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DOMESTIC CONTRACTS, 2ND ED.

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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 updates to Chapter 3 (Cohabitation Agreements) and Chapter 4 (Same Sex Cohabitation Agreements).

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Highlights

Case law highlights in this update include:

- **Chapter 3 — Cohabitation Agreements — § 3:47 Ownership and Division of Property** — *J.S. v. M.F. N.-H.*, 2024 NBKB 237 (N.B. K.B.) — Parties began cohabiting in mid-2015 — Man had been living with parents — Parents offered financial assistance to purchase new home and title was registered solely in man's name — Woman refused to sign cohabitation agreement presented immediately after home purchase — Court found it was man's parents who prompted agreement to be drafted — Man was more docile and accommodating to them — Woman was strong-willed — This prompted conflict between parties and man's parents — Woman made it clear she would not relinquish all interest in property — Testified she was unaware man wanted cohabitation agreement until it arrived by mail — Man accepted her refusal and did not insist on signature — Court found this acceptance implied acknowledgment of woman's potential legal claim — Parties thereafter acted as if they had joint interest in property — Woman participated equally in renovations, home improvement, and eventual sale — Woman also contributed to household and family expenses throughout relationship — Court rejected argument that woman had waived any legal interest in home — Found unjust enrichment and joint family venture established — Court awarded woman 50 percent of land value — Rejected notion that absence of signed agreement negated her entitlement — Court noted that cohabitation agreement was never signed and thus had no legal effect.
- **Chapter 3 — Cohabitation Agreements — § 3:52 Support** — *Boyd v. Dreher*, 2025 SKCA 11 (Sask. C.A.) — Parties cohabited for 14 years, and had two children together — Executed cohabitation agreement three years before separation — Agreement included a spousal support clause, indicating woman's entitlement would be calculated based only on employment income — Income calculation was to exclude man's \$2.2 million personal injury settlement, and any income derived from it — Both parties had independent legal advice at time agreement was signed — Upon separation, woman challenged validity of cohabitation agreement — Alleged duress and non-disclosure of settlement amount — Chambers judge made interim order awarding woman spousal support pending trial, using man's full income amount including settlement award — Appeal Court dismissed appeal — Man's income for calculation purposes to include settlement award — In evaluating agreement, chambers judge had implicitly applied principle from *Miglin v. Miglin*, 2003 SCC 24 despite not expressly advertent to decision — Chambers judge's reasons were brief but could be reasonably read as reflecting conclusion that woman raised a reasonable prospect of impeaching cohabitation agreement at trial — Evidence showed duress during negotiations — Man had threatened to end relationship if woman did not sign — Coupled with lack of disclosure around \$2.2 million settlement, situation raised reasonable prospect of successfully impeaching cohabitation agreement at trial — For interim support purposes, chambers judge was correct to give alleged agreement little or no deference — Presence

of independent legal advice did not conclusively validate cohabitation agreement since duress or non-disclosure might still be proven at later trial — Low threshold applied to interim application, and merely called for a reasonable prospect of success at trial — Chambers judge was correct to disregard income exclusion provision in cohabitation agreement at interim spousal support stage.

- **Chapter 3 — Cohabitation Agreements — § 3:80 Independent Legal Advice, Disclosure and Fair Agreement — *K.S. v. D.S.*, 2025 NSSC 198 (N.S. S.C. Fam. Div.)** — Parties cohabited from 2008 to 2021 — Signed two cohabitation agreements, one in 2010, and one in 2020 — Both agreements addressed property and parenting — Man sought to set aside agreements, claiming they should not bind parties — Woman claimed they were valid — Man outright denied signing 2010 agreement, which purported to give woman full interest in property and required him to repay her \$11,500 — 2010 agreement also barred man from any claim to property despite mortgage and title being in his name — Man and his father had done extensive renovations to property — Man acknowledged signing a document titled “Separation Agreement” in 2020, but disputed its contents and was not certain he had signed the version woman filed with court — Man claimed woman routinely asked him to sign documents without explanation, or to sign blank documents to be filled in later — Neither party had independent legal advice — Financial control rested with woman — Court found procedural flaws in both agreements — Agreements lacked fairness and mutual understanding — Agreement signed in 2010 gave rise to significant unfairness to man, and precluded claims against property regardless of any contribution he may have made — Neither agreement met threshold for validity — Both agreements were declared invalid.

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