "dealing at arm's length." When a person so deals, he embarrasses himself to a certain extent by exhibiting his selfish attitude. In dealing through an intermediary, the parties are able to save face, as it were. They likewise may deal more cagily by concealing the anxiety which personal contact would disclose.[7] Although these impressions might have been very striking to the Chinese, they have become less and less of a deterrent to direct negotiations in modern times. It is nevertheless true that, although he may not be employed primarily for that purpose, the broker today renders the same service as did the Chinese intermediary.

Another change of custom, that has indirectly de-emphasized the importance of the broker as an intermediary, is the modern trend toward fixed prices. Nevertheless, real estate is still generally sold by the bargaining method. Today, the average person is not used to the bargaining method and consequently is unfamiliar with the value of an intermediary.[8] Not sensing the value of such services, unless the broker is otherwise useful, he is looked upon as an intermeddling middleman. It is apparent, therefore, that the average person hiring a broker today does so mainly for some reason other than

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make [the customer] liable to [the broker]. . . ." Hansberry v. Holloway, 332 Ill. 334, 163 N. E. 662, 664 (1928); "[W]hen the defendants purchased the property in question they intended to dispense with [the introducing broker] for the sole purpose of having Gregory get the commissions. But they had a legal right to do this." Oppenheimer v. Barnett, 131 App. Div. 614, 617, 116 N. Y. Supp. 44, 46 (1st Dep't 1909).

[7] See MCMICHAEL, HOW TO MAKE MONEY IN REAL ESTATE 279, 280 (1945).

[8] See FOSTER, SO YOU'RE GOING TO BUY A HOUSE 72 (1950).

desire for an intermediary. Today, the broker is hired principally to find from among the ever-expanding community a person who is willing to deal at terms most favorable to the broker's employer and only secondarily as an intermediary. A seller interested in *finding* a purchaser will profit from the employment of a number of *searchers,* especially when he need only compensate the one who is successful. That is exactly the opportunity afforded the seller by the unilateral type listing.

Real estate brokerage in most parts of this country today is a highly competitive enterprise. Because of the personal nature of the broker's services, it is not too difficult for a novice to enter the field and immediately to provide a certain amount of competition.[9] These *marginal producers* will solicit any type of listing available and will welcome the unilateral offer listing. Sellers, in their anxiety to dispose of property while obtaining the best price, will list with many brokers and will welcome others who solicit listings. Piracy of listings among brokers is quite simple and perfectly legal.[10]

Although brokers may frequently be heard to complain, this active competition is far from a deplorable situation. Sellers receive excellent service; the *marginal* broker, who finds that he cannot earn a living, drops out of the business, and thus the field is limited by the demand. While it is difficult for individual brokers to monopolize the business, the diligent are rewarded. It would seem, therefore, that brokerage under the unilateral type listing is here to stay.

Broker's Relationship to the Seller

Under the fact situation which gives rise to our problem we must assume that:

1. the broker is acting under a valid unilateral listing for the sale of a particular piece of property.[11]
2. the broker was the first to introduce the purchaser in question to the property.
3. the purchaser in question subsequently, in an effort to profit by a reduction in price in the amount of the commission, dealt directly with the seller without revealing the fact that he had been introduced by a broker.

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[9] McMichael, How to Operate a Real Estate Business 35 (1947).

[10] *Cf.* Newberry & Co. v. Warnecke & Co., 267 App. Div. 418, 46 N. Y. S. 2d 438 (1st Dep't 1944). It is interesting to note that the Real Estate Boards generally do not prohibit piracy of listings in their codes of ethics. See Spilker, Real Estate Business as a Profession 362 (1924).

[11] See Note, *The Status of the Implied Contract of Employment Between Real Property Owners and Brokers in New York,* 6 N. Y. U. Intramural L. Rev. 249 (1951); 2 Mechem, *op. cit. supra* note 1, at § 2390. For a detailed report on the feasibility of requiring listings to come within the statute of frauds, see 1949 Leg. Doc. No. 65(G), 1949 Report, N. Y. Law Revision Commission.

