

## Index

References given are to page numbers.

- ACCOUNTING PRINCIPLES**, *see also* INTERPRETATION PROVISIONS
- application of, 72-74
  - certainty, 75
  - concepts and principles, 71-72
  - consistency, 74-75
  - generally, 69-71
- ACKNOWLEDGEMENT**, *see also* CLAUSES
- generally, 316
  - principles and cases
    - consensus ad idem, 316-322
    - non est factum, 322-327
    - notice, 327-332
  - recommendations and conclusion, 332
- AMENDMENTS**, *see also* CLAUSES
- generally, 243-245
  - principles and cases
    - boilerplate amendment clauses, treatment of, 252-254
    - oral amendments, 247-249
    - written amendments, 249-252
  - recommendations and conclusion, 254
- APPENDICES**, *see* SCHEDULES AND APPENDICES
- ARBITRATION**, *see also* CLAUSES
- generally, 122-123
  - principles and cases, 123-130
  - recommendations and considerations, 130-131
- ASSIGNMENT**, *see also* CLAUSES
- generally, 183-185
  - principles and cases
    - choses in action, 185-187
    - choses in equity, 185-187
    - contractual provisions restricting rights of assignment, 190-195
    - generally, 185-187
    - novation and delegation, 187-189
    - presumption of assignability, 189
  - recommendations and conclusion, 195
- ATTESTATION AND SEALS**
- attestation, 368-369
  - generally, 366-367
  - recommendations and conclusion, 372
  - seals, 369-371
  - testimonium and, 365-366. 368
- BARGAINING POWER, INEQUALITY OF**, 297-298
- BINDING EFFECT AND ENUREMENT**, *see also* CLAUSES
- generally, 283-287
  - principles and cases, 287-291
  - recommendations and conclusion, 291-292

**BOILERPLATE CLAUSE**

- generally, 1-4, 373

**BUSINESS DAY**, *see also* INTERPRETATION PROVISIONS

- generally, 98-99
- principles and cases, 99
- recommendations, 100

**CAPITALIZED TERMS**, *see also* INTERPRETATION PROVISIONS

- generally, 84-85
- principles and cases, 85
- recommendations, 85-86

**CAVEAT EMPTOR**, 158**CLAUSES**

- acknowledgement, *see* ACKNOWLEDGEMENT
- amendments, *see* AMENDMENTS
- arbitration, *see* ARBITRATION
- assignment, *see* ASSIGNMENT
- binding effect and enurement, *see* BINDING EFFECT AND ENUREMENT
- confidentiality, *see* CONFIDENTIALITY
- costs and legal expenses, *see* COSTS AND LEGAL EXPENSES
- counterparts, *see* COUNTERPARTS
- email, *see* TRANSMISSION BY FACSIMILE OR ELECTRONIC MEANS
- English language and French language, *see* ENGLISH LANGUAGE AND FRENCH LANGUAGE
- force majeure, *see* FORCE MAJEURE

- further assurances, *see* FURTHER ASSURANCES
- independent contractor, *see* INDEPENDENT CONTRACTOR
- independent legal advice, *see* INDEPENDENT LEGAL ADVICE
- joint and several obligations, *see* JOINT AND SEVERAL OBLIGATIONS
- limitation of actions, *see* LIMITATION OF ACTIONS
- limitation of liability, *see* LIMITATION OF LIABILITY
- liquidated damages, *see* LIQUIDATED DAMAGES
- “no announcement” or “no publicity”, *see* NO ANNOUNCEMENT OR NO PUBLICITY
- notices, *see* NOTICES
- novation, *see* NOVATION
- prior agreement, *see* PRIOR AGREEMENT
- remedies, *see* REMEDIES
- severability, *see* SEVERABILITY
- survival, *see* SURVIVAL
- time, *see* TIME
- transmission by facsimile or other electronic means, *see* TRANSMISSION BY FACSIMILE OR ELECTRONIC MEANS
- waiver, *see* WAIVER

**COLLATERAL AGREEMENT**, *see* ENTIRE AGREEMENT, *see also* AMENDMENTS — oral agreements, *see also* AMENDMENTS — written agreements**COMMENCEMENT CLAUSE**

