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<p>DOMESTIC CONTRACTS, 2ND ED. Hugh G. Stark & Kirstie J. MacLise Release No. 5, July 2025</p>

This text contains the expert analysis and commentary, practical guidance, and sophisticated materials you need to draft effective domestic agreements. Domestic Contracts includes checklists, many sample agreements (including marriage agreements, cohabitation agreements and separation agreements), numerous additional clauses, case annotations, as well as authoritative commentary and relevant case law.

What's New in this Update

This release features extensive updates to Chapter 3 (Cohabitation Agreements).

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Highlights

Case law highlights in this update include:

- **§ 3:52 Support**—*Scharfenberg v. Scharfenberg*, 2024 ONSC 6563, 2024 CarswellOnt 18329 (Ont. S.C.J.)—Parties signed cohabitation agreement in 1991—Agreement contained release of support and property claims under the *Succession Law Reform Act (SLRA)*—Financial disclosure was made, and wife received independent legal advice—Terms of cohabitation agreement were adhered to during parties’ 30-year relationship—Husband did not provide for wife in Will, citing cohabitation agreement—Wife claimed dependant’s relief under *SLRA*—Court examined enforceability of release when assessing wife’s *SLRA* claim—Agreement was not an automatic bar to support claim—*SLRA* s. 63(4) allowed for support despite agreements/waivers—In circumstances, court found wife’s circumstances gave rise to dependency upon husband’s death—Court weighed contributions, financial independence, moral obligations—Wife had disregarded legal advice when signing agreement—Retained assets from prior divorce—Wife benefitted financially from relationship and suffered no detriment—Court declined to award support, as cohabitation agreement barred wife’s claim.
- **§ 3:47 Ownership and Division of Property**—*Johnston v. Goodwin*, 2024 BCSC 1384, 2024 CarswellBC 2204 (B.C. S.C.)—Same-sex partners G and J began romantic relationship in 2013—G won \$12 million in online slot game in 2016—Parties then purchased and lived in a home solely owned by G—Parties signed cohabitation agreement in August 2017—Recital to agreement expressed intention of cohabitation agreement was to maintain “separate property” regime outside the ambit of the B.C. *Family Law Act*—“Shared property” specifically defined in Recital to mean assets registered in both parties’ names, or designated in writing as being owned by both—Cohabitation agreement also included an entire agreement clause—At time cohabitation agreement was signed, only shared property within this definition was a car—Parties agreed that Recital formed part of cohabitation agreement, and was intended to have contractual effect—J, whose job involved providing investment advice to high net worth clients, claimed existence of an oral Fee Agreement with G, entitling J to 50 percent of the share of certain investment returns—G denied existence of oral Fee Agreement and invoked cohabitation agreement to preclude such claims by J—Court found cohabitation agreement focused on governing parties’ relationship in view of *Family Law Act*, not on business or investment arrangements—Subject matter of cohabitation agreement was limited to parties’ financial interdependence upon relationship breakdown, not on precluding existence of separate business contracts between them—Court found genuine issue for trial on whether J was entitled to share of G’s investment returns under alleged oral Fee Agreement.
- **§ 3:83 Marriage of the Parties**—*Krebs v. Cote*, 2021 ONCA 467, 2021 CarswellOnt 9191, 156 O.R. (3d) 663, 459 D.L.R. (4th) 730, 57 R.F.L. (8th) 279 (Ont. C.A.)—Parties began relationship in 2006 with many separations—Entered into cohabitation agreement in December 2012 or January 2013—Wife moved out of husband’s home shortly after—Par-

ties reconciled and married with wife moving back into home, and then relationship broke down for final time in 2019—Wife sought order that cohabitation agreement was invalid, not binding on parties and of no force or effect—Motion judge declared that cohabitation agreement was of no force and effect—Husband appealed—Appeal allowed—Court declared cohabitation agreement still governed parties' rights and obligations—Common law rule respecting effect of reconciliation still applied—Reconciliation did not operate to void cohabitation agreement, absent a clear provision to the contrary—Nor was there a legal presumption that reconciliation brings end to cohabitation agreement—Motion judge made extricable errors of law in interpreting cohabitation agreement—Nothing in its language operated to temporally restrict application of terms to cohabitation as defined time or restricted broad language to cohabitation before separation followed by reconciliation—That there could be multiple separations and reconciliations in future would have been within reasonable contemplation of parties at time agreement was signed—Reading contract as whole in context of relationship of parties at time it was signed, it was intended to apply despite separation and subsequent reconciliation preceding final separation—Broad language of cohabitation agreement evinced objective intention to have agreement apply in general to cohabitation, including that which followed separation and reconciliation.