Index

ABANDONMENT OF PROPERTY

Generally, **9:5 [Footnote 32]** Absconding debtors see Absconding debtors

ABSCONDING DEBTORS

Arrest

Bankruptcy and Insolvency Act, **32:3** [Text Following Footnote 1] Ontario, under (repealed) Fraudulent Debtors Arrest Act, **36:1 et seq.** [Footnote 1]

General, **1:5, 36:1 et seq. [Footnote 1]** United Kingdom, statutes of Richard II and Henry VII (fraudulent conveyances in the context of absconding debtors), **1:14 [Footnote 3]**

United States Uniform Fraudulent Transfer Act, **14:42** [Footnote 145]

ACCOUNTANTS, FINANCIAL ADVISORS AND TRUSTEES, AND OTHERS, ADVICE FROM

See main heading "Advice, from solicitors, accountants, financial advisors, trustees, and others"

ACTIONS AND OTHER PROCEEDINGS

See also Claim; Enforcement of money judgments, the role of the execution creditor and the seizure of the debtor's property by the sheriff or other similar official; Judgment; Proceedings and procedure

Bars to, 5:11

Challenges to plaintiff's pleadings, 5:9

Class actions, 5:1 to 5:9

Commencement of, 5:1 to 5:9

Damages and other pecuniary claims, 1:8 [Footnote 68], 7:11 to 7:17

Effect of successful, 7:5 to 7:30

Personal action against transferee, 1:1 [Footnote 9], 7:11 to 7:17

Person standing in actual privity with the debtor, whether necessary and/or

© 2024 Thomson Reuters, Rel. 4, 4/2024

ACTIONS AND OTHER

PROCEEDINGS—Cont'd proper party to fraudulent transaction

proceeding, **5:10** Summary and other proceedings

general, **5:2**

Alberta, 5:4

British Columbia, **5:3**

Ontario, **5:5**

reform, **5:6**

use of, to defraud creditors, 8:1 et seq.

Transferor, whether necessary and/or proper party to fraudulent transaction proceeding, **5:10**

ACTS OF BANKRUPTCY

See Bankruptcy (Canadian federal Bankruptcy and Insolvency Act)

ADVANCEMENT, PRESUMPTION OF

See also, Trust, enforcement against transferee

Generally, 6:1 et seq. [Footnote 7]

ADVICE, FROM SOLICITORS, ACCOUNTANTS, FINANCIAL PLANNERS AND TRUSTEES, AND OTHERS

Accountants, financial planners and trustees, and others, **2:1 et seq. [Footnote 12]; 14:3 [Footnote 5]**

Estate planning by solicitors and nonsolicitors, **2:4** [Text Following Footnote 25]

General, 2:4, 14:7, 27:1 et seq.

"Huxter" or other non-professional, advice by, **1:1 et seq. [Footnote 22]**

Insolvent debtor, advice from restructuring practitioners, **2:1** [Footnote 12]

Litigation against debtors, see main heading "Debt litigation"

Tax evasion, asset and tax sheltering, money laundering, creation and investment of illicit funds, and other similar arrangements. See Index, main headings "Estate planning,

ADVICE, FROM SOLICITORS, ACCOUNTANTS, FINANCIAL PLANNERS AND TRUSTEES, AND OTHERS—Cont'd

asset and tax sheltering"; and "Solicitors"

Transferee, advice given to, 14:7

Whether advice or other conduct may be a defence to a fraudulent transactions challenge, **2:4**

AGENCY

See also Solicitors Relationship between sheriff and execution creditor, **4:7**

AGREEMENT BETWEEN DEBTOR AND TRANSFEREE

See Prior agreements

ANTON PILLER ORDER Generally, **36:7**

APPOINTMENT, POWERS OF Generally, 9:18 to 9:33

ARM'S LENGTH AND NON-ARM'S LENGTH TRANSACTIONS

See Bankruptcy (subheadings for both preferences and reviewable transactions)

ARREST OF DEBTOR

Generally, 36:1 et seq. [Footnote 1]

ASSET PROTECTION

See main heading "Estate planning"

ASSOCIATES, TRANSACTIONS BETWEEN

See main heading "Consideration," then "transactions between relatives"

ATWOOD, MARGARET, HAG-SEED (2016)

"Lawyer and Ponzi scheme scammer," as actor in prison theatrical company's The Tempest, **38:2** [Footnote 1.500]

BADGES OF FRAUD

See also main heading "Presumption of law, and fraudulent intent"

Generally, 14:41 to 14:43

Assignments and Preferences Act model, badges of fraud under, **14:61**

BADGES OF FRAUD—Cont'd

Bankruptcy and Insolvency Act, s. 96 (transfers at undervalue): s. 96(1)(a)(iii), use of badges of fraud to determine debtor's intent, 14:42 [text accompanying Footnote 37]; 26:4 [text accompanying Footnotes 14 to 25]; 27:7 [Footnote 21]

see main heading "Bankruptcy (Canadian federal Bankruptcy and Insolvency Act)," then "transfers at undervalue (s 96, BIA), **26:1 et** seq., **27:1 et seq.**, **28:1 et seq.**, **29:1 et seq.**

Bona fides/good faith, **15:3**, **15:4**, **15:6** "concurrent intent" doctrine, **15:13 to 15:15**

- protective provision, **15:3** [Footnote 1] Defence by appeal court to findings of
 - trial judge re badges, 14:42 [Footnote 22], 14:54 [Footnote 12]

Effect of, **14:52 to 14:56**

- Examples (non-exhaustive) see also "List of examples"
 - benefit retained by debtor; possession remaining in debtor, **14:3** [Footnote 3]

see also main heading "Benefit to debtor"

- generally, 9:18 [Footnote 13]; 14:3 [Footnote 3],14:42 [Footnotes 25 to 28] (badge of fraud (2)) good faith and retention of benefit.
- 15:1 et seq.
- where creditor, after seizure, allows debtor to remain in possession
 - generally, **14:42** [Footnotes 25 to 28]
 - secret understanding between debtor and transferee, where debtor remains in possession, **14:42** [Footnote 25], 14:42 [Footnote 30]
 - trust, presumption of, where debtor remains in possession, 14:42 [Footnote 25], 14:42 [Footnote 33]
- close relationship between debtor and transferee, **1:8 [text accompanying Footnote 11]; 14:42 [Footnote 65] (badge of fraud (12))** concealment or removal of property see main heading "Concealment or

BADGES OF FRAUD—Cont'd

Examples (non-exhaustive) see also "List of examples"-Cont'd concealment or removal of property -Cont'd removal of property" consideration cash transaction, 14:42 [Footnote 63] (badge of fraud (11)) false statements concerning, 14:42 [Footnote 58] (badge of fraud (8)) grossly inadequate, 14:42 [Footnotes 61, 62] (badge of **fraud** (9)) harm to creditor by transaction, and generally, 14:29; 14:39 Where there is no consideration passing, see also below, under subheading "examples (non-exhaustive)," "gift of all of debtor's assets"; and main heading "Harm to creditor, must it always be proven for success in action even where fraudulent intent is also proven?" conveyance. antedating deed or other document, 14:42 [Footnote 74] deed, instrument or other document containing self-serving, etc. language affidavit or similar litigation document containing a self-serving statement of intent, 14:42 [Footnote 38] transfer deed containing a selfserving and unusual provision, 14:42 [Footnote 37] documents see also main headings "Prior agreements"; and "Sham transactions" abolition of, or failure to keep, 14:42 [Footnote 74] concealment of, 14:42 [Footnote 75] (badge of fraud (24)) destruction of, 14:42 [Footnote 74] (badge of fraud (24)) made "honestly," etc., 14:41, 14:42 [Footnote 36] see also "transfer deed contained

© 2024 Thomson Reuters, Rel. 4, 4/2024

BADGES OF FRAUD—Cont'd

Examples (non-exhaustive) see also "List of examples"-Cont'd conveyance.-Cont'd made "honestly," etc., 14:41, 14:42 [Footnote 36]—Cont'd a self-serving and unusual provision, and "affidavit or similar litigation document containing a self-serving statement of intent," above made in respect of any sort of legal action contemplated, threatened, pending or initiated against debtor, 14:42 [Footnotes 31, 32] (badge of fraud (4)) made to transferee without transferee's knowledge, 14:42 [Footnote 72] (badge of fraud (23))down payment, false statement of, 14:42 [Footnote 70] (badge of fraud (14)) gift of all of debtor's assets, 14:42 [Footnote 24] (badge of fraud (1))general, 14:42 [Footnote 4] harm to creditor by transaction, and, 14:30; 14:39 see also above, under subheading "examples (non-exhaustive)," "consideration"; and main heading "Harm to creditor, must it always be proven for success in action even where fraudulent intent is also proven?' haste, 14:42 [Footnote 63] (badge of fraud (10)) insolvency of debtor, at or after transaction, 14:42 [Footnote 91] (badge of fraud (27); 14:42 [Footnote 108] and badge of fraud (27.1)) harm to creditor by transaction, and, 14:32; 14:39 see also main headings "Harm to creditor, must it always be proven for success in action even where fraudulent intent is also proven?"; and "Insolvency/solvency of parties' payment to third person, not a party to conveyance, 14:41 to 14:43

BADGES OF FRAUD—Cont'd

Examples (non-exhaustive) see also "List of examples"-Cont'd (badge of fraud (13)) possession remaining in debtor see above, "benefit retained by debtor; possession remaining in debtor' ranking of badges of fraud (not all of equal weight), 14:42 [Text Following Footnote 132] prominence of secrecy?, 14:42 [Text Accompanying and Following Footnote 133] red flags in real estate transactions, 2:2 (LSUC, r. 3.2 to 7, Commentary [4.1], [4.2]) representation by debtor that property was the debtor's, after conveyance, 14:42 [Footnote 30, 80] (badge of fraud (26)) revocation of conveyance, power given to debtor, 14:41 to 14:43 (badge of fraud (7)) secrecy, 14:42 [Footnote 30] (badge of fraud (3)). See also Index, main heading "Deceit, dishonesty, immorality, illegality, collusion, guile, malice, etc., in relation to fraud," then serially "Civil (voidable transactions) law in Canadian common law jurisdictions," and "secrecy, collusion and contrivance linked to conspiracy" associated with fraudulent conduct in medieval period, 1:1 et seq. clandestine conveyances (re: landlord's distraint) and secret conveyances (re: badges of fraud), as some evidence of fraud, 14:42 [Footnote 30]; 37:3 [Footnote 1] collusion and contrivance and debtor-transferee conspiracy, 1:1 [Footnote 18], 1:27 [Footnote 4], 1:28 [Footnote 1], 1:29 [Footnote 1], 1:35 [Footnote 1] notice of impugned transaction, failure to give, 14:1 et seq., 14:42 [Footnote 30] ranking of badges of fraud, prominence of secrecy?, 14:42 [Text

BADGES OF FRAUD—Cont'd

Examples (non-exhaustive) see also "List of examples"—Cont'd

secrecy, 14:42 [Footnote 30] (badge of fraud (3)). See also Index, main heading "Deceit, dishonesty, immorality, illegality, collusion, guile, malice, etc., in relation to fraud," then serially "Civil (voidable transactions) law in Canadian common law jurisdictions," and "secrecy, collusion and contrivance linked to conspiracy"—Cont'd

Accompanying and Following Footnote 133]

"suspicious" transactions, circumstances, etc.: whether a separate badge of fraud, a meaningful adjunct to a specific badge of fraud, or a general basket provision describing one or more specific fact situations badges of fraud separate badge, where inherently "suspicious"?, 14:42 [Text Accompanying and Following Footnote 165] "suspicious" facts and circumstances appearing alongside other badges, etc. (e.g., "typical and suspicious"), 14:42 [Text Accompanying and Following Footnote 160] equated with badges, 14:42 [Text Accompanying and Following Footnote 154] intimate link with a badge (e.g., transfer between close relatives), 14:42 [Text Accompanying and Following Footnote 161] basket provision encompassing all, or virtually all, badges of fraud?, 14:42 conclusions, 14:42 general, 14:42 jurisprudence, 14:42 relationship between "suspicious" transactions, etc. and badges of fraud: intimate and confusing, 14:42

BADGES OF FRAUD—Cont'd

Examples (non-exhaustive) see also "List of examples"-Cont'd "suspicious" transactions, circumstances, etc.: whether a separate badge of fraud, a meaningful adjunct to a specific badge of fraud, or a general basket provision describing one or more specific fact situations-Cont'd terminology, often varies, 14:42 trusts creation of, 14:42 [Footnote 33] (badge of fraud (5)) invocation of, bankruptcy (transfers at undervalue) context, 14:42 [Footnote 33] Good faith/bona fides, and, 15:3 [Footnote 1] List of examples expansive, 14:42 [Footnotes 55, 56 and Accompanying Text] limits to expansion, 14:42 [Footnote **57 and Accompanying Text**] Ponzi schemes, 7:6 [Footnotes 27 and 28 and Accompanying Text], 38:3 Preference actions badges of fraud, use in, 1:8 [Footnote 62], 19:13 [Text Accompanying Footnote 1] Presumption of law, and fraudulent intent see main heading "Presumption of law, and fraudulent intent" Rebutting, 14:42 Registration of instrument, delay, 14:42 [Text Accompanying Footnote 146] Sufficiency or insufficiency and effect, of badges general, 14:41, 14:44, 14:47, 14:52 quantity and quality of the evidence badges of fraud, 14:42 [Footnote 22] unnecessary to prove more than one badge of fraud, if one is sufficient, 14:42 [Footnote 22] passage of time, effect of, 14:56 presence of badge of fraud mere presence not determinative of fraud, 26:4 [Text Following Footnote 16] whether presence mandates inference of fraud by court, 26:4

BADGES OF FRAUD—Cont'd Sufficiency or insufficiency and effect, of badges-Cont'd quantity and quality of the evidence -Cont'd presence of badge of fraud-Cont'd **[Text Following Footnote** 16] proof and rebuttal of badges proof: whether court can act on pleadings or needs badge to be "proven," 14:53 [Text **Following Footnote 15**] rebuttal, 14:69 [Footnote 6], 15:3 [Footnote 1] "Suspicious" transactions, circumstances, etc. See this main heading ("BADGES OF FRAUD"), then serially "Examples (non-exhaustive)," " 'suspicious' transactions, circumstances, etc.: whether a separate badge of fraud, a meaningful adjunct to a specific badge of fraud, or a general basket provision describing one or more specific fact situations"

Term ("badges of fraud") not always used to describe an inference of fact, 14:14 [Footnote 45]; 14:42 [Text Following Footnote 56]

Transfer is voluntary and transferor is solvent, **10:1** [Footnote 23], 14:42 [Footnote 94]

Trusts, sham, using "badges of fraud" to challenge, **14:43**

Where no badge is present, implications for fraudulent conveyances action, **14:69** [Footnote 6]

BANK DEPOSITS, FREEZING OF (BANK ACT, S.C. 1991, C. 46, S. 437(2))

Generally, 36:1 [Footnote 1]

BANKRUPTCY (CANADIAN FEDERAL BANKRUPTCY AND INSOLVENCY ACT)

See also Legislation; Statute of Elizabeth and other English statutes; Statutes, provincial, fraudulent conveyances and preferences

Absconding bankrupt, arrest of, **32:3** [Text Following Footnote 1]

© 2024 Thomson Reuters, Rel. 4, 4/2024

BANKRUPTCY (CANADIAN FEDERAL BANKRUPTCY AND INSOLVENCY ACT)-Cont'd Acts of generally, 10:7 [Footnote 5], 23:1 proving, 5:12 Arrest of bankrupt absconding bankrupt, 32:3 [Text Following Footnote 1] removal or destruction of property and information, 32:3 [Text Following Footnote 1] Bankrupt may be added as proper defendant, 1:25 [Footnote 8] no need to add as defendant, 1:25 [Footnote 7] Bankruptcy and provincial voidable transactions provisions coexistence of provincial voidable transaction statutes (including, where applicable, the Statute of Elizabeth) and related Bankruptcy and Insolvency Act provisions respecting frauds on creditors, 1:24, 1:25; 22:5, 22:6 harmonization of bankruptcy and provincial law, proposed, 1:8 [Footnote 85] Claim, requirement to prove, 22:4 [Footnote 1.500] Consideration abolition of debt, calls for, 1:1 [Text preceding and following note 11.175] forgiveness or reduction of, or refusal to collect, as consideration See Index, main heading "Consideration," then serially "Debts of debtor," "forgiveness or reduction of, or refusal to collect," "as consideration and as a fraudulent conveyance" general See also Index, main heading "Consideration" See Index, this main heading, subheading "Consideration" nominal See Index, main heading "Consideration," then "nominal consideration, meaning of"

BANKRUPTCY (CANADIAN FEDERAL BANKRUPTCY AND INSOLVENCY ACT)—Cont'd Consideration, nominal, meaning of, 27:13 Creditor court order permitting creditor to pursue remedy where trustee refuses (BIA, s. 38), 32:4 defined, 24:1, 24:14 Under provincial law, see "Creditors or others" Debts, meaning of (s. 121(1), BIA), 22:4 [Footnote 1.500] Discharge of bankrupt, refusal of in relation to bankrupt's fraud, 31:6 Disposition of property bankruptcy offences (s. 198) concealment not a "disposition," 31:5 [Text Accompanying Footnote 7] general, 31:3 transfers at undervalue (s. 96), 26:4 [Text Following Footnote 6] Enforcement see "remedies and enforcement" under this main heading Examination of bankrupt and others attendance at examination compelling, 23:3 failure to attend, 23:3 creditors and other parties, examination by. 23:4 introduction, 23:1 licensed insolvency trustee, 23:3 Official Receiver, examination by, 23:2 questions, requirement to answer, 23:1, 23:3 Good faith bankruptcy offences (s. 198(1)(g)), 31:1 et seq. settlements, 27:6 [Footnote 6] Initial bankruptcy event, defined, 24:4, 27:15, 28:9, 30:2 Insolvency (1) See this main heading, then (1) sequentially "Preferences," "elements of impeachable preference," "insolvency of bankrupt"; and (2) sequentially "Transfers at undervalue," "insolvency"

BANKRUPTCY (CANADIAN FEDERAL BANKRUPTCY AND INSOLVENCY ACT)—Cont'd

Insolvency-Cont'd

- (2) For Canadian provincial law, see main heading "Insolvency/ solvency of parties," subheading "Canada, provincial law"; and main heading "Badges of fraud," then sequentially "Examples (non-exhaustive)," "insolvency of debtor, at or after transaction"
- (3) For American law, see main heading "Insolvency/solvency of parties," subheading "United States"
- badges of fraud and insolvency, similar to s. 2, Bankruptcy and Insolvency Act, **14:42** [Footnotes 24, 91, 108]
- co-existence and harmonization of provincial and federal law re voidable transactions, **1:8**, **1:24**
- Interpretation of Bankruptcy and Insolvency Act
 - general, 22:3
 - use of provincial legislation to interpret, **31:3** [Text Accompanying Footnote 10]
- Liabilities, meaning of (s. 121(1), BIA), 22:4 [Footnote 1.500]
- Licensed insolvency trustee bankrupt, no need to add as defendant, **1:25 [Footnote 6]**
 - bankrupt's interest, trustee representing, 1:25 [Footnote 6]
 - books, documents, papers and other property to be produced, **23:3**
 - examination of bankrupt and others see Bankruptcy (subheading examination of bankrupt and others)
 - remedies and enforcement see also this main heading, then sequentially "transfers at under
 - value," "court orders" court order permitting creditor to pursue remedy where trustee
 - refuses, **32:4** enforcement, **32:1**
 - provincial remedies, right to assert, 1:24, 1:25, 23:1 et seq., 32:2. For a consideration of the coexistence of provincial void-

BANKRUPTCY (CANADIAN FEDERAL BANKRUPTCY AND INSOLVENCY ACT)—Cont'd Licensed insolvency trustee—Cont'd remedies and enforcement—Cont'd able transaction statutes (including, where applicable,

- the Statute of Elizabeth) and related Bankruptcy and Insolvency Act provisions respecting frauds on creditors see sec, 26:3
- transfers at undervalue (and former reviewable transactions), trustee's opinion of value of property, **28:12**
- Limitation periods, application of provincial legislation, **5:23**, **24:5**, **42:46**
- Offences
 - generally, 31:1 et seq.
 - acts of bankruptcy and the institution of a voidable transactions proceeding, **5:12**
 - bankruptcy offences and Criminal Code offences, basic difference between, 30:2; 31:1 [Text Following Footnote 4]
 - concealment, removal, destruction, etc. of property, **31:5** concealment not a "disposition,"
 - **31:5 [Text Accompanying Footnote 7]** fraudulent disposition of property, **31:3**,
- 31:4 Payment of dividends/purchase or redemption of shares generally, 30:2, 35:1 [Footnote 12] exception, 30:5 initial bankruptcy event, and, 30:2
 - remedy, **30:4**
 - reverse onus, **30:3** right to director to seek recovery, **30:5**
 - statutory provisions, **30:1** time periods, relevant, **30:2**
- Preferences arm's length and non-arm's length
 - transactions control, and, **28:8 [Text Following** Footnote 21]
 - directors and the corporations they serve, **24:6**
- $\ensuremath{\mathbb{C}}$ 2024 Thomson Reuters, Rel. 4, 4/2024

BANKRUPTCY (CANADIAN FEDERAL BANKRUPTCY AND INSOLVENCY ACT)—Cont'd Preferences—Cont'd arm's length and non-arm's length transactions-Cont'd general, 24:2, 24:6 Companies' Creditors Arrangement Act proceedings (s. 36.1), application of ss. 95 and 96 (Bankruptcy and Insolvency Act) in, 1:8 [Footnote 8], 9:23 [Footnote 7], 14:42 [Footnote 31, 61], 24:2 [Footnote 4], 28:8 [Footnote 35], 28:8 [Text **Following Footnote 36**] control arm's length and non-arm's length transactions, and, 28:8 [Text Following Footnote 21] meaning of, 24:7 date of bankruptcy, 24:4 deterrence: preference provisions deter creditors from dismembering bankrupt's estate before bankruptcy and thereby precluding equality of distribution of estate, 24:3 [Footnote 5] diligent creditors and pressuring creditors, 24:23 elements of impeachable preference effect of non-arm's length transactions. 24:17 elements, listed, 24:8 federal and provincial legislation, overlapping and conflicting, 1:24.1:25 in favour of creditor. 24:14 insolvency of bankrupt balance sheet test, 24:13 exempt property, 27:10, 27:11 "obligation" ceasing to meet current obligations as they become due, 24:12 choosing not to meet obligations as they become due, whether person is "insolvent" where assets exceed liabilities, **10:1** [Footnote 18] inability to meet obligations as they become due, 24:11

BANKRUPTCY (CANADIAN FEDERAL BANKRUPTCY AND INSOLVENCY ACT)—Cont'd Preferences—Cont'd elements of impeachable preference -Cont'd insolvency of bankrupt-Cont'd "obligation"-Cont'd meaning of. 24:13 statutory definition, 24:10 intent, relationship of effect of conveyance on issue of intent, 24:17 [Text Accompanying Footnotes 4 and 5] intention to prefer general, 24:16 test (objective), 24:16 [Text Accompanying Footnote 6], 24:17 [Text Following Footnote 2]

payment by debtor to creditor, 24:8 [Footnote 1] payment by third party to creditor, 24:8 [Footnote 1] payment for work or services to be performed, 24:15 [Footnote 5] presumption, statutory generally, 24:17 exemption from, for margin deposit made by clearing member. 24:2 rebuttal of continuing in business, 24:20 diligent creditor, 24:17, 24:23 generally, **19:36 to 19:38** ordinary course of business, 24:19 prior agreement to grant security, 24:21 security for current advances, 24.22 trust, where transferee is trust beneficiary, 24:3 [Footnote 51 transactions subject to attack consent to judgment, 24:9 consolidation of accounts by bank, 24:9 default judgment, 24:9 landlord's distress, 24:9

payment to secured creditor, 24:9

BANKRUPTCY (CANADIAN FEDERAL BANKRUPTCY AND INSOLVENCY ACT)—Cont'd Preferences—Cont'd elements of impeachable preference -Cont'd transactions subject to attack -Cont'd property of bankrupt, 24:9 repossession of goods, 24:9 trust, where transferee is trust beneficiary, 24:3 [Footnote 5] initial bankruptcy event, 24:2 introduction, 24:1 landlord's completion of distraint against fraudulently removed property by tenant, whether a judicial proceeding under s. 95, 24:9 [Text Accompanying Footnote 22] other jurisdictions, relevance of laws of, 24:17 [Footnote 18] principle of equality of distribution, 24:3 related persons, 24:7 relevant date of transaction, 24:20 [Footnote 13] statutory provisions, 24:2 time periods, relevant, 24:2,(e) timing, 24:4 "void," use of term, 24:2 [Footnote 3] see also Void/voidable Proper forum and procedure to collect on money judgment, determination of (bankruptcy context), 1:24 (Text **Following Footnote 7**) Provincial legislation pleading both provincial and federal statutes, 27:1 [Footnote 2] use of to interpret bankruptcy legislation, 31:3 [Text Accompanying Footnote 10] Purposes of bankruptcy legislation equality among creditors (preferences), 24:3 general, 23:1 Remedies and enforcement see also this main heading, then "transfers at undervalue" generally, 32:1

BANKRUPTCY (CANADIAN FEDERAL BANKRUPTCY AND INSOLVENCY ACT)—Cont'd

Remedies and enforcement-Cont'd court order permitting creditor to pursue remedy where trustee refuses, 32:4 subordination of claims, 32:5 trustee's remedies and enforcement tools. 32:3 trustee's use of provincial legislation, 32:2 Reviewable transactions (former s. 100, BIA) arm's length and non-arm's length transactions, 28:5 [Footnote 9] conspicuous difference in value, 28:11 defendants, 28:14 innocent defendant, 28:14 knowledge of defendant, 28:14 deficiencies and strengths in 1999 remedies, 27:1 et seq. deficiencies of pre-1999 remedies, 27:1 et seq. discretion of court, 28:15 to 28:18 discretion to conduct an inquiry, 28:16 discretion to grant relief, 28:17, 28:18 introduction, 28:1 judgment for difference in value, 28:13 licensed insolvency trustee's opinion of value, 28:12 prejudgment interest, 28:14 privy to reviewable transaction general. 28:14 piercing the corporate veil and privity, 28:14 [Text Accompanying] Footnote 5] "reviewable transaction" defined and interpreted: related persons (BIA, former section 4) and the legal/ constitutional effect of the deeming provision (BIA, former section $3(\overline{3})$; control; related groups and related corporations; arm's length and non-arm's length transactions; persons), 28:5 to 28:9 statutory provisions, 28:3 to 28:19 time periods, relevant, 28:10 transaction between bankrupt and neighbour, 28:8 transfers at undervalue (BIA, s. 96), relevance of former reviewable

© 2024 Thomson Reuters, Rel. 4, 4/2024

BANKRUPTCY (CANADIAN FEDERAL BANKRUPTCY AND INSOLVENCY ACT)—Cont'd Reviewable transactions (former s. 100, BIA)—Cont'd transactions provisions, 28:1 et seq. within one year, 28:10 Settlements (former s. 91, BIA), 27:1 et seq. deficiencies of remedy, 27:4 defined generally, 27:6, 27:9, 27:14 intention, 27:7 judicial approaches, 27:10 new statutory definition, 27:12, 27:13 purposive approach, 27:8 designation of beneficiary or RRIF; transfer from RRSP to RRIF. 27:11 exempt property see also main heading "Property," under "exempt (including otherwise immune) property" conversion of non-exempt property to exempt property prior to bankruptcy, 27:10, 27:11 scope of, compared to "dispositions," 7:7 [Footnote 82], 9:18 [Footnote 51 settlement on bankrupt himself or herself, 27:11 [Footnote 4] time periods, relevant, 27:15 transfers at undervalue (BIA, s. 96), relevance of former settlement provisions, 27:1 et seq. United Kingdom Insolvency Act, 27:12 [Footnote 8], 27:13 [Footnote 36] where no transfer of property, 27:14 Statutory definition of, 24:4, 27:15, 30:2 Statutory interpretation see Legislation (under "statutory interpretation") Subordination of claims (fraudulent creditors), 32:5 Tracing proceeds, 11:1 et seq. Transferee, may be added as proper defendant, 1:1 et seq. Transfers at undervalue (s. 96, BIA) generally, 29:1 et seq.

