



# Avoiding Realtor Liability

**COLDWELL  
BANKER**

**RICHARD SMITH,  
REALTORS**

**258-6677**

Each Office is Independently Owned And Operated.

**NET  
30**



# Overview

- Realtor Duties and Obligations
- Common Claims
- Case Law
- Insurance Coverage





# Caveat Emptor

"Let the Buyer Beware"

ALESSANDRO PRA

PHOTOGRAPHY

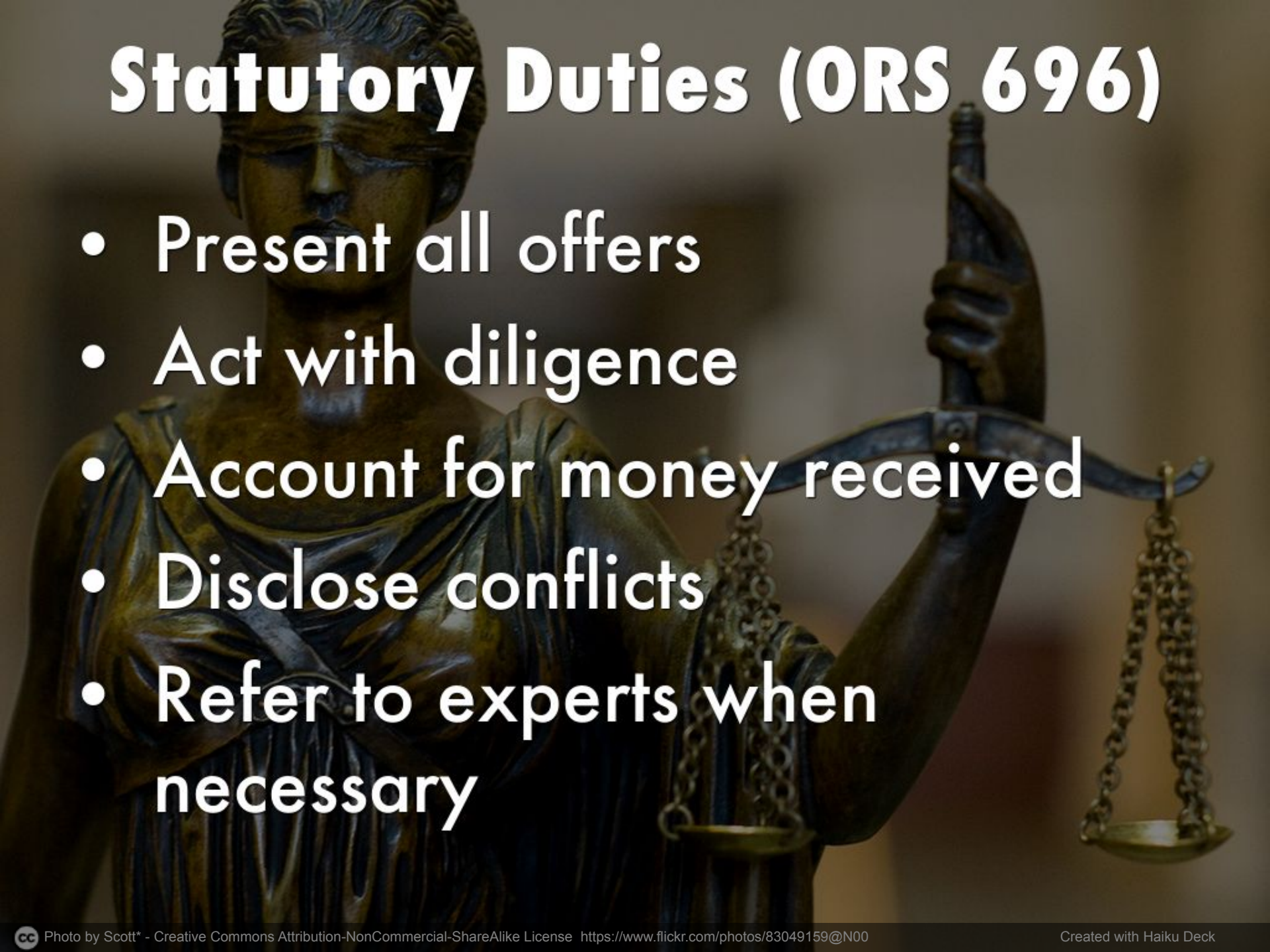




**caveat emptor, qui ignorare non debuit quod jus alienum emit**

let a purchaser, who ought not to be ignorant of the amount and nature of the interest which he is about to buy, exercise proper caution

# Statutory Duties (ORS 696)



- Present all offers
- Act with diligence
- Account for money received
- Disclose conflicts
- Refer to experts when necessary

