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# Law of Vendor and Purchaser

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 (Parties), 9 (Deduction and Investigation of Title), 12 (The Contract), 13 (Position of Parties Pending Completion), 16 (Remedies for Default), 17 (Remedies for Vendor), 18 Remedies of Purchaser), and 20 (Recovery of Commission By Real Estate Agent or Broker).

## Highlights

### Remedies for Default: Non-Performance, etc., as a Bar to Remedy: Purchaser's Non-Performance — Where Recovery of Deposit by Purchaser Denied

The original ruling held that the deposit was not pre-incorporation contract subject to exclusion of personal liability under s. 21(4) of the *Business Corporations Act*, and instead the deposit was money to secure performance. The judge held that the promoter used express language in s. 21(4) of Act was not personally liable for damages, but the promoter forfeited the deposit to the vendor because the promoter failed to close. The promoter appealed the ruling. The Court of Appeal affirmed that the judge did not err in rejecting the promoter's argument, that under s. 21(4) of the Act, where the contract provided that the promoter was not bound by contract, neither can the promoter be bound by deposit. The purchaser's obligations under a contract of purchase and sale

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were distinct from the obligation incurred by the payer of deposit. The implied term of the deposit was that on a breach of contract by the purchaser, or the promoter on behalf of the intended purchaser, the deposit was forfeited to the vendor. Therefore, it was reasonable for the judge to interpret the phrase “without any personal liabilities” in the context of the contract as a whole, and not applying to deposit: *Benedetto v. 2453912 Ontario Inc.*, 2019 CarswellOnt 2492 (ONCA).

#### **Recovery of Commission By Real Estate Agent of Broker: Real Estate Licensing Legislation**

The Chambers judge order was set aside, and the underlying notice of a civil claim was dismissed. The Court of Appeal held that section 4(1) of the *Real Estate Services Act* reflects a policy decision by the legislature to create an absolute statutory bar from granting compensation to non-licensed and non-exempted individuals for real estate services: *Lindsay v. Ambrosi*, 2019 CarswellBC 3584 (BCCA).

#### **Deduction and Investigation of Title: Possessory Title —Adverse Possession as Foundation for Possessory Title**

At the time the plaintiff purchased real property in 2005, she believed that the western boundary with the neighbouring property was marked by an existing fence. The plaintiff maintained the property up to that fence until the defendant constructed a new fence, which was eight-feet closer to her house after acquiring the neighbouring property in 2012. Although the plaintiff acknowledged the accuracy of the survey showing the legal boundary between properties was actually where the defendant had constructed new fence, she brought an action for declaration of ownership for the eight-foot strip that she had believed to be hers on basis of adverse possession. In order to establish ownership by adverse possession, the plaintiff had to establish that for the period of ten years prior to June 16, 2003, when the properties were converted from the registry to the land titles system, her predecessors in title had actual possession of the eight-foot strip, with an intention to exclude the legal owner and others entitled to possession, and that adverse possession had been open, notorious, constant, continuous, peaceful and exclusive of rights of the true owner. It could be inferred from evidence that the fence in place at the time the plaintiff purchased the property had been constructed by one of her predecessors in title sometime between 1980 and 2005. There was, however, no evidence that the predecessors or others had viewed or treated that fence as a boundary line. The plaintiff had not called any predecessors to give evidence with the result, and there was no evidence that they had done anything with the eight-foot strip that could be said to constitute open and continuous exclusive possession: *McKay v. Vautour*, 2020 CarswellOnt 139 (ONCA).