BANKRUPTCY (CANADIAN FEDERAL BANKRUPTCY AND INSOLVENCY ACT)—Cont'd Transfers at undervalue (s. 96, BIA) -Cont'd arm's length and non-arm's length transfers approach to defining arm's length/ non-arm's length transfers (Income Tax Act context), 28:8 [Text Following Footnote 12] relationship between the parties bonds of dependence, control or influence between the parties, 28:8 [Text Following Footnote 5] normal commercial dealings (indicia including bonds of dependence, control or influence in terms of the parties' relationship), indicia of, 28:8 [Text Following Footnote 29] effect of BIA, s. 4 ("related" persons), 28:5 to 28:7 control (re: "related" persons), 28:6 family members, non-arm's length transfers between, test for attacking a nonarm's length transfer at undervalue, 26:4 [Text **Following Footnote 27**] economic self-interest of the transferor is, or is likely to be, displaced by noneconomic considerations, 28:8 [Text Following Footnote 29] no incentive for the transferor to maximize the consideration, 28:8 [Text Following Footnote 29] no such indicia: inference that the parties were not dealing at arm's-length, 28:8 [Text Following Footnote 29] consideration fair market value court, role of. See Index, this

BANKRUPTCY (CANADIAN FEDERAL BANKRUPTCY AND INSOLVENCY ACT)—Cont'd Transfers at undervalue (s. 96, BIA) -Cont'd arm's length and non-arm's length transfers-Cont'd consideration-Cont'd fair market value-Cont'd subheading, then "court, role of" determination of, 26:4 [Text **Following Footnote 36**] "conspicuous" difference in value of consideration received by debtor and the fair market value of the consideration given by the debtor, 28:11.70 trustee, opinion of trustee, 26:4 [Text Following Footnote 36], 28:12 court, role of, 28:12 Uniform Law Conference of Canada, Uniform Reviewable Transactions Act, 26.4 [Text **Following Footnote 40**] time for determining amount (date of transfer; subsequent consideration not relevant), 26:4 [Footnote 39.500], 28:11.30 what constitutes, 28:11.50 where consideration received by debtor is "conspicuously" less than fair market value of the consideration given by debtor (BIA, s.2), definition of "transfer at undervalue," 26:4 [Text Following Footnote 34], 28:11 court, role of, 28:12 discretion, whether it exists and, if so, its nature and scope general, 28:15 inquiry, to conduct, 28:16 relief against whom may relief be obtained, 28:14 does court have any discretion to grant relief, 26:4

BANKRUPTCY (CANADIAN FEDERAL BANKRUPTCY AND INSOLVENCY ACT)—Cont'd

Transfers at undervalue (s. 96, BIA) -Cont'd arm's length and non-arm's length transfers-Cont'd court, role of. 28:12-Cont'd discretion, whether it exists and, if so, its nature and scope -Cont'd [Text Preceding and **Following Footnote** 29], 28:17 and 28:18, 29:1 to 29:6 alternative interpretations of "may" (BIA, s. 96(1), 26:4 [Text Preceding and Following Footnote 29], 28:17 [Text **Following Footnote 16**] guidance for court in exercising discretion. 26:4 [Text Following Footnote 31], 28:18 where statutory ambiguity exists, 28:17 **[Text Following Foot**note 16] a new principle?, 28:18 fair market value of the consideration, determination of, role of the court, 28:12 overview (reviewable transactions under former Act (and. In part, BIA, s. 96)) "related persons" (former Act) arm's length and non-arm's length transfers, timing, and consideration, 26:4 **[Text Following Footnote** 11], 27:5 to 27:14, 28:3 et seq. effect of s. 4 ("related" persons), 28:5 to 28:7 control (re: "related" persons), 28:6 badges of fraud, use of, to determine

debtor's intent, 26:4 [Text Accompanying Footnote 14],

© 2024 Thomson Reuters, Rel. 4, 4/2024

BANKRUPTCY (CANADIAN FEDERAL BANKRUPTCY AND INSOLVENCY ACT)—Cont'd Transfers at undervalue (s. 96, BIA) -Cont'd 27:7 [Footnote 21] see also this subheading, under "Mercado Capital Corporation v Oureshi' then sequentially "appellant's Factum Prepared for Its Appeal to the Court of Appeal," "badge of fraud alleged: transfer deed contained a self-serving and unusual provision" bankruptcy provisions, current and former. 26:2 Companies' Creditors Arrangement Act proceedings (s. 36.1), application of ss. 95 and 96 (Bankruptcy and Insolvency Act) in, 1:8 [Footnote 8], 9:23 [Footnote 7], 14:42 [Footnote 31, 61] 24:2 [Footnote 4], 28:8 [Footnote 35], 28:8 [Text **Following Footnote 36**] consideration. See this subheading, then serially "arm's length and non-arm's length transfers," "consideration," " 'conspicuous' difference in value of consideration received by debtor and the fair market value of the consideration given by the debtor "conspicuously," meaning of. See this subheading, then serially "arm's length and non-arm's length transfers," "consideration," "fair market value," "determination of" court, role of. See this subheading, then serially "arm's length and nonarm's length transfers," "court, role of" deficiencies and strengths in 1999 reform remedies, 27:1 et seq. deficiencies of pre-2009 remedies (ss. 91, 100), **27:4** "disposition" of property, 26:4 [Text **Following Footnote 4**] see also this subheading, under "Mercado Capital Corporation Qureshi"

BANKRUPTCY (CANADIAN FEDERAL BANKRUPTCY AND INSOLVENCY ACT)—Cont'd Transfers at undervalue (s. 96, BIA) -Cont'd experts, financial statements and appraisals: use by court to determine fair market value, 28:11 [Text Accompanying and Following Notes for Footnotes 6, 12, 22, 23, 24] absence of experts or documentary evidence, 28:11 [Footnotes 0.500, 22.500] court may determine whether an expert is qualified to assess fair market value of transferred asset, 28:11 [Footnote 0.500] Income Tax Act, relevance of, 28:8 [Text Following Footnotes 12, 29] insolvency definition of "insolvent person," 26:2 determining on "cash flow" or "balance sheet" basis, 10:3 [Footnote 3], 24:11 [Footnote 1] introduction to s. 96, 26:1 et seq., esp. Mercado Capital Corporation v. Qureshi, commentary on, 29:1 et sea. appellant's Factum Prepared for Its Appeal to the Court of Appeal, 27:4 badge of fraud alleged: transfer deed contained a self-serving and unusual provision, 14:42 **Text Accompanying Foot**note 37] see also this subheading, under "badges of fraud, use of, to prove intent" "disposition" of property. not defined in s. 96, Bankruptcy and Insolvency Act, 9:18 [Footnote 4] timing of "disposition" date of the agreement of purchase and sale vs. date of execution of transfer deed or similar instrument, 9:27 [Footnote 4] general, 27:15; 28:10

BANKRUPTCY (CANADIAN FEDERAL BANKRUPTCY AND INSOLVENCY ACT)—Cont'd Transfers at undervalue (s. 96, BIA) -Cont'd Mercado Capital Corporation v. Qureshi, commentary on, 29:1 et seq.—Cont'd "disposition" of property.-Cont'd use of term in many Canadian statutes, 9:18 [Footnote 4] Ontario Court of Appeal decision, 29:5 critique of, **29:6** Ontario Superior Court of Justice decision, 29:3 test for attacking a non-arm's length transfer at undervalue, 26:4 [Text Following Footnote 27] (mis)use of former s. 100, Bankruptcy and Insolvency Act, Appellant's Factum to Court of Appeal, 29:4 [Note: A number of the references under this subheading refer to provisions in the former reviewable transactions and settlement legislation (BIA, ss. 100 and 91, respectively) relevant to an interpretation of current s. 96. see generally this main heading, subheadings "reviewable transactions" and "settlements."], 26:1 et seq., 27:1 et seq., 28:1 et seq., 29:1 et seq. pre-2009 bankruptcy provisions, and transfers at undervalue see Note at this subheading, above reviewable transactions provisions (former s. 91), relevance to transfers at undervalue, 28:1 et seq. settlement provisions (former s. 100), relevance to transfers at undervalue, 27:1 et seq. related and non-related persons see also this main heading, subheading "reviewable transaction' defined and interpreted" BIA, effect of s. 4 ("related" persons), **28:5**, **28:6**, **28:7** non-related persons, 28:8 [Text Following Footnote 13]

BANKRUPTCY (CANADIAN FEDERAL BANKRUPTCY AND INSOLVENCY ACT)—Cont'd Transfers at undervalue (s. 96, BIA)

> -Cont'd remedies court, remedies available to Mercado Capital Corporation v. Qureshi, appellant's Factum Prepared for Its Appeal to the Court of Appeal, 29:4 [Text **Following Footnote 11**] see also generally this main heading, subheading "Mercado Capital Corporation v Qureshi, commentary on, 29:1 et seq. orders, types of, 28:14 court, role of (including whether discretion exists and, if so, its nature and scope). See Index, this subheading, then serially "arm's length and non-arm's length transfers," "court, role of" licensed insolvency trustee see also this main heading, then sequentially "licensed

insolvency trustee," "remedies and enforcement" remedies available to, **27:16** suing to recover shortfall in value, **26:4** [Text Accompanying Footnote 12], **27:4**, **27:16** trustee's opinion concerning

value, 28:12 voiding the transfer, 26:4 [Text Accompanying Footnote 12], 27:16

same effect as under provincial fraudulent conveyances law: "void" means voidable, 27:16 [Text Accompanying Footnote 1]

see also main heading "Void/ voidable"

persons entitled, **28:14** persons who are "privy" to the transfer, liability of (BIA, s. 96(3)), **28:1 et seq.**

© 2024 Thomson Reuters, Rel. 4, 4/2024

BANKRUPTCY (CANADIAN FEDERAL BANKRUPTCY AND INSOLVENCY ACT)—Cont'd

Transfers at undervalue (s. 96, BIA) —Cont'd

- "reviewable transaction" defined and interpreted (related persons (BIA, former section 4) and the legal/ constitutional effect of the deeming provision (BIA, former section 3(3); control; related groups and related corporations; arm's length and non-arm's length transactions; persons), **28:5 to 28:9**
- transferee, may be added as proper defendant, 1:25 [Text Following Footnote 8]

trustee in bankruptcy see this main heading, under "licensed insolvency trustee" value of transferred property

appraisals sought by trustee, 26:4 [Text Following Footnote 9]

judgment for difference in value, **28:12**

trustee's opinion concerning value, **28:12**

Trust argument, invoked to legitimize debtor's transfer of property, **14:42** [Footnote 33]

Trustee in bankruptcy

see this main heading, under "licensed insolvency trustee"

Void/voidable

see Void/voidable

- Wealth and inequality, how the law creates them (asset protection, trusts, corporate status, bankruptcy law, and the role of lawyers)
 - see also main heading "Corporations," subheading "corporate status and incorporation; asset protection; and corporate law: critique (in terms of creation of wealth and its distribution)"
 - Pistor, Katharina, The Code of Capital: How the Law Creates Wealth and Inequality (2019), reviewed of by Adam Tooze: "How 'Big Law' Makes Big Money," The New York Review of Books (February 13, 2020), **9:24** [Footnote 1], 34:1 et seq.

BENEFICIARY

- Creditors as, directors' duty of care, **34:1** et seq.
- Designation of, former bankruptcy settlement provisions (s. 91, BIA), 27:11
- Designation of, of life insurance policy, 9:18 to 9:33
- Exigibility of interests in land, 9:22 [Footnote 53]
- Trust interest, as conveyance, **9:18 to 9:33**

BENEFIT TO DEBTOR

See main heading "Badges of fraud," then sequentially "examples (nonexhaustive)" and "benefit retained by debtor; possession remaining in debtor"; main heading "Fraudulent conveyances," subheading "benefit, retention by debtor, no need to show, for fraudulent conveyance"; and main heading "Sham transactions"

BILL OF EXCHANGE, ENDORSER OF, AS CREDITOR

Generally, 18:8

BONA FIDES

See Good faith

BONDS, JUDGMENTS, ORDERS AND OTHER PROCEEDINGS: WHETHER COVERED BY

Fraudulent conveyances legislation, 1:5; 8:1 et seq.

Fraudulent preference legislation, 20:3

BULK SALES LEGISLATION

Generally, **40:1 et seq.** Deterrence of fraudulent transfers of property, **40:2 [Text Following Footnote 5], 40:6**

Waiving compliance with mandatory provisions, and "industry practice," **40:6 [Text Following Footnote 7]**

BURDEN/ONUS OF PROOF AND STANDARD OF PROOF [NOTE: READERS SHOULD CONSULT THE TEXT FOR BOTH MAIN REFERENCES BELOW, SINCE THE ISSUES ARE TREATED SIMILARLY IN FRAUDULENT CONVEYANCES AND FRAUDULENT PREFERENCES LITIGATION]

Fraudulent conveyances

- see main heading "Intent fraudulent conveyances," then sequentially "proving fraudulent intent," "burden/onus of proof"
- badges of fraud, presumptions and burden of proof, **14:52 to 14:56**

Fraudulent preferences see main heading "Intent — fraudulent preferences," then "burden of proof"

CAUTION

Generally, 36:6

CAUTIONARY NOTE Generally, 1:1 to 1:8

CEASING TO MEET LIABILITIES AS THEY FALL DUE Generally, 10:3, 10:4, 24:12

CERTIFICATE OF PENDING LITIGATION

Generally, **36:6** Registration as deterrent to dealing with property, **36:6** [Text Following Footnote 32]

CHANGE OF POSITION, DEFENCE OF

Generally, 24:3

CHEATING

See also main heading "Conspiracy" See Index, main heading "Deceit, dishonesty, immorality, illegality, collusion, guile, malice, etc., in relation to fraud"

CHOICE OF LAW

Generally, 12:2, 12:8

CLAIMS

See also Actions and other proceedings; Proceedings and procedure; Enforce-

© 2024 Thomson Reuters, Rel. 4, 4/2024

CLAIMS—Cont'd

ment of money judgments, the role of the execution creditor and the seizure of the debtor's property by the sheriff or other similar official; Judgment Meaning of contingent claim, 19:5 [Footnote 5] unliquidated claim, 19:5 [Footnote 5] Standing for creditor with contingent claim (fraudulent preferences), 18:3 Standing for creditor with unliquidated claim fraudulent conveyances Assignment and Preferences Act model, 13:8 [Footnote 6] Fraudulent Conveyance Act model, 13:5 [Footnote 10] fraudulent preferences, 18:3

CLASS ACTION

Generally, **5:8**

CLEARING HOUSE

Defined, **24:1** Exemption from statutory presumption of preference, **24:1**

CLEARING MEMBER, DEFINED Generally, 24:1

CLOSE RELATIONSHIP BETWEEN TRANSFEROR AND TRANSFEREE

See also Index, main headings "Family law: legislation; agreements and other arrangements; and jurisprudence"; "Consideration"; "Natural love and affection, as consideration"; and Trusts

General, **14:47 to 14:51, 15:11, 19:16** [Footnote 1]

Whether leniency warranted in family arrangements, **15:11** [Footnote 3,19, 27]

COGNOVIT ACTIONEM, USE OF, DEFRAUD CREDITORS

Generally, 8:2

COLLUSION

See also main heading "Conspiracy" See Index, main heading "Deceit, dishonesty, immorality, illegality, collusion,

COLLUSION—Cont'd

guile, malice, etc., in relation to fraud"

COMMENCEMENT OF ACTION

See Actions and other proceedings

COMMERCIAL AND OTHER SIMILAR INTERESTS

See also main heading "Leveraged buyouts"

Corporate status and incorporation; trusts; asset protection; and corporate law: critique (in terms of creation of wealth and its distribution), 1:1 [Footnote 12], 1:1 [Text Following Footnote 24], 1:1 [Footnote 32], 1:15 [Footnote 8], 9:25 [Text Following Footnote 1]

Debtor's intent and his or her business or financial circumstances

see also main heading "Intent — fraudulent conveyances," "business or financial circumstances of debtor, current and/or future"

commercial justification of transaction, 1:35 [Footnote 62]

Financial information, difficulty in acquiring and verifying

mid-19th to early-20th century, 1:1 [Footnote 11]

modern requirements, 1:1 [Footnote 10]

Freedom of commerce impaired by voiding all conveyances, etc., **1:15** [Text Accompanying Footnote 8]

Law impairing or otherwise affecting commercial interests, **1:8** [Text Accompanying Footnote 38 et seq.], **1:15** [Text Following Footnote 6], **1:8** [Footnote 49], **19:29** [Text Accompanying Footnote 6 et seq.], **19:33** [Text Accompanying Footnote 5 et seq.], **20:1** [Footnotes 13, 14]

- certainty in commercial transactions, stare decisis and judicial activism, 1:1
- law reform considerations, 1:15 [Text Following Footnote 11]

Private companies, shares, potential disruption of company's share and management structure by seizure and sale of shares, **39:2** [Text

COMMERCIAL AND OTHER

SIMILAR INTERESTS—Cont'd Accompanying Footnotes 13, 14], 39:8 [Text Accompanying Footnote 5]

Techniques to minimize business risk, 2:1 [Footnote 3]

see also Estate planning wealthy individuals: how money and influence can insulate the very wealthy from the consequences of reckless decisions (Purdue Pharma/Sackler discussion), **1:1** [Footnote 1]

COMMON LAW

See also main heading "Statute of Elizabeth and other English statutes"

Certainty in commercial transactions, stare decisis and judicial activism, 1:1

Courts effect changes for specific situations, not system-wide, 1:15 [Text Accompanying Footnote 11], 4:18 [Footnote 4], 14:42 [Footnote 57]

Fraudulent conveyances, **1:11**

Fraudulent preferences, **17:1**

Inception of voidable transactions law, 1:1 [Footnote 5], 1:12 [Footnote 1]

COMPANIES' CREDITORS ARRANGEMENT ACT PROCEEDINGS (S. 36.1), APPLICATION OF S. 95 (BANKRUPTCY AND INSOLVENCY ACT) IN

Generally, 1:8 [Footnote 8], 9:23 [Footnote 7], 14:42 [Footnote 31, 61], 24:2 [Footnote 4], 28:8 [Footnote 35], 28:8 [Text Following Footnote 36]

CONCEALMENT OR REMOVAL OF PROPERTY

See also main headings, "Deceit, dishonesty, immorality and illegality, in relation to fraud;" "Estate planning, asset and tax sheltering"; "Deceit, dishonesty, immorality and illegality, in relation to fraud"; and "Landlord and tenant matters," subheading "landlord's distraint against fraudulently removed property by tenant"

CONCEALMENT OR REMOVAL OF **PROPERTY**—Cont'd Badge of fraud, as. 1:30 [Footnote 7]. 14:42 [Footnotes 30, 77] Bankruptcy and Insolvency Act (s. 198) concealment not a "disposition," 31:5 [Text Accompanying Footnote 7 et seq.] general, 31:5 Criminal Code (Canada), 1:30 General, 1:6, 7:12 [Footnote 2], 14:77 "Offshore" accounts and tax havens passport selling by "offshore" countries, to enable fraud, money laundering, and tax evasion, 1:13 [Footnote 12.500] use of by world leaders, powerful politicians, billionaires, celebrities, religious leaders and drug dealers to hide their investments in mansions, exclusive beachfront property, yachts and other assets, 2021 report of the International Consortium of Investigative Journalists (the "Pandora Papers"), 2:6 [Footnote 2] Ontario, Rules of Civil Procedure (made under Courts of Justice Act), 3:2 passport selling by "offshore" countries, to enable fraud, money laundering, and tax evasion, 1:3 [Footnote 12.500] Removal of tenant's property, distraint by landlord if "fraudulently or clandestinely" removed, 37:3, 14:42 [Footnote 30] Trusts, concealment of assets by means of, 1:1 [Footnote 20 et seq.] and Accompanying Text United States Uniform Fraudulent Transfer Act, 1:30 [Footnote 7], 14:77 CONCURRENT INTENT DOCTRINE See also Transferee (under "notice or knowledge of debtor's fraudulent intent (fraudulent conveyances)) Debtor's answers on discovery, effect on proving transferee's intent, 14:1 to 14:39, 15:14 Fraudulent conveyances, 15:11 British Columbia, 15:14 [Footnote 48] © 2024 Thomson Reuters, Rel. 4, 4/2024

-Cont'd Fraudulent preferences. 19:10. 19:11. 19:13 Not relevant in bankruptcy preferences cases, 24:16 **CONFESSION OF JUDGMENT, USE OF. TO DEFRAUD CREDITORS** Generally. 8:2 Warrant of attorney to confess judgment, 8:2 **CONFLICTING AND OVERLAPPING** LEGISLATION Generally, 1:18 to 1:29 CONFLICT OF LAWS Choice of law, 12:2, 12:8 Forum non conveniens, 12:7 Introduction, 12:1 choice of law, 12:2, 12:8 service out of the jurisdiction, 12:3, 12:6 Jurisdiction, 12:4 to 12:7 forum non conveniens, 12:7 general limits on, 12:7 oppression actions, 12:5 service ex juris, 12:3, 12:6 Remedies, 12:9 CONSENT TO JUDGMENT Bankruptcy and Insolvency Act, 24:9 [Text Accompanying Footnote 21] Provincial legislation, 8:1 et seq. **CONSIDERATION** Adequacy of Assignment and Preferences Act model, 15:8, 15:9, 16:4 to 16:6 Fraudulent Conveyances Act model, 14:47 [Footnote 4], 15:8, 15:9, 15:11 commercial justification of transaction, 1:35 [Footnote 62] full consideration not required, 14:36 [Text Following Footnote 5], 14:42 [Text Following Footnote 61], 15:11 [Text Accompanying Footnote 26] law reform (New Brunswick Report), 7:24 weighing the adequacy of consideration: not an exercise in

CONCURRENT INTENT DOCTRINE

CONSIDERATION—Cont'd Adequacy of-Cont'd precision but one of judgment. 15:9 [Footnote 14] Antecedent debt, payment of, effect of fraudulent conveyances cases, 15:10 fraudulent preference cases. 15:10 (in part): 20:4 new promise to pay antecedent debt, 15:10 [Footnote 24] Debts of debtor See also Index, main heading "Bankruptcy (Canadian federal Bankruptcy and Insolvency Act)," then "'debts', meaning of (s. 121(1), BIA)" abolition of debt, calls for, 1:1 [Text preceding and following note 11.175] assumption of, as consideration, 15:12; 16:5 extension of time for repayment, 19:34 [Text Following Footnote 25] forgiveness or reduction of a debt, as consideration, 1:1 [Text preceding and following note 11.175]; 15:11 [Footnote 12]; 19:34 [Footnote 6]; 19:35 [Text Accompanying and Following Footnote 6]; 28:11 **[Text Following Footnote** 7.1001 contra, fraudulent preferences, protected transactions, consideration (present actual payment of money), 20:9 [Text Accompanying and **Following Footnote 9**] refusal to collect a debt, as a fraudulent conveyance, 9:18 [Footnote 35] Debts of debtor, transferee's assumption of, as sufficient consideration, 15:12, 16:5 Family property law claims, release or compromise of, 15:11 [Footnote 12], 19:34 [Footnote 6], 19:35 [Footnote 7], 20:8 Forbearance to sue, 15:11 [Footnote 12], 19:34 [Footnotes 6, 25], 19:35 [Footnote 7], 20:8, 28:11 [Text Following Footnote 7.100]

CONSIDERATION—Cont'd Full consideration voiding conveyance despite, 15:11 [Footnote 28] "Good" and "valuable," 15:11 Good faith, linked to, 15:5 "Grossly inadequate" consideration, 14:28 [Text Preceding and Following Footnote 36] Matrimonial claim, compromise of, 15:11 [Footnote 12] Matrimonial dispute, settlement of, 15:11 [Footnote 12] Natural love and affection. See below, under "provincial law," then "natural love and affection" Nominal consideration, meaning of bankruptcy, 27:12 [Text Accompanying Footnote 1] provincial law. See also Index, main heading "Close relationship between transferor and transferee" considered to be essentially a "gift," 15:11 [Footnote 31] creditor must prove, 15:11 [Test Accompanying Footnote 25] description (Black's Law Dictionary), 15:11 [Text Following Footnote 47] various descriptions, 15:11 gratuitous transferee paying nothing or a nominal amount, 9:18 [Footnote 1.500], 15:11 [Footnote 45.500] "trifling, insignificantly small or a token," 15:11 [Text **Following Footnote 46**] natural love and affection. See also above, "natural love and affection considered to be "nil" or "nominal" consideration, 15:11 [Footnote 14] natural love and affection. See also below, "nominal consideration" badge of fraud, "grossly inadequate" (badge (9)), 14:42 [Footnotes 61, 62] not "good" consideration, 15:11 [Footnote 19] no consideration, as "gift," 14:42 [Footnote 24]

CONSIDERATION—Cont'd

Nominal consideration, meaning of -Cont'd provincial law. See also Index, main heading "Close relationship between transferor and transferee" -Cont'd nominal consideration. 15:11 considered to be no consideration. 15:8 [Footnote 3 and accompanying text] not judicially defined, 15:11 [Text **Following Footnote 47**] not "minimal," 15:11 [Text Following Footnote 47] Past and present consideration fraudulent conveyances, 15:10 fraudulent preferences, 15:10 (in part); 20:4 new promise to pay antecedent debt, 15:10 [Text and Notes Following Footnote 25] Presumption of intent where no valuable consideration, 14:14 [Text Accompanying Footnote 44 et seq.] Promise, unperformed, as consideration, 15:1 et seq. Role of, 15:8 to 15:12 Sale of property for full value, 1:35 [Footnote 69], 1:41.70, 1:41.80, 1:42, 20:8 Security for existing debt, 15:8, 15:9 Spousal relationship, 15:11 [Footnote 19] Transactions between relatives, 15:11 Transferee's intent, and, 14:42 [Footnote 61], 15:11 presumption of intent where no valuable consideration, 14:14 [Text] Accompanying Footnote 44 et seq.] United States Uniform Fraudulent Transfer Act, 14:78 Valuation of, 15:11 [Footnote 8] CONSPIRACY

See also Index, main heading "Deceit, dishonesty, immorality, illegality, collusion, guile, malice, etc., in relation to fraud," then sequentially "civil (voidable transactions) law," "collusion"

 $\ensuremath{\mathbb{C}}$ 2024 Thomson Reuters, Rel. 4, 4/2024

CONSPIRACY—Cont'd Core elements of secrecy, collusion and contrivance to the prejudice of legitimately entitled third parties, comparison to conspiracy, 1:35 [Footnote 8], 7:14 [Footnote 3], 7:16 [Footnote 1] Covin, originally a secret agreement to cheat and defraud, now referred to as a conspiracy or collusion to cheat and defraud, 15:1 [Footnote 0.02] Criminal conspiracy, 2:5 [Footnote 13] Secrecy, collusion and contrivance linked to debtor-transferee conspiracy, 1:27 [Footnote 3], 1:29 [Footnote 1], 1:35 [Footnote 22] Tort of see also Remedies economic injury caused or interfered with, 2:5 [Footnote 10], 2:5 [Text **Following Footnote 29**] essential elements, 2:5 criminal conspiracy, essential elements of, where germane to civil conspiracy, 2:5 [Footnote 13] inducing a tort, 2:5 [Footnote 12] solicitor's liability for, 2:6 [Footnote 2] transferee, use of tort against, 1:2 [Footnote 19], 2:5 [Footnote 14], 7:14

CONSTITUTIONALITY

- Bankruptcy and Insolvency Act, reviewable transactions (former s. 100): related persons (BIA, former section 4) and the legal/constitutional effect of the deeming provision (BIA, former section 3(3)), **28:5**
- Coexistence of provincial voidable transaction statutes (including, where applicable, the Statute of Elizabeth) and related Bankruptcy and Insolvency Act provisions respecting frauds on creditors, **26:3**
- Criminal and quasi-criminal provincial fraudulent transactions legislation, 1:27
- Fraudulent conveyances legislation, 1:8 [Footnote 78]
- Fraudulent preferences legislation, 18:7

CONSTITUTIONALITY—Cont'd

Rules dealing with fraudulent concealment of property, **1:30**

CONTEMPT ORDERS, AGAINST DEBTOR

Generally, 1:32
Imprisonment for debt (voidable transactions), 1:32 [Text Accompanying and Following Footnote 2]
Ontario, Rules of Procedure, rule 60.18(5), 1:32 [Text Accompanying Footnote 1]

CONTINGENT CLAIM

See Claim

CONTINUING IN BUSINESS

Bankruptcy, 24:21 Control, 28:6 Hazardous business/investment, 2:1 [Text Following Footnote 4], 13:13 [Footnotes 7, 22, and 64], 14:14 [Footnotes 4, 5] Provincial legislation, 19:35

CONTROLLING OR DIRECTING MIND OF CORPORATION

See Corporations; Directors

CONVEYANCE, DISPOSITION AND OTHER SIMILAR TRANSACTIONS

See also Fraudulent conveyances; Fraudulent preferences; Transactions, void/ voidable

All or virtually/essentially all of the debtor's property, **14:42** [Footnote 24]

Benefit, retention by debtor, **1:8**, **14:33**, **14:51**

By act outside debtor's control, **9:18** [Footnotes 17, 26]

Debtor must have interest in conveyed property, 13:1 [Footnote 2], 14:51

Debts of debtor, forgiveness or reduction of, or refusal to collect, etc. See Index, main heading "Consideration," then "Debts of debtor." See also Index, main heading "Bankruptcy (Canadian federal Bankruptcy and Insolvency Act)," then "Debts', meaning of (s. 121(1), BIA)" CONVEYANCE, DISPOSITION AND **OTHER SIMILAR** TRANSACTIONS—Cont'd Delay - remedy where conveyance delays but does not defeat recovery, 1:35, 1:45, 14:32, 14:45 Disclaimers of legacies or gifts conveyance, as, 9:22 disposition, and disclaimers, contrasted, 9:22 [Footnote 37] law reform, 9:28 et seq. surrender or release, and disclaimers, contrasted. 9:22 Disposition Bankruptcy and Insolvency Act bankruptcy offences (s. 198) concealment not a "disposition," 31:5 [Footnote 7] general, 31:3 transfers at undervalue (s. 96), 26:4 [Text Following Footnote 6] see also main heading "Bankruptcy (Canadian federal Bankruptcy and Insolvency Act)," and then sequentially "transfers at undervalue," "Mercado Capital Corporation v Qureshi, commentary on," and "disposition' of property" British Columbia legislation use of term "disposition" definition Fraudulent Conveyance Act, 1:30 [Text Following Footnote 12.200] Interpretation Act. 1:30 [Text **Following Footnote** 12.5001 general, 9:18 [Footnotes 3 et seq. and Accompanying Text], 31:4 Ponzi scheme, voidable transactions: "disposition" of "excess," where perpetrator of scheme pays investor an amount exceeding the amount invested (the "excess"), 38:3.50 Harm to creditor, must it always be

proven? see main heading "Harm to creditor, must it always be proven for

CONVEYANCE, DISPOSITION AND OTHER SIMILAR

TRANSACTIONS—Cont'd success in action even where fraudulent intent is also proven?"