# Fiduciary Duties

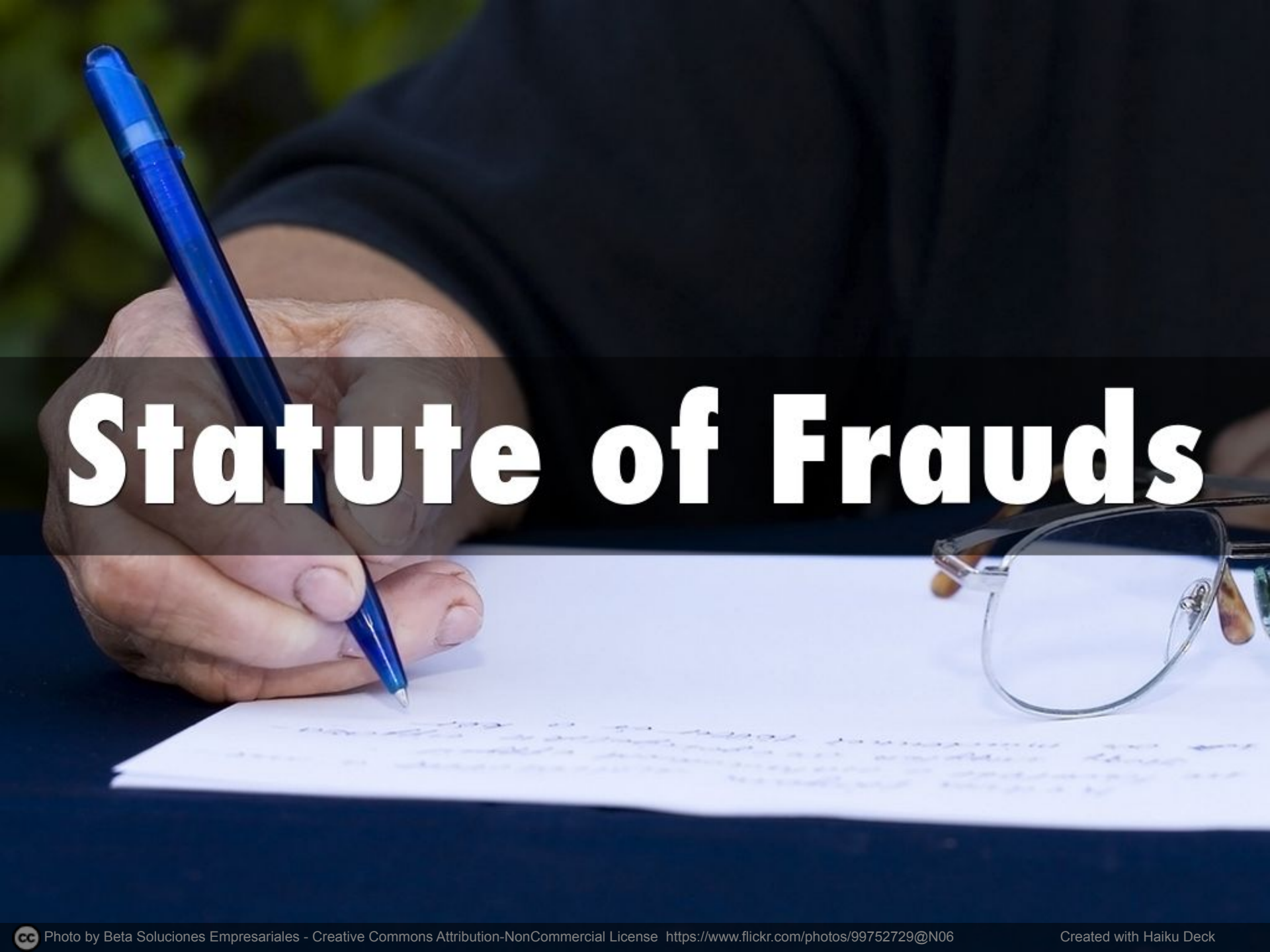
- Loyalty
- Good Faith
- Disclosure of Material Facts

# Haymes v. Rogers

- Seller Agent to Buyer:  
"Try offer of \$850k"
- Seller Agent to Seller:  
"\$950k is too high"

# Contracts

Offer, Acceptance, Mutual Assent & Consideration



# Statute of Frauds

# Misrepresentation

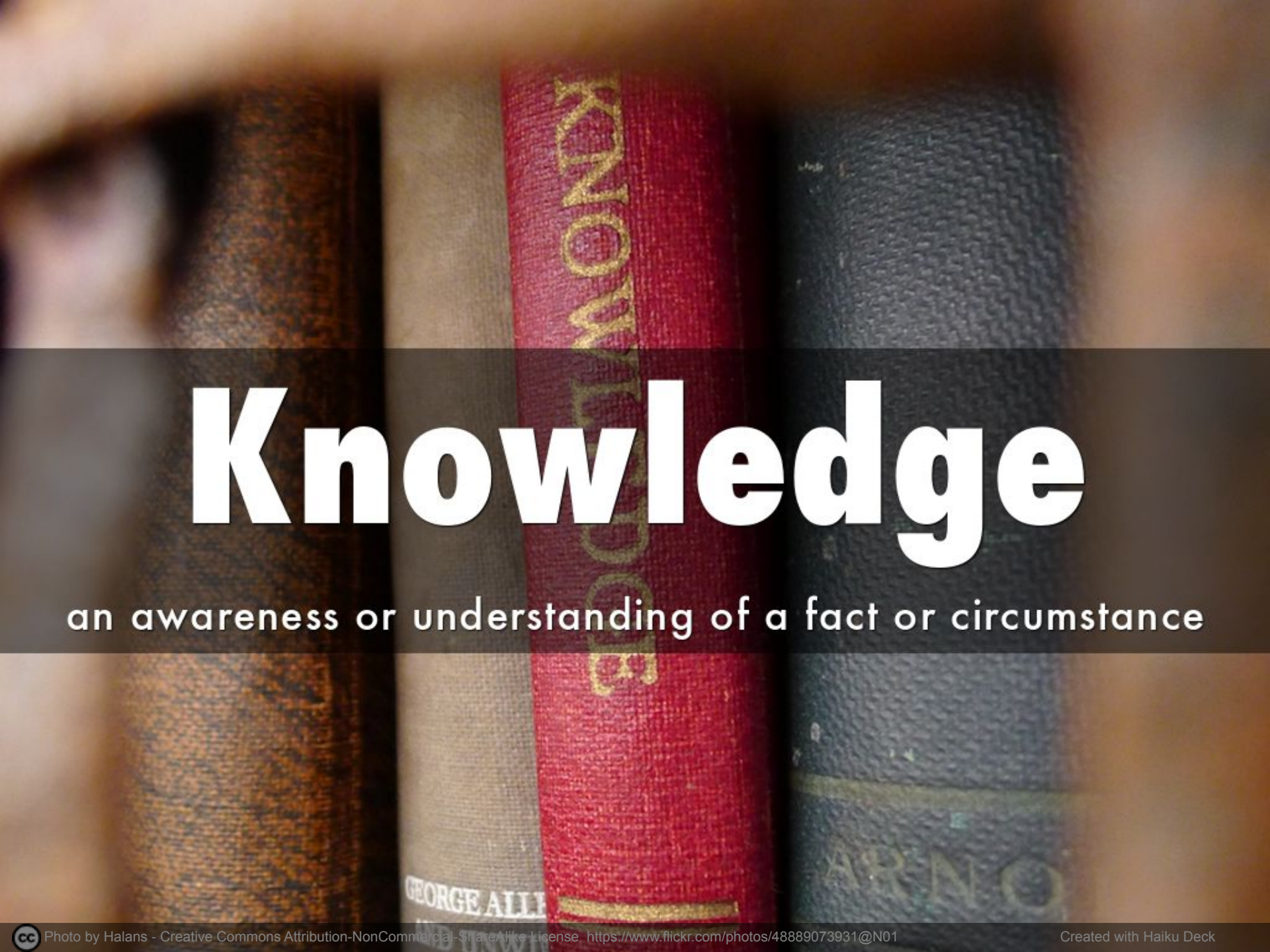
A background image of a woman with blonde hair, smiling and talking on a black mobile phone. The image is slightly blurred and has a dark, moody tone, serving as a backdrop for the text.

