

BUSINESS

LAW IN

ELEVENTH EDITION

CANADA

RICHARD A. YATES
SIMON FRASER UNIVERSITY

TERESA BEREZNICKI-KOROL
THE NORTHERN ALBERTA INSTITUTE OF TECHNOLOGY

TREVOR CLARKE
AURORA COLLEGE

PEARSON

Toronto

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This book offers a general discussion of legal principles relevant to business students. It is not intended to provide legal advice nor address specific situations. The law discussed in this book was compiled between June 2014 and April 2015. Subsequent changes in the law will not be reflected in the text.

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Preface

In order to ensure that *Business Law in Canada* continues to be a valuable resource to post-secondary instructors and students, the 11th edition has undergone a thoughtful revision, incorporating changes based on the increased importance of the Internet, information technology, and intellectual property. It also incorporates the large amount of feedback and many thoughtful suggestions provided by users of the 10th edition.

CHANGES TO THE 11TH EDITION

The following pedagogical changes have been made to the 11th edition:

- Content from the previous edition's Chapter 14, "Information Technology and the Internet," has been updated and integrated into relevant chapters to better address the pervasive presence of the digital world when making everyday business decisions.
- An increased number of CanLII citations have been incorporated into the text to provide readers with quick access to online materials.
- An increase in the number of visuals, such as tables and checklists, to make content more visually appealing and more accessible to visual learners.

The key changes for each chapter are listed below:

Chapter 1: Managing Your Legal Affairs: Revisions include a Case Summary on the Supreme Court of Canada decision in *Cojocar v. British Columbia Women's Hospital and Health Centre*, in which the Court discussed the presumption of judicial integrity and impartiality, as well as an expanded discussion in the Ethics section regarding corporate social responsibility.

Chapter 2: Introduction to the Legal System: The Case Summaries in this chapter have been updated significantly, including one that discusses *R. v. Caron*. Case Summary 2.2 now focuses on *Craig v. Canada*. A summary of the Supreme Court's decision on physician-assisted suicide (in *Carter v. Attorney General of Canada*) has been added. A summary of *Simpson v. Oil City Hospitality Inc.* is introduced, and the *Campbell River* case has been replaced with *Canada (Attorney General) v. Johnstone*. New Case Summaries examine *Vaughan (City) v. Tsui*, *R. v. Keshane*, and *Smith v. St. Albert (City)*. Table 2.1 has been updated, and material concerning the Mounted Police Association case has been removed.

Chapter 3: The Resolution of Disputes: The Courts and Alternatives to Litigation: The section on Alternatives to Court Action has been moved to the beginning of the chapter. Information relating to jurisdiction from the previous edition's "Information Technology and the Internet" chapter has also been incorporated into this chapter.

Chapter 4: Intentional Torts and Torts Impacting Business: Revisions to this chapter include the refinement of the "unlawful means" tort, as clarified lately by the Supreme Court of Canada, and the effect of the Internet on tort law and privacy from the previous edition's chapter "Information Technology and the Internet."

Chapter 5: Negligence, Professional Liability, and Insurance: The chapter is introduced with a new Case Summary dealing with negligence. The *Crocker v. Sundance* case has been retained, but is located in the section dealing with defences to negligence. In direct response to reviewers' comments, the *Design Services v. Canada* Case Summary has been replaced by a recent product liability case, *More v. Bauer*. A chart detailing what needs to be established to prove negligence has been added. Analysis of strict liability and occupiers' liability has been rearranged, while analysis of the *Hercules* case has been expanded.

Chapter 6: The Elements of a Contract: Consensus and Consideration: A discussion on the Supreme Court of Canada decision in *Bhasin v. Hrynew* has been added to the chapter. The case creates a new “general organizing principle of good faith contractual performance,” and also a common law duty of parties to a contract “to act honestly in the performance of contractual obligations.” Material from the previous edition’s “Information Technology and the Internet” chapter relating to Internet transactions, consensus, and ecommerce legislation has been incorporated into this chapter.

Chapter 7: The Elements of a Contract: Capacity, Legality, and Intention: Material from the previous edition’s “Information Technology and the Internet” chapter relating to Internet transactions, capacity, writing, and ecommerce legislation has been incorporated into this chapter.