- Insolvent debtor, refusal to collect money owed to him, not a prejudicial "disposition" (B.C. Report), **9:22** [Footnote 42]
- Journal entries, whether reflecting actual conveyances, **1:8** [Footnote 7], **9:18** [Text Following Footnote 48], 26:4 [Footnote 7], 28:12 [Text Following Footnote 15]

Meaning of, 9:18 to 9:33, 24:9

- Other than by debtor, 1:8 [Footnote 67], 9:33 [Footnote 2]
- Ponzi scheme, voidable transactions, conveyance: payment of "excess," where perpetrator of scheme pays investor an amount exceeding the amount invested (the "excess"), **38:3.50**

Prejudicial effect of

- see main heading "Harm to creditor, must it always be proven for success in action even where fraudulent intent is also proven?"
- Refusal of a gift (powers of appointment, disclaimers, legacies, beneficial interests)

current law, 9:22

- law reform, 9:28 to 9:33
- Releases and other similar instruments current law. 9:21

law reform, 9:28 to 9:33

Sham transactions

- see Sham transactions
- Timing of, **14:1 to 14:39**
 - see also main heading "Bankruptcy (Canadian federal Bankruptcy and Insolvency Act)," subheading "transfers at undervalue," and then sequentially "Mercado Capital Corporation v
 - Qureshi, commentary on," "'disposition' of property," and "timing of 'disposition'"
- Transferee corporation controlled or organized by corporate or noncorporate debtor, **9:24**, **9:25**, **14:53** [Footnote 6]; **15:14** [Footnote 8]

© 2024 Thomson Reuters, Rel. 4, 4/2024

CONVEYANCE, DISPOSITION AND OTHER SIMILAR TRANSACTIONS—Cont'd

"Voluntary" conveyances, meaning and use of term, 9:18 [Footnote 1.500], 15:11 [Footnote 45.500]

CORPORATIONS

- See also main headings "Bankruptcy (Canadian federal Bankruptcy and Insolvency Act)," subheading "wealth and inequality, how the law creates (asset protection, trusts, corporate status, bankruptcy law, and the role of lawyers)"; and Directors
- Corporate status and incorporation; asset protection; and corporate law: critique (in terms of creation of wealth and its distribution), 1:1 [Footnote 12], 1:1 [Text Following Footnote 24], 1:1 [Footnote 32], 1:15 [Footnote 8], 9:24 [Text Following Footnote 1]

Corporate veil

piercing

- "creditors or others," interpretation of "others," where mortgage corporations (which granted mortgages to secure legal fees) were controlled by an individual who was a judgment debtor of other creditors: whether each creditor of the judgment debtor was an "other" with standing to seek impeachment of the mortgages, **13:17.100**
- general, 13:14 [Footnote 3], 14:3 [Footnote 5], 14:44 [Footnote 11], 28:14 [Text Accompanying Footnote 5], 36:6 [Footnote 10]
- transferee corporation controlled or organized by corporate debtor, 9:24, 9:25, 14:53 [Footnote 6], 15:14 [Footnote 8]
- transferee's notice or knowledge of transferor's fraudulent intent, where same individual is "controlling mind" of both transferor and transferee (where not a corporate veil issue: Abalon Holdings Ltd. v. Bank of Nova Scotia), **14:3** [Footnote 5], **14:44** [Footnote 8], **15:10**

Index-21

INDEX

CORPORATIONS—Cont'd Corporate veil-Cont'd piercing-Cont'd [Foonote 34], 15:14 [Footnote 81 transfer of assets to a new corporation, whether a fraudulent transaction, 9:25 use to minimize business risk, 2:1 [Footnote 3] see also Estate planning veil not pierced, Bankruptcy and Insolvency Act, s. 198(1) (offences) (Plante c. Gaudreau), 31:5 Corporation, defined, 28:9 Directorships, interlocking corporate, 14:44 Dividends (restrictions on payment of) and purchase or redemption of shares bankruptcy and insolvency provisions, 30:1 et seq. general, 17:1 [Footnote 28] law reform, 35:2 provincial legislation, 35:1 Fraud and dishonesty, advice from solicitor, 2:2 (LSUC r. 3.2 to 8) see also this main heading, subheading "corporate status and incorporation; asset protection; and corporate law: critique (in terms of creation of wealth and its distribution)" Intent of "directing" or "controlling" mind, 14:3 [Footnote 5] Notice or knowledge of transferor's intent where transferor and transferee are the same, 15:14 [Footnote 8] transferee corporation controlled or organized by corporate debtor, 9:24, 9:25, 14:53 [Footnote 6], 15:14 [Footnote 8] transferee's notice or knowledge of transferor's fraudulent intent, where same individual is "controlling mind" of both transferor and transferee (where not a corporate veil issue: Abalon Holdings Ltd. v. Bank of Nova Scotia), 14:3 [Footnote 5], 14:44 [Footnote 8], 15:10 [Foonote 34], 15:14 [Footnote 8]

CORPORATIONS—Cont'd

Notice or knowledge of transferor's intent where transferor and transferee are the same, 15:14 [Footnote 8] -Cont'd transferor and transferee having the same operating mind (so allegedly no legitimate transaction was concluded between them), 14:1 et seq. Private or closely held corporations, restrictions on share transfers and on other entitlements, 39:1 et seq. company law, effect of court intervention or non-intervention on, 39:1 court intervention or non-intervention, 39:1 definition, 39:1 [Footnote 4] enforcement proceedings, effect of court intervention or non-intervention on, 39:1 law reform, 39:12 to 39:18 legislation (provincial) and jurisprudence jurisprudence before securities transfer legislation, **39:2**, **39:3** securities transfer legislation, restrictions on share transfers and on other entitlements different provincial approaches, 39:5 to 39:11 fraudulent conveyances legislation, links to, 39:6 voidable transactions legislation. 39:4 reasons for restrictions, 39:1 devices to evade execution, 39:13 [Footnote 1] share-holding rights, nature of, 39:1 transfers (voluntary) and transmissions (non-voluntary), 39:1 types of restrictions, 39:1 Shareholders, liability of, 30:1, 30:4, 30:5 Shares, issuance of additional shares in an existing corporation, as a fraudulent conveyance, 9:24 Subsidiary, associated and related corporations or other entities, creation and legitimacy of, 14:44 Transactions involving close corporate relationships, 14:44

CORPORATIONS—Cont'd

- Transferee corporation controlled or organized by corporate or noncorporate debtor, **9:24**, **9:25**, **14:53** [Footnote 6], **15:14** [Footnote 8]
- Transfer of assets to a new corporation and other related conduct, such as the issuance of additional shares in an existing corporation, whether a fraudulent transaction, **9:24**, **9:25**
 - see also this main heading, subheading "corporate status and incorporation; asset protection; and corporate law: critique (in terms of creation of wealth and its distribution)"
- Wealth production, inequality, etc., 1:1 [Text Following Footnote 24]

CORROBORATION

Generally, **14:48** Res ipsa loquitur, and, **14:48**

COURTS

See also Anton Piller order; Damages; Derivative action; Enforcement of money judgments and seizure of debtor's property by sheriff or other similar official; Injunctions; Conspiracy, tort of; Judgment; Mareva injunctions; Oppression remedy; Preservation and similar orders; Proceedings and procedure; Remedies; Unjust enrichment, damages for

Decisions not based on statutory provisions, **1:8** [Footnote 74], 9:18

- certainty in commercial transaction, stare decisis and judicial activism, 1:1
- courts effect changes in specific situations, not system-wide, 1:15 [Text Accompanying Footnote 11], 4:18 [Footnote 4], 14:42 [Footnote 57]
- Declaratory relief (voidable transactions), 5:20 [Text Following Footnote 23]; 7:5 to 7:22
- Deference normally accorded by appeal courts to the findings of trial judges, **14:9** [Footnote 1], 14:54
- Discretion of (bankruptcy) reviewable transactions (former s. 100, BIA), **28:15 to 28:18**

© 2024 Thomson Reuters, Rel. 4, 4/2024

COURTS—Cont'd

- Discretion of (bankruptcy)-Cont'd transfers at undervalue. 29:1 et seq. Mercado Capital Corporation v Qureshi, appellant's Factum Prepared for Its Appeal to the Court of Appeal (for commentary on Mercado Capital Corporation v. Qureshi, see main heading "Bankruptcy (Canadian federal Bankruptcy and Insolvency Act)," then "transfers at under-value"), **29:4** [Text Following Footnote 11], 29:5 [Text **Accompanying Footnotes 4** to 7], 29:6 [Text **Accompanying Footnotes 2** to 3]
- Judicial activism and legislative reform. See this main heading, under "Legislative reform versus judicial activism"
- Legislative reform versus judicial activism, 1:8 [Footnote 38], 1:41.85

"Open courts," principle of, re: removal or redaction of portions of the record from publicly filed materials, 2:7 [Footnote 7], 5:5 [Footnote 25]

Powers of

judgment: entitlement, effect and relief granted

general, Ch. 7

judicial activism, judicial restraint and legislative reform, 1:41.55, 1:41.60, 1:41.65, 1:41.80, 1:41.85, 1:42 law reform, 7:3, 7:24 to 7:31

COVIN

See Index, main heading "Deceit, dishonesty, immorality, illegality, collusion, guile, malice, etc., in relation to fraud"

Originally a secret agreement to cheat and defraud, now referred to as a conspiracy or collusion to cheat and defraud, **15:1** [Footnote 0.02]

Statute of Elizabeth, an Act against certain "covinous" transactions, 1:1 [Hunt's Description of Act (First Para.) Text Following Footnote 5]

CREDIT

CREDITORS AND "OTHERS"-Cont'd Financial information, difficulty in acquiring and verifying see also Information mid-19th to early-20th century, 1:1 [Footnote 11] modern requirements, 1:1 [Footnote 10] Responsible practices during credit relationship, ensuring, 1:1 [Text Following Footnote 10] Role of, and voidable transactions law, 1:1 to 1:8 **CREDITORS AND "OTHERS"** See also Creditors' relief legislation; Enforcement of money judgments and seizure of the debtor's property by sheriff or other similar official; Standing to impeach — fraudulent conveyances Beneficiary of directors' duty of care, 34:1 et seq. Bill of exchange, endorser of, 18:8 Credit see Credit, role of, and voidable transactions law Creditors or "others," 13:4 to 13:8, 13:9, 13:10, 13:11 piercing corporate veil, interpretation of "others," where mortgage corporations (which granted mortgages to secure legal fees) were controlled by an individual who was a judgment debtor of other creditors: whether each creditor of the judgment debtor was an "other" with standing to seek impeachment of the mortgages, 13:17.100 See also Index, main heading "Corporations," then serially "Corporate veil," "piercing" statutory phrase used by the courts as a rule to determine standing to commence proceedings, 13:2 [Text **Following Footnote 1**] Creditors' relief legislation see Creditors' relief legislation Declaratory relief (voidable transactions), 5:20 [Text Following Footnote 23]; 7:5 to 7:22

Defined bankruptcy, 24:1, 24:14 Diligent, 24:23 Execution see also Enforcement of money judgments and seizure of debtor's property by sheriff or other similar official Expanded definitions and remedies (preferences) Alberta Fraudulent Preferences Act, s. 10. 18:2 general, 19:5 Saskatchewan Fraudulent Preferences Act, s. 12(1), (2), 18:2 [Footnote 19] standing, 18:2 General rule, 13:18, 18:1, 19:5 expanded definition, 18:2 Guarantor, 18:8 see also Guarantees Harm to creditor, must it always be proven? see main heading "Harm to creditor, must it always be proven for success in action even where fraudulent intent is also proven?" Initiator of a fraudulent preference (pressure by preferred creditor), 19:36 to 19:38 Intent to defraud "any creditor" (U.S. Uniform Fraudulent Transfer Act). 13:13 [Footnote 24] Judgment creditors, 13:3 Litigation against debtors, see main heading "Debt litigation" Non-judgment creditors, 13:4 to 13:8 "Others" referring to monetary claimants only, 13:6 [Footnote 7] Promissory note, endorser of, 18:8 Ratification of transaction, 1:8 [Footnote 10] Remedies see main heading "Illegal transactions" Remedy, where preferable to imposition of fiduciary duties, 11:1 [Footnote 7] Return of transferred property by, 1:8 [Footnote 5] Secured payments to secured creditor, 24:9 priority over unsecured judgment creditors, 1:3 [Footnote 3]

CREDITORS AND "OTHERS"—Cont'd Secured—Cont'd protected transactions --- fraudulent preferences, 20:9, 20:10 secured financing as protected transaction, 20:9, 20:10 security for current advances, 24:22 standing to impeach fraudulent conveyance. 13:12 standing to impeach fraudulent preference. 18:6 Sheriff or other similar official as creditor's surrogate to seize property allegedly transferred fraudulently, 4:1 Subsequent/future creditors standing to impeach fraudulent conveyance, 13:13, 13:18 intent to defraud "any creditor" (U.S. Uniform Fraudulent Transfer Act), 13:13 [Footnote 24] intent to defraud subsequent/future creditors in general or specific subsequent/future creditors, 13:13 [Esp. Footnotes 24, 25] standing to impeach fraudulent preference, 18:5 Substitution of new for old, 13:13 [Footnote 38] Third party, of, 13:14 Traditional setting, debtor-creditor relationship as, 1:2 Use of term, 1:2, 1:3, 1:4 Waiver of rights, 1:8 [Footnote 5] **CREDITORS' RELIEF LEGISLATION** Conveyance legislation, and, 7:19 to 7:21 Effect of, where statutory right to impeach judgment or execution used to defraud creditors, 8:3, 41:22 General, 7:19 to 7:21 Preference legislation, and, 1:12 [Footnote 16], 1:35 [Text Accompanying Footnote 49 et seq.], 17:1 Reform, 7:23 to 7:30; 17:6, 17:7 **CRIMINAL AND QUASI-CRIMINAL OFFENCES RESPECTING** VOIDABLE TRANSACTIONS AND FRAUD, AND RELATED MATTERS Criminal and quasi-criminal provisions of, relevance of Statute of Elizabeth

© 2024 Thomson Reuters, Rel. 4, 4/2024

CRIMINAL AND QUASI-CRIMINAL OFFENCES RESPECTING VOIDABLE TRANSACTIONS AND FRAUD. AND RELATED MATTERS—Cont'd to provincial voidable transactions law, 1:26 to 1:29 constitutional matters, 1:27 British Columbia, 1:28 outside British Columbia, 1:29 Deterrence, of person contemplating voidable transaction, resort to criminal law, 7:25 [Footnote 14] Offences, 1:30; 2:3 [Footnote 41] Criminal Code offences and Bankruptcy and Insolvency Act offences, basic difference between, 1:1 et seq.; 31:1 [Text **Following Footnote 4**] extradition proceedings, legislation, liberal/broad interpretation, 1:30 [Footnote 27] **CROWN, LEGISLATION BINDING ON**

Bankruptcy and insolvency legislation, 24:1 deterrence, of creditor contemplating voidable transaction, best left to criminal law, 1:8 [Footnote 46]

Provincial legislation, **1:30**

CUSTODY, PRESERVATION AND DETENTION OF PROPERTY ORDERS, BANKRUPTCY LEGISLATION

Generally, 36:1 et seq.

DAMAGES

See also Conspiracy, tort of; Remedies Conspiracy, linked to secrecy, collusion and contrivance, 1:1 [Footnote 18]; 1:27 [Footnote 4]; 1:28 [Footnote 1]; 1:29 [Footnote 1]; 1:35 [Footnotes 8, 22]

Exemplary damages see this main heading, subheading "punitive or exemplary damages"

Fiduciary duties, breach of director of corporation, **34:1 et seq.** transferor, **1:2 [Footnote 19]**

Monetary judgment against recipient of a transfer at undervalue (Bankruptcy

DAMAGES—Cont'd and Insolvency Act, s. 96(1)), 26:4, 27:4 No right to, in voidable transactions proceedings Against transferee, 7:13:25 transferor, 7:13:50 General, 5:20 [Text Accompanying Footnotes 19 et seq.], 7:13 Punitive or exemplary damages oppression remedy, 33:5 [Text Following Footnote 43], 33:13 [Footnote 5] voidable transactions. 7:15 [Esp. Text] Following Footnotes 1, 3] Restitution, analogy with secrecy, collusion and contrivance, 1:35 [Footnotes 8, 22] Tort, actual damage or injury as a necessarv element of liability for negligence, 14:9 [Footnote 1]. See also Index, main heading "Tort" Unjust enrichment, damages for, 7:14 [Text Following Footnote 16], 33:5 [Text Following Footnote 41] Analogy with secrecy, collusion and contrivance, 1:35 [Footnotes 8, 22] **DEBT LITIGATION. DEBT** COLLECTION AND RELATED MATTERS Debt collection, see also main heading "Enforcement of money judgments" frustrating collection, 1:4 impediments to collection, 1:3 money judgments and enforcement of judgment debts, 1:3

Debt litigation, 2:1

Limiting financial exposure to avoid litigation, **2:1**

DEBTOR AND DEBT

See also Enforcement of money judgments, the role of the execution creditor and the seizure of the debtor's property by the sheriff or other similar official; Insolvency/solvency of parties

Absconding, 1:1 to 1:8

DEBTOR AND DEBT—Cont'd Arrest Bankruptcy and Insolvency Act, 32:3 [Text Following Footnote 1] Ontario, under (repealed) Fraudulent Debtors Arrest Act, 36:1 [Footnote 1] Church sanctuary (pre-modern) for fugitive debtors, 1:4 [Footnote 3] Collection of money judgment from, 1:3 [Esp. Footnote 6 et seq.] title to or ownership or possession of debtor's property bound by writ of execution, 1:3 [Text Preceding and Following Footnote 22] Concealment of property by, 3:2, 3:6 Consumer debt, consequences of increased, 1:1 [Text Accompanying] and Following Footnote 10] Conveyance by see Conveyance, disposition and other similar transactions "Debt" and "debtor": no definition in Ontario Legislation Act, 2006, S.O. 2006, c. 21, Schedule F (successor to the former Interpretation Act), 1:9 [Footnote 9] Debtor-solicitor relationship dishonesty, fraud, etc. by debtor, 2:2 (LSUC r. 3.2 to 7) general, 2:2, 2:3 solicitor as dupe of debtor, 2:2 traditional setting, debtor-creditor relationship as, 1:2 Debts of debtor, forgiveness or reduction of, or refusal to collect, etc. See Index, main heading "Consideration," then "Debts of debtor." See also Index, main heading "Bankruptcy (Canadian federal Bankruptcy and Insolvency Act)," then "debts', meaning of (s. 121(1), BIA)" Examination of bankrupt and others (federal law), 23:1 et seq. debtor (provincial law), 3:1 [Footnote **12**Ī discovery, debtor's answers, effect on proving transferee's intent, 14:1 to 14:39, 15:14 [Footnote 15]

DEBTOR AND DEBT—Cont'd Financial situation see Insolvency of parties Imprisonment for debt, abolition, 1:32 [Text Accompanying Footnotes 2 to 4] Intent of bankruptcy, 24:16 fraudulent conveyances see Intent --- fraudulent conveyances fraudulent preferences, 19:6 to 19:9 Interest in conveyed property, 9:3, 13:1 [Footnote 1], 14:51 Litigation against, see main heading "Debt litigation" Payment to creditor by, **19:4** [Footnote 1], 20:10 [Footnote 3], 24:8 [Footnote 1] Remedies against see Remedies Removal from jurisdiction, 1:5 Reputation for honesty, 1:1 [Footnote 26] Rights concerning conveyed property, 6:1 [Footnote 7] Testify or give evidence, failure to, **14:42** [Text at Footnote 110] Use of term, 1:2, 1:3, 1:4 DECEIT, DISHONESTY,

IMMORALITY, ILLEGALITY, COLLUSION, GUILE, MALICE, ETC., IN RELATION TO FRAUD

See also Index, main headings: "Concealment or removal of property"; "Fraud"; "Illegal transactions"; "Sham transactions"

Civil (voidable transactions) law in Canadian common law jurisdictions

badges of fraud

See this subheading, under "voidable transactions"

cheating

- See this subheading, under "covin" collusion
- covin, originally a secret agreement to cheat and defraud, now referred to as a conspiracy or collusion to cheat and defraud, 14:43.50 [Text Accompanying Footnote 6]

© 2024 Thomson Reuters, Rel. 4, 4/2024

DECEIT, DISHONESTY, IMMORALITY, ILLEGALITY, COLLUSION, GUILE, MALICE, **ETC., IN RELATION TO FRAUD** -Cont'd Civil (voidable transactions) law in Canadian common law jurisdictions -Cont'd cheating-Cont'd secrecy, collusion and contrivance linked to conspiracy, 1:1 [Footnotes 18], 1:27 [Footnote 4], 1:28 [Footnote 1], 1:29 [Footnote 1], 1:35 [Footnote 22] covin generally, 14:43.50 originally a secret agreement to cheat and defraud, now referred to as a conspiracy or collusion to cheat and defraud, 14:43.50 **[Text Accompanying Footnote** 6] Statute of Elizabeth, an Act against certain "covinous" transactions, 1:14 [Footnote 5], 14:43.50 [Text Following Note 6] deceit deceit, unfair competition, and interference with profitable relations they maintain with business associates or employees, remedy against, 7:17 [Footnote 4] "defraud and deceive" (Ontario Fraudulent Conveyances Act, s. 5: frauds against purchasers), different terminology than in provisions respecting frauds against creditors, 1:8 [Footnote 77] fraud, whether the same as, 1:1 [Text Following Footnote 26], 1:1 [Footnote 27], 1:8 [Footnote 77], 1:35 [Footnote 31] dishonesty and honesty dishonesty not having a criminal or quasi-criminal dimension, 1:29 honesty, reputation for, 1:1 [Footnote 26] solicitor's judgment-proofing advice, 2:6 [Footnote 5 and Accompanying Text]

DECEIT, DISHONESTY, **IMMORALITY, ILLEGALITY,** COLLUSION. GUILE. MALICE. ETC., IN RELATION TO FRAUD -Cont'd Civil (voidable transactions) law in Canadian common law jurisdictions -Cont'd dishonesty and honesty-Cont'd stretching and distorting existing legislation to prevent dishonest trading, 6:3 [Footnote 8.500 and accompanying text] transferee's notice or knowledge of debtor's fraud, whether "dishonesty," 1:29 [Text Accompanying Footnote 5] general, 1:28, 1:29, 1:27 [Footnote 5], [1:35 and Following] guile British Columbia (Fraudulent Conveyance Act), 1:28, 15:15 other provinces, 1:29 illegality See Index, main heading "Illegal transactions" immorality See Index, main heading "Deceit, dishonesty, immorality, illegality, collusion, guile, malice, etc., in relation to fraud' mala fides, 1:28 [Text Accompanying Footnotes 8, 17]; [Text Following Footnote 15] malice criminal and quasi-criminal law British Columbia Fraudulent Conveyance Act, 1:28 other provinces, 1:29 secrecy, collusion and contrivance linked to conspiracy, 1:1 [Footnote 18]; 1:27 [Footnote 4]; 1:28 [Footnote 1]; 1:29 [Footnote 1]; 1:35 [Footnotes 8, 22] unjust enrichment, restitution, the tort of knowing receipt, analogies with, "Tort," then "Knowing receipt, tort of," 1:35 [Footnotes 8, 22]. See also Index, main headings: "Damages," then "Restitu-

DECEIT, DISHONESTY, **IMMORALITY, ILLEGALITY,** COLLUSION, GUILE, MALICE, **ETC., IN RELATION TO FRAUD** -Cont'd Civil (voidable transactions) law in Canadian common law jurisdictions -Cont'd malice-Cont'd secrecy, collusion and contrivance -Cont'd tion, analogy with secrecy, collusion and contrivance" and "Unjust enrichment, damages for" voidable transactions, badges of fraud, and deceit, dishonesty, immorality, illegality, collusion, guile, malice, etc., 14:42 Criminal or quasi-criminal dimension? British Columbia and other provinces British Columbia (Fraudulent Conveyance Act), 1:28 collusion legislation is remedial, therefore "collusion, guile, malice or fraud" ignored, 1:28 **Text Following Footnote** 19] "defraud" not ordinarily used in any criminal or quasi-criminal sense under the various Fraudulent Conveyances Acts, 1:28 contra, [Text accompanying and Following Footnote 1:28] dishonesty (having a criminal or quasi-criminal dimension) not required to be proven, 1:28 legislation is remedial, therefore "collusion, guile, malice or fraud" ignored, 1:28 [Text **Following Footnote 9**] mala fides, 1:28 [Text Accompanying and Following Footnote 9] other Canadian common law jurisdictions, 1:29 general, 1:28, 1:29, 1:27 [Footnote 5], [1:35 and Following]

DECEIT, DISHONESTY, IMMORALITY, ILLEGALITY, COLLUSION, GUILE, MALICE, ETC., IN RELATION TO FRAUD —Cont'd

Criminal or quasi-criminal dimension? —Cont'd

passport selling by "offshore" countries, to enable fraud, money laundering, and tax evasion, **1:3** [Footnote 12.500]

DEEMED, MEANING OF

Generally, 28:5 [Footnote 12]

DE FACTO CONTROL Generally, 28:6 [Footnote 7]

DEFAULT JUDGMENT

Generally, **24:9** Deemed admission of allegations, **14:1 to 14:39**

DEFENCES — FRAUDULENT PREFERENCES

Change of position, **24:3** Honest attempt to stave off going out of business, **19:35, 24:21**

Pressure, transfer made in response to, 19:36 to 19:38

Previous promise to make future transfer, 19:34, 24:20

DE JURE CONTROL Generally, 28:6

DERIVATIVE ACTION

See also Oppression remedy; Remedies Introduction, **33:1, 33:8** Legislation, **33:9** Remedies, **33:13** Standing, **33:10**

DESIGNATION OF BENEFICIARY OF LIFE INSURANCE POLICY Generally, 9:18 to 9:33

DETENTION, CUSTODY AND PRESERVATION OF PROPERTY ORDERS, BANKRUPTCY LEGISLATION Generally, 36:1 [Footnote 1]

© 2024 Thomson Reuters, Rel. 4, 4/2024

DETERRENCE, OF PERSON CONTEMPLATING FRAUDULENT DEALING WITH PROPERTY

- "Bankruptcy (Canadian federal Bankruptcy and Insolvency Act)," then sequentially "preferences," "deterrence: preference provisions deter creditors from dismembering bankrupt's estate before bankruptcy and thereby precluding equality of distribution of estate"
- "Bulk sales legislation," subheading "deterrence of fraudulent transfers of property"
- "Certificate of pending litigation," subheading "registration as a deterrent to dealing with property"
- "Criminal Code (Canada) provisions respecting voidable transactions and related matters," subheading "deterrence, of creditor contemplating voidable transaction, best left to criminal law"
- "Fraudulent conveyances," then sequentially, "goals," "deterrence, of creditor contemplating voidable transaction"
- "Fraudulent preferences," then sequentially, "goals," "deterrence, of creditor contemplating voidable transaction"
- "Injunctions," subheading "deterrence, refusal to freeze bank account, contempt of court"
- "Landlord and tenant matters," then sequentially "history," "aiding tenant in fraudulent removal of property, 'double-value' penalty as deterrent (UK Distress for Rent Act, 1737)"

DIRECTORS

See also Corporations; Payment of dividends/purchase or redemption of shares; Oppression Remedy

Fraud and dishonesty, advice from solicitor, 2:2 (LSUC r. 3.2 to 8)

Liability of bankruptcy and insolvency provisions, **30:1 et seq.** CBCA liability, **30:5 [Footnote 1]**

fiduciary duties, breach of, **34:1 et seq.**

DIRECTORS—Cont'd Liability of-Cont'd fraudulent, as against creditors, 14:3 [Footnote 5] interlocking corporate directorships, 14:44 law reform, 35:2 personal liability. 14:3 [Footnote 5]. 28:14 [Footnote 1]. 30:1 [Footnote 3], 33:1 [Footnote 11], 33:13 [Footnote 9], 35:1 et seq., provincial legislation, 35:1 Notice, knowledge and privity of privy to reviewable transaction (former bankruptcy provision: s. 100, BIA), 28:14 transferee's notice or knowledge of transferor's fraudulent intent. where same individual is "controlling mind" of both transferor and transferee, 14:3 [Footnote 5], 14:44 [Footnote 8], 15:1 et seq., 15:10 [Footnote 34], 15:14 [Footnote 8]

DISCLAIMERS OF LEGACIES OR GIFTS

See main heading "Conveyance, disposition or other similar transactions," subheading "disclaimers of legacies or gifts"

DISCOVERY

Debtor's answers on discovery, effect on proving transferee's intent, 14:9 [Footnote 3], 15:14 [Footnote 15] Equitable (Norwich order), 3:4

DISHONESTY

See Index, main heading "Deceit, dishonesty, immorality, illegality, collusion, guile, malice, etc., in relation to fraud"

DISPOSITION

See Conveyance, disposition and other similar transactions

DISTRIBUTION OF PROCEEDS OF **ENFORCEMENT PROCEEDINGS**

See Creditors' relief legislation

DIVIDENDS, PAYMENT OF, AND PURCHASE OR REDEMPTION **OF SHARES** See Corporations

DOUBLE INTENT REQUIREMENT

See Concurrent intent doctrine

DREISER, THEODORE

The Financier (1912) financial and other practical consequences of criminal fraud conviction, 1:1 [Footnote 19] motives for giving a preference, 17:1

[Footnote 17]

see also Intent - fraudulent conveyances; Intent - fraudulent preferences

The Titan (1914)

liberal interpretation or original intent of legislation, where obscured or nullified by courts, legislatures, contracts, etc., 1:8 [Footnote 29]

see also main heading "Legislation," then sequentially "interpretation," "voidable transactions statutes," "liberal/broad inter-pretation?"

pyramid building schemes, 1:1 [Footnote 16]

see also Pyramid building schemes reputation of debtor for honesty, 1:1

[Footnote 26]

See also Index, main heading "Deceit, dishonesty, immorality, illegality, collusion, guile, malice, etc., in relation to fraud"

DUTY OF CARE

Creditors as beneficiaries of, 34:1 et seq.

EFFECT OF TRANSACTION

See also Judgment Bankruptcy and Insolvency Act Preferences

> see Bankruptcy, under "preferences" ("elements of impeachable preference")

transfers at undervalue (s 96). see Bankruptcy, under

"transfers at undervalue"

Harm to creditor, must it always be proven? see main heading "Harm to creditor, must it always be proven for success in action even where fraudulent intent is proven?"

