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LAW OF VENDOR AND PURCHASER

Victor DiCasteri

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The *Law of Vendor and Purchaser* is the classic work on the law relating to the sale of real estate in Canada. The 3rd edition, in 20 chapters, surveys the statutes and case law in the common law provinces and territories. The first eight chapters explore the formation of the contract for sale or the agreements of purchase and sale. Chapters 9 to 14 canvass the legal issues that arise from the investigation of title to repudiation or abandonment, and from construction of the contract to the position of the parties pending completion. Chapters 15 to 18 examine the selection and pursuit of remedies for vendors and purchasers upon default. Chapters 19 and 20 address the standard of care to be met by solicitors acting for parties to a real estate transaction, and the rights and duties of real estate agents and brokers.

This release features updates to the case law and commentary in Chapters 3 (Parties), 4 (Statute of Frauds), 5 (Offer and Acceptance), 7 (Misrepresentation, Undue Influence and Fraud), 8 (Mistake and Illegality), 10 (Repudiation or Abandonment), 13 (Position of Parties Pending Completion), 16 (Remedies for Default), 17 (Remedies of Vendor), 18 (Remedies of Purchaser) and 20 (Recovery of Commission by Real Estate Agent or Broker).

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Highlights

STATUTE OF FRAUDS—PART PERFORMANCE—THE DOCTRINE and OTHER ACTS—2730453 *Ontario Inc. v. 2380673 Ontario Inc.*, 2025 CarswellOnt 1810 (Ont. C.A) (appeal from order for specific performance of oral agreement for sale of land deemed enforceable based on doctrine of part performance; doctrine applicable to evidence of conduct unequivocally referable to, and amounting to some dealing with, disputed property coupled with detrimental reliance; sole issue whether conduct relied on by trial judge as part performance satisfies detrimental reliance requirement of doctrine; appellant alleges respondent's only contractual obligation was to pay purchase price and no detriment arises since tender refused; appellant rejects other conduct unrelated to final step of closing process and not expressly mandated by terms of agreement as irrelevant on basis such conduct irrelevant to whether respondent irremediably carried out some or all of its obligations to their detriment such that inequitable to rely on Statute of Frauds; appeal dismissed; no error concluding irremediable performance contemplates acts performed in expectation of performance of oral agreement by other party without expectation of discrete monetary compensation; doctrine does not require more than nominal or *de minimus* detriment in monetary terms and time, effort and expense prior to closing accepted in applicable authorities; to allow appellant to walk away after standing by and allowing respondent to prepare for months in commitment to closing without reciprocal enforceable commitment would effectively confer option in appellant's favour which parties did not negotiate.)

MISTAKE AND ILLEGALITY—MISTAKE—UNILATERAL MISTAKE—SPECIFIC PERFORMANCE—Covey v. Dueck, 2025 CarswellAlta 313 (Alta. K.B.) (appeal from summary judgment related to sale of residential property; property under lease and purchase contract contemplated completion and possession prior to end of fixed term tenancy; realtor alleges purchaser wanted tenant to stay beyond possession date; after waiving all conditions, purchaser advised tenant would not vacate prior to end of fixed term and objected; seller attempted to terminate transaction, purchaser obtained order for specific performance on amended closing date, executed assignment of lease and commenced action for damages against seller; appeal dismissed; no error finding date parties agreed to vacant possession or applying and rejecting doctrine of mistake; seller's position no *consensus ad idem* on essential term of vacant possession date contradicts admission parties executed standard form contract and request for rectification which relies on common intention on date; validity of contract, including issue of *consensus ad idem*, finally decided when order for specific performance granted and not subject to re-litigation; surrounding circumstances relating to tenant do not render vacant possession term uncertain especially since standard for contract including entire agreement clause and subjective intentions not proper element of surrounding circumstances.)

REMEDIES OF VENDOR—RECOVERY BY VENDOR OF DAMAGES—MEASURE OF DAMAGES—Marshall v. Hall, 2025 CarswellOnt 1577 (Ont. S.C.J. (Div. Ct.)) (vendor's appeal from damages awarded for purchaser's failure to complete; appellant's sought \$72,496.31 based on differential between sale price agreed to by parties of and actual price obtained after failure to close plus carrying costs and legal costs; trial judge concluded vendor failed to mitigate, rejected actual sale price and relied on respondent's appraisal of market value to assess damages as \$27,875.56; trial judge concluded vendor must act reasonably from date of breach to date of re-sale for damages to be assessed as differ-

ence in sale price; purchaser's appraiser alleged re-marketing process flawed due to reliance on out—dated comparable properties and failure to give sufficient time for exposure to rising market at fair market value; judge rejected general rule best indicator of market value is price willing, arm's length purchaser will pay; appeal allowed; trial judge effectively reversed burden of proof without case authority by concluding seller must establish exceptional circumstances to render decision to sell below market value reasonable; absent proof ultimate purchaser not arm's length third party, expert appraisal evidence irrelevant and re- sale price presumed to be market value; error to find failure to mitigate without evidence more reasonable marketing efforts likely to achieve higher price and to substitute expert opinion on market value for actual sale price.)