- Statement you know or should know is false
- Material
- Intent and Reliance
- Damages

# Types of Misrepresentation

- Intentional (Fraud)
- Negligent





# Knowledge

an awareness or understanding of a fact or circumstance

# What is "Material"?

Likely to affect the party's decision

# Reliance

- Reasonable Person's Perspective
- Fact vs. Opinion
- To the Detriment

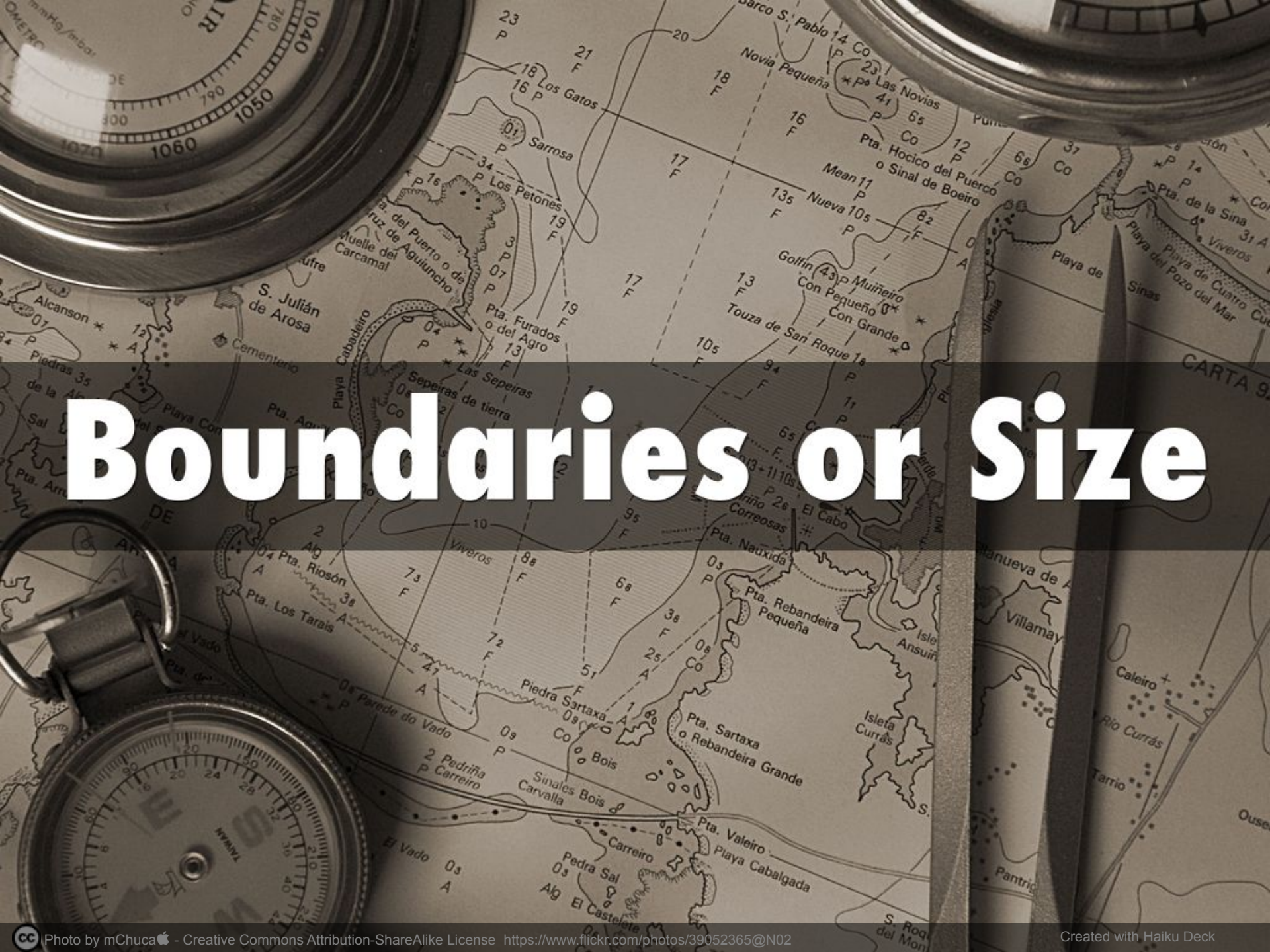


# Importance of Inspections

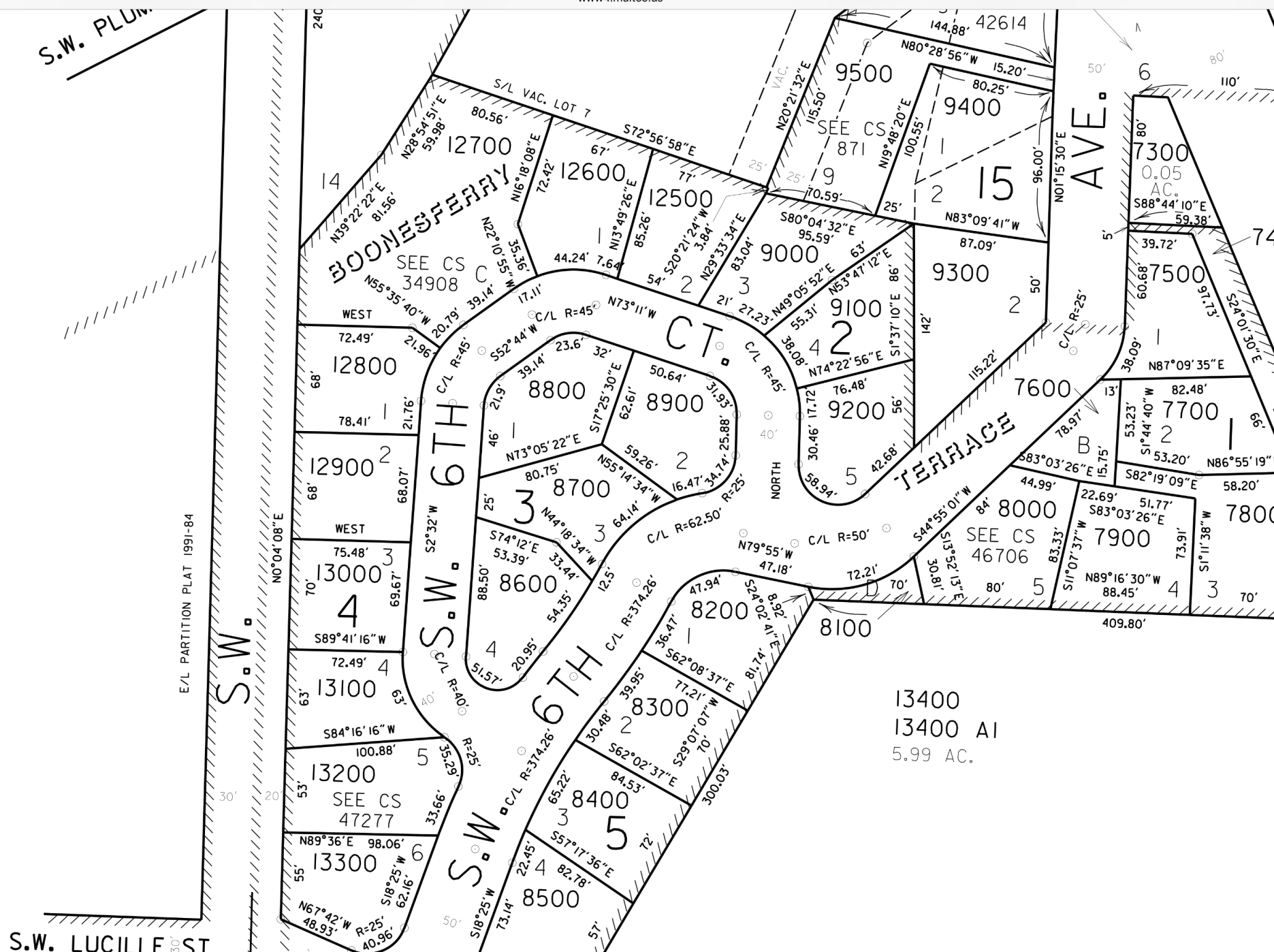
"A visual analysis for the purposes of providing a professional opinion of the condition of a building"

A photograph of a young woman with brown hair tied back, smiling and looking to her right. She is sitting at a table with several drinks in front of her, including a blue cup with a straw and a bottle of pink juice. The background is a bright, out-of-focus indoor setting, possibly a cafe or restaurant, with large windows and other people visible in the distance.