EFFECT OF TRANSACTION—Cont'd

Impeachment, effect, see main headings "Judgment" and "Void or voidable" Oppression remedy, **33:1** [Footnote 9], **33:6** [Footnote 5] Provincial law fraudulent conveyances see Fraudulent conveyances law reform, **14:62 to 14:67** fraudulent preferences

see Fraudulent preferences law reform, **19:14 to 19:18**

ENDORSER OF DEBTOR'S DEBT

As a "creditor" under preference legislation, **18:2**

Payment to, as preference, 19:5

ENFORCEMENT OF MONEY JUDGMENTS, THE ROLE OF THE EXECUTION CREDITOR AND THE SEIZURE OF THE DEBTOR'S PROPERTY BY THE SHERIFF OR OTHER SIMILAR OFFICIAL

See also Index, main headings: "Actions and other proceedings"; "Bankruptcy (Canadian federal Bankruptcy and Insolvency Act)," then "Debts', meaning of (s. 121(1), BIA)"; "Claim"; "Judgment"; "Proceedings and procedure"

Debtor, examination of and information concerning debtor's property

see Examination of debtors and others (outside bankruptcy); Information concerning the debtor and the debtor's property; for bankruptcy proceedings, see main heading "Bankruptcy (Canadian federal Bankruptcy and Insolvency Act"

Enforcement of judgment

collection of money judgment, 1:1 et seq.; 4:1 et seq.

enforcement measures against debtor's property, by judgment creditor. See, below, execution creditor

enforcement not a right to pillage and leave debtor destitute and still in debt, **39:13 [Text Following Footnote 3]**

generally, **1:2, 7:1 et seq.** frustrating debt collection, **1:4**

ENFORCEMENT OF MONEY

JUDGMENTS, THE ROLE OF THE EXECUTION CREDITOR AND THE SEIZURE OF THE DEBTOR'S PROPERTY BY THE SHERIFF OR OTHER SIMILAR OFFICIAL—Cont'd

Enforcement of judgment—Cont'd generally, **1:2**, **7:1 et seq.**—Cont'd impediments to debt collection by unsecured creditors, **1:3**

intentional interference with the economic expectations of an aggrieved judgment creditor, fraudulent conveyance as, **7:17**

proceeds of property fraudulently transferred

see Proceeds of property fraudulently transferred; see also Pecuniary judgment directly against fraudulent transferees

"sheriff," expanded meaning in Section 4, Note before, **4:1**

stay of enforcement proceedings, **7:17** voidable transactions law

adjunct to enforcement law, **1:49** [Footnote 3]

effect of, on role of sheriff in enforcing money judgments (the meaning of "void"), **4:10**

inception of voidable transactions law, **1:1** [Footnote 5], 1:12 [Footnote 1]

Examination of debtor and others, see main heading "Examination of debtors and others"

Execution creditor see also Standing to impeach —- fraudulent conveyances; Standing to impeach —- fraudulent preferences

bringing suit in own name alone, **5:8** [Footnote 5]

enforcement measures against debtor's property, by

generally, 1:15 [Footnote 4], 9:2 [Footnotes 3, 4]

liability of creditor, **4:17** seeking instructions and/or indemnification from creditor's solicitor, **4:18**

© 2024 Thomson Reuters, Rel. 4, 4/2024

ENFORCEMENT OF MONEY JUDGMENTS, THE ROLE OF THE EXECUTION CREDITOR AND THE SEIZURE OF THE DEBTOR'S PROPERTY BY THE SHERIFF OR OTHER SIMILAR OFFICIAL—Cont'd

Execution creditor—Cont'd execution, right to levy, **9:2** [Footnotes 3, 4]

see also infra, this title, under "sheriffs or other similar officials and the seizure of debtor's property"

- harm to creditor, must it always be proven? see main heading "Harm to creditor, must it always be proven for success in action even where fraudulent intent is also proven?"
- liability for excessive intervention in execution process, **4:3** [Footnote 6]; **4:17**

money judgments and the enforcement of judgment debts, **1:1 to 1:3** frustrating debt collection, **1:4**

- impediments to debt collection, 1:3
- property of no or trivial value, execution against, and fraudulent conveyances statutes, **1:7** [Footnote 4], 9:2 [Footnote 3], 9:5 [Footnote 1], 14:26 [Footnote 1]

burden of proof on transferee, 9:2 [Footnote 3]

- sheriff or other similar official as creditor's agent or surrogate to seize property allegedly transferred fraudulently, **4:7**
- title to or ownership or possession of debtor's property bound by writ of execution, remaining in debtor until divested under applicable law, **1:3** [Text Preceding and Following Footnote 22]

Legislation, **4:11 to 4:15**

judicial dispute resolution proceedings and related matters, sheriff's resort to interpleader and motions for directions, **4:15**

Ontario Rules of Civil Procedure, R.R.O. 1990, Reg. 194, **4:15** [Text Following Footnote 8]

ENFORCEMENT OF MONEY

- JUDGMENTS, THE ROLE OF THE EXECUTION CREDITOR AND THE SEIZURE OF THE DEBTOR'S PROPERTY BY THE SHERIFF OR OTHER SIMILAR OFFICIAL—Cont'd
- Legislation, **4:11 to 4:15**—Cont'd property was transferred in bad faith (Ont. Execution Act), **4:14** seizure of property in possession of a

third party, **4:11 to 4:13** Litigation against debtors, see main heading "Debt litigation, debt collection and related matters"

- Private or closely held corporations, restrictions on share transfers and on other entitlements
 - see Corporations (under "private or closely held corporations, restrictions on share transfers and on other entitlements")
 - enforcement proceedings, effect of court intervention or non-intervention on, **39:1**
 - restrictions on share transfers, reasons for, as device to evade execution, **39:14** [Text at Footnote 1]
- Proper forum and procedure to collect on money judgment, determination of,
- **1:24 [Text Following Footnote 7]** Sheriffs or other similar officials and the
 - seizure of debtor's property abandonment of seizure, 7:18 [Footnote 9]
 - bar to voidable transaction proceeding by prior seizure, **5:11** cautionary approach by sheriff, **4:8**
 - "common law" (expansionist) view, 4:1 and (b)

response

- general, 4:4
- law reform proposals, 4:6
- legislation, **4:11 to 4:15**
- voidable transactions law and
- meaning of "void," **4:10**
- dispute resolution proceedings, **4:15** duty to discover existence and location
- of debtor's property, **4:10** expansive role for sheriffs?, **4:1 et seq.** indemnification of sheriff or other similar official, **4:3 [Text Accompany-**

ENFORCEMENT OF MONEY JUDGMENTS, THE ROLE OF THE **EXECUTION CREDITOR AND** THE SEIZURE OF THE **DEBTOR'S PROPERTY BY THE** SHERIFF OR OTHER SIMILAR **OFFICIAL**—Cont'd Sheriffs or other similar officials and the seizure of debtor's property-Cont'd ing Footnotes 10, 11], 7:18 [Footnote 6 and Accompanying Text] instructions to sheriff, 4:17 interpleader, by sheriff, 4:15 liability of sheriff or other similar official. 4:8 to 4:10: 4:15 motion for directions, 4:15 practice of sheriff or other similar official, 4:7 to 4:10 property subject (or not subject) to seizure common law restrictions, continuing applicability of, 9:5 [Footnote] 21 exchanged or substituted property, 11:1 burden of proof on transferee, 9:2 [Footnote 3] exempt property see main heading "Property," then sequentially "provincial law," "property exempt from enforcement proceedings" sheriff or other similar official as creditor's agent or surrogate to seize property allegedly transferred fraudulently, 4:1 et seq. title to or ownership or possession of debtor's property bound by writ of execution, 1:3 trust property, 13:1 [Footnote 1] see also Trusts seizure, 1:1 to 1:8, 7:5 to 7:22 generally, 1:3, 1:4, 7:5 to 7:22 creditor's right to direct a seizure, 9:2 [Footnotes 3, 4] effect of seizure, property not impeachable under fraudulent conveyances statutes, property non-fraudulently conveyed and therefore cannot be reached by creditors, 1:7 [Footnote 4]; 9:5

ENFORCEMENT OF MONEY JUDGMENTS, THE ROLE OF THE EXECUTION CREDITOR AND THE SEIZURE OF THE DEBTOR'S PROPERTY BY THE SHERIFF OR OTHER SIMILAR OFFICIAL—Cont'd

Sheriffs or other similar officials and the seizure of debtor's property-Cont'd seizure, 1:1 to 1:8, 7:5 to 7:22 -Cont'd **[Text Accompanying Footnote** 1]; 14:1 et seq. excessive seizure see this heading ("seizure"), under "wrongful or excessive seizure." expansive role for sheriffs?, 4:1 et seq. frustrating debt collection, 1:4 impediments to debt collection by unsecured creditors, 1:3 property interest sheriff can seize and pass on at sheriff's sale, 39:1 et seq. common law restrictions, continuing applicability of, 9:5 [Text Accompanying Footnote 2] sheriff's potential liability for the seizure or failure to seize the debtor's exigible property and for the wrongful seizure of a third party's property, 4:8 to 4:10 title to or ownership or possession of debtor's property bound by writ of execution, 1:3 [Text Preceding and Following Footnote 221 what constitutes generally, 7:18 [Footnote 6 and Accompanying Text] physical possession of or contact with "seized" property, whether required, 7:18 [Footnote 9] "walking possession" agreement, 7:18 [Footnote 9] wrongful or excessive seizure, 4:1 et seq. (esp. 4(a.1)); 7:18 [Footnote 6 and Accompanying

© 2024 Thomson Reuters, Rel. 4, 4/2024

Text]

ENFORCEMENT OF MONEY JUDGMENTS, THE ROLE OF THE EXECUTION CREDITOR AND THE SEIZURE OF THE DEBTOR'S PROPERTY BY THE SHERIFF OR OTHER SIMILAR OFFICIAL—Cont'd

Sheriffs or other similar officials and the seizure of debtor's property—Cont'd "sheriff" or other similar official, expanded meaning in Section 4, Note before, **4:1** status of sheriff in enforcement proceedings (agency, seizure and property interests, **4:7**

Solicitor for execution creditor see also Solicitors liability for excessive intervention in execution process, **4:17**

EQUITY

- See also main heading "Statute of Elizabeth and other English statutes," subheading "common law and equity"
- Equitable change of position, doctrine of, **20:13; 24:3**

Equitable discovery (Norwich order), **3:4** Ponzi schemes

see main heading "Ponzi schemes (transactions induced by fraud)"

United States law

equitable relief (for example, specific performance; constructive trust) denied to transferee (where fraudulent conveyance is characterized as "illegal")

see also main heading "Illegal transactions"

ESTATE PLANNING, ASSET AND TAX SHELTERING

See also main heading "Advice, from solicitors, accountants, financial advisors, trustees, and others" Cloaking real purpose of transaction, 2:4 Estate planning by non-solicitors, 2:4 [Text Following Footnote 25] Examples of, 2:1 [Text Following Footnote 3] General, 2:4, 14:7

Income and other taxes tax evasion, asset and tax sheltering, money laundering, creation and

ESTATE PLANNING, ASSET AND TAX SHELTERING—Cont'd

Income and other taxes—Cont'd investment of illicit funds, and other similar arrangements. See also Index, main heading "Solicitors"

> "offshore" accounts and tax havens passport selling by "offshore" countries, to enable fraud, money laundering, and tax evasion, 1:13 [Footnote 12.500]

- "offshore" accounts and tax havens, use of by world leaders, powerful politicians, billionaires, celebrities, religious leaders and drug dealers to hide their investments in mansions, exclusive beachfront property, yachts and other assets, 2021 report of the International Consortium of Investigative Journalists (the "Pandora Papers"), **2:6 [Footnote 2]**
 - assets are transnational, mobile, and inaccessible to governments that wish to tax and regulate them, **1:1** [Footnote 27.500]

tax havens, secrecy of, 1:1 [Footnote 27.500]

solicitors, accountants, company incorporators, and wealth managers: enablers who facilitate money laundering and tax evasion, accountability of, **2:6** [Footnote 2]

trusts, use of to shield assets of "superrich," etc., 9:17 [Footnote 2], 14:51 [Footnote 2]

vehicles to hide ownership (anonymous companies, trusts, foundations) and to invest illicit funds (real estate, hedge funds, art, factories), **1:1** [Footnote 27.500]

transferor-transferee liability, **28:5** [Footnotes 10, 11]

ESTATE PLANNING, ASSET AND TAX SHELTERING—Cont'd Judgment-proofing techniques, 1:8 [Footnotes 24, 26]; 2:1 [Footnote 3] asset protection: laws, "bulking up," 1:1 [Text Accompanying Footnote 21 et seq.] by non-professionals, 1:1 [Footnote 221 corporate status and incorporation; trusts; asset protection; and corporate law: critique (in terms of creation of wealth and its distribution), 1:1 [Footnote 12]; 1:1 [Footnote 32]; 1:1 [Text Following Footnote 24]; 1:15 [Footnote 8]; 9:25 [Text Following Footnote 1] see also main heading "Bankruptcy (Canadian federal Bankruptcy and Insolvency Act)," subheading "wealth and inequality, how the law creates (asset protection, trusts, corporate status, bankruptcy law, and the role of lawyers)' trusts, use of, to shield assets, 1:1 [Text Following Footnote 24]: 9:17 [Footnote 2]; 14:51 [Footnote 2] Secrecy and estate planning, 2:1 [Footnote 15]; 2:4 [Text Following Footnote 25] **EVIDENCE** See also main headings Badges of fraud; Proceedings and procedure; Intent fraudulent conveyances; Intent ---fraudulent preferences Corroboration, 14:48 Deference by appeal court to findings of trial judge, 14:9 [Text Accompanying Footnote 1] badges of fraud, 14:42 [Footnotes 22, 45]; 14:54 [Footnote 12] fact, overturning finding of fact by lower court, etc.: subject to a palpable and overriding error standard of review, 14:1 et seq. Direct evidence or express admission of "actual" fraudulent intent see main heading "Intent - fraudulent conveyances," subheading "direct evidence or express admission of

EVIDENCE—Cont'd

Direct evidence or express admission of "actual" fraudulent intent-Cont'd 'actual' fraudulent intent"

Fact, overturning finding of fact by lower court, etc.: subject to a palpable and overriding error standard of review, 14:1 et seq.

Fresh evidence, introduction of on appeal, 14:55

Quantity and quality of the evidence badges of fraud, 14:42 [Footnote 22] books, records, financial statements and other documents incomplete, inaccurate or misleading

documents, 14:41 to 14:43 (badge of fraud (24))

loss of, 14:41 to 14:43 (badge of fraud (24))

credibility and reliability distinguished, 14:54 [Footnotes 6 to 8]

failure of transferor or transferee to testify or give evidence, 14:42 [Footnote 110]

- passage of time, effect of, 14:56 removal or redaction of portions of the record from publicly filed materials; submissions relating to (a) confidentiality of material; (b) material respecting solicitor-client privilege; and (c) the lack of a Reply pleading with respect to the limitation defence, 2:7 [Footnote 7], 5:5 [Footnote 25]
- stay of proceedings pending appeal, fraud must be pleaded with particularity, 14:53 [Footnote 16]

witness's honesty, 14:54 [Footnotes 6 to 8]

Res ipsa loquitur, 14:48 "Second evidentiary rule," 14:48

EXAMINATION OF DEBTORS AND OTHERS (OUTSIDE BANKRUPTCY)

See also Bankruptcy (Canadian federal Bankruptcy and Insolvency Act); Information concerning the debtor and the debtor's property

Generally, 3:1

Admission of no intention to obey order or judgment

see also main heading "Intent - fraud-

© 2024 Thomson Reuters, Rel. 4, 4/2024

EXAMINATION OF DEBTORS AND OTHERS (OUTSIDE

BANKRUPTCY)—Cont'd Admission of no intention to obey order or judgment-Cont'd ulent conveyance," subheading "direct evidence or express admission of "actual" fraudulent intent" Contempt orders, 1:32 generally, 1:3, 1:32 against debtor, 1:32 Debtor. 3:2 assets, secret, discovery of, 3:1 et seq. discovery, debtor's answers, effect on proving transferee's intent, 14:9 [Footnote 3]; 15:14 [Footnote 15] examination for discovery, 3:2 sheriff, examination by, 4:1 Information concerning debtors and debtors' property generally, 1:3, 3 financial information. 1:1 Persons other than debtor, of, 3:3, 3:4

EXECUTION CREDITOR

See Enforcement of money judgments, the role of the execution creditor and the seizure of debtor's property by the sheriff or other similar official

EXECUTION OF MONEY JUDGMENTS

See Enforcement of money judgments, the role of the execution creditor and the seizure of debtor's property by the sheriff or other similar official

EXEMPLARY DAMAGES, AWARDED AGAINST DEFENDANT

See main heading "Damages"

EXEMPT PROPERTY

See Property

EXPERT WITNESSES

Generally, 14:9 [Text Accompanying Footnote 2]

FAMILY LAW: LEGISLATION; AGREEMENTS AND OTHER ARRANGEMENTS; AND JURISPRUDENCE

See also Close relationships; Trusts

FAMILY LAW: LEGISLATION; AGREEMENTS AND OTHER ARRANGEMENTS; AND

JURISPRUDENCE—Cont'd Disclosure of debtor's assets transferred or gifted to another person, 41:15 [Footnote 1]

Family law agreements and other arrangements consideration, inadequacy, whether leniency warranted where convey-

ance is between spouses or relatives, **14:1 et seq.**

pre-nuptial, pre-marital, co-habitation, and separation agreements general, **41:18**, **41:19** law reform, **41:22**

Family property legislation, disposition of property

badges and presumptions of fraud, and, 14:42 [Footnote 25]; 41:10

fraudulent conveyances and potential claims under family property legislation (list of types of claims), **13:8 [Footnote 1]**

injunctions, distinguished from, **41:13** to **41:17**

jurisprudence, 41:10

restraining and preservation orders, **41:14**

statutes

British Columbia, Manitoba, Prince Edward Island, Saskatchewan, **41:2**

Nova Scotia, **41:8**

statutes not expressly requiring fraudulent intention, **41:11**

statutes requiring fraudulent intention, **41:2 to 41:10**

statutory language, compared with Fraudulent Conveyances statutes, **41:9**

Marriage contracts

change, suspension or termination of order, evidence of prior fraudulent conveyance, **41:14** [Footnote 30] enforcement of order preservation orders, **41:17** restraining orders, **41:16** spousal misconduct, fraudulent conveyance as, **14:15** [Footnote 1] matrimonial cases, **13:9**, **14:51**, **14:59**, **14:60**

FIDUCIARY DUTIES

Breach of see also main headings "Corporations"; "Directors" by corporate directors, **2:5** [Footnote 11]; **34:1 et seq.** by solicitors, **2:5** [Footnote 11] Imposition of, where necessary, **11:1** [Footnote 7]

Tracing, theories behind, **11:1** [Text Following Footnote 4]

FINANCIAL PLANNERS, ADVICE FROM

See Advice, from solicitors, accountants, financial planners, trustees, and other professionals; Estate planning; Solicitors

FORFEITURE

Fraudulent conveyances statutes, and, 1:12, 1:26, 1:27

Illicit transactions, characterized as fraudulent, 1:1; 1:35 [Footnote 22]; 6:2 [Footnote 1]

FORGERY OF A DEED OR OTHER INSTRUMENT, AS A BADGE OF FRAUD

See main heading Badges of fraud (under "examples (non-exhaustive)," then under "conveyance")

FRAUD

See also Index, main headings, "Deceit, dishonesty, immorality, illegality, collusion, guile, malice, etc., in relation to fraud"; "Fraudulent conveyances"; "Fraudulent preferences"; "Legislation" (then sequentially "interpretation," "voidable transactions statutes")

Badges of fraud

see Badges of fraud

Consumer credit (modern dramatic increase in), over-indebtedness and fraud, 1:1 [Footnote 10]

Elizabethan notions of fraud, including fraudulent conveyances, **1:1** [Footnote 5]

Examples of, 1:1 [Text Following Footnote 12]

© 2024 Thomson Reuters, Rel. 4, 4/2024

FRAUD—Cont'd

Illegal transactions, fraudulent conveyances characterized as, see main heading "Illegal transactions" Judgment obtained by, **8:1 et seq.**, **15:13**

Meaning, 1:35 to 1:41.55, 1:41.65, 1:41.70, 1:41.80, 1:42, 14:1 to 14:39

Covin, originally a secret agreement to cheat and defraud, now referred to as a conspiracy or collusion to cheat and defraud, **15:1** [Footnote 0.02]

secrecy, collusion and contrivance
liked to debtor-transferee conspiracy, 1:27 [Footnote 3];
1:29 [Footnote 1]; 1:35 [Footnote 22]

term not used in narrow, technical or criminal sense, **1:1 et seq.**

Theories of, 1:8 [Text Accompanying Footnote 39 et seq.]

Transactions induced by, in equity, **38:1** et seq.

FRAUDS AGAINST PURCHASERS OF REAL PROPERTY

Generally, 1:8 [Footnote 77]

FRAUDULENT CONVEYANCES

See also Index, main heading "Conveyance, disposition and other similar transactions"

All or virtually/essentially all of the debtor's property, **14:42** [Footnote 24]

Badges of fraud

see Badges of fraud Benefit, retained or not retained by

debtor; conveyed or not conveyed to transferee

see also main heading "Badges of fraud," then sequentially "examples (non-exhaustive" and "benefit, retention by debtor"; and main heading "Sham transactions," then sequentially "benefit to debtor or transferee," "retention by debtor"

no intention to convey any benefit and no benefit conveyed to or obtained by transferee (therefore no fraudulent conveyance), **1:8 [Text Following Footnote 21]; 14:51 [Text**

FRAUDULENT CONVEYANCES

-Cont'd Benefit, retained or not retained by debtor; conveyed or not conveyed to transferee-Cont'd **Following Footnote 49**] retained by debtor, no need to show for fraudulent conveyance, 9:18 [Footnote 11 and Accompanying Text] Bonds, judgments, orders and other proceedings, whether covered by fraudulent conveyances legislation, 1:5; 8:1 et seq. British Columbia Fraudulent Conveyance Act, 1:28, 14:40, 15:15 Characterization of, 5:20 [Footnote 24]; 5:20 [Text Following Footnote 23]; 7:5 to 7:22 damages, no right to, 5:20 [Footnote 24]; 5:20 [Text Following Footnote 23] declaratory relief, 5:20 [Footnote 24]; 5:20 [Text Following Footnote 23]; 7:5 to 7:22 Commercial interests, law affecting see Commercial interests Constitutionality of legislation, 1:8 [Footnote 78] Criminal Code, 2:6 Effect of conveyance see main heading "Harm to creditor, must it always be proven for success in action even where fraudulent intent is also proven?" Elizabethan obsession with fraudulent conveyancing, 1:8 [Footnote 63]; 1:14 [Footnote 5] Fraudulent Conveyances Act (Ontario), s. 4, expanded voiding provision, 1:8 [Footnote 13]; 15:11 [Footnote 8] Fraudulent preferences and fraudulent conveyances distinguished, 1:1 and Following; 1:37; 15:10 (re: present and past consideration) confusing the distinction, 1:35 [Text Accompanying Footnote 3. Footnotes 4 to 6] fraudulent preferences and fraudulent conveyances, same transaction as

See below, under subheading

FRAUDULENT CONVEYANCES -Cont'd Fraudulent preferences and fraudulent conveyances-Cont'd distinguished, 1:1 and Following; 1:37; 15:10 (re: present and past consideration)-Cont'd fraudulent preferences and fraudulent conveyances, same transaction as-Cont'd "fraudulent preferences and fraudulent convevances." then serially "pleading both fraudulent conveyances Act and fraudulent preferences Act,""whether the same transaction may be both, or either, a fraudulent conveyance and/or a fraudulent preference under applicable legislation" Elizabethan obsession with fraudulent conveyancing, 1:1 [Footnote 7]; 1:8 [Footnote 63]; 1:14 [Footnote 5] inception of voidable transactions law, 1:1 [Footnote 5]; 1:12 [Footnote 1] licensed insolvency trustee, right to pursue voidable transactions under provincial statutes, 1:24, 1:25, 32:2 see also Bankruptcy (Canadian federal Bankruptcy and Insolvency Act), under "licensed insolvency trustee" persons unable to impeach a conveyance successfully see also Standing to impeach ----fraudulent conveyances creditors "privy," etc. to the conveyance, 15:14 pleading both fraudulent conveyances Act and fraudulent preferences Act, 1:8 [Text Accompanying Footnote 62]; 1:19 [Text Accompanying Footnote 15]; 1:19 [Text Following Footnote 25]; 19:1 [Footnote 6] see also Proceedings and procedure coexistence of provincial voidable transaction statutes (including, where applicable, the Statute of

FRAUDULENT CONVEYANCES

-Cont'd Fraudulent preferences and fraudulent conveyances-Cont'd pleading both fraudulent conveyances Act and fraudulent preferences Act, 1:8 [Text Accompanying Footnote 62]; 1:19 [Text Accompanying Footnote 15]: 1:19 [Text Following Footnote 25]; 19:1 [Footnote 6]—Cont'd Elizabeth) and related Bankruptcy and Insolvency Act provisions respecting frauds on creditors, 26:3 whether the same transaction may be a fraudulent conveyance and/or a fraudulent preference under applicable legislation, Text Preceding and Following Footnote 12]; 1:35 [Text Accompanying Footnote 6; 1:36 and Following; 38:5 [Text Following Footnote 42]; 38:5 [Text Preceding Footnote 18.300] creditor, transfer to: can fraudulent conveyances legislation be invoked, whether or not fraudulent preferences legislation may also be invoked, 1:35 [Text Preceding and Following Footnote 12]; 1:39 and Following conclusions, 1:42 fraudulent conveyances legislation, nature and scope of, 1:41 Statute of Elizabeth, ambit of: the "traditional view" respecting preferences, including the "mere cloak exception," 1:41 jurisprudence and commentary, 1:40 **Optical Recording Laboratories** Inc., Re decision, 1:41 sceptics, 1:41 responses, 1:41 conclusions, 1:42 fraudulent conveyances legislation,

FRAUDULENT CONVEYANCES —Cont'd

Fraudulent preferences and fraudulent conveyances-Cont'd pleading both fraudulent conveyances Act and fraudulent preferences Act, 1:8 [Text Accompanying Footnote 62]; 1:19 [Text Accompanying Footnote 15]: 1:19 [Text Following Footnote 25]; 19:1 [Footnote 6]—Cont'd whether the same transaction may be a fraudulent conveyance and/or a fraudulent preference under applicable legislation, Text Preceding and Following Footnote 12]; 1:35 [Text Accompanying Footnote 6; 1:36 and Following; 38:5 [Text Following Footnote 42]; 38:5 [Text Preceding Footnote 18.300]-Cont'd creditor, transfer to: can fraudulent conveyances legislation be invoked, whether or not fraudulent preferences legislation may also be invoked. 1:35 [Text Preceding and Following Footnote 12]; 1:39 and Following -Cont'd nature and scope of, 1:41 legislative reform versus judicial activism, 1:41.55; 14:46 (see also 14:20, and 14:36 to 14:37) "traditional view," including the "mere cloak" exception, 1:41 justifying "traditional view": effect of enactment of fraudulent preferences legislation, 1:41 transfer to creditor as two separate transactions (both a fraudulent conveyance and a fraudulent preference),

Fraudulent purchase of personal property otherwise exempt from enforcement

1:41

© 2024 Thomson Reuters, Rel. 4, 4/2024

FRAUDULENT CONVEYANCES

-Cont'd proceedings, in order to defeat creditors. 9:14 Goals, purpose, and "normative ideals" of legislation, 1:35 to 1:42, 17:1 et seq. deterrence, of person contemplating voidable transaction criminal law, resort to, 7:25 [Footnote 14] law reform and commentary, 1:8 [Footnote 46]; 1:35 [Text Following Footnotes 40, 41]; 1:48; 14:12 [Text Following Footnote 5] leveraged buyouts, See main heading "Leveraged buyouts" prejudicial effect of conveyance, See main heading "Harm to creditor" punitive or exemplary damages, and, 7:15 [Text Following Footnotes 1, 3]; 7:25 [Footnote 14] United States Uniform Fraudulent Transfer Act, 1:8 [Footnote 46]; 1:35 [Text Following Footnote 42] purpose of fraudulent conveyances and fraudulent preferences legislation, confusion respecting, 1:35 [Footnotes 3 to 5] tort and fraudulent conveyances distinguished, 1:1 et seq. Good faith see "protected transactions" under this main heading Harm to creditor: whether an impeaching creditor must suffer harm before a conveyance may be set aside, even where the debtor is shown to be fraudulent see main heading "Harm to creditor, must it always be proven for success in action even where fraudulent intent is also proven?" Illegal transactions, fraudulent conveyances as see main heading "Illegal transactions"

Impeachment of transaction, see main heading "Judgment"

FRAUDULENT CONVEYANCES -Cont'd Insolvency and solvency statutory provisions, extended scope, no reference to, **19:1** [Footnote 2] where debtor is solvent at time of convevance and remains solvent thereafter see Insolvency/solvency of parties Intent see Intent —- fraudulent conveyances Interpretation of legislation see main heading "Legislation," then sequentially under "interpretation," "voidable transactions statutes" Motive see Intent --- fraudulent conveyances. Proceedings and procedure see Proceedings and procedure Property, types of, impeachable and not impeachable under fraudulent conveyances statutes see Property Protected transactions Assignment and Preferences Act Model generally, 16:1 et seq. consideration, role of, 16:4 to 16:6 good faith, 16:3 [Footnote 4] insolvency of debtor, 16:2 notice or knowledge of debtor's intent, by transferee, 16:3 Fraudulent Conveyances Act Model generally, 15:1 et seq. consideration good faith and, 15:5 role of, 15:8 to 15:12 good faith, conveyances in badges of fraud, as evidence of, 15:3 [Footnote 1] see also Badges of fraud comprehensive basket provision, as, 15:7 consideration and, 15:5 meaning, 15:2 to 15:7 mortgage, where specific impeachment exception made, 15:1 notice or knowledge of debtor's intent, by transferee, 15:2

[Esp. Footnote 7 et seq.]