Since under the unilateral listing the seller reserves to himself the right to sell his property, he is not liable for commission if he does so in good faith and in ignorance of the broker's introduction.[12] Should the seller be aware of the broker's acts, but elect to deal directly with the broker's purchaser, the law will compel the seller to pay the broker a commission even though the latter has done no more than to show the property to the purchaser.[13]

It may seem from the outset, therefore, that the broker may easily protect his introduction and prevent the purchaser from collusion by informing the seller of the name of each purchaser he produces. Such protection, however, may easily be negated by the purchaser. For example: he may give an assumed name to the broker; he may purchase through another broker under an assumed name; or he may deal directly with the owner through a "straw man." [14] In addition, a purchaser may deal with the owner before the broker has had a chance to reveal his name. Another consideration is that the broker may justifiably be reluctant to list the purchaser's name with the seller in fear that the seller himself may attempt clandestinely to deal directly with the purchaser in which case the broker may have a legal remedy, but proof of notice is difficult.[15] The listing of customers' names, therefore, is poor protection for the broker where a purchaser deliberately sets out to *save* the amount of the commission.

The general rule, which seems to prevail as an underlying basis for the decisions, is that there is no peculiar legal status attendant to the relationship between broker and customer.[16] It is not diffi-

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[12] Strout Farm Agency, Inc. v. Spencer, 199 N. Y. Supp. 453, 120 Misc. 692 (Sup. Ct. 1923). See Note, 7 A. L. R. 87 (1920). The so-called majority rule, that a seller may be liable to a broker for commission if he sells to that broker's customer even though unaware of the relationship, is greatly limited in its application, especially where the seller inquires of the customer and is told that no broker is involved. See Note, 142 A. L. R. 275 (1943). Holdings that the seller is strictly liable to the introducing broker for commission in a case where the seller was acting in good faith, ignorant of the broker's connection to the purchaser, have been severely criticized. See 1942 ANNUAL SURVEY OF AMERICAN LAW 493; 2 MECHEM, *op. cit. supra* note 1, at 2018.

[13] See cases collected in Notes, 47 A. L. R. 855 (1927); 128 A. L. R. 430 (1940). In certain situations a seller may use the broker's *softening* without paying for it. *Cf.* Sibbald v. The Bethlehem Iron Co., 83 N. Y. 378 (1881) (where the broker abandons the deal); Note, 88 A. L. R. 716 (1934) (where the seller terminates the employment in good faith).

[14] McAuslan & Nutting v. Futurity Thread Co., 245 Mass. 216, 150 N. E. 96 (1926); Sharp v. Keaton, 117 Okla. 131, 245 Pac. 852 (1926); Ringler v. Ruby, 117 Ore. 455, 244 Pac. 509 (1926). See Note, *Purchase Through Straw Man After Negotiations With Broker*, 14 CORNELL L. REV. 318 (1929).

[15] *Cf.* Friedman v. Stern, 17 N. Y. S. 2d 334 (Sup. Ct. 1939).

[16] See 2 MECHEM, *op. cit. supra* note 1, at 2098. "[T]he broker assumes no personal obligations and acquires no rights of action, the benefits and obligations attaching only to his principals." *Cf.* Grossman v. Herman, 266 N. Y.

cult to understand why the courts have not recognized any special relationship. Since the underlying theory of any brokerage case is that of contract based upon employment of an agent, and since the customer fits into that relationship as an implement with which the broker may carry out the terms of his employment contract, the broker's relationship with the customer appears to the court merely as a mechanical incident to the major question, the performance of the contract.[17] Theoretically speaking, however, under our system of jurisprudence, whenever two persons are situated in a position with respect to one another where their relationship gives rise to a flow of benefits or detriments between them, the law will provide special rules for the relationship. For example, when one person rightfully enters upon another's land, the law imposes upon the owner certain special duties of protecting the visitor.[18] Similarly, when a person endeavors to confer a benefit upon another, ostensibly not as a gift, the law will not allow the beneficiary to lay by and accept the improvement without falling under a duty in quasi-contract;[19] a person gaining knowledge of another's secrets as a result of a relationship of confidence with the other will discover that the law will impose a special duty of silence although the secret be not otherwise protectable.[20] The policy underlying these legal sanctions derives from the flow of benefits and detriments arising from the special relationship.[21] Although there be no express contract, the law imposes, upon the party receiving a benefit, a reciprocal duty, be it a duty *ex delicto* (as in the visitor situation) or a duty *ex contractu* implied from the attendant circumstances. At this point, it is worthy to note the fine shred of distinction between tort and contract.[22]