- generally, 7, 9-11

- COMMENCEMENT**  
**CLAUSE** (*cont'd*)
- parties and, 24
- COMMERCIAL AGREEMENT**
- generally, 5-6
- CONFIDENTIALITY**, *see also*  
**CLAUSES**
- generally, 344-345
  - principles and cases
    - confidentiality clause, whether necessary, 348-351
    - equitable duty of confidentiality, 346-348
    - generally, 345-346
    - judicially imposed limitations, 352-354
    - obligations to disclose, 352-354
  - recommendations and conclusion, 354
- CONSENSUS AD IDEM**, 316-322, 129-130, 244-245
- CONSIDERATION**
- generally, 31-33
  - principles and cases, 33-35
  - recommendations and conclusion, 35
- CONTRA PROFERENTUM RULE**, 52, 62, 90, 142
- CORPORATIONS**, *see also*  
**PARTIES**
- as parties, 20-21
- COSTS AND LEGAL EXPENSES**, *see also* **CLAUSES**
- generally, 162-164
  - principles and cases, 164-182
  - recommendations and conclusion, 182-183
- COUNTERPARTS**, *see also*  
**CLAUSES**
- generally, 332-334
  - principles and cases, 334-337
  - recommendations and conclusion, 337
- CURRENCY**, *see also*  
**INTERPRETATION**  
**PROVISIONS**
- generally, 100
  - principles and cases, 100-106
  - recommendations, 106
- DATE**
- generally, 9-11
- DEFINITIONS**, *see also*  
**INTERPRETATION**  
**PROVISIONS**
- generally, 40-41
  - principles and cases, 41-42
  - recommendations and conclusion, 44-45
  - types
    - confining, 42
    - enlarging, 42
    - restricting, 42
- DELEGATION**, *see* **ASSIGNMENT**
- DURESS**, 294-297
- EJUSDEM GENERIS**, 133-135
- Email**, *see* **TRANSMISSION BY**  
**FACSIMILE OR ELECTRONIC**  
**MEANS**
- ENGLISH LANGUAGE AND**  
**FRENCH LANGUAGE**, *see also* **CLAUSES**
- generally, 279-281
  - principles and cases, 281-283
  - recommendations and conclusion, 283

**ENTIRE AGREEMENT**, *see also*  
INTERPRETATION  
PROVISIONS

- generally, 45-51
- principles and cases, 51-64
- recommendations and conclusion, 64

**ENUREMENT**, *see* BINDING  
EFFECT AND ENUREMENT**EXTENDED MEANINGS**, *see also*  
INTERPRETATION  
PROVISIONS

- generally, 65-67
- principles and cases, 67-68
- recommendations and conclusion, 68-69

**FIDUCIARY RELATIONSHIP**

- existence of relationship
  - confidentially clause, 352
  - executors and administrators, 285
  - solicitor-client, 2
- relevance to
  - accounting principles, 70-71
  - costs, 173
  - independent legal advice, need for, 303-308, 299-303, 314
  - undue influence, 299-303

**FORCE MAJEURE**, *see also*  
CLAUSES

- generally, 131-133
- principles and cases, 133-135
- recommendations and considerations, 136

**FRENCH LANGUAGE**, *see*  
ENGLISH LANGUAGE AND  
FRENCH LANGUAGE**FUNDAMENTAL BREACH**, 137-  
141, 60-63**FURTHER ASSURANCES**, *see also*  
CLAUSES

- generally, 254-256
- principles and cases
  - generally, 256-264
  - implied terms, 264-266
- recommendations and conclusion, 266-267

**GOVERNING LAW**, *see also*  
INTERPRETATION  
PROVISIONS

- generally, 86-88
- principles and cases
  - choice of forum, 92-97
  - choice of law, 88-91
- recommendations and considerations, 97-98

**HEADINGS**, *see also*  
INTERPRETATION  
PROVISIONS

- generally, 76
- principles and cases, 77-78
- recommendations and conclusion, 78-79

**INDEPENDENT CONTRACTOR**,  
*see also* CLAUSES

- generally, 360
- principles and cases, 360-363
- recommendations and conclusion, 363-364

**INDEPENDENT LEGAL ADVICE**,  
*see also* CLAUSES

- generally, 292-293
- principles and cases
  - duress, 294-297
  - fiduciary relationship, 303-304
  - general rule and exceptions, 293-294

**INDEPENDENT LEGAL****ADVICE** (*cont'd*)

- independent legal advice, 308-314
- inequality of bargaining power, 297-298
- unconscionability, 304-308
- undue influence, 299-303
- recommendations and conclusion, 315

**INDENTURE**

- counterparts and, 333
- generally, 10

**INDIVIDUALS, AS PARTIES,** *see also* PARTIES

- generally, 14-15
- on behalf of corporation to be incorporated, 15-17
- power of attorney, 17-18
- trustee, 18-19

**INTERPRETATION PROVISIONS**

- accounting principles, *see* ACCOUNTING PRINCIPLES
- business day, *see* BUSINESS DAY
- capitalized terms, *see* CAPITALIZED TERMS
- currency, *see* CURRENCY
- definitions, *see* DEFINITIONS
- entire agreement, *see* ENTIRE AGREEMENT
- extended meanings, *see* EXTENDED MEANINGS
- generally, 37-40
- governing law, *see* GOVERNING LAW
- headings, *see* HEADINGS
- references, *see* REFERENCES
- schedules and appendices, *see* SCHEDULES AND APPENDICES

**JOINT AND SEVERAL****OBLIGATIONS,** *see also* CLAUSES

- generally, 196-197
- principles and cases, 197-202
- recommendations and conclusion, 202-203

**LANGUAGE,** *see* ENGLISH LANGUAGE AND FRENCH LANGUAGE**LEGAL EXPENSES,** *see* COSTS AND LEGAL EXPENSES**LIMITATION OF ACTIONS,** *see also* CLAUSES

- generally, 144-149
- principles and cases, 149-154
- recommendations and conclusion, 154-156