# Common Misrepresentations



# Boundaries or Size



**F, W.M., MULTNOMAH COUNTY, OREGON  
JANUARY, 1978**

I CERTIFY THAT THIS IS A TRUE AND EXACT  
COPY OF THE PLAT OF "BOONESFERRY TERRACE"

SUBSCRIBED AND SWORN BEFORE ME  
THIS 5<sup>th</sup> DAY OF January, 1978

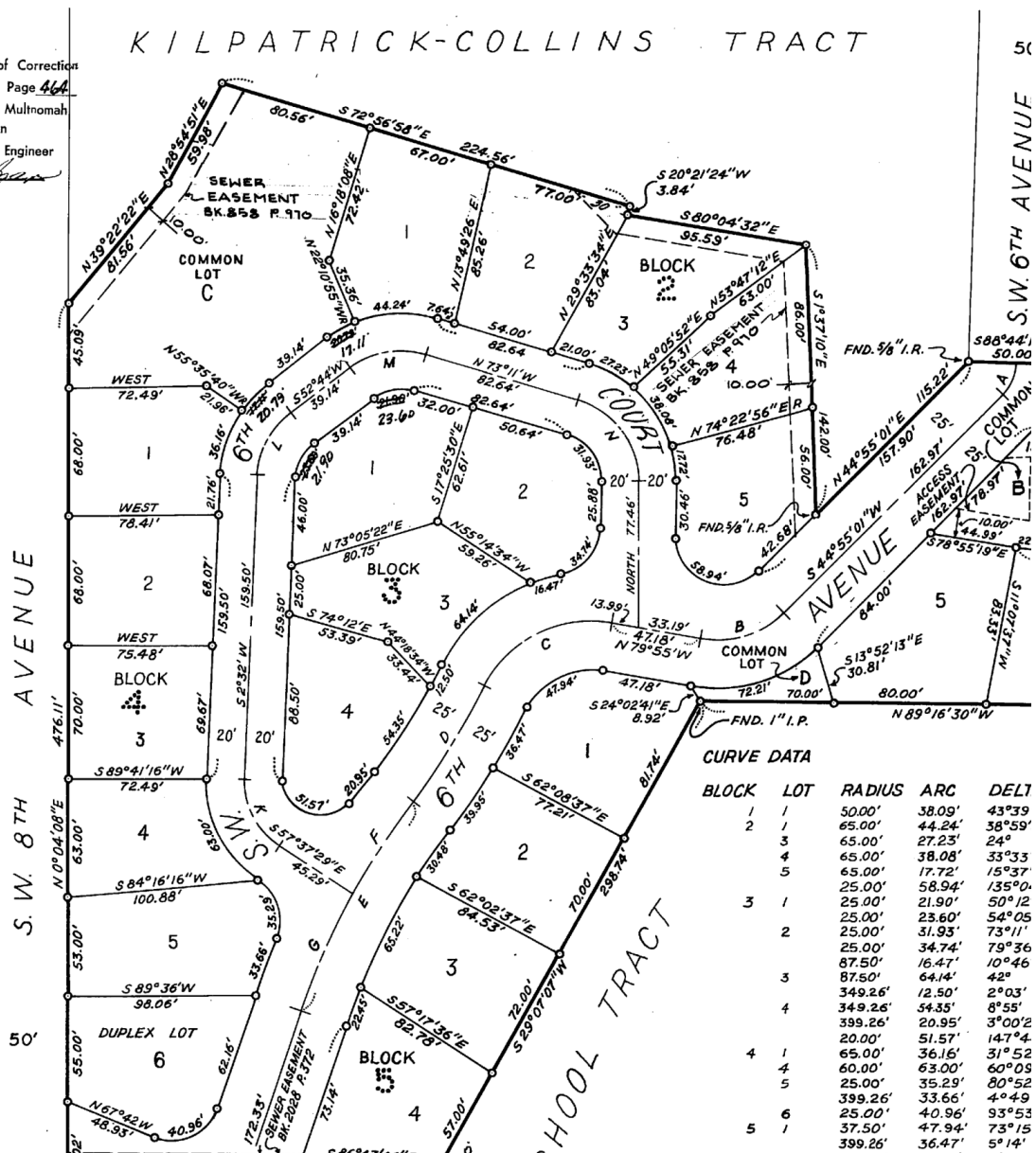
Debra Ostby  
NOTARY PUBLIC FOR THE STATE OF OREGON  
MY COMMISSION EXPIRES MAY 2, 1980

### **UTILITY EASEMENT.**

1931.07' — 28. — 27 — S.W. LUCILLE STREET

Corrected Per Affidavit of Correction  
Recorded in Book 1332, Page 464  
Date 2/21/72 Records of Multnomah  
County, Oregon  
O.J. Domreis, County Engineer  
By [Signature]

KILPATRICK-COLLINS TRACT



| CURVE DATA |     |         |        |        |
|------------|-----|---------|--------|--------|
| BLOCK      | LOT | RADIUS  | ARC    | DEL    |
| 1          | 1   | 50.00"  | 38.09' | 43°39  |
| 2          | 1   | 65.00"  | 44.24' | 38°59' |
| 3          |     | 65.00"  | 27.23' | 24°    |
| 4          |     | 65.00"  | 38.08' | 33°33  |
| 5          |     | 65.00"  | 17.72' | 15°37' |
|            |     | 25.00"  | 58.94' | 135°00 |
| 3          | 1   | 25.00"  | 21.90' | 50°12  |
|            |     | 25.00"  | 31.93' | 54°06  |
| 2          |     | 25.00"  | 31.93' | 73°11' |
|            |     | 25.00"  | 34.74' | 79°36  |
|            |     | 87.50"  | 16.47' | 10°46  |
| 3          |     | 87.50"  | 64.14' | 42°    |
|            |     | 349.26' | 12.50' | 2°03'  |
| 4          |     | 349.26' | 54.35' | 6°55'  |
|            |     | 399.26' | 20.95' | 3°00'2 |
|            |     | 20.00"  | 51.57' | 147°4  |
| 4          | 1   | 65.00"  | 36.16' | 31°52  |
| 4          |     | 60.00"  | 63.00' | 60°03  |
| 5          |     | 25.00"  | 35.29' | 80°52  |
|            |     | 399.26' | 33.66' | 4°49   |
| 6          |     | 25.00"  | 40.96' | 93°53  |
| 5          | 1   | 37.50"  | 47.94' | 73°15  |
|            |     | 399.26' | 36.47' | 5°14'  |