We cannot dispute the existence of benefits flowing between broker and customer. Had the broker no customers, he would make no sales. Benefits flow, therefore, from the customer to the broker by reason of the patronage. Conversely, when even the most reluctant customer consents to listen to the broker's offering, he is the recipient of valuable services. It is not meant to be inferred, however, that a customer ought to compensate a broker; merely that duties do flow from customer to broker.

The question may be asked, does the greater flow of benefits from customer to broker cancel the lesser reciprocal flow? It is sub-

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249, 194 N. E. 694 (1935); Hokar Products Corp. v. Griscom & Co., 40 N. Y. S. 2d 54 (Sup. Ct. 1943).

[17] *Cf.* Hornstein v. Podwitz, 254 N. Y. 443, 173 N. E. 674 (1930); Sampson and Oppenheimer v. Ottinger Bros., 93 App. Div. 226, 87 N. Y. Supp. 796 (1st Dep't 1904).

[18] RESTATEMENT, TORTS § 341 (1934).

[19] See 1 WILLISTON ON CONTRACTS § 3 (Rev. ed. 1936).

[20] RESTATEMENT, TORTS § 757 (1939).

[21] See McNiece and Thornton, *Affirmative Duties in Tort*, 58 YALE L. J. 1272 (1949).

[22] See WILLISTON, *op. cit. supra* note 19, at 9.

mitted that such a theory is illogical for the reason that duties which the law might infer in reciprocity for such benefits are of an incongruous nature. For example: the duty upon the owner of land to protect the business visitor could not be said to cancel the duty owing from the visitor not to abuse the premises. From this reasoning, it is concluded that there are duties stemming from the broker-customer relationship, owing to the broker. It is the failure of courts to recognize and define these duties that permits the existence of the problem at hand.

The case of *Keviczky v. Lorber* [23] was one of the first instances in which the courts recognized the abuse with which we are dealing. Therein, the customer and the seller by-passed the introducing broker and consummated a deal through the medium of a second broker who was obviously a "dummy." The court found that since the first broker was so close to earning a commission, the collusive actions of the customer constituted a tort.[24] The name given to this "tort" by the court was "civil conspiracy." The logic of that decision, however, has been severely criticized—both in the dissenting opinion and in other materials.[25]

Civil conspiracy has for its elements: concert of action to do a tortious act or to employ tortious means.[26] But in order to commit a tort, the customer must have been guilty of some underlying tortious conduct. The majority opinion in the *Keviczky* case did not even imply what that tortious conduct might be. Thus, while there was a recognition of the abuse, there was a failure to discover a reasonable basis for the remedy.[27]

The effect of the *Keviczky* case has been limited in later cases to instances where the customer has prolongedly dealt through the plaintiff-broker in negotiating for the purchase, and then, at a point where it is obvious that the broker is about to earn a commission, changes brokers.[28] The resultant rule remedies little the abuse with which

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[23] 290 N. Y. 297, 49 N. E. 2d 146 (1943). In this case the action was maintained against the customer, the "dummy" broker and the seller. Subsequent cases have held its rule applicable where merely the customer and the "dummy" broker are sued. Avallone v. Bernardi, 83 N. Y. S. 2d 905 (Mt. Vernon City Ct. 1948).

[24] Other cases which have held the defendant liable on the tort theory are Krigbaum v. Sbarbaro, 23 Cal. App. 427, 138 Pac. 364 (1913) (interference by outsiders where broker was close to a deal); Skene v. Carayanis, 103 Conn. 708, 131 Atl. 497 (1926); see Ringler v. Ruby, 117 Ore. 455, 244 Pac. 509, 512 (1926).

[25] See Note, *Conspiracy—Civil Liability Splitting Real Estate Broker's Commissions*, 12 FORD. L. REV. 277, 279 (1943).