Chapter 8: Factors Affecting the Contractual Relationship: Case Summaries have been updated and, in response to reviewer input, the *Ron Engineering* case is addressed. Other additions include two tables on rescission of contract and exceptions to operation of the privity rule.

Chapter 9: The End of the Contractual Relationship: A Case Summary describing the *Tercon* decision has been added together with further marginal notes as needed. Reviewers asked for a detailed review of the status of fundamental breach in contract law, so the approach taken by the courts “before and after” the *Tercon* case has been detailed. Table 9.2, on the effect of the *Frustrated Contracts Act*, has been clarified. The analysis of exclusionary clauses and their enforceability has also been updated.

Chapter 10: Agency and Partnership: The discussion of agency has been carefully delineated from partnership, with the importance of choosing an agent emphasized and fiduciary duty clarified. The discussion of sole proprietors and partnership has been expanded and a summary of items that could be included in a partnership agreement added. The status of a partner being an employee was clarified with a discussion of the Supreme Court of Canada case *McCormick v. Fasken Martineau DuMoulin LLP*. The discussion of limited liability partnerships has been clarified and a section on joint ventures added. Content pertaining to undisclosed principals has been reduced.

Chapter 11: Corporations: Case Summaries have been refreshed with new content and a short section entitled “Shareholder Agreements” has been added to the chapter.

Chapter 12: Employment: Relevant material from the previous edition’s “Information Technology and the Internet” chapter has been incorporated into this chapter. In response to reviewers’ requests, the *Tree Savers* case has returned as Case Summary 12.6. The *R. v. Cole* Case Summary has been updated to include the new ruling from the Supreme Court of Canada. The recent Supreme Court decision in *Potter v. New Brunswick Legal Aid Services Commission* dealing with constructive dismissal has been summarized. Employment law is an area undergoing constant change, so further new cases summarized or discussed include

- *Crisall v. Western Pontiac Buick GMC (1999) Ltd.*,
- *Jardine Lloyd Thompson Canada Inc v Harke-Hunt*,
- *Payette v. Guay Inc.*,
- *Pate Estate v. Galway-Cavendish and Harvey (Township)*
- *Hicks v. HRSDC*
- *Canada (Attorney General) v. Johnstone*
- *Ontario (Attorney General) v. Fraser*

This case is addressed under the Cases and Discussion Questions section:

- *Goudie v. Ottawa (City)*

Chapter 13: Intellectual Property: This new chapter covers relevant material taken from the previous edition's chapter "Real, Personal, and Intellectual Property" and "Information Technology and the Internet," including a discussion on copyright, patents, trademarks, and other forms of intellectual property. The chapter also looks at the protection of private and confidential information and how these subjects intersect with changing technology and the expansion of the Internet.

Chapter 14: Real and Personal Property and Protection of the Environment: In general the chapter content has been condensed and clarified where possible and a major section on the protection of the environment added. Intellectual property has been moved to Chapter 13, as indicated above. The discussion on joint tenancy and tenancy in common has been expanded, as has the discussion of mortgages. In the area of residential tenancies, a list of areas often changed by provincial legislation has been included.

Chapter 15: Priority of Creditors: The section entitled "Alternatives to Bankruptcy" has been moved to the end of the chapter so that the material on bankruptcy would flow more smoothly.

Chapter 16: Sales and Consumer Protection: Discussion of the *Sale of Goods Act* has been simplified. Thus the requirement of writing discussion has been removed and the discussion of FOB, CIF, COD, and bill of lading contracts has been condensed. However, discussion of sales made online and the *International Sale of Goods Act* has been expanded with material from the previous edition's chapter "Information Technology and the Internet." Discussion of the *Federal Competition Act* and the subject of mergers have been reduced. A discussion of identity theft has been added, as well as an examination of the 2001 *Internet Sales Contract Harmonization Template* and an extended discussion of electronic money based on material from the previous edition's chapter "Information Technology and the Internet."

FEATURES

You will find the following text features in the 11th edition:

Learning Objectives provide an overview of the chapter content.

Learning Objective icons appear where the discussion of each learning objective begins.

Provincial icons direct students to additional information in provincial supplements on MyBusLawLab.