## **EXHIBIT "A"**

A part of the Hector Campbell Donation Land Claim in Section 25, Township 1 South, Range 1 East of the Willamette Meridian, in the City of Milwaukie, County of Clackamas and State of Oregon, described as:

Beginning at a point 9.38 chains South and 7.50 chains East of the Northwest corner of the Hector Campbell Donation Land Claim in Township 1 South, Range 1 East of the Willamette Meridian; thence West along the South line of Harvey Avenue 7.42 chains, more or less, to the East side of the county road and the true point of beginning of the tract herein described; thence South  $0^{\circ}45'$  East 60 feet to a point; thence East 150.00 feet to a point; thence North 60 feet to a point in the Southerly line of Harvey Avenue; thence West along the Southerly line of Harvey Avenue 150 feet to the point of beginning.

# Salahutdin Case

- Buyer wants 1 acre parcel to subdivide
- Buyer's agent finds parcel listed at 1+ acre
- "Constructive Fraud"
- Damages: \$175k

# Friedman v. Kasser

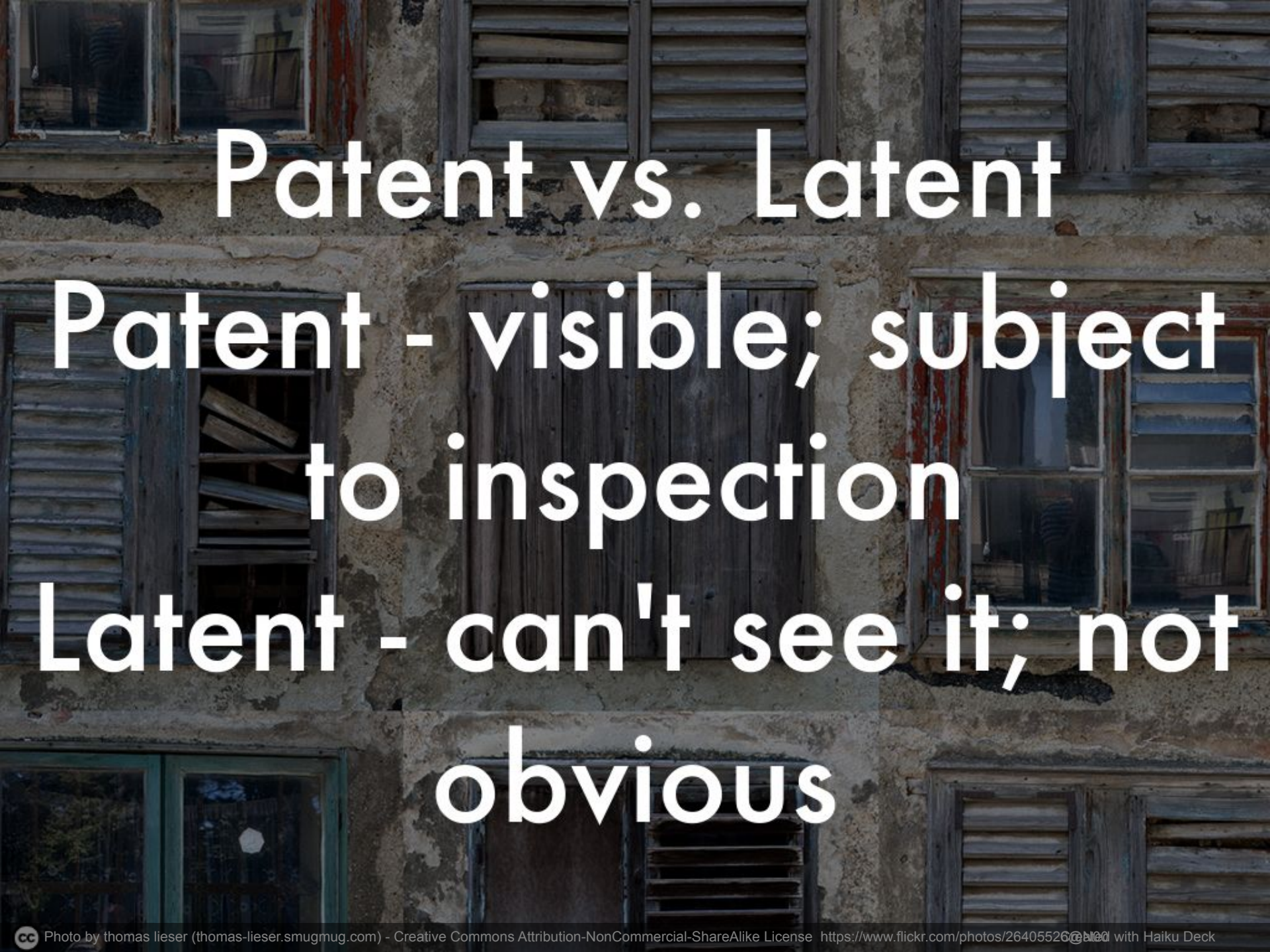
- Feldmans and Friedmans own 3 lot parcel
- Feldman stakes boundaries
- Kassers buy and realize boundaries are wrong



# Condition of Property

A close-up, artistic photograph of a typewriter's internal mechanism, specifically the typebars and galleys. The image is dark and moody, with a greenish-blue tint. The typebars are visible as sharp, metallic points, and the galleys are the curved structures that guide the typebars. The word "Disclosures" is overlaid in a large, white, sans-serif font.