[26] *Ibid.*

[27] *Ibid.*

[28] *See, e.g.*, Newberry & Co. v. Warnecke & Co., 267 App. Div. 418, 46 N. Y. S. 2d 438 (1st Dep't), *aff'd mem.*, 293 N. Y. 698, 56 N. E. 2d 585 (1944); Wolf v. Farkas, 49 N. Y. S. 2d 391 (N. Y. City Ct. 1944); Cohen v. City Bank Farmers Trust Co., 276 App. Div. 195, 93 N. Y. S. 2d 609 (1st

we are dealing, for the broker's main service today under unilateral offer listings is that of finding, not that of negotiating. By the mere disclosure of his offering to the customer, the broker has performed the major portion of his services. The courts, however, refuse recognition to the flow of benefit resulting from the disclosure, but do recognize it where there has been prolonged negotiation. But, as shown above, negotiation is by far the less important service of the broker.

It is at this point deemed advisable to draw a rather important distinction. There are many opinions which reiterate the rule that if one broker is more successful in inducing a customer to purchase, the other broker is not, merely because he was the first to offer the property, entitled to a commission from the seller.[29] It is not meant to be inferred that in such a case the introducing broker should be entitled to compensation from the customer. Note, however, that in such a situation the customer does not stand to profit from the change of brokers. If, however, the second broker happened to be a friend or relative of the customer who did not have a listing of the property until after the customer was introduced to it through the first broker, the good faith of the change might easily be challenged. A distinguishing line might be drawn by stating that our problem deals only with situations wherein the customer, after being introduced to the property by a broker, attempts to avoid paying any broker a commission, or where the customer attempts to steer the commission to a selected broker.

Manifestly, the customer's attitude in the abusive instances is fraudulent. But mere fraudulent attitudes are not actionable. The remedy lies not in fraud.[30] The tort of interference with advantageous contractual relationships is similarly unavailable since under the unilateral offer listing the broker has no protectable contractual relationship until he can show that he was the procuring cause of the sale. The dissenting opinion in the *Keviczky* case relied strongly upon the argument that the plaintiff could not prove damages since he was not able to prove that had the customer not "conspired," he would have dealt through the plaintiff-broker.[31]

A more plausible remedy might be found in the tort of interference with advantageous business relationships. This remedy is ever expanding and is today being applied more and more in situations where the business relationships fall short of contract.[32] In

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Dep't 1949); Avallone v. Bernardi, 83 N. Y. S. 2d 905 (Mt. Vernon City Ct. 1948).

[29] Smith v. McGovern, 65 N. Y. 574 (1875); Baker v. Thomas, 12 Misc. 432, 33 N. Y. Supp. 613 (C. P. 1895); Feldman v. O'Brien, 23 Misc. 341, 344, 51 N. Y. Supp. 309, 311 (Sup. Ct. 1898).

[30] See 12 FORD. L. REV., *supra* note 25, at 281.

[31] Keviczky v. Lorber, 290 N. Y. 297, 309, 49 N. E. 2d 146, 151 (1943).

[32] See PROSSER ON TORTS 975 (1941); Note, *Torts: Interference With Business Relations,* 32 CALIF. L. REV. 205 (1944).

fact, although not named as such, it is probably this field of tort that the court meant to apply in the *Keviczky* case when it stated: "The damage here suffered by plaintiff was the loss of an asset in his business and the acquisition by Lorber of that asset." [33]

A defendant may be guilty of that tort even in cases where he does not act deliberately for the purpose of interfering with another's advantage, but acts for his personal benefit although aware that he is interfering.[34] If this tort is applicable, however, the *Keviczky* case has been quite properly limited in its effect to cases where the negotiations are so advanced that it is obvious that the broker is about to earn a commission.[35] Only then is it clear that the broker has attained a protectable business relationship.