Case Summaries appear throughout each chapter. They are used to introduce topics and to provide concrete examples that help students understand key legal issues. Many of the Case Summaries also include Discussion Questions, which help promote a more thorough understanding of the relevant issues, or Small Business Perspectives, which identify the relevant legal issues facing small business owners.

Marginal notes summarize adjacent paragraphs and highlight key points.

Reducing Risk boxes are featured throughout the text. Each Reducing Risk box describes what the sophisticated client would do in the business situation the box presents.

Diagrams illustrate cases with complex fact patterns.

Key legal terms appear in bold and full definitions appear in the Glossary.

Summaries in point form promote quick review and reference.

Finally, we remind all who use this text that it is designed as a tool for learning business law and not as an authoritative source of legal advice. When faced with a specific legal problem, the reader is advised to seek the assistance of a lawyer.

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Instructor Supplements

Business Law in Canada, 11th Edition, is accompanied by a complete package of instructor supplements. Some of the following items are available for download from a password-protected section of Pearson Canada's online catalogue at <http://catalogue.pearsoned.ca>; see your Pearson Canada sales representative for details and access.

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Acknowledgments and Dedications

As has been the case in every new edition of *Business Law in Canada*, reviewers have played an important role in correcting, reshaping, and updating the book, and we would like to acknowledge their invaluable contributions. In addition to providing encouragement and insight into what instructors want and need, they provide an important connection to the people this book is designed to serve.

We thank all those who have patiently gone over the text and made suggestions for revision, including Lorrie Adams, MacEwan University; Michael Bozzo, Mohawk College; Douglas Kennedy, NAIT; Daniel Le Dressay, Langara College; Douglas Peterson, University of Alberta; Joseph Radocchia, University of Waterloo; Mark Schwartz, York University; Don Valeri, Douglas College.

I am grateful for the opportunity to continue contributing to *Business Law in Canada* and wish to express my gratitude to my co-writers, Trevor and Teresa, for their leadership and dedication to the text. The writing and publishing of a textbook requires a coordinated effort by many people. Pearson Canada provided us with a team of enthusiastic and knowledgeable people, all of whom willingly helped us in many ways. I appreciate and acknowledge the assistance and support received from Carolin Sweig, Karen Townsend, Jessica McInnis, Leona Burlew, Kimberley Blakey, and Alex Li at Pearson Canada.

Finally, I would like to thank my wife, Ruth, who continues to lend her support to this effort. I would like to dedicate this edition of the text to her, our children, their partners, and our grandchildren.

—Richard A. Yates, LLB, MBA

Allow me to acknowledge my colleagues and the students at NAIT. Working within such a supportive environment has been a real pleasure. I value the positive energy of Anna Beukes, chair of the School of Finance, and Tad Drinkwater, Peter Nissen, and Perri Sinal, dean and associate deans, respectively, for the JR Shaw School of Business. My colleagues who teach business law, Douglas Kennedy, Kim Watamaniuk, Anne Henderson, Craig Grubisich, Angus Ng, Chelsea-Evans Rymes, Justin Matthews, and Robin Kaulback, have all contributed to the success our course has had in creating sophisticated clients. Thank you for all your efforts.

I would like to dedicate the 11th edition to my husband, Rick, and my supportive family, whose plans were frequently adjusted to accommodate my work. Have I told you lately that I love you?

—Teresa Bereznicki-Korol, BA, JD

I would like to dedicate the 11th edition to all of the students I have taught using *Business Law in Canada*. My interactions with my students have always been inspiring, and watching them develop into sophisticated clients continues to be incredibly satisfying and motivating. Given that, it only seems right to dedicate this edition of the textbook to all of them, wherever they are and whatever they are doing.

I would like to thank one of those former students in particular, Sherry Baxter. Now a practising lawyer, Sherry did the research required to update the legislation and case law relevant to the chapters in the 11th edition for which I was responsible. This task is time consuming and demanding. Sherry did an excellent job and provided comments, insights, and suggestions that were extremely helpful. Thank you once again, Sherry.

I would also like to acknowledge the unwavering support of my wife, Peggy. The saying “Behind every successful man is a great woman” is definitely true. Preparing a business law textbook is an onerous project. I could not have completed the work required to prepare the 11th edition without Peg’s continued patience, tolerance, understanding, and encouragement. Thank you very much, Peg!

—Trevor Clarke, BSc, MBA, LLB