**LIMITATION OF LIABILITY,** *see also* CLAUSES

- generally, 136-137
- principles and cases, 137-143
- recommendations, 143-144

**LIQUIDATED DAMAGES,** *see also* CLAUSES

- conscionability and reasonableness, 121-122
- generally, 117-119
- principles and cases, 119-122
- recommendations and conclusion, 122

**MERGER, DOCTRINE OF,** 157**MISREPRESENTATION,** 51-64, 173, 292-293, 320, 327-332**NO ANNOUNCEMENT OR NO PUBLICITY,** *see also* CLAUSES

- generally, 355-356
- principles and cases

**NO ANNOUNCEMENT OR NO PUBLICITY** (*cont'd*)

- • commercial transactions, 356-358
- • litigation settlements, 358-359
- • severance agreement, 358
- recommendations and conclusion, 359

**NO PUBLICITY**, *see* NO ANNOUNCEMENT OR NO PUBLICITY**NON EST FACTUM**, 322-327**NOTICE OF SPECIFIC TERMS, AS DEFENCE TO LIABILITY**, 327-332**NOTICES**, *see also* CLAUSES

- generally, 214-219
- principles and cases, 219-225
- recommendations and conclusion, 225-227

**NOVATION**, *see also* CLAUSES

- generally, 337-338
- principles and cases, 338-343
- recommendations and conclusion, 343-344

**PAROL EVIDENCE RULE**, 39, 50-51, 51-64, 239, 242, 244-245, 247-249**PARTIES**

- among, 13-14
- between, 13-14
- by and between, 13-14
- corporations, 20-21
- defining parties, 22-24
- generally, 13-14
- individuals, 14-19
- • generally, 14-15
- • on behalf of corporation to be incorporated, 15-17

- • power of attorney, 17-18
- • trustee, 18-19
- partnerships, 19-20

**PARTNERSHIPS**, *see also* PARTIES

- as parties, 19-20

**PRIOR AGREEMENT**, *see also* CLAUSES

- generally, 234-236
- principles and cases, 236-242
- recommendations and conclusion, 242

**RECITALS**

- generally, 25-29

**REFERENCES**, *see also* INTERPRETATION PROVISIONS

- generally, 79-81
- principles and cases, 81-83
- recommendations and conclusion, 84

**REMEDIES**, *see also* CLAUSES

- generally, 114-115
- principles and cases, 115-117
- recommendations and considerations, 117

**SCHEDULES AND APPENDICES**, *see also* INTERPRETATION PROVISIONS

- generally, 107
- principles and cases, 108-110
- recommendations and conclusion, 110

**SEALS**, *see* ATTESTATION AND SEALS**SEVERABILITY**, *see also* CLAUSES

- generally, 267-269
- principles and cases, 269-278

**SEVERABILITY** (*cont'd*)

- recommendations and conclusion, 278-279

**SEVERAL OBLIGATIONS**, *see* JOINT AND SEVERAL OBLIGATIONS**STATUTES**

- Arbitration Acts, 123-130, 130-131
- Business Corporations Acts, 15-16, 20-21, 196, 270, 369-370
- Charter of the French Language (Que.), 280-282
- Currency Act (Fed.), 101-102, 106
- Electronic Commerce Acts, 224, 227-234
- Interpretation Acts, 18, 66-67, 82-83, 90, 99, 229, 230-231
- Judicature Act (England), 185-186, 204, 206, 208, 237
- Law and Equity Act (B.C.), 164, 178-180, 185
- Legislation Act (Ont.), 66, 67, 82, 99, 230
- Limitations Acts, 144-149, 155, 370
- Partnership Acts, 19-20, 200
- Powers of Attorney Acts, 17
- Rules of Civil Procedure, 99, 162, 164-165, 173, 218, 231
- Statute of Frauds, 34, 113, 186, 223, 230, 232-233, 234, 239, 245-246, 336, 342
- Substitute Decisions Act (Ont.), 17

**SURVIVAL**, *see also* CLAUSES

- generally, 156-158
- merger, doctrine of, 157
- principles and cases, 158-160
- recommendations and conclusion, 160-161

**TESTIMONIUM**

- attestation and seals and, 368
- generally, 365-366
- recommendations and conclusion, 372

**TIME**, *see also* CLAUSES

- generally, 203-205
- principles and cases, 205-214
- recommendations and conclusion, 214

**TITLE OF AGREEMENT**

- generally, 7

**TRANSMISSION BY****ELECTRONIC MEANS**, *see* TRANSMISSION BY FACSIMILE OR ELECTRONIC MEANS**TRANSMISSION BY FACSIMILE OR ELECTRONIC MEANS**, *see also* CLAUSES

- generally, 227-228
- principles and cases
  - date of delivery, 233
  - effectiveness of document, 228-230
  - “in writing” requirements, 230-231
  - signed original, simultaneous or subsequent delivery, 232
- recommendations and conclusion, 234

**UNCONSCIONABILITY**, 304-308**UNDUE INFLUENCE**, 299-303**WAIVER**, *see also* CLAUSES

- generally, 111-112
- principles and cases, 112-114
- recommendations, 114