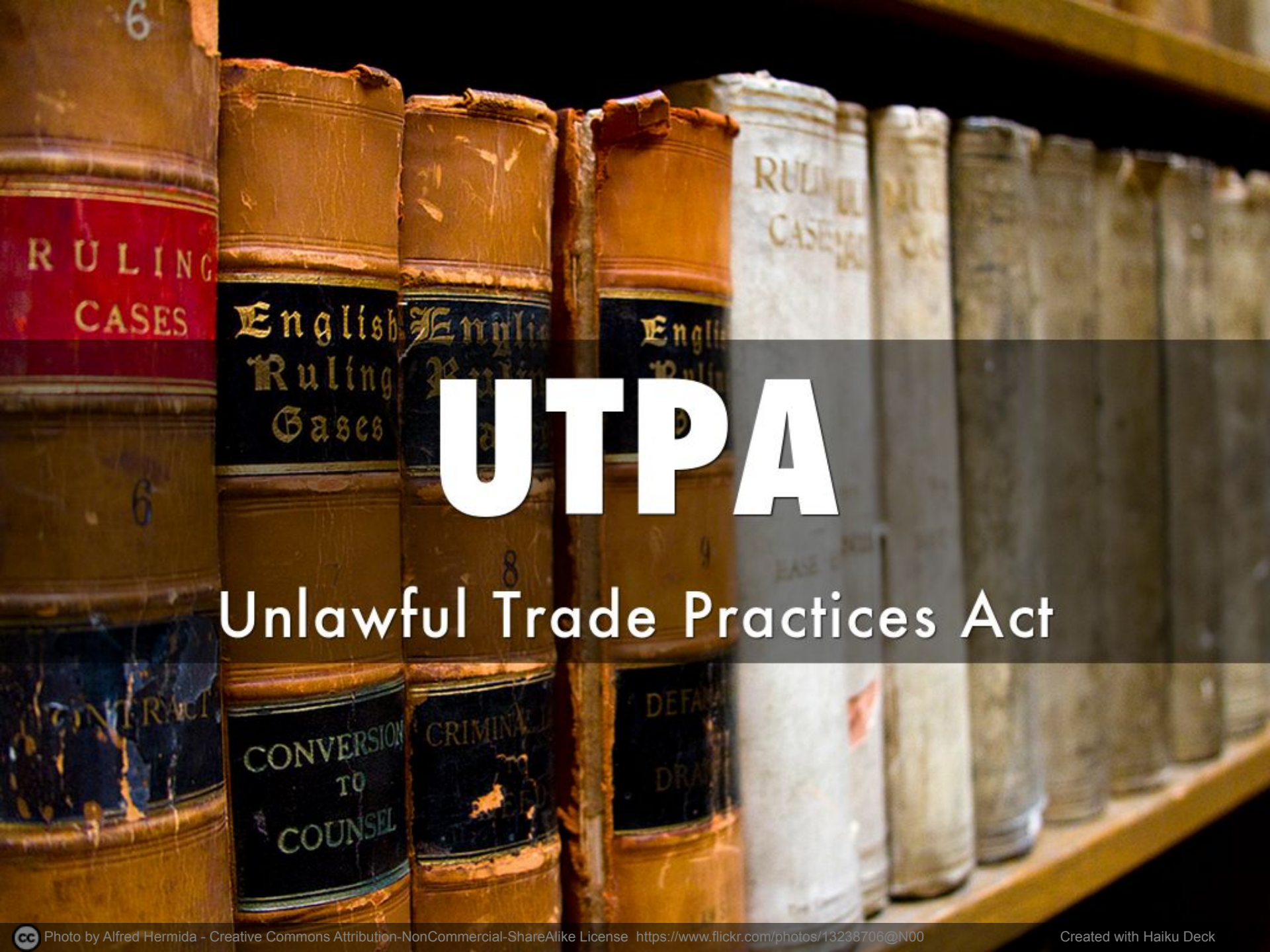
# Disclosures



Patent vs. Latent

Patent - visible; subject  
to inspection

Latent - can't see it; not  
obvious



# UTPA

Unlawful Trade Practices Act

A man in a dark pinstripe suit, white shirt, and red and white striped tie stands with his arms crossed against a dark background. The image is used as a background for the text overlay.

# **Unauthorized Practice of Law**

Applying law to specific facts



# Handling Claims

A photograph of two men sitting at a wooden table in a dimly lit room. The man on the left is smiling and looking towards the camera, wearing a light blue button-down shirt. The man on the right is wearing glasses and is partially obscured. On the table are several glasses, including one with a 'Blue Bird' logo. In the background, a chalkboard has 'MEDIATION HEADQUARTERS' written on it in white chalk, with some other faint markings below it.