FRAUDULENT CONVEYANCES —Cont'd

Protected transactions-Cont'd Fraudulent Conveyances Act Model -Cont'd good faith, conveyances in-Cont'd reference to debtor, 15:3, 15:4 genuineness of transaction, 15:6 transferee, 15:5 notice or knowledge of debtor's intent, by transferee generally, 15:13 to 15:15 good faith and, 15:2 [Esp. Footnote 7 et seq.] Registration, etc. of deed, intent. See Index, main heading "Registration or filing of transfer deed or other instrument" Sale of property, British Columbia, 7:5 to 7:22 Standing to impeach see Standing to impeach --- fraudulent conveyances Timing to determine intent (time of transaction) exempt property, whether exemption retained by debtor after conveyance, timing issue critique of current law and an alternative approach in the context of fraudulent conveyances actions, 9:5.50 to 9:5.65 introduction, 9:5, 9:5.25 Torts distinguished from fraudulent conveyances, 1:35 purpose, 7:17 [Footnote 4] whether the transferee of a fraudulent conveyance may be liable in tort for the intentional interference with the economic expectations of an aggrieved judgment creditor, 7:17 whether transferee may be liable for intentional interference with economic expectations of judgment creditor, 7:17 [Text Following Footnote 1] Transferee corporation controlled or organized by corporate or noncorporate debtor, 9:24, 9:25, 14:53

 $\ensuremath{\mathbb{C}}$ 2024 Thomson Reuters, Rel. 4, 4/2024

FRAUDULENT CONVEYANCES —Cont'd [Footnote 6]; 15:14 [Footnote 8]

Transfer of assets to a new corporation and other related conduct, such as the issuance of additional shares in an existing corporation, whether a fraudulent transaction, 9:24, 9:25 Value of conveyed property, relevance of see also main heading "Harm to creditor, must it always be proven for success in action even where fraudulent intent is also proven?" link between property value and the debtor's intent, 14:28 property value as determinative for success in action, 14:29 Void/voidable on impeachment see main heading "Void/voidable" Whether the same transaction may be both, or either, a fraudulent conveyance (under, inter alia, the Statute of Elizabeth) and a fraudulent preference, 1:36 to 1:41.75, 1:42 Writ of execution, and, 4:3

FRAUDULENT PREFERENCES

See also Conveyance, disposition and other similar transactions

Attack under fraudulent conveyances legislation, **1:37 et seq.**

Bankruptcy law, under see Bankruptcy (Canadian federal Bankruptcy and Insolvency Act), preferences

Bonds, judgments, orders and other proceedings, whether covered by fraudulent preference legislation, **20:3**

British Columbia, Fraudulent Preference Act, "disposition," examples of, **19:2** [Footnote 1]

Characterization of, **5:20** [Footnote 24]; **5:20** [Text Following Footnote 23]

damages, no right to, **5:20** [Footnote 24]; **5:20** [Text Following Footnote 23]

declaratory relief, **5:20** [Footnote 24]; 5:20 [Text Following Footnote 23]

Commercial interests, law affecting see Commercial interests Constitutionality of, **18:7**

FRAUDULENT PREFERENCES —Cont'd

Elements of impeachable preference under provincial legislation disposition of property, 9:1 et seq. effect of transaction, 19:13 [Text Accompanying Footnote 17 et seq.] elements, listed, 19:1 insolvency of debtor see Insolvency/solvency of parties intent see Intent --- fraudulent preferences motive see Intent --- fraudulent preferences. payment by debtor to creditor, 19:3 [Footnote 3]; 20:10 [Footnote 3] payment by third party to creditor, 19:3 [Footnote 3]; 20:10 [Footnote 3] proportionality test, 19:20 proving preferential effect general, 19:13, 19:20 harm to creditor: whether an impeaching creditor must suffer harm before a conveyance may be set aside, even where the debtor is shown to be fraudulent see main heading "Harm to creditor, must it always be proven for success in action even where fraudulent intent is also proven?" presumptions within statutory presumption period, 19:19 to 19:32 Alberta. 19:23 British Columbia, 19:22 New Brunswick. 19:26 Nova Scotia, 19:27 Ontario, 19:25 Prince Edward Island, 19:28 Saskatchewan, 19:23 Yukon, 19:24 presumptions, inferences and badges of fraud general, 19:13 outside the statutory presumption period, 19:29 time period, calculation of, 19:21 quid pro quo, need for, 19:13 [Footnote 46]

FRAUDULENT PREFERENCES -Cont'd Elements of impeachable preference under provincial legislation-Cont'd to or for creditor, 19:5 "creditor," expanded definitions and remedies Alberta Fraudulent Preferences Act. s. 10. 18:2 general, 19:5 Saskatchewan Fraudulent Preferences Act, s. 12(1), (2), 19:1 et seq. Fraudulent conveyances and fraudulent preferences distinguished, and confusing the distinction. See Index, under main heading "Fraudulent conveyances," then serially "fraudulent preferences and fraudulent conveyances,""distinguished" fraudulent preferences and fraudulent conveyances, same transaction as See Index, under main heading "Fraudulent conveyances," then serially "fraudulent preferences and fraudulent conveyances,""pleading both fraudulent conveyances Act and fraudulent preferences Act," "and "whether the same transaction may be both, or either, a fraudulent conveyance and/or a fraudulent preference under applicable legislation" failure to distinguish, 1:1 et seq. licensed insolvency trustee, right to pursue voidable transactions under provincial statutes, 1:24, 1:25 32:2 see also Bankruptcy (Canadian federal Bankruptcy and Insolvency Act), under "licensed insolvency trustee" pleading both fraudulent conveyances Act and fraudulent preferences Act See Index, main heading "Fraudu-lent conveyances," "then serially "fraudulent preferences and fraudulent

FRAUDULENT PREFERENCES

-Cont'd Fraudulent conveyances and fraudulent preferences-Cont'd pleading both fraudulent conveyances Act and fraudulent preferences Act -Cont'd conveyances,""pleading both fraudulent conveyances Act and fraudulent preferences Act" coexistence of provincial voidable transaction statutes (including, where applicable, the Statute of Elizabeth) and related Bankruptcy and Insolvency Act provisions respecting frauds on creditors whether the same transaction may be both, or either, a fraudulent conveyance and/or a fraudulent preference under applicable legislation Fraudulent conveyances provision in fraudulent preferences statutes, 1:20 Goals, purpose, and "normative ideals" of legislation, 1:35 to 1:42, 17:1 et seq. deterrence, of creditor contemplating voidable transaction see also main heading "Deterrence" law reform and commentary, 1:8 [Footnote 46]; 1:35 [Text Following Footnotes 40, 41] punitive or exemplary damages, and, 7:15 [Text Following Footnotes 1, 3] United States Uniform Fraudulent Transfer Act, 1:35 [Text Following Footnote 42] mixing fraudulent conveyances and fraudulent preferences, 1:1 et seq. Good faith, 20:5, 20:6 Impeachment, see main headings "Judgment," "Void/voidable" Interpretation of legislation see main heading "Legislation," then sequentially under "interpretation," "voidable transactions statutes" Introduction/history/goals, 1:35 to 1:41.75, 1:42, 17:1 et seq. Prejudicial effect of preference, role of, 19:40 to 19:46

-Cont'd Proceedings and procedure see Proceedings and procedure Protected transactions, 20:1 et seq. generally, 20:1 et seq. court orders, payments under, 20:11, 20:12 legislation, payments under, 20:11, 20:12 payment of money to creditor, 14(b)(i), 20:7 present actual payment of money: forgiveness or reduction of, or refusal to collect, not satisfactory consideration, 20:9 [Text Following Footnote 8] sale in ordinary course of trade or calling, 20:5, 20:6 sale of property for full value, 20:8 secured financing, 20:9, 20:10 wages, payment of, 20:11, 20:12 Reform, 19:9 [Footnote 9] Registration, etc. of deed, intent. See Index, main heading "Registration or filing of transfer deed or other instrument" Standing to impeach see Standing to impeach --- fraudulent preferences Timing to determine intent (time of transaction), 14:1 to 14:39 Void or voidable, see main heading "Void/voidable" **FUTURE INCOME PLANS** See RRSPs and RRIFs GIFTS Generally. 27:6 As essentially evidencing nominal consideration, 1:8 [Footnote 4]; 11 [Footnote 31]; 15 Refusal of a gift (powers of appointment, disclaimers, legacies, beneficial interests) current law, 9:22 law reform, 9:28 to 9:33 **GOALS OF VOIDABLE** TRANSACTIONS LAW

FRAUDULENT PREFERENCES

Generally, **1:35 to 1:41.65, 1:42, 1:48, 17:1 et seq., 24:3**

@ 2024 Thomson Reuters, Rel. 4, 4/2024

INDEX

FRAUDS ON CREDITORS: FRAUDULENT CONVEYANCES AND PREFERENCES

GOOD FAITH

See various references under main headings "Fraudulent conveyances" and "Fraudulent preferences"

GRANT OF SECURITY

Generally, 9:23

GUARANTEES

Future or contingent liability, **9:18, 10:5** Giving of a guarantee, as a "conveyance" within voidable transactions legislation, **9:23**

Guarantor

creditor as, **13:4 to 13:8, 18:1, 18:2, 18:8**

debtor as, **13:7** [Footnote 2] Payment made under a guarantee, **9:23** Whether guarantee constitutes a debt, **10:5**

GUILE

See Index, main heading "Deceit, dishonesty, immorality, illegality, collusion, guile, malice, etc., in relation to fraud"

HARM TO CREDITOR, MUST IT ALWAYS BE PROVEN FOR SUCCESS IN ACTION EVEN WHERE FRAUDULENT INTENT IS ALSO PROVEN?

- NOTE: The entries listed below under this main heading concern the role of the prejudicial effect of a fraudulent conveyance except where otherwise expressly indicated. In the latter connection, see for example subheading "Preferences, and the role of prejudicial effect," below.
- Canadian statutes, jurisprudence and commentary, 14:27 to 14:35
 - bankruptcy, Bankruptcy and Insolvency Act, preferences, s. 95(1)(b), **1:48** [Footnote 3]
 - common law provinces, **14:27 to 14:34** attention by courts to harm issue prejudicial effect, not debtor's intent, as primary focus, **14:24 [Text Accompanying Footnote 7]; 14:28 [Text Accompanying Footnote 29]** scant attention compared to focus on debtor's intent, **1:48 [Text**

HARM TO CREDITOR, MUST IT **ALWAYS BE PROVEN FOR** SUCCESS IN ACTION EVEN WHERE FRAUDULENT INTENT IS ALSO PROVEN?—Cont'd Canadian statutes, jurisprudence and commentary, 14:27 to 14:35-Cont'd common law provinces, 14:27 to 14:34 -Cont'd attention by courts to harm issue -Cont'd Accompanying Footnote 3] badges, or inferences, of fraud see below, at "presumptions and badges (inferences) of fraud to determine debtor's intent, and prejudicial effect of transaction" common law and Quebec law, compared, 14:35 conclusions badges (inferences) of fraud. rebuttable, 14:39 presumption arising from prejudicial effect: rebuttable, 14:22 proof of creditor harm: necessary but not determinative, 14:38 consideration, where likely to harm creditors, 15:8 to 15:12. See also main headings 10:1 to 10:11; 16:4 to 16:6; and Index, main heading "Badges of fraud," then sequentially "examples (non-exhaustive)," "consideration" conveyance delays but does not wholly defeat creditors. 14:14 [Text Following Footnotes 59] debtor, where solvent see below, at "solvent debtor (solvent before and after conveyance)" debtor's interest in conveyed property not actually transferred (including certain "shams"), 14:33, 14:42 [Footnotes 25 to 29 and Accompanying Text], 14:51 [Text Following Footnote 49].

See also (under "common law provinces"), below, at "gift," and Index, main heading "Sham transactions"

HARM TO CREDITOR. MUST IT **ALWAYS BE PROVEN FOR** SUCCESS IN ACTION EVEN WHERE FRAUDULENT INTENT IS ALSO PROVEN?—Cont'd Canadian statutes, jurisprudence and commentary, 14:27 to 14:35-Cont'd common law provinces, 14:27 to 14:34 -Cont'd exempt or immune property, 14:31 see also main heading "Property," subheading "property not seizable by creditors and therefore, where conveyed, not impeachable under traditional fraudulent conveyances statutes" fraudulent conveyances, 14:19 to 14:39 fraudulent preferences, 19:40 to 19:46 general. 1:8 [Text Accompanying Footnote 140]; 1:48 [Footnote 3]; 14:3 [Footnote 1] introduction, 14:20 issues. 14:19 gift, conveyances by way of, 14:23 harm to creditor: whether an impeaching creditor must suffer harm before a conveyance may be set aside, even where the debtor is shownes to be fraudulent, 14:17 [Footnote 8]; 14:42 [Footnotes 24, 26] where transaction is one that has not actually taken place or has not had any effect as a matter of law (no benefit to transferee), 1:43 [Footnote 7]; 14:42 [Footnote 26] illegal transactions see also main heading "Illegal transactions" trust cases, 6:4 prejudicial effect of transaction, relevance, 6:5 [Text Following Footnote 32] insolvent debtor, refusal to collect money owed to him, not a prejudicial "disposition" (B.C. Report), 9:22 [Footnote 42]

ALWAYS BE PROVEN FOR SUCCESS IN ACTION EVEN WHERE FRAUDULENT INTENT IS ALSO PROVEN?—Cont'd Canadian statutes, jurisprudence and commentary, 14:27 to 14:35-Cont'd common law provinces, 14:27 to 14:34 -Cont'd intent of debtor commercial justification of transaction, 1:65 [Footnote 62] see also main heading "Commercial and other similar interests" effect of conveyance, relationship to issue of debtor's intent, 1:8 [Text Preceding and Following Footnote 142]: 14:9 et seq., esp. 14:12 to 14:16; 14:26 [Text Following Footnote 4] "objective" determination, 14:12 to 14:14, 14:45 presumptions and badges (inferences) of fraud to determine debtor's intent, and prejudicial effect of transaction "badges," or inferences, of fraud, 14:39: 14:41 to 14:43 see also main heading "Badges of fraud" presumptions of fraud, 1:8 [Footnote 141]; 14:22; 14:38; 14:45, 14:46 sham transaction: creation of a transaction intended to give the appearance of creating legal rights or obligations that are different than those actually intended by the sham's creator (the debtor), or where transaction has otherwise not actually taken place. See Index, main heading "Sham "transactions." joint tenancy interest conveyed, 14:34 judicial discretion, 14:28

HARM TO CREDITOR, MUST IT

© 2024 Thomson Reuters, Rel. 4, 4/2024

FRAUDS ON CREDITORS: FRAUDULENT CONVEYANCES AND PREFERENCES

HARM TO CREDITOR, MUST IT **ALWAYS BE PROVEN FOR** SUCCESS IN ACTION EVEN WHERE FRAUDULENT INTENT IS ALSO PROVEN?—Cont'd Canadian statutes, jurisprudence and commentary, 14:27 to 14:35-Cont'd common law provinces, 14:27 to 14:34 -Cont'd law reform fraudulent preferences, 19:9 [Footnote 9] general (fraudulent conveyances and preferences), 1:48; 14:24 14:62 to 14:67 litigation, practicalities initiating, 14:23 solvent debtor (solvent before and after conveyance). See also Index, main heading "Insolvency/solvency of parties" whether remedy available against solvent debtor (e.g., where transaction delays but does not defeat creditors), 14:32 contra, 1:1 et seq.; 14:1 et seq. law reform, 1:1 et seq. Statute of Elizabeth, 1:7 statutes, common law provinces (including Statute of Elizabeth, where applicable), 14:20; 14:27 different provisions in different statutes should be read together, in accordance with plain intention of the statutes (Westinghouse Canada Ltd. v. Buchar), 1:2 [Footnote 9]; 1:8 [Text Following Footnote 140]; 1:41.85 [Text Following Footnote 5]; 14:1 [Text Accompanying Footnote 1]; 14:4 [Text Accompanying Footnote 6]; 14:20 [Footnote 8] preferences and early bankruptcy legislation, 14:21 voidable transactions statutes, using phrases such as "void as against the creditor or creditors injured, delayed or prejudiced" (or similar statutory language), whether reference is to a matter of standing HARM TO CREDITOR, MUST IT **ALWAYS BE PROVEN FOR** SUCCESS IN ACTION EVEN WHERE FRAUDULENT INTENT IS ALSO PROVEN?—Cont'd Canadian statutes, jurisprudence and commentary, 14:27 to 14:35-Cont'd common law provinces, 14:27 to 14:34 -Cont'd statutes, common law provinces (including Statute of Elizabeth, where applicable), 14:20; 14:27 -Cont'd or to a substantive matter to be proved by the plaintiff subsequent to any standing issue, 14:20 [Text Preceding and Following Footnote 3.400] value of conveyed property, relevance, 14:28, 14:29 where no harm, creditor's conduct return of transferred property by, 1:8 [Footnote 5] waiver of rights by, 1:8 [Footnote 5] Conclusions, common law provinces See Index, this main heading, then sequentially "Canadian statutes, jurisprudence and commentary,' "common law provinces," "conclusions" Preferences, and the role of prejudicial effect general, 19:39 to 19:47 law reform, 19:9 [Footnote 9.500], **19:15** [Text Following Footnote 8], 19:47 [Text Following Footnote 1]. See also this main heading, subheading "Law reform" debtor's insolvency, etc., and prejudicial effect, 19:47 [Text Following Footnote 1] prejudicial effect of transaction, fraudulent preference and fraudulent conveyance law not fundamentally different, 19:41 [Text Preceding and Following Footnote 1] preference that necessarily prejudices non-preferred creditors: where debtor is insolvent at the time of the preference, or becomes insolvent as a result of

HARM TO CREDITOR. MUST IT ALWAYS BE PROVEN FOR SUCCESS IN ACTION EVEN WHERE FRAUDULENT INTENT IS ALSO PROVEN?—Cont'd Preferences, and the role of prejudicial effect-Cont'd prejudicial effect of transaction, fraudulent preference and fraudulent conveyance law not fundamentally different, 19:41 [Text Preceding and Following Footnote 1] -Cont'd the preference, or, for example where the debtor knows he or she is "on the eve of insolvency" (for example, s. 4(2) of the Ontario Assignments and Preferences Act, 19:40 [Text Preceding Footnote 3] debtor's insolvency, etc., and prejudicial effect, 19:40 [Text **Preceding Footnote 2**] statutory provisions and prejudicial effect, 19:41 and following bankruptcy Bankruptcy and Insolvency Act, 19:46 early United Kingdom preference legislation, 19:45 Criminal Code, creditor protected only where debtor intended to prefer that specific creditor (R. v. Gingras), potential provincial implications, 18:0.90, 18:0.95 presumption of debtor's fraudulent intent where preference causes prejudice, **19:43** deeming and other provisions where no presumption is created, 19:44 badges of fraud, application of, 19:43 [Footnote 1 and Accompanying Text] provincial preference statutes "evenhandedness" in treatment of creditors incorporation of the goal of "evenhandedness" in provincial preference legislation, 18.0.30 normative goal, and prejudicial effect, 18.0.30, 19:40

ALWAYS BE PROVEN FOR SUCCESS IN ACTION EVEN WHERE FRAUDULENT INTENT IS ALSO PROVEN?—Cont'd Preferences, and the role of prejudicial effect-Cont'd statutory provisions and prejudicial effect, 19:41 and following -Cont'd provincial preference statutes -Cont'd standing and prejudicial effect, relationship in provincial statutes, 19:42 [Footnote 2] where prejudicial effect is explicit (but using different language), 19:42 Quebec (Paulian action), 42:18 to 42:30 Quebec law and common law, compared, 14:35 United States, statute, jurisprudence and commentary (including Uniform Fraudulent Transfer Act, 14:26; 14:68 to 14:80 **ILLEGAL TRANSACTIONS** See also main heading "Remedies" Criminal law, 1:26 to 1:29 (criminal and quasi to criminal law); 1:30 (Criminal Code (Canada) Fraudulent conveyances transferee, restitutionary remedy, 6:4 General: fraudulent conveyances and preferences characterized as "illegal" transactions?, 6:2 to 6:5; 7:6 [Text Accompanying Footnote 6]; 7:25 [Text Following Footnote 2] introduction: enforceability ("Holman v. Johnson Principle"), exceptions to non-enforcement (restitutionary relief), **6:3** law reform B.C. Report (including reference to Report on Illegal Transactions), 6:5 Ontario Law Reform Commission. Report on Amendment of the Law of Contract (1987), 6:3 [Footnotes 1, 12] trust cases, 6:4 prejudicial effect of transaction, relevance, 6:5 [Footnote 32]

HARM TO CREDITOR. MUST IT

© 2024 Thomson Reuters, Rel. 4, 4/2024

ILLEGAL TRANSACTIONS—Cont'd

Illegality of agreements made unenforceable under contract law, **6:3** [**Text Following Footnote 3**] restitutionary relief for benefits conferred in performance of

contracts, 6:3 [Text Following Footnote 3]

Illicit transactions, characterized as fraudulent, 1:35, 6:2

Ponzi schemes, whether "unlawful" or "illegal," **38:5** [Text Following Footnotes 11, 26, 37]

Preferences

- as illegal or unlawful transactions, 7:6 (Text Accompanying Footnote 6), 7:25 (Text Accompanying Footnote 6)
- remedy by preferred creditor after impeachment: creditor probably restored to original position by revival of original claim against the debtor, **7:6**, **21:1**

IMMORALITY, IN RELATION TO FRAUD

See Index, main heading "Deceit, dishonesty, immorality, illegality, collusion, guile, malice, etc., in relation to fraud"

IMPEACHMENT, EFFECT OF See Judgment

IMPUTED KNOWLEDGE Generally, 19:13 [Footnote 13]

INABILITY TO MEET OBLIGATIONS Generally, **24:11**

INCOME TAX

See main heading "Estate planning"

INCORPORATION TO SHIELD ASSETS

Generally, 9:18 to 9:33

INFORMATION CONCERNING THE DEBTOR AND THE DEBTOR'S PROPERTY

Examination of bankrupt and others, 23:1 et seq. Financial information

consumers, need for financial literacy, 1:1 [Footnote 11]

INFORMATION CONCERNING THE DEBTOR AND THE DEBTOR'S PROPERTY—Cont'd

Financial information—Cont'd financial instruments, increased complexity of, **1:1 [Footnote 14]**

INJUNCTIONS

See also main heading "Mareva injunctions"

Deterrence, refusal to freeze bank account, contempt of court, **36:2** [Footnote 24 and Accompanying Text]

Freezing bank deposits (Bank Act, S.C. 1991, c. 46, s. 437(2)), **36:1** [Footnote 1]

Injunctive relief, and judgment in voidable transaction proceeding, 7:2 [Footnotes 12, 13]; 7:3 [Footnote 3]

Interim preservation of property and specific funds (Courts of Justice Act, R.S.O. 1990, c. C.43, s. 26(a)), **36:1** [Footnote 1]

Restraining and preservation orders legislation

family property legislation, **41:14** provincial maintenance and support legislation, enforcement of orders

preservation orders, **41:17** restraining orders, **41:16**

Purdue Pharma/Sackler family, lawsuit against (New York, 2019), **1:1** [Footnote 1]

INSOLVENCY/SOLVENCY OF PARTIES

Canada, federal bankruptcy law see main heading "Bankruptcy (Canadian federal Bankruptcy and Insolvency Act)," then sequentially "preferences," "elements of impeachable preference," "insolvency of bankrupt" Canada, provincial law

debtor, insolvency of badges of fraud, and badges of fraud and presumptions of fraud, and insolvency, **14:42 [Footnotes 90 et seq.]**

general. See Index, main heading "Badges of fraud," then

INSOLVENCY/SOLVENCY OF PARTIES—Cont'd

Canada, provincial law-Cont'd debtor, insolvency of-Cont'd badges of fraud, and-Cont'd sequentially "Examples (non-exhaustive)," "insolvency of debtor, at or after transaction" similarity to s. 2, Bankruptcy and Insolvency Act, 14:42 [Footnotes 24, 91, 108] consumer debt, consequences of increased, 1:1 [Text Accompanying and Following Footnote 10] date on which to determine insolvency/solvency date of execution of instrument vs. date of registration (delay in registration), 9:27; 14:4 to 14:6 general, 10:1 [Footnote 3]; 19:2 effect of future, contigent liabilities, 10:5 evidence of intent in fraudulent conveyances, 10:1 judgment-proof debtor, 1:8 [Footnote 88]; 3:1 [Footnote 5]; 14:40 [Footnote 17] knowledge of, by creditor, **19:13** onus of proof, 10:2 preferences, debtor's insolvency, etc., and prejudicial effect: law reform, 19:40 [Footnote 3], 19:47 presumptions of fraud, and, 10:1 [Footnote 2]; 14:42 [Footnotes 90.911 prevention of (increasing financial literacy, etc.), 1:1 [Text Following Footnote 10] restructuring practitioners, advice from, 2:1 [Footnote 12], 24:11 statutory provisions, extended scope, no reference to, 19:1 [Footnote 6] tests, 10:3, 10:4 cessation of payment, 10:3 [Footnote 3] compare definition of "insolvent person" under

INSOLVENCY/SOLVENCY OF PARTIES—Cont'd Canada, provincial law-Cont'd debtor, insolvency of-Cont'd tests, 10:3, 10:4-Cont'd cessation of payment, 10:3 [Footnote 3]-Cont'd Bankruptcy and Insolvency Act, 10:3 [Footnote 3] distinction made between "legal" insolvency and "commercial" insolvency, 10:3 [Footnote 1 And Following Text] fact of cessation not proof of inability to pay, **10:3** [Footnote 18 And Text **Preceding And** Accompanying] equitable liability principles, 19:1 et seq.; 38:1 et seq. inability to pay: should plaintiff make a fresh demand for payment to establish inability?, 10:3 [Footnote 3 And Following Text] fact of cessation not proof of inability to pay, 10:3 [Footnote 18 Text Preceding And Accompanying] insolvency on "cash flow" basis vs on "balance sheet" basis, 10:3 [Footnote 3]; 24:11 [Footnote 1] statutory tests read disjunctively, **10:1** [Footnote 7] valuation of debtor's assets and liabilities, 10:5 assets outside the province, 10:7 [Footnote 5] future and contigent assets and liabilities, 10:5 where, proof of, required, 10:1, 16:2 no proof required (Fraudulent Conveyances Act model), **10:1** [Footnote 2] debtor, solvency of, at and after conveyance fraudulent conveyances badges and presumptions of fraud, 14:42 [Footnotes 20, 90 et seq.]

© 2024 Thomson Reuters, Rel. 4, 4/2024

INDEX

FRAUDS ON CREDITORS: FRAUDULENT CONVEYANCES AND PREFERENCES

INSOLVENCY/SOLVENCY OF

PARTIES—Cont'd Canada, provincial law-Cont'd debtor, solvency of, at and after conveyance-Cont'd fraudulent conveyances-Cont'd Bank of Montreal v. Crowell, 13:6 B.C. Report, exchange of property as consideration, 1:35 generally, 1:3 [Footnote 5]; 1:20 harm, as essential element of action see also main heading "Harm to creditor' generally, 14:16 debtor, solvent before and after conveyance, 1:35, 1:45, 14:32, 14:45 insolvency, where it must be proved, 10:1 liberal statutory construction, see main heading "Legislation" fraudulent preferences, 1:3 [Footnote 5]; 14:42 [Footnote 20]; 19:2 United States generally, 10:4 "commercial insolvency" (failure to pay debts when due), 10:1 [Footnote 13]; 10:3 [Footnotes 3, 6] exclusion of certain property interests from determining value of debtor's assets, 10:4 "legal insolvency" (insufficient assets to pay debts), 10:1 [Footnotes 12, 13]; 10:3 [Footnote 30] presumption of insolvency, 10:1 [Footnote 13]; 10:3 [Footnotes 3, 6] Uniform Fraudulent Transfer Act, 14:79 **INSURANCE, DESIGNATION OF BENEFICIARY AS CONVEYANCE** Generally, 9:18 [Footnote 40]; 9:20 [Footnotes 2, 3] **INTENT —- FRAUDULENT CONVEYANCES**

NTENT — FRAUDULENT CONVEYANCES See also Intent — fraudulent preferences Generally, 14:1 et seq. "Actual" intent to defraud (U.S. Uniform Fraudulent Transfer Act), 14:68 **INTENT —- FRAUDULENT** CONVEYANCES—Cont'd Badges of fraud see Badges of fraud Burden of proof see this title, below, at "proving fraudulent intent" Burden/onus of proof see this main heading, at "proving fraudulent intent' Business or financial circumstances of debtor, current and/or future. See also main heading "Commercial and other similar interests" belief of debtor concerning, 1:35 [Text Following Footnote 57]; 14:3 [Text Following Footnote 47] intent to protect debtor's assets, possible or intended future business likely to be risky, etc., 14:3 [Text **Following Footnote 23**] Corporations, 14:1 to 14:39 Deemed, by default judgment, 14:1 to 14:39 Degree of proof required, 14:3 [Footnote 23]; 14:9 [Footnotes 1, 5] Delays but does not defeat creditors, 14:14 [Text Following Footnote 59], 14:32 contra, 1:35 [Footnote 89 and Accompanying Text], 14:46 [Text Accompanying and Following Footnote 39] law reform, 1:35 [Footnote 89 and Accompanying Text] Direct evidence or express admission of "actual" fraudulent intent, 1:1 et seq.; 14:12 [Text Following Footnote 5]; 14:14 [Text Accompanying Footnote 49]; 14:14 [Text Accompanying Footnotes 55 to 58]; 31:1 et seq. Dominant intent and mixed motives see this main heading, then sequentially "proving fraudulent intent," "dominant intent, mixed motives and measuring the degree or level of fraudulent intent: how much fraudulent intent is required to be

proved?" Effect of conveyance

see main heading "Harm to creditor, must it always be proven for suc-

INTENT —- FRAUDULENT CONVEYANCES—Cont'd Effect of convevance-Cont'd cess in action even where fraudulent intent is also proven?" Fact, intent as a question of, 14:9 [Text Accompanying Footnote 1]; 31:3 [Text Accompanying Footnotes 1 to 4] Failure to testify, 14:58 Fraud, meaning of, etc see main heading "Fraud" Harm to creditor, must it always be proven? see main heading "Harm to creditor, must it always be proven for success in action even where fraudulent intent is also proven?" Hindsight see this main heading, under "business or financial circumstances of debtor, current and/or future" Insolvency of debtor, as some evidence of intent, 10:1 "Intent" and other terms ("motive," "purpose," "reason," "design," etc.), similar or distinguishable?, 14:2 (fraudulent preferences), 14:57; 19:1 et sea. Intent to prejudice only some creditors, 14:1 to 14:39 Knowledge of debtor, 1:35 [Footnote 57] Motive and mixed motives see this main heading, then sequentially "proving fraudulent intent," "dominant intent, mixed motives and measuring the degree or level of fraudulent intent: how much fraudulent intent is required to be proved?" Pre-existing agreement, effect of, 14:59, 14:60 Presumption of fraudulent intent see main heading "Presumption of law, and fraudulent intent" see Presumptions of fraudulent intent-fraudulent conveyances Proving fraudulent intent See also main heading "Evidence" burden/onus of proof fraudulent preferences," then

INTENT —- FRAUDULENT CONVEYANCES—Cont'd Proving fraudulent intent-Cont'd burden/onus of proof-Cont'd "burden of proof" general, 14:8 badges of fraud, presumptions and burden of proof, 14:52 to 14:56 primary and secondary onus, shifting, 14:8 [Text Following Footnote 2]; 14:52 non-arm's length transactions between close relatives, associates and others, 14:42 [Text Accompanying Footnote 65]; 14:44 [Text Accompanying Footnotes 6 to 18] family arrangements: more forgiving treatment?, 14:47 [Footnote 4] res ipsa loquitur, 14:48 deemed fraudulent intent under legislation other than traditional voidable transactions legislation, effect on fraudulent conveyance and fraudulent preference actions, 14:57 differences between Fraudulent Conveyances Act Model (including Statute of Elizabeth) and Assignments and Preferences Act Model. 14:61 general, 14:1 et seq. onus, burden and standard of proof, 14:8 discharging burden/onus, 14:9 to 14:14 family expenses, conveyance proceeds used to meet, 41:18 [Footnote 1] family law agreements, 41:18, 41:19 non-arm's length transactions between close relatives, associates and others, 14:1 et seq. (esp. 14:48 and (iv) (need for corroboration?) evidence of fraud deference by appeal court to findings of trial judge, 14:54 direct evidence, 14:11, 14:14 **[Text Following Footnote** 34, and Text Accompanying Footnote 35], 14:28.

