Publisher's Note

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LAW OF VENDOR AND PURCHASER

Victor DiCastri Release No. 9, September 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 3, 6, 7, 8, 10, 13, 16 and 19.

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Highlights

MISTAKE AND ILLEGALITY—MISTAKE—IN GENERAL—Hipkins v. Mc-Donald, 2025 SKCA 34 (appeal from order for appellant sister to be bought out by respondent brother by payment of 1/3 value of cabin bequeathed by mother to three children for their use and enjoyment; sister died and her 1/3 interest in cabin passed to her children; cabin located on land leased from provincial Crown and only two parties entitled to be named on lease; parties executed agreement whereby appellant and respondent named on lease and children's 1/3 interest held in trust by appellant; at trial, appellant alleged trust agreement based on common mistake children entitled to interest in cabin and void; appellant relied on mother's will requiring cabin to be held in joint tenancy such that deceased's sister's interest passed by right of survivorship to appellant and respondent and not to her children; no error by chambers judge concluding clear language of will expressed mother's "wish and desire" cabin be transferred in joint tenancy and not mandatory direction; no error concluding common mistake not established and trust agreement valid; no error concluding appellant's more frequent historical use and sentimental attachment not determinative factors which justified order for appellant to buy others out; no error granting respondent right to buy out appellant on basis respondent held majority 2/3 interest, beneficial owners of other 1/3 supported respondent's application, respondent paid greater share of common expenses and respondent commenced court proceedings first; appropriate to order buy out of appellant given that only 1/3 interest will be displaced and respondent and beneficial owners paid expenses to maintain property; appeal dismissed.)

POSITION OF PARTIES PENDING COMPLETION—NOTICE—VACAT-ING AND CANCELLATION OF CERTIFICATE—Fenoglio v. Thompson, 2025 ABCA 212 (appeal from order discharging of amended certificates of pending litigation (CPLs) registered against three residential properties; appellant alleges misappropriated investment funds used to acquire properties and relies on resulting or constructive trust; chambers judge concluded appellant failed to properly plead interest in and undue delay pursuing claim justified discharge of CPLs: right to constructive trust requires plaintiff to plead monetary award inadequate and identify link between plaintiff's contribution and property; no error concluding pleadings amounted to bare assertion of constructive trust against "all assets" without alleging connection to specific properties and effectively constitutes claim for monetary award and accounting; use of wording "interest in land" or "proprietary interest" in pleading not determinative and appropriate for Court to apply scrutiny when evaluating whether true nature of action is legally recognized in rem claim; where essence of claim in personam registration of CPL creates indeterminate cloud on title and discharge of CPL does not deprive party of potential fruits of litigation since no lawful entitlement to proprietary remedy; no particulars of alleged unjust enrichment, breach of fiduciary duty or fraud or link between plaintiff's investment in nebulous business venture, wrongful acts or unjust enrichment of defendant and acquisition, maintenance or preservation of impugned properties by defendant; evidence corroborated that appellant's funds not used by defendant to acquire property in Canada or improve impugned properties and appellant never granted interest in land by defendant; no error in assessment of true nature of appellant's claim as monetary based on pleadings and evidence and order for discharge of CPLs; appeal dismissed.)