MEDIATION  
HEADQUARTERS

# **Mediation, Arbitration & Litigation**

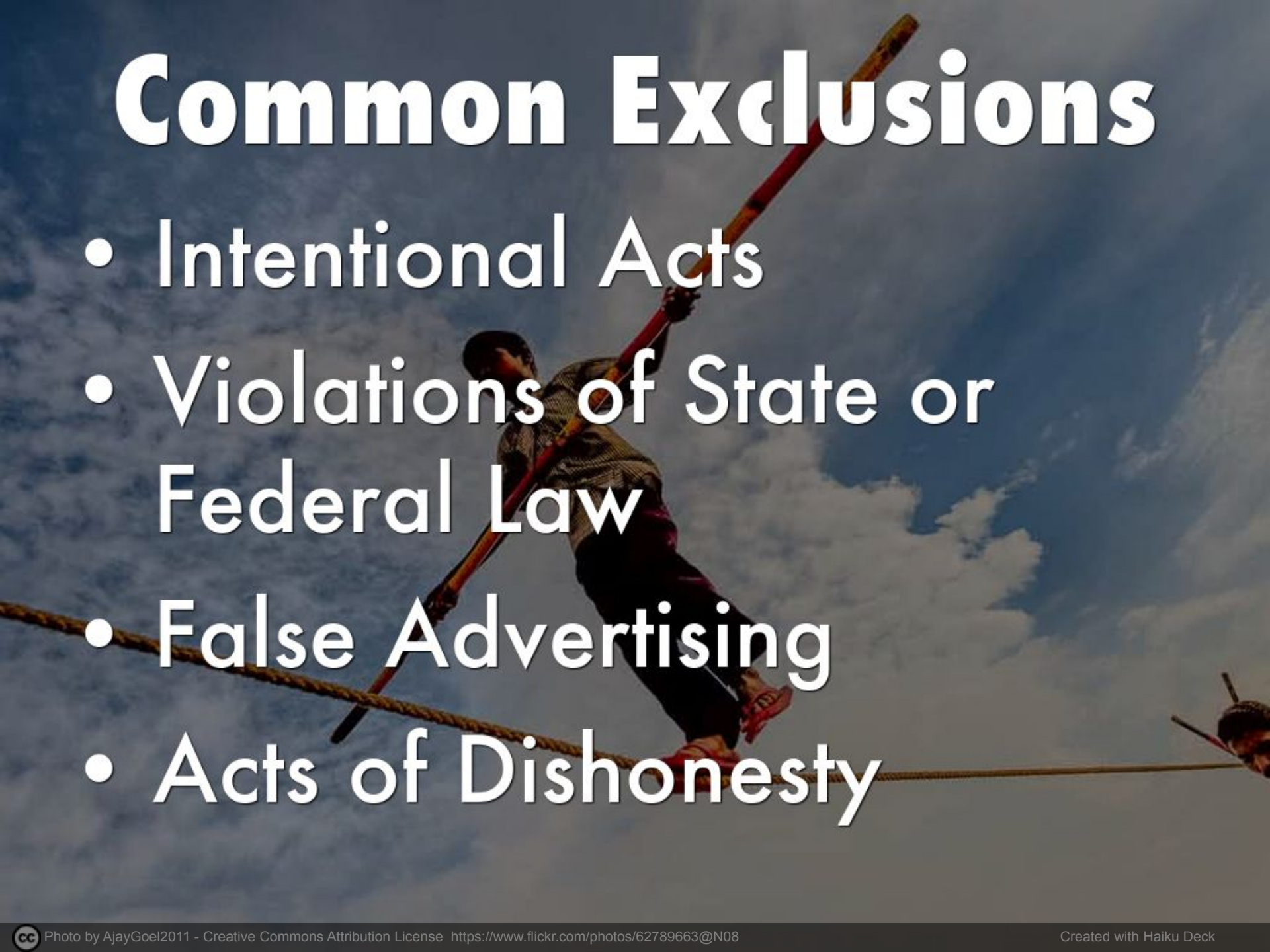
# Duty to Defend & Duty to Indemnify



A row of wooden blocks, each with a letter and a subscript, spelling out the word 'INSURANCE'. The blocks are arranged on a wooden base. The letters are I, N, S, U, R, A, N, C, E. The subscripts are 1, 1, 1, 1, 1, 1, 1, 3, 1. The blocks are light-colored wood with dark letters and subscripts. A semi-transparent dark grey banner is overlaid across the middle of the image, containing the title text.

# Tendering Claims to Insurance

# Common Exclusions

A person is walking a tightrope against a cloudy sky. They are holding a long red pole for balance. The person is wearing a patterned shirt and dark pants. The tightrope is a thick, light-colored rope. The background is a blue sky with white clouds.

- Intentional Acts
- Violations of State or Federal Law
- False Advertising
- Acts of Dishonesty

# Cases

**MINISTÉRIO DAS FINANÇAS**

**Decreto n.º 50**

para o Comércio Exterior. — O Decreto n.º 50, de 1.º de Dezembro de 1955, e do Decreto n.º 30, 1.ª série, de 6 de Fevereiro de 1948, ficam fixadas as condições de aplicação, nas quais se fará a liquidação de todas as faturas comerciais anteriormente substituídas por outras.

de 1956. — O Secretário-Geral do Ministério das Finanças.

# Cousins v. Realty Ventures

- Hodgins = realtor
- Cousins = buyer
- Rule = duty of loyalty, duty to present offers

# May v. Hopkins

- Hopkins = realtor
- Mays = buyers
- Rule = disclose and present all inspections

# Keough v. Richard

- Log cabin community
- Obvious signs of leaks
- Buyer declines inspection
- Rule = importance of inspections

# Easton v. Strassburger

- Sloping floors and landscape netting visible
- Buyer sues realtor, developer and contractor
- Rule = disclose material facts

# Davis v. Taylor

- Realtor: "great condition"
- Buyer discovers foundation problems
- Realtor: "it's no longer my problem"
- Rule = words matter; court said jury could "infer" that realtor had knowledge