© 2024 Thomson Reuters, Rel. 4, 4/2024

INTENT —- FRAUDULENT CONVEYANCES—Cont'd Proving fraudulent intent-Cont'd discharging burden/onus, 14:9 to 14:14 -Cont'd non-arm's length transactions between close relatives, associates and others, 14:1 et seq. (esp. 14:48 and (iv) (need for corroboration?)—Cont'd evidence of fraud-Cont'd **Respecting direct evi**dence in fraudulent preferences context, see Index, main heading "Intent to fraudulent preferences," then serially "proving fraudulent intent," "intent to defeat, delay, defraud creditors, need to prove," "admission of such intent as "direct" evidence of intent to prefer" fresh evidence, introduction of on appeal, 14:55 quantity and quality of the evidence badges of fraud, 14:3 [Footnote 40], 14:53. **Respecting burden of** proof, see Index, this main heading, then serially "proving fraudulent intent," general," "badges of fraud, presumptions and burden of proof" passage of time, effect of, 14:56 terminology respecting the burden and/or standard of proof ("balance of probabilities," "clear and sufficient proof," "preponderance of evidence," "substantial evidence," "tangible evidence," "persuasive burden," "most persuasive factor"), 14:42 Footnotes 14, 16, 65]; 14:47 [Footnote 2] higher degree of probability, 14:8 [Text Following Footnote 9]; 14:51 [Text Accompanying and Following Footnote 68]

INTENT —- FRAUDULENT CONVEYANCES—Cont'd Proving fraudulent intent—Cont'd transfer/shifting of burden/onus, 14:8 [Footnote 2] admissions of fraudulent intent, 14:11 "objective" determination of debtor's intent. 1:8 [Text Accompanying Footnote 142], 14:12 to 14:14, 14:16; 14:26, 14:41 to 14:43 Registration of transfer deed or other instrument, delay or no registration see Registration or filing of transfer deed or other instrument Sham transaction: creation of a transaction intended to give the appearance of creating legal rights or obligations that are different than those actually intended by the sham's creator (the debtor). See Index, main heading "Sham "transactions." Standard of proof see this main heading, at "proving fraudulent intent" Standing to impeach, 13:19 Subsequent events, relevance of, 14:2, 14:3 Surrounding circumstances, 14:42 [Footnote 7] Timing, 14:1 to 14:39 events subsequent to conveyance, effect of, on intent, 14:1 to 14:39 registration of instrument, effect of, on intent, 1:35 [Footnote 46]; 14:3 [Footnote 9] **INTENT —- FRAUDULENT** PREFERENCES See also Intent --- fraudulent conveyances Admission of fraudulent intent see main heading "Intent - Fraudulent conveyances," subheading "admission of fraudulent intent" Bankruptcy intent to prefer, 24:16 settlements (former s. 91, BIA), 27:7 Burden of proof, 19:12 see also main heading "Intent - fraudulent conveyances," then sequentially "proving fraudulent

INTENT —- FRAUDULENT PREFERENCES—Cont'd Burden of proof. 19:12-Cont'd intent," "burden/onus of proof" Disproving requisite intent see Defences — fraudulent preferences Fact, intent as a question of, 14:9 [Text Accompanying Footnote 1]; 31:3 **Text Accompanying Footnotes 1** to 4] Fraud, meaning of, etc see main heading "Fraud" General, 19:6 to 19:13 intention to prefer recipient creditor over other creditors, 19:6 to 19:9 goal of evenhandedness among creditors harmed by a fraudulent preference and incorporation of goal in legislation, 19:6 R. v. Gingras: A Different Statutory Model (Criminal Code), 19:7 whether for the plaintiff to succeed he or she must prove that each of the debtor's creditors sued has been the object of the debtor's fraudulent intent, 19:6 to 19:8 Harm to creditor, must it always be proven? see main heading "Harm to creditor, must it always be proven for success in action even where fraudulent intent is also proven?" Hindsight, 1:35 [Footnote 57] Insolvency of debtor, as some evidence of intent. 10:1 "Intent" and other terms ("motive," "purpose," "reason," "design," etc.), similar or distinguishable?, 14:2; 19:1 et seq. Intent of debtor, 19:6 to 19:9 Intent of recipient creditor, 19:10, 19:11 creditor's knowledge of debtor's insolvency, 19:13 Pressure, doctrine of, 19:36 to 19:38 Presumptions of fraudulent intent see main heading "Presumption of law, and fraudulent intent," then "fraudulent preferences and presumptions" Proving fraudulent intent, 19:12, 19:13. See also main heading "Harm to creditor, must it always be proven © 2024 Thomson Reuters, Rel. 4, 4/2024

PREFERENCES—Cont'd for success in action even where fraudulent intent is also proven?" deemed fraudulent intent under legislation other than traditional voidable transactions legislation, effect on fraudulent conveyance and fraudulent preference actions, 14:57 dominant intent, mixed motives and measuring the degree or level of fraudulent intent: how much fraudulent intent is required to be proved?, 19:12 [Footnote 2]. For fraudulent conveyances, see, for example, 1:8 [Footnote 53] reason for giving a preference, 17:1.55 [Footnotes 8 to 10 and Accompanying Text] relevance of debtor's reason for acting, in assessing dominant intent. 17:1.55 [Footnote 10 and Accompanying Text] Reasonable belief of debtor, 1:35 [Footnote 59] Reform, 19:9 [Footnote 9] Registration of transfer deed or other instrument, delay or no registration see Registration or filing of transfer deed or other instrument deemed fraudulent intent see subsection under this main heading. Sham transaction: creation of a transaction intended to give the appearance of creating legal rights or obligations that are different than those actually intended by the sham's creator (the debtor). See Index, main heading "Sham "transactions." **INTERPLEADER PROCEEDINGS AND** PRESERVATION OF PROPERTY **(ONTARIO RULES OF CIVIL** PROCEDURE, R.R.O. 1990, REG. **194, MADE UNDER THE COURTS** OF JUSTICE ACT, R.S.O. 1990, C. C.43, R. 43)

INTENT —- FRAUDULENT

Generally, 11:2 INTERPRETATION ACTS (FEDERAL

AND PROVINCIAL) See main heading "Legislation"

JOINT TENANCY, CONVEYANCE OF, AS FRAUDULENT CONVEYANCE Canada, 9:5 [Footnote 11]; 9:18 [Footnote 6], 9:15

United States, 9:3 [Footnote 3]

JUDGMENT

See also Actions and other proceedings; Claims; Conspiracy, tort of; Courts; Damages; Enforcement of money judgments, the role of the execution creditor and the seizure of the debtor's property by the sheriff or other similar official; Proceedings and procedure; Remedies; Void/voidable

British Columbia, 7:7 [Text to Footnote 71 et seq.]; 7:14 [Text to Footnote 7 et seq.]

Common law and equity, distinguished, 7:5 to 7:22

Confession of judgment, use of, to defraud creditors, **8:2**

Consent, use of, to defraud or prefer creditors, 8:1 et seq., 15:13, 19:4

Consent to judgment Bankruptcy and Insolvency Act, 24:9 [Text Accompanying Footnote 21]

provincial legislation, 8:1 et seq.

Default judgment, **24:9**

deemed admission of allegations, 14:1 to 14:39

Effect of impeachment of transaction general, **7:5 and Following**

order granted in fraudulent conveyances action, characterization of order in the context of limitations statutes (action to "recover land"?, "consequential relief"?): Limitations Act, 2002, S.O. 2002, c. 24, Sched. B, and Real Property Limitations Act, R.S.O. 1990, c. L-15), **7:9**

Relief granted and effect of impeachment

generally, **7:5 to 7:30**

pecuniary judgment against transferee, **7:11 to 7:17, 11:1**

Standing, and, **7:1 to 7:4, 13:4 to 13:8**

Summary and other similar proceedings see main heading Proceedings and

procedure

JUDGMENT—Cont'd

Effect of impeachment of transaction -Cont'd Use of, to defraud or prefer creditors, 1:5, 8:1 et seq., 15:13, 19:4 Where value of property has increased since conveyance, 7:5 to 7:30 Enforcement of, 9:2 [Footnotes 3, 4]; 9:5 [Footnote 12], 23:1 et seq. Entitlement to general, 7:1 to 7:4 harm to creditor, must it always be proven? see main heading "Harm to creditor, must it always be proven for success in action even where fraudulent intent is proven?" injunctive relief, 7:2 right to sue and right to judgment, distinction, 7:2 valid claim, evidence of, 7:2 voidable transactions proceeding and main action, timing and process, 7:2; 13:6 Limitations Act, 2002 (Ont.) proceedings, characterization of court order in, 5:22, 7:8, 7:9 Monetary judgment against recipient of a transfer at undervalue (Bankruptcy and Insolvency Act, s. 96(1)), 26:4, 27:4 JUDGMENT DEBTOR EXAMINATION Generally, 3:1 [Footnote 12] JUDGMENT-PROOFING **TECHNIOUES** See also Estate planning General, 1:8 [Footnotes 24, 26] JUDICIAL PROCESS, USE OF, TO **DEFRAUD CREDITORS**

Generally, 8:1 et seq., 15:13

JURISDICTION (CONFLICT OF LAWS)

See also Conflict of laws Forum non conveniens, **12:7** General limits on, **12:4** Oppression actions, **12:5** Service ex juris, **12:3**, **12:6**

LACHES

Generally, 5:25

LACHES—Cont'd Inordinate delay and prejudice (fading memories, loss of documents), 14:42 Limitation periods and, 5:25 [Text Accompanying Footnote 20 et seq.], 33:7 [Text Accompanying Footnote 1, 2] Oppression remedy, limitation periods and laches, 5:25 [Text Accompanying Footnote 20 et seq.], 33:7 [Text Accompanying Footnote 1, 2] LANDLORD AND TENANT MATTERS Bankruptcy, completion of landlord's distraint, whether a judicial proceeding under Bankruptcy and Insolvency Act, s. 95 (preferences), 24:9 [Text Accompanying Footnote 22] History, 37:1 Landlord's distraint against fraudulently removed property by tenant general, Ch. 37 clandestine conveyances (re: landlord's distraint) and secret conveyances (re: badges of fraud), as some evidence of fraud, 14:42 [Footnotes 4, 30], 37:3 [Footnotes 1, 2 and Accompanying Text] issues. 37:3 law reform, 37:1 [Text Accompanying] Footnote 27], 37:6 legislation Canada general commentary (all provinces and territories), Ch. 37 specific provinces and territories Alberta, 37:1 [Footnotes 3, 12] British Columbia, 37:1 [Text Accompanying or Following Footnotes 18, 23] Manitoba, 37:1 [Text **Accompanying Footnote** 15] New Brunswick, 37:1 [Text **Accompanying Footnote** 19] Newfoundland and Labrador, 37:1 [Footnote 13] Northwest Territories, 37:1 [Text Accompanying Footnote 25]

LANDLORD AND TENANT MATTERS -Cont'd Landlord's distraint against fraudulently removed property by tenant-Cont'd legislation-Cont'd Canada—Cont'd specific provinces and territories -Cont'd Nova Scotia, 37:1 [Text **Accompanying Footnote** 24] Nunavut, 37:1 [Text **Accompanying Footnote** 25] Ontario, 37:1 [Text Accompanying or Following Footnotes 3, 14, 16] Prince Edward Island, 37:1 [Text Accompanying Footnote 20] Saskatchewan, 37:1 [Text Following Footnote 8 and **Text Accompanying Foot**note 16], 37:5 [Text Preceding Footnote 10] Yukon Territory, 37:1 [Text **Accompanying Footnote** 21] United Kingdom, 37:1 [Text Accompanying Footnote 27], 37:5 [Text Accompanying Footnote 10] tenant fraudulently removing inventory, 37:2 LAW REFORM (LAW REFORM COMMISSIONS, LEGISLATURES) See also main headings "Law Reform and Law Reform Commissions (Canada)"; "Law Reform and Law Reform Commissions (Outside Canada)" Courts effect changes for specific situations, not system-wide, 1:24, 14:42 Inclusion in text, reasons for, 1:10 Justinian (Roman Emperor), Code of, 1:10 [Footnote 7.500] Need for, 1:2 [Text Accompanying Footnote 9] LAW REFORM AND LAW REFORM COMMISSIONS (CANADA) See also main headings "Law reform (law reform commissions, legislatures)";

© 2024 Thomson Reuters, Rel. 4, 4/2024

LAW REFORM AND LAW REFORM COMMISSIONS (CANADA)

-Cont'd "Law Reform and Law Reform Commissions (Outside Canada)" Alberta Institute of Law Research and Reform Remedies of Unsecured Creditors, 3:1 [Footnotes 12, 13] Alberta Law Reform Institute Enforcement of Money Judgments (Report No. 61, 1991), 39:8 [Footnote 8], 39:13 [Footnote 4] Exemption of Future Income Plans, 1:8 [Footnote 71], 27:11 [Footnote 21] The Bulk Sales Act (1990), 40:2 [Footnote 5] British Columbia, Law Reform Commission of Fraudulent Conveyances and Preferences (1986) ("B.C. Working Paper"), 1:8 [Footnote 94], 1:12 [Footnote 16], 5:17 [Footnote 1], 5:17 [Footnote 8], 9:22 [Footnote 36], 14:17 [Footnote 6], 14:37 [Footnote 9], 14:37 [Footnote 11], 17:5 [Footnote 4] Report on Bulk Sales Legislation (1983), **40:2** [Footnote 5] Report on Fraudulent Conveyances and Preferences (1988) ("B.C. Report"), 1:1 [Text Accompanying Footnote 7], 1:1 [Footnote 31], 1:7 [Footnote 1], 1:7 [Footnote 2], 1:8 [Footnote 25], 1:8 [Footnote 26], 1:8 [Footnote 76], 1:8 [Footnote 92], 1:8 [Footnote 96 to 102], 1:8 [Footnote 158], 1:35 [Footnote 24], 1:35 [Footnote 69], 1:41 [Footnote 12], 1:41 [Footnote 14 to 15], 5:1 [Footnote 1], 5:8, [Footnote 13], 6:1 [Footnote 7], 6:2 [Footnote 2], 6:5 [Footnote 23], 7:7 [Footnote 72 to 73], 7:7 [Footnote 79], 9:2 [Footnote 1], 9:3 [Footnote 5], 9:18 [Footnote 20 to 21], 9:19 [Footnote 46 to 47], 9:22 [Footnote 1], 9:22 [Footnote 36], 9:22 [Footnote 41], 9:22 [Footnote 42], 10:3 [Footnote 22], 11:1 [Footnote 25], 11:1 [Footnote

LAW REFORM AND LAW REFORM COMMISSIONS (CANADA) —Cont'd

- British Columbia, Law Reform Commission of-Cont'd 35], 11:1 [Footnote 38], 11:2 [Footnote 43], 13:5 [Footnote 10], 13:6 [Footnote 3], 13:9 [Footnote 16], 13:9 [Footnote 22], 13:13 [Footnote 1], 13:13 [Footnote 8], 13:13 [Footnote 21], 13:13 [Footnote 26], 13:13 [Footnote 34], 13:13 [Footnote 38], 13:13 [Footnote 63], 13:14 [Footnote 1], 13:14 [Footnote 3], 14:12 [Footnote 5], 14:14 [Footnote 25 to 27]. 14:14 [Footnote 38], 14:14 [Footnote 42], 14:14 [Footnote 47], 14:14 [Footnote 49], 14:17 [Footnote 7], 14:24 [Footnote 4], 14:24 [Footnote 5], 14:24 [Footnote 6], 14:30 [Footnote 1]. 14:37 [Footnote 9]. 14:37 [Footnote 10], 14:37 [Footnote 11], 14:37 [Footnote 12], 14:42 [Footnote 3], 14:42 [Footnote 23], 14:42 [Footnote 68], 14:44 [Footnote 5], 14:47 [Footnote 3], 14:52 [Footnote 9], 14:52 [Footnote 13 to 21], 14:52 [Footnote 37], 14:53 [Footnote 17], 14:53 [Footnote 25], 14:59 [Footnote 7], 14:60 [Footnote 2], 15:1 [Footnote 2], 15:3 [Footnote 1], 15:5 [Footnote 13], 15:6 [Footnotes 6 to 7], 15:11 [Footnote 9], 15:11 [Footnote 31], 15:11 [Footnote 37], 15:14 [Footnotes 38 to 39], 15:14 [Footnote 65], 15:15 [Footnote 78], 17:1 [Footnote 27], 17:1 [Footnote 28], 17:5 [Footnote 5]; 18:2 [Footnote 10], 18:6 [Footnote 13], 19:10 [Footnote 12], 19:16 [Footnote 2], 19:17 [Footnote 1], 19:22 [Footnote 11], 19:22 [Footnote 14], 19:32 [Footnote 3], 20:1 [Footnote 1], 20:8 [Footnote 15 to 17], 20:9 [Footnote 2] Report on Illegal Transactions (1983),
 - 7:27 [Footnote 2]

LAW REFORM AND LAW REFORM COMMISSIONS (CANADA) —Cont'd

- British Columbia, Law Reform Commission of—Cont'd
 - Testamentary Intent and Unexpected Circumstances, 9:22 [Footnote 37]
- Manitoba Law Reform Commission Report on the Bulk Sales Act (1988), **40:2** [Footnote 5]
- New Brunswick, Department of Justice, Law Reform Division
 - Third Report of the Consumer Project, Vol. II, Legal Remedies of the Unsecured Creditor After Judgment (1976) ("New Brunswick Report"), 4:3 [Footnote 13], 4:3 [Footnote 15], 4:6 [Footnote 5], 4:8 [Footnote 1], 4:8 [Footnote 3], 5:2 [Footnote 8], 5:5 [Footnote 2], 7:6 [Footnote 5], 7:23 [Footnote 3], 9:8 [Footnote 1], 10:1 [Footnotes 17 to 18], 10:3 [Footnote 14], 10:3 [Footnote 18], 10:5 [Footnote 12], 10:9 [Footnote 5], 11:1 [Footnote 2], 11:1 [Footnote 25], 11:1 [Footnote 35], 11:4 [Footnote 2], 11:4 [Footnote 5 to 7], 13:1 [Footnote 8], 13:5 [Footnote 6], 13:6 [Footnote 3], 13:7 [Footnote 2], 13:16 [Footnote 1], 13:18 [Footnote 8 to 9], 13:18 [Footnote 12], 13:22 [Footnotes 8 to 9], 14:14 [Footnote 41], 14:37 [Footnote 1], 14:59 [Footnote 8], 15:6 [Footnote 4], 15:14 [Footnote 39], 15:14 [Footnote 66 to 67], 16:3 [Footnote 6 to 8], 16:5 [Footnote 1], 18:5 [Footnote 3], 19:10 [Footnote 22], 20:1 [Footnote 1], 20:8 [Footnote 12], 20:8 [Footnote 33 to 37]
- Northwest Territories, Committee on Law Reform
- The Bulk Sales Act, Working Paper No. 3 (1990), **40:2 [Footnote 5]**
- Ontario, Business Law Advisory Council, Report to Minister of Government and Consumer Services (Fall 2016), **40:1 et seq.**
- Ontario, Business Law Agenda Stakeholder Panel, Business Law

@ 2024 Thomson Reuters, Rel. 4, 4/2024

LAW REFORM AND LAW REFORM COMMISSIONS (CANADA) —Cont'd

Agenda: Priority Findings & Recommendations Report (Ontario: June 2015) ("Business Law Agenda Report (Ontario: 2015)"), **1:49** [Footnote 1], 40:2 [Footnote 7] Ontario Law Reform Commission Report on Amendment of the Law of Contract (1987), 6:1 [Footnote 7], 6:3 [Footnotes 1, 12], 6:5 [Footnotes 25, 26], 7:6 [Footnote 6] Report on Class Actions (1982), 5:8 [Footnotes 1, 22, 25] Report on Family Law, Part IV, Family Property Law (1974), 41:1

- [Footnotes 4, 5] Report on Limitation of Actions, 5:1 et seq.
- Report on the Enforcement of Judgment Debts and Related Matters, Part I (1981), **3:3 [Footnotes 13, 14], 4:12 [Footnote 1], 7:18 [Footnote 6]**
- Report on the Enforcement of Judgment Debts and Related Matters, Part II (1981), **4:6** [Footnote 2], 7:18 [Footnote 9]
- Report on the Enforcement of Judgment Debts and Related Matters, Part III (1981), **7:18 [Footnotes 7, 8]**
- Report on the Enforcement of Judgment Debts and Related Matters, Part IV (1983) ("O.L.R.C. Report"), 1:8 [Footnote 105], 1:15 [Footnote 11], 1:15 [Footnote 13], 1:21 [Footnote 2], 1:30 [Footnote 2], 1:35 [Footnote 22], 1:35 [Footnote 39], 1:35 [Footnote 69], 1:39 [Footnote 1], 4:6 [Footnote 4], 5:8 [Footnote 15], 9:3 [Footnote 5], 11:1 [Footnote 39], 14:14 [Footnote 43], 14:19 [Footnote 3], 14:37 [Footnote 2], 14:37 [Footnote 3], 14:37 [Footnote 4], 14:37 [Footnote 7], 14:52 [Footnote 23], 15:17 [Footnote 6], 16:3 [Footnote 8], 17:3 [Footnote 1 to 4], 18:5 [Footnote 3], 18:6 [Footnote 13], 19:9

LAW REFORM AND LAW REFORM COMMISSIONS (CANADA)

-Cont'd Ontario Law Reform Commission -Cont'd [Footnote 9], 19:19 [Footnote 2], 19:20 [Footnote 3], 20:8 [Footnote 11], 20:8 [Footnote 14 to 15] Report on the Enforcement of Judgment Debts and Related Matters. Part V (1983), 1:45 [Footnote 2], 4:1 [Footnote 1], 4:7 [Footnote 4, 4:9 [Footnote 9, 14], 4:15 [Footnote 5], 4:17 [Footnotes 1, 2], 7:18 [Footnote 6] Report on the Law of Landlord and Tenant, 37:1 [Footnote 27] Saskatchewan Law Reform Commission The Bulk Sales Act: Report to the Minister of Justice (1990), 40:2 [Footnote 5] Uniform Law Conference of Canada "ULCC (Buckwold)," 1:35 to 1:41.60, 1:41.85 [Footnote 1], 1:42, 1:48; 5:24; 6:1 [Footnote 5], 9:23 [Footnote 14], 13:12 [Footnote 5], 14:14 [Footnote 23], 14:24 [Footnote 13], 14:42 [Footnote 2], 14:68 [Footnote 3], 14:75[Footnote 2], 15:17 [Footnote 6] "ULCC (Buckwold) (Preferences: 2008)," 1:3 [Footnote 3], 1:35 [Footnote 52], 1:35 [Footnote 66], 7:22 [Footnote 1], 10:1 [Footnote 13], 17:1 [Footnote 26], 17:1 [Footnote 32], 18:2 [Footnote 10], 18:6 [Footnote 3], 19:3 [Footnote 1], 19:3 [Footnote 4], 19:9 [Footnote 1], 19:19 [Footnote 3], 19:26 [Footnote 3], 19:29 [Footnote 5], 19:33 [Footnote 2], 19:33 [Footnote 4], 19:34 [Footnote 21], 19:37 [Footnote 6], 20:1 [Footnote 2], 20:1 [Footnote 5], 20:1 [Footnote 14]

- "ULCC (Buckwold) (Preferences: Final 2011)," 1:35 [Footnote 50], 1:35 [Footnote 51], 7:6 [Footnote 6], 7:22 [Footnote 4]
- ULCC "Second Progress Report on the Civil Enforcement of Judgments Project" (2002), **39:17**

LAW REFORM AND LAW REFORM COMMISSIONS (CANADA) —Cont'd

- Uniform Law Conference of Canada —Cont'd
 - Uniform Acts Uniform Civil Enforcement of Money Judgments Act (2004), **39:18**
 - Uniform Reviewable Transactions Act (2012) ("ULCC Act (2012)") (The complete Uniform Reviewable Transactions Act appears in the Legislation tab of the text.)
 - general, 1:1 [Footnote 34], 1:4 [Footnote 4], 1:8 [Footnote 45], 1:8 [Footnote 71], 1:8 [Footnote 86], 1:8 [Footnote 89], 1:8 [Footnote 141], 1:9 [Footnote 17], 1:26 [Footnote 14], 9:5 [Footnote 22], 9:5 [Footnote 44], 9:11 [Footnote 2], 9:18 [Footnote 8], 9:22 [Footnote 5], 9:22 [Footnote 13], 10:1 [Footnote 9], 10:1 [Footnote 22], 13:5 [Footnote 10], 13:7 [Footnote 2], 14:28 [Footnote 3], 14:37 [Footnote 15], 14:42 [Footnote 20], 17:1 [Footnote 18], 17:1 [Footnote 19], 19:5 [Footnote 3], 19:5 [Footnote 4] Uniform Securities Transfer Act (2004), 39:16

LAW REFORM AND LAW REFORM COMMISSIONS (OUTSIDE CANADA)

See also main headings "Law reform (law reform commissions, legislatures)"; "Law reform (law reform commissions, legislatures)"

New Zealand Law Commission Company Law Reform and Restatement, **19:9 [Footnote 9]**

United Kingdom

Payne Committee Report of the Committee on the Enforcement of Judgment Debts (1969), **3:1**

The Law Commission Distress for Rent (Working Paper

Index

LAW REFORM AND LAW REFORM COMMISSIONS (OUTSIDE CANADA)—Cont'd

United Kingdom—Cont'd The Law Commission—Cont'd No. 97 (1990)), **37:11 [Foot**-

note 27]

United States see United States law, National Conference of Commissioners on Uniform State Laws, Uniform Fraudulent Transfer Act and Uniform Fraudulent Conveyance Act

LAWYERS

See Solicitors

LEGACY, REFUSAL OF

Generally, 9:22

LEGISLATION

- See also Bankruptcy (Canadian federal Bankruptcy and Insolvency Act); Companies' Creditors Arrangement Act (s 36.1); Courts; Statute of Elizabeth and other English statutes; Statutes, provincial, fraudulent conveyances and preferences
- Alberta Fraudulent Preferences Act (s. 1) as codification of Statute of Elizabeth, **14:61** [Footnotes 6, 8 and Accompanying Text]

Bankruptcy

see Bankruptcy (Canadian federal Bankruptcy and Insolvency Act), and this main heading under "Interpretation"

British Columbia, **1:27 to 1:29, 14:40** Fraudulent Conveyance Act constitutional issues, **1:27** history of, **1:27** sale of property, **7:19 [Footnote 8]**

section 1: re: "despite a pretence or other matter to the contrary," 1:8 [Footnote 84], 1:43 [Footnote 2]

sections 1 and 2 collusion, guile, malice, dishonesty, deceit, fraud, **1:27, 1:28** "disposition," rather than a "conveyance," of property, **1:8 [Footnote 81]**

© 2024 Thomson Reuters, Rel. 4, 4/2024

LEGISLATION—Cont'd Case law confusing mixture of English common law and equitable remedies, 1:2 [Text Accompanying Footnote 1] outsized role in settling fraudulent conveyances law, 1:2 [Text Accompanying Footnote 3] Coexistence of provincial voidable transaction statutes (including, where applicable, the Statute of Elizabeth) and related Bankruptcy and Insolvency Act provisions respecting frauds on creditors, 26:3 Consumer debtor legislation (common law), inheritance from United Kingdom bankruptcy and insolvency law, 17:1 [Footnote 21] Derivative action, 33:9 General, 1:1 to 1:8 Goals, 1:35 to 1:42 History, 1:11 to 1:17 Inappropriate interference with commercial transactions, 1:8 [Text Accompanying Footnote 38] Interpretation see also main headings "Bankruptcy (Canadian federal Bankruptcy and Insolvency Act)"; headings "Deceit, dishonesty, immorality and illegality, in relation to fraud"; "Fraud"; "Guile"; and "Sham transactions" general approach (abbreviated), under federal bankruptcy and provincial voidable transactions legislation dictionary meaning, use of, 31:1 et seq. provincial legislation, use of, to interpret Bankruptcv and Insolvency Act. 31:3 [Text Accompanying Footnote 10] statutory provisions, to be interpreted in accordance with purpose of provision and context of statute, 31:1 et seq. words, to be given their ordinary meaning but in accordance with such purpose of provision and context of statute, 31:1 et seq. voidable transactions statutes

acts as remedial and to be given a fair, large and liberal interpreta-

LEGISLATION—Cont'd

Interpretation—Cont'd voidable transactions statutes—Cont'd tion. See this main heading, then "Interpretation Acts (federal and provincial) and the Judicial Interpretation of Voidable Transactions Statutes"

counter-argument, 1:8 [Footnote 38], 1:35 [Footnote 25 and Accompanying Text]

criminal law, fraud legislation. See Index, main heading "Criminal and quasi-criminal offences respecting voidable transactions and fraud, and related matters," then sequentially, "Offences," "extradition proceedings, legislation, liberal/broad interpretation

deceit, negligent misconduct, sharp practice, improvident business: fraud broader than, **1:35** [Text Following Footnote 23]

different provisions in different statutes should be read together, in accordance with plain intention of the statutes (Westinghouse Canada Ltd. v. Buchar), **1:1 et seq.**

fraud, meaning of, 1:35 to 1:41.55, 1:41.70, 1:41.80, 1:42; 14:1 to 14:39

term not used in narrow, technical or criminal sense, 1:35 [Text Accompanying Footnote 22]

"fraud": too narrow a term, 1:35 [Footnote 22 and Accompanying Text]

general, 1:8 [Text Accompnaying Footnote 28], 1:11 [Footnote 7]

harm to creditor, must it always be proven? see main heading "Harm to creditor, must it always be proven for success in action even where fraudulent intent is proven?"

