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LAW OF VENDOR AND PURCHASER

Victor DiCasteri

Release No. 10, November 2025

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 Chapters 1, 2, 3, 5, 7, 10, 13, 16, 17, 18 and 20.

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Highlights

LAND AND INTERESTS THEREIN—LEGAL SIGNIFICATION—IN GENERAL—*PrairieSky Royalty Ltd v. Yangarra Resources Ltd*, 2025 CarswellAlta 1500 (Alta. C.A.) (appeal from order that bona fide purchaser for value without notice bound to pay overriding royalty on petroleum and natural gas lease for unpatented Crown mineral lands; appellant successor in title unaware of respondent's royalty encumbrance when purchased Crown lease; trial judge held bona fide purchaser without notice is equitable doctrine and only applicable to competing equitable interests; royalty rights runs with land and binds appellant; no error in conclusion royalty is legal interest in land and appellant liable to pay royalty; categories of legal interests in land recognized by common law not closed and development of new legal interests not prohibited in Canada; although cautious approach to recognition of new interests appropriate, common law must be flexible to respond to unique and evolving demands of oil and gas industry; industry custom, public policy and legal authorities support recognition of royalty as legal interest in land where so intended by parties; authorizing bona fide purchaser without notice to acquire minerals free of royalty undermines industry stability and goals of reducing uncertainty and risk of royalty holder marketplace; parties to royalty agreement intended to create legal interest in land; greater vulnerability of royalty-holders compared to leaseholders justifies greater protection afforded legal interest which is binding without notice.)

PARTIES—HUSBAND AND WIFE—RESULTING TRUST—*Crampton v. Lightfoot*, 2025 CarswellOnt 10532 (Ont. S.C.J.) (dispute over property purchased jointly with 2/3 price paid by plaintiff, 1/3 by defendant mother and title registered solely in name of defendant son; defendant son alleges plaintiff served as lender and not entitled to beneficial interest for contribution to purchase by resulting trust; evidence does not establish loan or gift; parties intended plaintiff to be purchaser when funds contributed and plaintiff acted as purchaser and owner at all material times; presumption of resulting trust not rebutted and plaintiff entitled to 2/3 interest in property; order for sale under Partition Act subject to accounting of property expenses.)

REPUDIATION OR ABANDONMENT—REPUDIATION OR ABANDONMENT OF CONTRACT—CONSEQUENCES OF REPUDIATION OR ABANDONMENT—*Chan v. Chan*, 2025 CarswellBC 2212 (B.C. C.A.) (appeal from order concluding both parties repudiated settlement agreement respecting sibling's respective interests in real property by failing to execute mutual release; no error concluding intention to settle petition action not merely conveyancing transaction and includes implicit agreement to execute mutual release; provision of mutual release is implied term of agreement and demand for undertaking from lawyer to provide executed release after closing beyond scope of implied term and indicates unwillingness to be bound; neither party was ready and willing to complete transfer of property, pay proceeds of sale to vendor and resolve terms of release by agreement or court order; since neither party able to complete, neither party in position to accept other's repudiation; settlement agreement remains binding and parties ordered to arrange for new closing date; appeal allowed.)

REMEDIES OF PURCHASER—RECOVERY OF DAMAGES BY PURCHASER—MEASURE OF DAMAGES IN CONTRACT—*Khanna v. Holzel et al.*, 2025 CarswellOnt 11376 (Ont. S.C.J.) (application for assessment of dam-

ages to purchaser for seller's breach of agreement to purchase property; no principled basis to depart from usual rule damages assessed on date of breach unless applicant entitled to rescission or specific performance; applicant accepted breach when respondent unable to remove third party purchaser's certificate of pending litigation registered respecting prior 2020 agreement; even if careless by failing to obtain release in 2020 from third party purchaser, respondent not aware of possibility of third party claim when representing good title in subsequently dealings with applicant; fraudulent misrepresentation of "good title" not established to trigger right of rescission; specific performance not available as uniqueness not established; property offers special value for applicant's intended purpose with no reasonable substitute; evidence establishes current state of property unsuitable as residence for applicant's family, applicant uncertain about residing there for more than one year and purchase arguably for investment; appropriate measure of damages difference between purchase price and market value on date of breach; loss of market value on date of breach assessed based on testimony of appraiser and appraisal evidence addressing market value two months after date of breach.)