At this point let us note the anomaly in implementing the tort of interference as a remedy. In order to do so, the court must consider the act of the customer in buying the property to be a tortious one. No prior acts could be tortious since the customer at all times retains absolute discretion as to whether or not to buy. But note that the act of buying the property is the very act which creates the advantageous situation. The court would have to reason that the very act, which created the broker's advantage, was the tort that interfered with it. Such a holding is quite illogical especially when we admit that the customer had discretionary power throughout as to the creation of the advantage.

The duty which owes from customer to broker is incurred as an incident of a relationship of trust. The broker must trust that the customer will protect the disclosure once made; that he will recognize that it was made solely in the hope that the broker might earn a commission; and that he will not misuse the broker's efforts. It is submitted that the customer, aware of the purpose for which the broker's disclosure is made, in giving heed to the disclosure impliedly agrees to accept the broker's trust.

Many alert brokers make a practice of exacting from prospective purchasers a promise to deal through them if they decide to purchase any of the listed properties disclosed by the broker. Such express agreements have been tested, and apparently will be upheld.[36] The difficulty lies in proving them if they are not in writing. Customers are naturally quite averse to signing papers before a broker shows them anything. Indeed, they may regard the broker's request as an offensive one, meant to imply that they are untrustworthy. Furthermore, such agreements drafted by laymen and signed by customers without counsel are quite dangerous. It is submitted that the agreement ought to be implied by the law. The law would merely infer

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[33] Keviczky v. Lorber, 290 N. Y. 297, 306, 49 N. E. 2d 146, 149 (1943).
[34] PROSSER ON TORTS 975 (1941).
[35] See note 28 *supra*.
[36] *Cf.* Springer v. Duveen, 164 App. Div. 878, 148 N. Y. Supp. 508 (1st Dep't 1914).

that when a customer listens to the broker's offering, he recognizes the purpose for which it was made and impliedly promises not thereafter to use the disclosure to his own profit.[37] Thus, if a second broker, through greater efforts, induced the customer to buy, the customer would not be using the first broker's disclosure to his own advantage. However, should the customer instruct another broker, for example, his cousin, to obtain the listing and then purchase through his cousin, the customer has used the disclosure to his own advantage.

There remains the question of damages. It has been submitted that the implied contract will only be breached in a situation wherein the customer profits from abuse of the disclosure. The customer's profit then is a logical measure of damages. Since, however, the customer's misconduct has caused the loss of a full commission to the broker, the latter sum would seem to be a more equitable measure.

To those who are acquainted with the law of real estate brokerage, the implication of such a contract may seem to be a radical departure from existing precedent.[38] It is submitted, however, that to those who are familiar with brokerage practice, the proposed modification would be no more than a recognition by the law of a moral obligation that has been recognized in practice for many years. It is understandable that the law has been so reluctant. The history of unconscionable dealings in real estate brokerage has tainted the hands of the broker even in the courts of law. Brokers today, however, are not morally inferior to men of other callings. The law itself gives them recognition by license.[39] The strict stare decisis of the unconscionable practices era should be modernized.

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[37] See Louis Kamm, Inc. v. Flink, 113 N. J. L. 582, 175 Atl. 62 (1934), wherein the court recognized a property right in the broker's disclosure of the name of his customer as being his stock in trade.

[38] In Johnson v. Gustafson, 201 Minn. 629, 277 N. W. 252 (1938), the broker apparently had a unilateral type listing; his customer bought through a straw man. Without even discussing the necessity of a showing that the broker had brought the parties to a point where a deal was inevitable, the court held the defendant liable in the amount of the commission for interference with contractual relationships. The result, that the customer was held liable for abusing the mere disclosure, is in accord with the solution herein offered although the reasoning is that of the tort theory.

[39] See N. Y. REAL PROP. LAW § 440-a. This section was first added by Laws of N. Y. 1922, c. 672. The purpose of the section is to assure competency and observance of professional conduct on the part of real estate brokers and salesmen. *In re* Wilson Sullivan Co., 289 N. Y. 110, 114, 44 N. E. 2d 387, 389 (1942). See also Massie v. Dudley, 173 Va. 42, 3 S. E. 2d 176, 181 (1939). For a list of the license requirements of the various states, see VAN BUREN, REAL ESTATE BROKERAGE AND COMMISSIONS, LAW AND PRACTICE 299 (1948).