Interpretation Acts (federal and provincial). See this main heading, then "Interpretation Acts (federal and provincial) and the Judicial Interpretation of Void-

LEGISLATION—Cont'd

Interpretation-Cont'd voidable transactions statutes-Cont'd able Transactions Statutes" liberal interpretation or original intent of legislation, where obscured or nullified by courts, legislatures, contracts, etc. (Dreiser, The Titan), 1:8 [Footnote 29] normative ideals respecting voidable transactions legislation and law federal, 1:35 [Footnote 25], 24:3 [Footnote 5] provincial general, 1:35 and Following preferences, 17:1 normative goal of "evenhandedness" among creditors incorporation of this goal in provincial preference legislation, 17:1.55 normative goal, and prejudicial effect, 17:1.55, 19:40 remedial in nature, 1:8 [Footnote 28 and Accompanying Text] tracing provisions and a liberal interpretation of preference legislation See also Index, main heading "Tracing property fraudulently reconveyed by debtor's transferee, and proceeds respecting the sale of such property," 11:1 [Text Following Footnote 15] Interpretation Acts (federal and provincial) and the Judicial Interpretation of Voidable Transactions Statutes Alberta Interpretation Act voidable transactions legislation as remedial and to be given a fair, large and liberal interpretation, 1:30 [Footnote 14 and Accompanying Text] British Columbia, Interpretation Act binding the Crown, 1:33 [Text Accompanying and Following Footnote 5]; 1:34 [Footnote 5]

LEGISLATION—Cont'd

Interpretation Acts (federal and provincial) and the Judicial Interpretation of Voidable Transactions Statutes-Cont'd British Columbia, Interpretation Act -Cont'd courts ignoring Interpretation Acts, 1:35 [Footnote 7 and Accompanying Text] "dispose," definition of, 1:30 [Text Following Footnote 12 and Accompanying Footnote 14]: 9:18 [Text Following Footnotes 4, 20 and 25]; 31:3 release, as a conveyance with voidable transactions Act, 9:18 **[Text Accompanying Footnote** 7]; 9:21 [Text Following Footnote 2]; 9:30 [Footnote 2] voidable transactions legislation as remedial and to be given a fair, large and liberal interpretation, 1:30 [Footnote 14 and Accompanying Text]; 31:3 [Footnote 8] Canada, Interpretation Act binding the Crown, 1:33 [Text Accompanying Footnotes 1 to 51 purpose of voidable transactions legislation, often ignored by Interpretation Act, 1:35 [Footnote 7] voidable transactions legislation as remedial and to be given a fair, large and liberal interpretation, 1:30 [Text Following Footnote 11]: 1:35 [Footnote 7 and Accompanying Text] "disposition," "disposes" (in Bankruptcy and Insolvency Act), interpretation consistent with, 31:3 [Text Accompanying and Following Footnote 5] Ontario, Legislation Act, 2006, S.O. 2006, c. 21, Schedule F (successor to the former Interpretation Act), approach the same in other common law provinces, except British Columbia and Prince Edward Island, 1:33 [Text Preceding Footnote 5]

LEGISLATION—Cont'd

Interpretation Acts (federal and provincial) and the Judicial Interpretation of Voidable Transactions Statutes-Cont'd Ontario, Legislation Act, 2006, S.O. 2006, c. 21, Schedule F (successor to the former Interpretation Act), -Cont'd binding the Crown, 1:33 [Text Following Footnote 4] "debt," "debtor" or "creditor," no definition under, 1:9 [Footnote 91 law reform, 1:34 [Especially Text **Following Footnote 5**] purpose of voidable transactions legislation, often ignored by Legislation Act, 2006, and former Interpretation Act, 1:35 [Footnote 7 and Accompanying Text] voidable transactions legislation as remedial and to be given a fair, large and liberal interpretation, 1:30 [Footnote 14 and Accompanying Text]; 31:3 **[Text Accompanying Footnote** 81 Prince Edward Island binding the Crown, 1:33 [Text Accompanying and Following Footnote 51 Saskatchewan voidable transactions legislation as remedial and to be given a fair, large and liberal interpretation. 1:30 [Footnote 14 and Accompanying Text]: 9:15 [Footnote 38]; 9:20 [Text Following Footnote 9] Judicial activism and legislative reform. See this main heading, under "Legislative reform versus judicial activism" Law of Property Act, 1925, 15 Geo 5, c. 20, 1:16 [Footnote 2], 15:11 [Text Accompanying Footnotes 18, 26] whether replacing Statute of Elizabeth, 1:16 [Footnote 2], 1:19 [Footnote 8 and Accompanying Text], 9:22 [Footnote 16.500 and Accompanying Text]

© 2024 Thomson Reuters, Rel. 4, 4/2024

LEGISLATION—Cont'd Legislative reform versus judicial activism, 1:8 [Footnote 38], 1:41.85 List of legislation applicable in Canadian provinces (including the Statute of Elizabeth), 1:8 [Footnote 81] Ontario See also Index, main heading "Solicitors," subheading "Professional obligations," for solicitors' rules/ codes of professional conduct antecedents common law, 1:11 pre-modern English legislation, 1:12 Bills of Sale Act, R.S.O. 1980, c. 43 (since repealed), 1:8 [Footnote 77], 2:1 [Text Following Footnote 23: Scenario B], 14:57; 14:67 generally, 1:1 to 1:8, 1:16 limitations statutes See Index, main heading "Limitations statutes" Rules of Civil Procedure, R.R.O. 1990, Reg. 194, 4:15 [Text Following Footnote 7] Oppression remedy, 33:2 Pleading both Fraudulent Conveyances Act/Statute of Elizabeth and fraudulent conveyances provisions of Fraudulent Preferences Act trustee in bankruptcy, right to pursue voidable transactions under provincial statutes, 1:24, 1:25, 32:2 Provincial (statutory presumption of intent), 19:22 to 19:28 Ouebec see Paulian action United Kingdom Bills of Sale Acts, 1:8 [Footnote 77] 27 Eliz. c. 4, 1:8 [Footnote 77], 1:26 [Footnote 2] United States see United States law LEVERAGED BUYOUTS Generally, 1:8, 9:23, 14:19 [Text Following Footnote 5], 14:46

LIFE INSURANCE POLICIES Generally, 9:20

LIMITATIONS STATUTES

Alberta. 5:19 British Columbia, 5:16 to 5:18 current Limitation Act, S.B.C. 2012, c. 13. 5:18 former Limitation Act, R.S.B.C. 1996, c. 266, 5:17 Manitoba, Newfoundland and Labrador, New Brunswick, Northwest Territories, Saskatchewan, and Yukon. 5:15 Ontario limitation periods, 5:2 Limitations Act, 2002, S.O. 2002, c. 24, Sched. B, and Real Property Limitations Act, R.S.O. 1990, c. L-15 application of limitations statutes to real property, 7:9 conflicting Ontario limitations jurisprudence respecting the Limitations Act, 2002, and the Real Property Limitations Act, and the matter of "consequential relief," 7:9 Limitations Act, 2002 law prior to Limitations Act, 2002, 5:20 law reform prior to Limitations Act. 2002. 5:21 Limitations Act, 2002, 5:22 LIS PENDENS

See also main headings "Actions and other proceedings"; "Proceedings and procedure" Generally, **36:6**

MALA FIDES

See Index, main heading "Deceit, dishonesty, immorality, illegality, collusion, guile, malice, etc., in relation to fraud"

MALICE

See Index, main heading "Deceit, dishonesty, immorality, illegality, collusion, guile, malice, etc., in relation to fraud"

Generally, 1:28, 14:40

MAREVA INJUNCTIONS

See also main headings "Injunctions"; "Remedies," subheading "prejudgment remedies"

MAREVA INJUNCTIONS—Cont'd

Generally, **36:2** Claims by third parties, **36:3**

Conditions, 36:2 [Footnote 24]

Effect, 36:4, 36:5

Injunctions pre-Mareva, 36:1

Nondisclosure, consequences of, **36:2** [Footnote 15]

Post-judgment injunction, **36:2** [Footnote 2]

Preservation order (interim) for funds, distinguished, **36:1** [Footnote 1], **36:7** [Text Following Footnote 8]

Reconciliation with fraudulent conveyances and preferences law, **36:4**, **36:5**

Where property transferred out of jurisdiction, **36:2** [Footnote 5]

World-wide injunction, **36:2** [Footnotes 11, 12]

MARGIN DEPOSIT

Defined, **24:1** Exemption from statutory presumption of preference, **24:1**

MARRIAGE CONTRACTS

See Index, main heading "Family law; legislation; agreements and other arrangements; and jurisprudence"

MATRIMONIAL, AND MAINTENANCE AND SUPPORT, MATTERS

See Index, main heading "Family law: legislation; agreements and other arrangements; and jurisprudence"

MONEY HAD AND RECEIVED

Transferee, action by, 7:10 [Text Following Footnote 5]

MORAL PRINCIPLES AND NORMATIVE IDEALS SUPPORTING VOIDABLE TRANSACTIONS LAW

Effect of Ontario Fraudulent Conveyances Act, on lawful mortgage, **36:6**

Equitable, created by impugned transaction, **14:60** [Footnote 20]

General, 1:35 to 1:41.65, 1:42

Preferences, 17:1 [Text Accompanying Footnote 1]

 $\ensuremath{\mathbb{C}}$ 2024 Thomson Reuters, Rel. 4, 4/2024

MOTIVE OF PARTIES

See Intent — fraudulent conveyances; Intent — fraudulent preferences

NATURAL LOVE AND AFFECTION, AS CONSIDERATION

Generally, 15:11 [Footnotes 3, 19]

NON-OWNERSHIP OF CONVEYED PROPERTY

Generally, 9:3 [Footnote 4]

NORMATIVE IDEALS SUPPORTING VOIDABLE TRANSACTIONS LAW

See Moral principles and normative ideals supporting voidable transactions law

NORWICH ORDER (EQUITABLE DISCOVERY OF THIRD PARTY

See main heading "Examination of debtors and others (outside bankruptcy)," subheading "discovery of third party, equitable (Norwich order)"

NOTICE OR KNOWLEDGE BY TRANSFEREE OF TRANSFEROR'S INTENT See Transferee

OPPRESSION REMEDY

See also Derivative action; Remedies Introduction, **33:1** Legislation, **7:15, 33:2** Limitation periods and laches, **5:25** [Text

Accompanying Footnote 20 et seq.], 33:7 [Text Accompanying Footnote 1, 2] Remedies, 7:15, 33:13 Standing, 33:3 to 33:6

OPTIONS

See also Disclaimers of legacy or gifts; Powers of Appointment; Releases and other similar instruments Refusal to exercise, as a fraudulent conveyance, **9:22** [Footnote 34]

ORDER

See Judgment

ORDINARY COURSE OF BUSINESS Bankruptcy, 24:19 Provincial legislation, 20:5, 20:6

OVERLAPPING AND CONFLICTING LEGISLATION

Generally, 1:18 to 1:29

PARTIES TO FRAUDULENT TRANSACTION PROCEEDING

See also Standing to impeach —- fraudulent conveyances and Standing to impeach —- fraudulent preferences Generally, **5:10**

PAULIAN ACTION (L'ACTION EN INOPPOSABILITÉ)

Generally, 42:1 et seq.

Harm to creditor, must it always be proven for success in action even where fraudulent intent is also proven?

general, **42:18 to 42:30** Quebec law and common law, compared, **14:35**

Limitation period, application to bankruptcy proceedings, 24:4, 42:46

Uniform Canadian voidable transactions legislation, as part of, **42:1** [Footnote 1]

Uniform Reviewable Transactions Act, proposed, adaptation in Quebec, 1:8 [Footnote 88]

PECUNIARY RELIEF (DAMAGES)

See also Index, main headings Damages; Remedies General, **5:20** [Text Accompanying Footnotes 19 et seq.], **7:13** Punitive or exemplary damages, **7:15** Relief against transferee, **7:13:25** transferor, **7:13:50** Tort of consipiracy, **7:14** Unjust enrichment, **7:16** PENALTIES, UNDER FRAUDULENT

CONVEYANCES STATUTES

Generally, 1:12, 1:26, 1:27

PERSON, DEFINED Generally, 28:9

PERSONAL PROPERTY LEGISLATION Generally, 20:9, 20:10

PIERCING CORPORATE VEIL

Generally, 13:14 [Footnote 3], 14:3 [Footnote 5], 14:44 [Footnote 12], 28:14 [Text Accompanying Footnote 5], 36:6 [Footnote 10]

PLEADINGS

See Actions and other proceedings; Proceedings and procedure

PLEDGE OF ASSETS

Generally, 9:23

PONZI SCHEMES (TRANSACTIONS INDUCED BY FRAUD)

- Bankruptcy, whether trustee in bankruptcy of perpetrator could recover "excess payments" received by "investors" (an "excess payment" is the amount that an "investor" has received from the perpetrator that is over and above the aggregate total of the defendant's "investments" in the Ponzi scheme), **38:5** [Footnote 4] Characteristics, **38:2**
- Effect on parties, **38:2** [Text Following Footnote 6]

"Excess payments" to "investors" Constituting a fraudulent transaction, **38:5**

constituting an "unlawful" transfer, **38** [Text Following Footnote 18] meaning of excess, **38:5**

Fraud in the courts of equity and at common law, **38:1**

Jurisprudence, 38:3

claims other than respecting a voidable transaction money had and received, **38:5** [Text

Following Footnote 18] unjust enrichment, 38:5 [Text Following Footnote 18]

consideration from "investors," whether "good," **38:5** [Text Following Footnote 26]

evidence necessary to prove fraudulent intent of perpetrator inferences and badges of fraud, **38:5**

[Text Following Footnote 24]

where the term "badge of fraud" and "inference" have both been used in reference to the same fraudulent transaction, **14:40** [Footnote 1 (And Accompany-

PONZI SCHEMES (TRANSACTIONS INDUCED BY FRAUD)—Cont'd

Jurisprudence, **38:3**—Cont'd evidence necessary to prove fraudulent intent of perpetrator—Cont'd

ing Text)], 38:5 [Footnote 24] fraudulent transaction

what constitutes ("excess" payments to "investors"), **38:5** whether British Columbia Fraudulent

Convenance Act applies where perpetrator retains no benefit in the "excess" paid to investors, **38:5 [Text Following Footnote 18]**

insolvency, Ponzi schemes deemed to be insolvent from the outset, **14:41** [Footnote 1.500]; 38:5 [Text Following Footnotes 3, 20]

pleading both fraudulent conveyances and fraudulent preferences legislation respecting the same transaction, 1:42 [Text Following Footnote 7]

intent of Statute of Elizabeth (in the context of a Ponzi scheme case), **38:5 [Text Following** Footnote 42]

Perpetrators, "investors" and victims (a non-exhaustive miscellany), 1:1 [Footnote 29], 38:2

Pyramid schemes, **38:3**

United States law, 7:6 [Text Following Footnote 30 at para. 43]

Unlawful scheme, whether Ponzi scheme constitutes, **38:5** [Text Following Footnote **37**]

POWERS OF APPOINTMENT

As a conveyance, **9:22** Law reform, **9:28 to 9:33**

PREJUDGMENT REMEDIES

See Remedies

PRESERVATION AND SIMILAR ORDERS

Bankruptcy legislation: preservation, detention or custody of property, order for, 36:1 [Footnote 1]
Provincial legislation family law legislation, 41:17

© 2024 Thomson Reuters, Rel. 4, 4/2024

PRESERVATION AND SIMILAR **ORDERS**—Cont'd Provincial legislation-Cont'd non-family law legislation Anton Piller orders. 36:7 difference between a Mareva injunction and an order to preserve specific funds, 36:7 [Text Following Footnote 8] freezing bank deposits (Bank Act, S.C. 1991, c. 46, s. 437(2)), **36:1** [Footnote 1] general, 36:1 [Footnote 1], 41:17 [Footnote 1] preservation of property interim order for funds (Ontario Rules of Civil Procedure, R.R.O. 1990, Reg. 194, made under the Courts of Justice Act, R.S.O. 1990, c. C.43, r. 45), 36:1 general, 36:1 [Footnote 1], 41:17 [Footnote 1] Mareva injunction, distinguished, 36:1 [Footnote 1], 41:17 [Footnote 1] interpleader proceedings (Ontario Rules of Civil Procedure, R.R.O. 1990, Reg. 194, made under the Courts of Justice Act, R.S.O. 1990, c. C.43, r. 43), 11:2

receivership, 36:1 [Footnotes 1, 2]

PRESSURE, DOCTRINE OF

See also: diligent creditor, bankruptcy, 24:23

Generally, 19:36 to 19:38

PRESUMPTION OF LAW, AND FRAUDULENT INTENT

See also main heading "Badges of fraud" Bankruptcy

see main heading "Bankruptcy (Canadian federal Bankruptcy and Insolvency Act)," then sequentially under "preferences," and "elements of impeachable preference"

FRAUDS ON CREDITORS: FRAUDULENT CONVEYANCES AND PREFERENCES

PRESUMPTION OF LAW, AND

FRAUDULENT INTENT—Cont'd Fraudulent conveyances and presumption badges of fraud distinguished, 14:1 to 14:39 burden of proof (badges and presumption), 14:52 to 14:56 evidence required, 14:53 to 14:56 see also main heading "Evidence" jurisprudential confusions of badges and presumption of fraud, 14:42 [Text Following Footnote 39], 14:46 [Footnote 2] effect of presumption, 14:44 to 14:46 where necessary effect is to defraud creditors general, 14:45, 14:46 harm to creditor, must it always be proven for success in action even where fraudulent intent is also proven? see also main heading "Harm to creditor, must it always be proven for success in action even where fraudulent intent is also proven?" general, 14:19 to 14:39 jurisprudence, statutes and commentary Canadian common law provinces, 14:27 to 14:34 general, 14:20, 14:21 Quebec, 14:35 Statute of Elizabeth, 14:20 United States, 14:26 Fraudulent preferences and presumptions, 19:19 to 19:32 see also this main heading, under "fraudulent conveyances and presumption" statutory presumptions calculating relevant time period, 19:21 provincial statutes Alberta, Saskatchewan, 19:23 British Columbia, 19:22 New Brunswick, 19:26 Nova Scotia, 19:27 Ontario, 19:25

PRESUMPTION OF LAW, AND

FRAUDULENT INTENT—Cont'd Fraudulent preferences and presumptions, 19:19 to 19:32—Cont'd statutory presumptions—Cont'd provincial statutes—Cont'd Prince Edward Island, 19:28 Yukon, 19:24 Rebuttable or irrebuttable presumption of law? general, 14:22 presumption arising from prejudicial effect is rebuttable, 14:38

PRETENCE, CONCERNING NATURE OF DEBTOR'S CONVEYANCE

See main heading "Sham transactions

PRIOR AGREEMENTS

See also main headings "Badges of fraud," then sequentially "examples (non-exhaustive)," "conveyance," and "documents"; and "Sham transactions"

- Bankruptcy, 24:20
- Effect on proving debtor's intent, **14:59**, **14:60**

Family law agreements (pre-nuptual or pre-marital agreements, co-habitation agreements, and separation agreements)

- general, **41:18**, **41:19** law reform, **41:22**
- Formality required, 14:59 [Footnote 9], 19:34 [Footnotes 19, 20]
- Method of proof, 14:59 [Footnote 2]
- Previous promise to make future transfer, 19:34

Series of agreements, 19:34

PRIVATE OR CLOSELY-HELD COMPANIES

See Corporations, private or closely-held corporations

PROCEEDINGS AND PROCEDURE

See also Actions and other proceedings; Enforcement of money judgments, the role of the execution creditor and the seizure of debtor's property by the sheriff or other similar official; Evidence

Bars to proceedings, 5:11

PROCEEDINGS AND PROCEDURE -Cont'd Claims for damages and other relief. 1:8 [Footnote 68], 7:11 to 7:17 see also Claims Class actions, 5:1 to 5:9 Commencement and prosecution, 5:1 et seq. Effect of successful proceedings, 7:5 to 7:30 Evidence see Evidence Institution of action class action, 5:8 commencement, general rule, 5:1 laches, 5:25 limitation periods, 5:13 parties, 5:10 res judicata, 5:7 Judgment see Judgment Judicial activism and legislative reform. See this main heading, under "Legislative reform versus judicial activism" Legislative reform versus judicial activism, 1:8 [Footnote 38], 1:41.85 Party to fraudulent transaction proceeding, whether necessary and/or proper person standing in actual privity with the debtor, 5:10 transferor of debtor's property, 5:10 Persons unable to impeach a convevance successfully see also Standing to impeach --- fraudulent conveyances; Property (under "property, types of, not impeachable under fraudulent conveyances statutes") creditors "privy," etc. to the conveyance, 15:14 Pleadings see also Fraudulent conveyances (under "fraudulent preferences and fraudulent conveyances"), Fraudulent preferences (under "fraudulent conveyances and fraudulent preferences") challenges to plaintiff's pleadings, 5:9 pleading both fraudulent conveyances and Fraudulent Preferences Acts, 1:8 [Text Accompanying Foot-

@ 2024 Thomson Reuters, Rel. 4, 4/2024

PROCEEDINGS AND PROCEDURE —Cont'd Pleadings—Cont'd

note 62]; 1:20; 1:38; 1:41.55; 19:1 [Footnote 6]

whether the same transaction may be both, or either, a fraudulent conveyance (under, inter alia, the Statute of Elizabeth) and a fraudulent preference, **1:36 to 1:41.75, 1:42**

summary proceedings, defendants' motion to have portions of the record removed or redacted from publicly filed materials for lack of a Reply pleading with respect to the limitation defence; evidence in record supporting plaintiff's claim; court must consider record as a whole rather than focus narrowly on pleadings alone, **7:9, 2:7** [Footnote 2 and Text Following Footnote 8], **5:15** [Text Accompanying Footnote 24]

Proper forum and procedure to collect on money judgment, determination of, 1:24 [Text Following Footnote 7]

Removal or redaction of portions of the record from publicly filed materials; submissions relating to (a) confidentiality of material; (b) material respecting solicitor-client privilege; and (c) the lack of a Reply pleading with respect to the limitation defence, 7:9, 2:7 [Footnote 2 and Text Following Footnote 8], 5:15 [Text Accompanying Footnote 24]

Summary proceedings

general, 5:2

Alberta, 5:4

British Columbia, 5:3

Ontario, 5:5

reform, **5:6**

- use of, to defraud creditors, **8:1 et seq.** Timing of voidable transactions proceedings and underlying action or claim, **5:4, 7:2**
- Transferee, proceedings against, 7:11 to 7:17, 11:1 [Footnote 9]
- Under both Fraudulent Conveyances and Fraudulent Preferences Acts, **1:8**,

PROCEEDINGS AND PROCEDURE ---Cont'd

1:35 to 1:41.50, 1:42 19:1 [Foot-note 6]

Use of proceedings to defraud creditors, 1:5, 8:1 et seq., 15:13

PROCEEDS OF PROPERTY FRAUDULENTLY TRANSFERRED

See Index, main heading "Tracing property fraudulently reconveyed by debtor's transferee, and proceeds respecting the sale of such property." See also main headings: "Enforcement of money judgments"; "Pecuniary judgment directly against fraudulent transferees (damages for tort of conspiracy, punitive or exemplary damages, damages for unjust enrichment, etc.)"

PROFESSIONAL ADVICE

Accountants, financial planners, insolvency and restructuring practitioners, and trustees, **2:1** [Footnote 12]

Lawyers, 2:1 et seq.

PROMISSORY NOTE, HOLDER OR ENDORSER OF, AS CREDITOR Generally, 13:7 [Footnote 5], 18:8

PROPERTY

See also main heading "Conveyance, disposition and other similar transactions"

Concealment or removal see Concealment or removal of property

Conveyance of all or virtually/essentially all of the debtor's property, **14:42** [Footnote 24]

Detention, custody or preservation, order for, **36:1** [Footnote 2]

- Enforcement against debtor's property, by judgment creditor, **9:2** [Footnotes 3, 4], 9:5 [Footnote 12]
- Exchanged or substituted property, execution against, **11:1**

Joint tenancy, conveyance of, as fraudulent conveyance

Canada, 9:5 [Footnote 11] United States, 9:3 [Footnote 3]

PROPERTY—Cont'd

```
Meaning of, 9:3, 27:14, 28:4 [Footnote 3]
```

Property not seizable by creditors and therefore, where conveyed, not impeachable under traditional voidable transactions statutes

bankruptcy, 24:14 [Footnote 20]; 27:14; 31:5 [Text Accompanying Footnote 5]

provincial law

general

harm to creditor, must it always be proven for success in action even where fraudulent intent is proven? (property that cannot be reached by creditors), 1:7 [Footnote 4], 9:5 [Text Accompanying Footnote 1], 14:25 to 14:35

see main heading "Harm to creditor, must it always be proven for success in action even where fraudulent intent is also proven?"

law reform commentary, 14:14 [Footnote 40]

property exempt from enforcement proceedings

conveyance of exempt property current law, **9:5**

critique of current law and an alternative approach in the context of fraudulent conveyances actions, 9:5.50 introduction: two approaches to current and reformed law on the scope of exemption provisions in the context of fraudulent conveyances actions, 9:5.50 reform proposals early reform proposal, 9:5.55 a critical response, 9:5.60 revised reform proposal, 9:5.65 law reform, 9:6 to 9:11 exempt property acquired by debtor pursuant to a conveyance, 9:14

proceeds of the sale of exempt property, **9:13**

PROPERTY—Cont'd

Property not seizable by creditors and therefore, where conveyed, not impeachable under traditional voidable transactions statutes-Cont'd provincial law-Cont'd property exempt from enforcement proceedings-Cont'd seizure of consideration given for exempt property, 9:5 [Footnote 12] value of property exceeds maximum legislated exempt amount, 9:5 [Footnote 12] property other than exempt property property in which the debtor has no beneficial or other interest, 9:3 [Footnote 4] property of no or trivial value, 1:7 [Footnote 4], 9:2 [Footnote 3], 9:5 [Footnote 1], 14:26 [Text Following Footnote 1] property that is non-assignable or restrictively assignable, 9:5 [Text Following Footnote 3] property rendered exempt from enforcement proceedings by a conveyance, 9:14 personal property (otherwise exempt from enforcement proceedings) purchased in order to defeat creditors, 1:7.50United States law (Uniform Fraudulent Transfer Act), 9:3 [Footnote 3], 9:5 [Footnote 5] see also main heading United States law exempt property, excluded under definition of "assets," 9:18 [Footnote 8] insolvency, exclusion of exempt property from determining value of debtor's assets, 10:4; 24:13 other property not reachable under enforcement proceedings, 9:18 [Footnote 8] Receiver, appointment of, 36:1 [Footnotes 1, 2] Recovery of, 11:1 et seq. Retention of property interest by debtor badge of fraud, 14:42 [Text

 $\ensuremath{\mathbb{C}}$ 2024 Thomson Reuters, Rel. 4, 4/2024

PROPERTY—Cont'd

Retention of property interest by debtor —Cont'd Accompanying Footnote 25] sham transactions see Sham transactions Return of property by transferee to debtor, 1:8 [Footnote 5] Sale of, in British Columbia, 7:19 [Footnote 8] Tangible and intangible property, application of statutes to, 9:2 to 9:17 Trust property, 9:17

PROTECTED TRANSACTIONS

Fraudulent conveyances see Fraudulent conveyances (under "protected transactions") Fraudulent preferences see Fraudulent preferences (under "protected transactions")

PUNITIVE DAMAGES, AWARDED AGAINST DEFENDANT See Damages

PURCHASE OF SHARES (LIABILITY OF DIRECTORS)

Bankruptcy and insolvency provisions, **30:1 et seq.**

PURCHASER, BONA FIDE Generally, 7:1 et seq.

PYRAMID BUILDING SCHEMES Generally, 1:1 [Footnote 16]

QUEBEC LAW

See Paulian action

RATIFICATION OF TRANSACTION BY CREDITOR Generally, 1:8 [Footnote 10]

REDEMPTION OF SHARES (LIABILITY OF DIRECTORS)

Bankruptcy and insolvency provisions, **30:1 et seq.**

REFORM

See Law Reform and Law Reform Commissions (Canada); Law Reform and Law Reform Commissions (Outside Canada)

REGISTRATION OR FILING OF TRANSFER DEED OR OTHER INSTRUMENT

Delay, effect on intent, 14:3 [Footnote 9], 14:4 to 14:6.50, 14:42 [Footnote 77]

No registration or filing, and secrecy, 14:42 [Footnote 133]

Receivers

Appointment of, 2:1 [Text Following Footnote 23 (Scenario A)], 36:1 [Footnote 2]

Standing to bring fraudulent conveyances action in receivership context, where plaintiff is not the receiver, but is a creditor in the receivership, **13:17.100, 36:1** [Footnote 2]

RELATED PERSONS AND OTHER ENTITIES

Related groups and corporations, **28:7** Related individuals, **28:5**

RELATIVES

See Consideration, transactions between relatives

RELEASES AND OTHER SIMILAR INSTRUMENTS

Current law, **9:21** Law reform, **9:28 to 9:33**

REMEDIES

See also Index, main headings: "Anton Piller order"; "Common law"; "Conspiracy, tort of"; "Courts"; "Creditors' relief legislation"; "Damages"; "Derivative action"; "Enforcement of money judgments and seizure of debtor's property by sheriff or other similar official"; "Illegal transactions"; "Injunctions"; "Judgment"; "Mareva injunctions"; "Oppression remedy"; "Preservation and similar orders"; "Tort"; "Transferee (under "remedies of transferee, after impeachment")"; "Unjust enrichment, damages for"

Generally, 7:5 to 7:30

Bankruptcy and Insolvency Act (Canada), 32:1

REMEDIES—Cont'd

Characterization of court order in Limitation Act proceedings, 5:22, 7:8, 7:9 Conveyances defeating, 1:4 [Footnote 1], 1:8 [Footnote 93], 34:1 et seq. Courts effect changes for specific situations, not system-wide, 1:15 [Text Accompanying Footnote 11], 4:18 [Footnote 4], 14:42 [Footnote 57] Declaratory relief (voidable transactions) general, 5:20 [Text Following Footnote 23], 7:5 to 7:7 Derivative action, 33:13 Difficulties in pursuing, see main heading "Debt litigation, debt collection and related matters" Impeachment, effect of, 7:1 et seq. Judicial activism and legislative reform. See this main heading, under "Legislative reform versus judicial activism" Legislative reform versus judicial activism, 1:8 [Footnote 38], 1:41.85 Monetary and pecuniary judgment against transferee, 7:11 to 7:17, 11:1 Oppression remedy, 33:13 Prejudgment remedies absconding debtors see Absconding debtors damages, claim for, 1:8 [Footnote 68] pecuniary judgment against transferee, 7:11 to 7:17 removal or concealment of property see Removal or concealment of property Punitive damages, awarded against defendants, 7:15 Sanctions for debtor's failure to produce information, **3:6** Unjust enrichment, damages for, 7:16 Wealthy individuals: how money and influence can insulate the very wealthy from the consequences of reckless decisions, 1:1 [Footnote 1] Where property transferred out of jurisdiction, 2:3 [Footnote 49], 12:9 **REMOVAL OR CONCEALMENT OF** PROPERTY

As a badge of fraud, **1:30** [Footnote 7] Bankruptcy and Insolvency Act (Canada), arrest of bankrupt for removal or

REMOVAL OR CONCEALMENT OF PROPERTY—Cont'd destruction of property and informa-

tion, **32:3** [Footnote 1] Criminal Code (Canada), **1:30** General, **1:6, 14:77**

United States Uniform Fraudulent Transfer Act, **1:30** [Footnote 7], 14:77 Wealthy individuals, and, **1:1** [Footnote

REPRESENTATIVE ACTIONS Generally, **5:1 to 5:9**

RESCISSION, CONTRASTED WITH IMPEACHMENT Generally, 7:7 [Footnote 81]

RES IPSA LOQUITUR AND CORROBORATION Generally, 14:48

RES JUDICATA Generally, **5:7**

11

RESTRAINING ORDERS

See Injunctions

REVIEWABLE TRANSACTIONS (FORMER BANKRUPTCY PROVISION: S

100, BIA). see Bankruptcy (Canadian federal Bankruptcy and Insolvency Act)

RIGHT OF REVINDICATION Generally, 24:9

ROLLOVERS

Generally, 27:11

RRSPS AND RRIFS

Exempt property, as, **27:14** [Footnote 7] Legislation, **9:14** [Footnote 3], **9:18** [Footnote 40] Transfer of rights in, **1:1 et seq.**, **9:18**

[Footnote 40], 27:11 [Footnote 21] Valuing RRSP, consideration of tax cost

to access funds, 10:3 [Footote 29]

RULES/CODES OF PROFESSIONAL CONDUCT

See Index, main heading "Solicitors," subheading "Professional obligations"

© 2024 Thomson Reuters, Rel. 4, 4/2024

SALE OF PROPERTY, IN BRITISH COLUMBIA Generally, 7:19 [Footnote 8]

SECRECY

See Index, main headings: "Badges of fraud," then serially "examples (non-exhaustive: see "list of examples," below)," and "secrecy"; and "Deceit, dishonesty, immorality, illegality, collusion, guile, malice, etc., in relation to fraud," then serially "civil (voidable transactions) law in Canadian common law jurisdictions," and "secrecy, collusion and contrivance linked to conspiracy"

SECURED CREDITORS

Grant and recording of security interest, whether prejudicial to creditors, 9:23, 20:9

Payments to secured creditor, 24:9

Priority over unsecured judgment creditors, 1:3 [Footnote 3]

Protected transactions —- fraudulent preferences, 20:9, 20:10

Secured financing as protected transaction, **20:9**, **20:10**

Security for current advances, **24:22** Standing to impeach fraudulent convey-

ance, 13:12 Standing to impeach fraudulent preference, 18:6

SEIZURE, BY SHERIFF OR OTHER SIMILAR OFFICIAL

See Enforcement of money judgments, the role of the execution creditor and the seizure of debtor's property by the sheriff or other similar official

SETTLEMENT, MATRIMONIAL DISPUTE, AS GOOD CONSIDERATION

Generally, 15:11 [Footnote 12]

SETTLEMENTS (FORMER BANKRUPTCY PROVISION: S

91, BIA). see Bankruptcy (Canadian federal Bankruptcy and Insolvency Act)

SHAM TRANSACTIONS See also Index, main heading "Deceit, dishonesty, immorality, illegality,

SHAM TRANSACTIONS—Cont'd

collusion, guile, malice, etc., in relation to fraud" Generally, **1:1 et seq.**

- Appearances, false, **1:8** [Footnote 84] Badges of fraud, and, **14:42** [Text
- Accompanying Footnote 25]
- Benefit to debtor or transferee debtor, retention of benefit by badges of fraud see main heading "Badges of fraud," then sequentially "examples (non-exhaustive)," "benefit retained by
 - debtor; possession remaining in debtor" general, **1:7 [Footnote 4], 1:8**

[Footnotes 18, 21], 9:18 [Footnote 13]

no intention to convey any benefit and no benefit conveyed to or obtained by transferee (therefore no fraudulent conveyance), 14:33, 14:42 [Footnotes 25 to 29 and Accompanying Text], 14:51 [Text Following Footnote 49]

transferee

- accrual of benefit by, **1:8** [Footnote 19], 27:6 [Footnote 7, 12, 22], 27:12 [Footnote 22]
- no benefit conveyed to or obtained by transferee (therefore no fraudulent conveyance), **1:8** [Text Following Footnote 21], 14:51 [Text Following Footnote 49]
- Definition, 1:35 [Footnote 45]; 9:26 [Text Accompanying Footnotes 1 and Following]; 14:43; 15:6 [Footnote 1]
- Estate planning arrangements, as, 2:4 [Text Accompanying Footnotes 11, 12]
- "Feigned" conveyance or consideration, 1:8 [Footnote 84]
- shams, and harm to creditor, 14:27
- Genuineness of the transaction, and, 1:43 [Footnote 3], 15:6
- Good faith, and, **1:8 [Footnote 21], 9:26** [Text Accompanying Footnote 2]
- Preferences under Statute of Elizabeth, not covered except where preference

SHAM TRANSACTIONS—Cont'd

was a cloak to benefit the debtor, 1:8 [Text Following Footnotes 107, 110]

Pretence, concerning the nature of debtor's conveyance (Statute of Elizabeth; British Columbia Fraudulent Conveyance Act), 1:8 [Footnote 84]; 1:43 [Footnote 2]; 9:26 [Footnote 3.500]

Transferee, no retention of a benefit, **9:26** Trusts, as

see main heading "Trusts," subheading "sham trusts"

SHARES AND SHAREHOLDERS See Corporations

SHERIFF, OR OTHER SIMILAR OFFICIAL

See Enforcement of money judgments, the role of the execution creditor and the seizure of debtor's property by the sheriff or other similar official

SOLICITORS

See also main headings "Advice, from solicitors, accountants, financial advisors, trustees, and others"; "Estate planning"

Advising clients respecting conveyances, general, **2:1 et seq.**

Advisors and advocates, distinction, 2:2, 2:3

- Civil liability of, 2:5
- Codes of professional conduct, 2:2
- Counselling of fraud, 2:4
- Criminal aspects of judgment proofing, 1:30

Criminal liability of, 1:30 [Footnotes 28, 29 and Accompanying Text], 2:6

Estate planning advice, **2:4**, **14:7** whether advice or other conduct may be a defence to a fraudulent transactions challenge, **2:4**

Ethical considerations, 2:1 et seq.

Fiduciary obligation, breach of, by, 2:5 [Footnote 11]

Imputing knowledge to client, **14:6** [Text Accompanying Footnotes 22, 25], 19:13 [Footnote 13]

Liability for excessive intervention in execution process, **4:17**

SOLICITORS—Cont'd

Litigation against debtors, see main heading "Debt litigation, debt collection and related matters" Payment of fees, as preference, **24:20**

[Footnote 13] Professional obligations, 2:2, 2:3

advising transferee, 2:2 [Footnote 1], 15:14 [Footnote 62]

dishonesty, fraud, etc. by debtor-client, 2:2 (LSUC r. 3.2 to 7)

dupe of debtor-client, solicitor as, 2:2 (LSUC r.3.2 to 7.1, Commentary [1])

fiduciary obligations, 2:2 (LSUC r. 3.2 to 2, Commentary [1.1])

honesty and candour, text following, 2:2 [Footnote 3]

ignorance (wilful) vs diligent review of client's intentions, etc., 2:2 [Footnote 1]

information, providing and withholding, LSUC r. 3.2 to 7.2, Commentary [3]); 2:2 (LSUC r. 3.2 to 2, Commentary [1.1], [1.2]

red flags in real estate transactions, 2:2 (LSUC r. 3.2 to 7.3 (Commentary [4.1], [4.2])

representation, withdrawal from, 2:2 (LSUC r. 3.7 to 1)

rules of professional conduct American Bar Association, Professional Responsibility and Code of Judicial Conduct, **2:2** [Footnote 14]

Canadian Bar Association, Code of Professional Conduct, **2:2**

Law Society of British Columbia, Professional Conduct Handbook, **2:2** [Footnote 3]

- Law Society of Ontario (formerly, Law Society of Upper Canada) Practice Tips, **2:3 [Footnote 6]** Rules of Professional Conduct, **2:2**
- transactions where vigilance is required, 2:2 (LSUC r. 3.2 to 7.3 (Commentary [2])

Removal of property from jurisdiction by debtor, assistance by, **1:6**

Retainer, possible detrimental effect on access to solicitors if retainer found

© 2024 Thomson Reuters, Rel. 4, 4/2024

SOLICITORS—Cont'd

fraudulent, **1:1 et seq.** Solicitor-client privilege, **2:7**

Wealth and inequality, how the law creates (asset protection, trusts, corporate status, bankruptcy law, and the role of lawyers)

see under main heading "Bankruptcy (Canadian federal Bankruptcy and Insolvency Act)," subheading "wealth and inequality, how the law creates (asset protection, trusts, corporate status, bankruptcy law, and the role of lawyers)"

wealth creation by lawyers for elites, through creation of corporate entities and other legal protections from creditors, **9:25** [Footnote 1]

SOLVENCY OF PARTIES

See Insolvency/solvency of parties

SPOUSES

See Family law legislation (provincial) and matrimonial cases

STANDING—DERIVATIVE ACTIONS

Creditor, applicant need not have been, 33:11 Good faith, 33:12

In interests of corporation, 33:12

STANDING—OPPRESSION REMEDIES

Applicant "creditor," **33:11** Improper conduct, **33:4** "Proper" person, **33:4**

STANDING TO IMPEACH ---FRAUDULENT CONVEYANCES

See also Standing to impeach —- fraudulent preferences

Alberta Rules of Court, r. 9.24, 1:5 [Footnote 2], 1:8 [Footnote 81]

Assignments and Preferences Act model, 13:18

Alberta Rules of Court, r. 9.24, 1:5 [Footnote 2], 1:8 [Footnote 81]

Fraudulent Conveyances Act model Alberta Rules of Court, r. 9.24, 1:5 [Footnote 2], 1:8 [Footnote 81] common law spouses cases, 13:11 constructive trust cases, 13:10

STANDING TO IMPEACH —-FRAUDULENT CONVEYANCES

-Cont'd Fraudulent Conveyances Act model -Cont'd contingent claimants, 13:9 [Text Following Footnote 42] creditor of third party, 1:8 [Footnote 67], 13:14 creditors and "others" see Creditors and "others" family law cases, 13:9 judgment creditors, 13:3 lien claimants, 13:12 [Footnote 14] non-judgment creditors/claimants, 13:4 to 13:8 secured creditors generally, 13:12 as "subsequent creditors," 13:12 **[Text Accompanying Footnote** 12] spouses, 13:9 standing to bring a claim, confused with the nature of the claim itself, 7:9 [Quoted Passage and Text **Following Footnote 42**] subsequent creditors generally, 13:13 as "secured creditors," 13:12 [Text Accompanying Footnote 12] Intent of debtor, 13:19 Judgment, and, 7:1 to 7:4, 13:4 to 13:8 Prejudicial effect, role of, statutory provisions: any relation to standing?, 14:20 [Footnote 3.500] STANDING TO IMPEACH ----FRAUDULENT PREFERENCES

See also Standing to impeach —- fraudulent conveyances Alberta Rules of Court, r. 9.24, **1:5** [Footnote 2], **1:8** [Footnote 81] Creditor, expanded definition of, **18:2** Judgment, and, **7:1 to 7:4** Licensed insolvency trustees, **18:7** Persons with unliquidated claims, **18:3** Secured creditors, **18:6** Statutes, using phrases such as "void as against the creditor or creditors injured, delayed or prejudiced" (or similar statutory language), whether reference is to a matter of standing or

STANDING TO IMPEACH ---FRAUDULENT PREFERENCES -Cont'd to a substantive matter to be proved by the plaintiff subsequent to any standing issue, 14:20 [Text Preceding and Following Footnote 3.400]; **19:42** [Footnote 2] Subsequent creditors, 18:5 STATUTE OF ELIZABETH AND **OTHER UNITED KINGDOM STATUTES** See also Bankruptcy (Canadian federal Bankruptcy and Insolvency Act); Legislation; Statutes, provincial, fraudulent conveyances and preferences Assignments and Preferences Act Model (re: fraudulent conveyances), and Statute of Elizabeth coexistence of Statute of Elizabeth and fraudulent conveyances provision in Assignments and Preferences Act Model, 1:20; 26:3 differences in proving fraudulent intent, 14:61 Bills of Sale Act, 1:8 [Footnote 77], 14:57 [Text Following Footnote 1] Brevity of, problems associated with, 1:1 Common law and equity see also main heading "Equity" common law (early modern), authority of, 1:11 [Footnote 10] equity, fraud in courts of, 38:1 pre-modern English legislation, 1:12; 38:1 statutory provisions, reason for (certainty, etc.), 1:11 [Footnote 101 Description, Statute of Elizabeth, 1:12 Elizabethan obsession with fraudulent conveyancing, 1:8 [Footnote 63], 1:12 [Footnote 1]

- Harm to creditor: must it be proven under the statute? See Index, main heading "Harm to creditor, must it always be proven for success in action even where fraudulent intent is also proven?"
- Statute of Elizabeth, and, **1:7**, **14:20** Inception of voidable transactions law, **1:1** [Footnote 5], **1:12** [Footnote 1]

Interpretation, broad/liberal

see under main heading "Legislation," then sequentially "voidable transactions statutes," "liberal/ broad interpretation?"

Landlord and tenant matters, tenant's fraudulent removal of inventory and landlord's right of distraint. See generally Index, main heading "Landlord and tenant matters"

United Kingdom legislation, 37:1 [Text Accompanying Footnote 27], 37:5 [Text Accompanying Footnote 10]

Law of Property Act, 1925, c. 20 (U.K.), 1:16 [Footnote 2]

Legacy of Statute of Elizabeth, 1:27 to 1:29, 14:40

criminal and quasi-criminal provisions of, relevance to provincial voidable transactions law, **1:26 to 1:29**

forfeiture and penalty provisions, relevance to provincial voidable transactions law, **1:19** [Text Accompanying Footnote 3]

pleading both Statute of Elizabeth and provincial Fraudulent Preferences Act

(coexistence of provincial voidable transaction statutes (including, where applicable, the Statute of Elizabeth) and related Bankruptcy and Insolvency Act provisions respecting frauds on creditors), **26:3**

Alberta, **1:19** [Footnote 6] general, **1:8** [Text Accompanying

Footnote 62]; 1:20; 1:38 retention, problems, **1:19 [Text**

Accompanying Footnote 4, 5]

Preferences

not covered by Statute of Elizabeth, 1:8 [Text Preceding and Following Footnote 106], 1:15 [Footnote 2]

common law right to challenge fraudulent preferences created in insolvency and bankruptcy proceedings, 1:15 [Text Following Footnote 3]

© 2024 Thomson Reuters, Rel. 4, 4/2024

STATUTE OF ELIZABETH AND OTHER UNITED KINGDOM STATUTES—Cont'd Preferences—Cont'd

not covered by Statute of Elizabeth, **1:8** [Text Preceding and Following Footnote 106], **1:15** [Footnote 2] —Cont'd exception: where preference was a cloak to benefit the debtor, **1:8** [Text Following Footnote 107] see also main heading "Sham transactions" Pre-modern English legislation, **1:14** statutes earlier than Statute of Elizabeth dealing with aspects of fraudulent conveyances, **1:14** [Text Accompanying Footnotes 1 to 4],

38:1 et seq. Pretense, concerning the nature of debtor's conveyance, 1:8 [Footnote 84]

Short-form title sometimes, but rarely, used instead of Statute of Elizabeth, 1571, or 13 Eliz. 1, c. 5 (1571): Fraudulent Conveyances Act, 1571, 1:13

Statute of Elizabeth and Assignments and Preferences Act Model

coexistence of Statute of Elizabeth and fraudulent conveyances provision in Assignments and Preferences Act Model, **1:20**

(coexistence of provincial voidable transaction statutes (including, where applicable, the Statute of Elizabeth) and related Bankruptcy and Insolvency Act provisions respecting frauds on creditors)., **26:3**

differences in proving fraudulent intent, **14:61**

Statute of Elizabeth as part of provincial law, **1:8** [Footnote 78], 26:3

Tangible and intangible property, application of Statute to, **9:2 to 9:17**

Whether the same transaction may be both, or either, a fraudulent conveyance (under, inter alia, the Statute of Elizabeth) and a fraudulent preference, 1:1 [Text Preceding and Following Note 13]; 1:8 [Text Following Note 118]; 1:36 to 1:41.50, 1:41.70, 1:41.75, 1:42; 38:3 [Text

STATUTE OF ELIZABETH AND OTHER UNITED KINGDOM STATUTES—Cont'd Preceding Footnote 3]

STATUTES, PROVINCIAL, FRAUDULENT CONVEYANCES (INCLUDING THE STATUTE OF ELIZABETH) AND PREFERENCES

See also main headings "Bankruptcy (Canadian federal Bankruptcy and Insolvency Act)"; "Fraudulent conveyances"; "Fraudulent preferences"; "Legislation"; "Statute of Elizabeth and other English statutes."

Brevity of Statute of Elizabeth, problems associated with, 1:1

- Coexistence of provincial voidable transaction statutes (including, where applicable, the Statute of Elizabeth) and related Bankruptcy and Insolvency Act provisions respecting frauds on creditors, **26:3**
- Interpretation, broad/liberal

see under main heading "Legislation," then sequentially "voidable transactions statutes," "liberal/ broad interpretation?"

- List of statutes applicable in Canadian provinces (including the Statute of Elizabeth), **1:8 [Footnote 81]**
- Whether the same transaction may be both, or either, a fraudulent conveyance (under, inter alia, the Statute of Elizabeth) and a fraudulent preference, **1:36 to 1:41.75, 1:42**

SUMMARY AND OTHER SIMILAR PROCEEDINGS

See Proceedings and procedure

SURETY OF DEBTOR'S DEBT

As a "creditor" under preference legislation, **18:2**

Payment to, as preference, 19:5

SUSPICIOUS CIRCUMSTANCES Generally, 14:41 to 14:43, 14:49

TAX SHELTERING ARRANGEMENTS

See main heading "Estate planning"

Index-76

TENANT, FRAUDULENT REMOVAL OF INVENTORY AND LANDLORD'S RIGHT OF DISTRAINT

See Index, main heading "Landlord and tenant matters" Generally, **37:2**

TERMINOLOGY ("DEBTOR," "CREDITOR," ETC.)

Generally, 1:9

TESTIMONY OR EVIDENCE OF DEBTOR OR TRANSFEREE

Failure to testify or give evidence, **14:42** [Text at Footnote 110]

Value of testimony or evidence of debtor or transferee

corroboration, 14:42 [Text Accompanying Footnote 111], 14:59 [Text Accompanying Footnote 11]

general, 14:42 [Text Accompanying Footnote 111], 14:59 [Text Accompanying Footnote 11]

TITLE, CHANGE OF REGISTRATION ON SUCCESSFUL IMPEACHMENT OF FRAUDULENT CONVEYANCE Generally, 7:6 [Footnote 10]

TOOLS OF THE TRADE EXEMPTION Generally, 9:4 to 9:12

TORT

Actual damage or injury as necessary element of negligence liability, **14:19** [Footnote 1]

Deceit, remedy for, 7:16

Deceit, unfair competition, and interference with profitable relations they maintain with business associates or employees, remedy against, **7:17** [Footnote 4]

Harm, need to prove, 7:16

Intentional interference with the economic expectations of an aggrieved judgment creditor, **7:17** [Footnote 6] fraudulent conveyance as, **7:17** [Foot-

note 6]

Knowing receipt, tort of, 1:1 [Footnote 18]; 1:35 [Footnotes 8, 22]

TORT—Cont'd

- Negligence or negligent misstatement, remedies under, preferable to imposition of fiduciary duties, **11:1** [Footnote 7]
- Purpose of, distinguished from fraudulent conveyances, 1:35 [Footnote 8]
- Remedy, where preferable to imposition of fiduciary duties, **10:1**
- Whether transferee may be liable for intentional interference with economic expectations of judgment creditor, **7:16**

TRACING PROPERTY FRAUDULENTLY RECONVEYED BY DEBTOR'S TRANSFEREE, AND PROCEEDS RESPECTING THE SALE OF SUCH PROPERTY

See also Index, main headings: "Enforcement of money judgments"; "Pecuniary judgment directly against fraudulent transferees"; "Tort"; then "Intentional interference with the economic expectations of an aggrieved judgment creditor"

Calculation of monetary judgment against transferee, 7:14

General, 11:1 et seq., 7:1 et seq.

Proceeds of enforcement proceedings, distribution of. See Index, main heading "Creditors' relief legislation"

Recovery of proceeds from transferee, **11:1 et seq.**

fraudulent transferee as trustee of proceeds replacing transferred property, for the benefit of defrauded creditors (Westinghouse Canada Ltd. v. Buchar), **15:15.50** [Footnote **11**]

Ontario and British Columbia tracing provisions in fraudulent preferences statutes, applicability to proceedings under fraudulent conveyances statutes (Westinghouse Canada Ltd. v. Buchar), **11:1** [Text Following Footnote 15]

tracing provisions and a liberal interpretation of preference legislation, **11:1** [Text Fol-

© 2024 Thomson Reuters, Rel. 4, 4/2024

TRACING PROPERTY

FRAUDULENTLY RECONVEYED BY DEBTOR'S TRANSFEREE, AND PROCEEDS RESPECTING THE SALE OF SUCH PROPERTY —Cont'd

See also Index, main headings: "Enforcement of money judgments"; "Pecuniary judgment directly against fraudulent transferees"; "Tort"; then "Intentional interference with the economic expectations of an aggrieved judgment creditor" —Cont'd

- Recovery of proceeds from transferee, 11:1 et seq.—Cont'd
- Ontario and British Columbia tracing provisions in fraudulent preferences statutes, applicability to proceedings under fraudulent conveyances statutes (Westinghouse Canada Ltd. v. Buchar), **11:1 [Text Following Footnote 15]**—Cont'd **lowing Footnote 15]** Theories behind, **11:1 [Text Following Footnote 4]**

TRANSACTIONS, VOID/VOIDABLE

See also Conveyance; Fraudulent conveyances; Fraudulent preferences Between relatives and associates generally, 14:47 close relationships inferences arising from, 14:44 suspicious circumstances, and, 14:49, 15:11 24:7 types of close relationships, 14:44 consideration, 15:11 corroboration, 14:48 Induced by fraud, 38:1 et seq. pressure, doctrine of, 19:37 [Footnote 241 Intent to transfer debtor's interest to transferee, Ontario Fraudulent Conveyances Act, s. 4, expanded voiding provision, 1:8 [Footnote 13], 15:11 [Footnote 8] Registration of transfer deed or other instrument, delay, effect on intent see Registration or filing of transfer deed or other instrument

FRAUDS ON CREDITORS: FRAUDULENT CONVEYANCES AND PREFERENCES

TRANSACTIONS, VOID/VOIDABLE —Cont'd

Registration of transfer deed or other instrument, delay, effect on intent —Cont'd types of close relationships, **14:44** Sham and genuine see Sham transactions Timing, **14:1 to 14:39** Transfers at undervalue (s. 96, BIA), **26:1 et seq.**, **27:1 et seq.**, **28:1 et seq.** see main heading "Bankruptcy (Canadian federal Bankruptcy and Insolvency Act)," at subheading "transfers at undervalue"

TRANSFERABILITY OF PRIVATE COMPANY SHARES

See Corporations, private or closely-held corporations

TRANSFEREE

Advice given to, by solicitors and others, 14:7 Benefit, transferee not receiving, 15:14 [Footnote 62] Due diligence, lack of, 2:2 [Footnote 1], 15:14 [Footnote 62] Failure to inquire, 2:2 [Footnote 1], 15:14 [Footnote 62] Good bargain, transferee seeking only, 15:14 [Footnote 39] Intent to transfer debtor's interest to transferee, Ontario Fraudulent Conveyances Act, s. 4, expanded voiding provision, 1:8 [Footnote 13], 15:3 [Footnote 1] Monetary and pecuniary judgment against, 7:11 to 7:17 Notice or knowledge of debtor's fraudulent intent (fraudulent conveyances) see also Concurrent intent doctrine Assignments and Preferences Act model. 16:3 Fraudulent Conveyances Act model, 10:1 [Footnote 2], 15:13 to 15:15 whether notice or knowledge constitutes "dishonesty," 1:29 see also Deceit and dishonesty, in relation to fraud Personal action against, 7:7 [Text at Footnote 72], 11:1 [Text at Footnote 9]

TRANSFEREE—Cont'd Prince Edward Island, abolition of need to prove transferee's notice or knowledge, 15:14 [Footnote 20], 19:10 [Footnote 1], 19:10 [Text Following Footnote 7] Remedies against see Remedies Remedies of transferee, after impeachment see also main heading "Illegal transactions" general, 7:13 "innocent" transferee, protection of, 7:26 law reform Law Reform Commission of British Columbia, 7:26 New Brunswick Department of Justice, Law Reform Division (1976), 7:24 Ontario Law Reform Commission, 7:25 Uniform Law Conference of Canada, 7:27 to 7:30 Buckwold Progress Report (2009), 7:28 to 7:30 Dunlop Feasibility Study (2004), 7:27 preference, creditor probably restored to original position by revival of original claim against the debtor, 7:25 [Footnotes 2, 6], 21:1 Return of property by transferee to debtor, 1:8 [Footnote 5] where insolvent transferee conveys in fraud of transferee's creditors, 1:8 [Footnote 5] Transferee corporation controlled or organized by corporate or noncorporate debtor, 9:24, 9:25, 14:53 [Footnote 6], 15:14 [Footnote 8] Transferee having no control over transferred property, 15:14 [Footnote 62] Transfer made without transferee's knowledge or consent general, 15:14 [Footnote 62] Transferor-transferee liability — income tax, 28:5 [Footnotes 10, 11] Where bond, judgment, proceeding, etc.,

Where bond, judgment, proceeding, etc. **15:13**

TROLLOPE, ANTHONY, THE WAY WE LIVE NOW

- Financial information, difficulty in acquiring and verifying in mid-19th to early-20th century, **1:1** [Footnote 11]
- Harassment of debtors by creditors, 19:36 [Footnote 1]
- Reference to The Way We Live Now, 1:1 [Footnote 11]
- Sham transactions, 9:1 et seq.
- Transferee as passive recipient of transfer, 1:1 et seq.; 15:14 [Footnote 62]

TRUSTS

Asset protection trust laws, "bulking up," 1:1 [Text Accompanying Footnote 20], 9:17 [Footnote 2]

Badges of fraud

- See Index, main heading "Badges of fraud," then sequentially "Examples (non-exhaustive)," "trusts"
- Bankruptcy (Bankruptcy and Insolvency Act)
 - See Index, main heading "Bankruptcy (Canadian federal Bankruptcy and Insolvency Act)," then (1) sequentially "Preferences," "elements of impeachable preference," "insolvency of bankrupt"; and (2) sequentially "Transfers at undervalue," "insolvency"
- Bare trustee, 9:17
- Beneficiary's interest, as conveyance, 9:18 to 9:33
- Cases (general), 9:17, 13:1 [Footnote 2], 14:51, 14:59, 14:60
- Constructive, **14:60** [Footnote 20] claim, sufficient to grant standing, **13:7** [Footnote 4], **13:10**
- common law spouses, 13:11
- Declaration of trust against direct transferee from debtor, **11:1**
 - where direct transferee makes no further transfer, **7:10** [Text

Accompanying Footnote 6]

where direct transferee subsequently transfers the fraudulently conveyed property to innocent second transferee, **1:1 et seq.**, **7:10** TRUSTS—Cont'd Enforcement by transferor against transferee, 6:1 et seq. see also Advancement, presumption of Illegality and, 6:3 Property held in trust, 9:17, 13:1 [Footnote 2] Sham trusts badges of fraud, use of, to challenge sham trusts, 14:43 definition, 14:43 [Text Following Footnote 6] invalidity of, 14:43 purpose of (fraudulent, deceitful or illegal purpose), 14:43 [Text Following Footnote 6] settlor's intention, 14:43 [Text Following Footnote 6] Tracing property and proceeds, fraudulent transferee as trustee of proceeds replacing transferred property, for the benefit of defrauded creditors (Westinghouse Canada Ltd. v. Buchar), 15:15.50 [Footnote 11] Transferee as trust beneficiary, 24:3 [Footnote 5] Use of, to shield assets of "superrich" generally, 1:1 [Footnote 10], 1:1 [Text Following Footnote 24], 1:1 [Footnote 32], 1:15 [Footnote 6], 9:17 [Footnote 2], 14:51 [Footnote 2] wealth and inequality, how the law creates (asset protection, trusts, corporate status, bankruptcy law, and the role of lawyers) see under main heading "Bankruptcy (Canadian federal Bankruptcy and Insolvency Act)," subheading "wealth and inequality, how the law creates (asset protection, trusts, corporate status, bank-

UNITED STATES LAW

Discussion by American courts and commentators (see, inter alia, reference to Alces and Glenn in List of Works Abbreviated in Footnotes), 1:1
[Footnote 22], 1:2 [Footnote 24], 1:7 [Footnote 4], 1:8 [Footnote 5],

lawyers)."

ruptcy law, and the role of

 $\ensuremath{\mathbb{O}}$ 2024 Thomson Reuters, Rel. 4, 4/2024

UNITED STATES LAW—Cont'd

1:8 [Footnote 15], 1:8 [Footnote 16], 1:8 [Footnote 25], 1:8 [Footnote 39], 1:8 [Footnote 74], 1:8 [Footnote 103], 1:35 [Footnote 1], 1:35 [Footnote 34], 1:35 [Footnotes 37 to 38], 1:35 [Footnote 45], 1:35 [Footnote 47], 1:35 [Footnote 49], 1:35 [Footnote 69], 1:41 [Footnote 7], 1:41 [Footnote 9 to 10], 1:41 [Footnote 13], 1:43 [Footnote 4 to 5], 2:1 [Footnote 15], 2:4 [Footnote 23], 2:4 [Footnote 24], 2:4 [Footnote 25], 5:8 [Footnote 2], 5:10 [Footnote 3], 5:10 [Footnote 13 to 14], 5:10 [Footnote 17], 6:1 [Footnote 5], 7:2 [Footnote 3], 7:2 [Footnote 7], 7:2 [Footnote 10], 7:6 [Footnote 2], 7:13 [Footnote 1], 9:2 [Footnote 1 to 3], 9:5 [Footnote 5], 9:5 [Footnote 9], 9:5 [Footnote 13], 9:5 [Footnote 16], 9:5 [Footnote 18], 9:13 [Footnote 2], 9:14 [Footnote 4], 9:22 [Footnote 4], 9:22 [Footnote 5 to 12], 9:23 [Footnote 10], 10:1 [Footnote 11], 13:1 [Footnote 9], 13:5 [Footnote 7], 13:12 [Footnote 2], 14:19 [Footnote 5], 14:19 [Footnote 6], 14:25 [Text **Preceding and Following Footnote** 18], 14:26 [Footnote 1 to 3 and Accompanying Text], 14:26 [Footnote 5], 14:31 [Footnote 1], 14:33 [Footnote 3], 14:33 [Footnote 4], 14:42 [Footnote 27], 14:53 [Footnote 6], 14:72 [Footnote 1], 14:72 [Footnote 2], 15:5 [Footnote 2], 15:6 [Footnote 18], 15:14 [Footnote 8], 17:5 [Footnote 6], 19:29 [Footnote 7], 19:34 [Footnote 7], 20:1 [Footnote 11]

National Conference of Commissioners on Uniform State Laws, Uniform Fraudulent Transfer Act and Uniform Fraudulent Conveyance Act, 1:1 [Footnote 26], 1:2 [Footnote 1], 1:2 [Footnote 2], 1:5 [Footnote 13], 1:8 [Footnote 16], 1:8 [Footnote 38], 1:8 [Footnote 73], 1:8 [Footnote 87], 1:30 [Footnote 7], 2:4 [Footnote 24],9:5 [Footnote 5], 9:5 [Footnote 12], 9:18 [Footnote 7], 9:18 [Footnote 18], 9:18 [Footnote 19], 9:21 [Footnote 4], 9:29 [FootUNITED STATES LAW—Cont'd

note 3], 10:1 [Footnote 11], 10:1 [Footnote 13], 10:4 [Footnote 1], 10:4 [Footnote 3], 10:10 [Footnote 11], 10:11 [Footnote 1, 2], 13:4 [Footnote 3], 13:5 [Footnote 8], 13:12 [Footnote 2], 13:13 [Footnote 24], 13:22 [Footnote 10], 14:3 [Footnote 2], 14:26 [Footnote 5], 14:31 [Footnote 1], 14:42 [Footnote 1], 14:42 [Footnote 24], 14:42 [Footnote 25], 14:42 [Footnote 30], 14:42 [Footnote 31],14:42 [Footnote 61], 14:42 [Footnote 64], 14:42 [Footnote 143], 14:52 [Footnote 23], 14:64 [Footnote 4], 14:69 [Footnote 5], 15:5 [Footnote 2], 15:8 [Footnote 3], 15:10 [Footnote 4], 15:11 [Footnote 6], 15:11 [Footnote 19], 15:14 [Footnote 2], 15:23 [Footnote 1], 19:20 [Footnote 3], 24:10 [Footnote 2], 24:10 [Footnote 3]. 24:16 [Footnote 12 to 13]. 30:5 [Footnote 2], 31:3 [Footnote 5], 38:5 [Footnote 10]

(see also the complete Uniform Fraudulent Transfer Act in the Legislation tab of the text.)

UNJUST ENRICHMENT, DAMAGES FOR

See Damages

UNJUST PREFERENCES

See Fraudulent preferences

UNLIQUIDATED CLAIM See Claim

VOID OR VOIDABLE, FOR FRAUDULENT TRANSACTIONS?

See also Judgment

Bankruptcy

- preferences, use of term "void," 24:2 [Footnote 3]
- transfers at undervalue (s 96, BIA), (commentary on Mercado Capital Corporation v. Qureshi). see main heading "Bankruptcy (Canadian federal Bankruptcy and Insolvency Act)," at subheading "transfers at undervalue," **26:1 et** seq., **27:1 et seq., 28:1 et seq., 29:1 et seq.**

VOID OR VOIDABLE, FOR FRAUDULENT TRANSACTIONS? -Cont'd Provincial law timing of determination, 14:1 to 14:39 "void" meaning of generally, 6:1 meaning void ab initio, not voidable, 6:1 [Text Following Footnotes 2 et seq.] declaration that property "revests in," "reverts to," etc. the fraudulent debtor (that is, conveyance is void ab initio), 7:7 [Text Preceding, Accompanying and Following Footnote 17] "void ab initio" vs. "voidable," effect of impeachment of

VOID OR VOIDABLE, FOR FRAUDULENT TRANSACTIONS? -Cont'd Provincial law-Cont'd "void"—Cont'd meaning of-Cont'd meaning void ab initio, not voidable, 6:1 [Text Following Footnotes 2 et seq.]-Cont'd transaction, 7:5'7:7 WAGES, PAYMENT OF Generally, 20:11, 20:12 WAIVER OF RIGHTS BY CREDITOR Generally, 1:8 [Footnote 10] WARRANT OF ATTORNEY TO **CONFESS JUDGMENT, USE OF,** TO DEFRAUD CREDITORS Generally, 8:2 WILL, GIFTS UNDER Generally, 9:18 to 9:33