LexisNexis® Reference Card: Contracts Law

Extracted from:

Halsbury's® Laws of Canada – ***Contracts 2013 Reissue.*** **Author(s):** Angela Swan, B.Comm., LL.B., B.C.L. & Jakub Adamski, B.A., B.C.L., LL.B., LL.M.

Referenced as HCO in this document

Click here to search this volume on the Quicklaw® service

▼HCO-1▼ Subject matter of contract law. Contract law takes as its subject certain sets of personal rights and duties, normally interconnected,[1] that parties bear because they have assented to the assumption of these obligations.[2] Contract law can be thus understood as an extensive elaboration of what is entailed by the assent to obligations expressed in a contract; what form of assent or consent is adequate to create a contract; and, if one was created, what did the parties agree to do. These questions, in turn, become important when a dispute arises between the parties and a court is asked to resolve it.

Objective understanding of assent. The conception of assent necessary to create a valid contract presented by contemporary Canadian contract law, may, from some points of view, be thought to be confusing but that perception arises only from the fact the courts have to take an objective view of what counts as an expression of assent. Assent in some metaphysical sense is not required; instead, any expression of assent will be tested by asking whether what a party did or said could reasonably be understood as such an expression, even if the subjective intention of the party was to withhold or qualify his or her expression of assent.[3]

Contractual obligations distinguished from other personal obligations. It is the focus on the existence of assent to obligations which distinguishes contract law from tort law and restitution or the law of unjust enrichment. Tort law is normally concerned with personal duties that are imposed on parties externally[4] to protect important social values[5] and the latter deals with the reversal or unwinding of defective transfers of wealth.[6] The three, contracts, tort and unjust enrichment constitute the three major sources of personal rights and duties (or obligations) in the common law.[7] As a unified subject contract law in its modern form is largely a product of nineteenth century legal scholarship.[8] Notwithstanding this history there is still no universal consensus as what is the single unifying principle of contract law[9] and justification[10] for the enforcement of contracts.

Notes

1. See W.N. Hohfeld, "Fundamental Legal Conceptions as Applied in Judicial Reasoning" (1913) 23 Yale L.J. 16 and (1917) 26 Yale L.J. 710 for the leading analysis of the general inter-relationship of rights and duties. More specifically, one of the most controversial features of the common law of contract, consideration, is rooted in the idea that parties' respective contractual obligations and benefits must be related to one another in sense that they were exchanged for each other: see further ▼HCO- 41▼.
2. Similarly, Robert E. Scott, a leading contract law scholar, noted recently in a lecture: "contract law regulates a consensual activity" ("The Death of Contract Law" (2004) 54 U.T.L.J. 369 at 370). Similarly, in voicing his disapproval of being asked retrospectively to re-arrange the terms of what the parties had agreed to, Sir George Jessell M.R., one of the greatest modern equity judges, emphasized the consensual nature of contract: "[I]f there is one thing which more than another public policy requires is that men of full age and competent understanding shall have the utmost liberty of contracting, and that their contracts when entered into freely and voluntarily shall be held sacred..." (*Printing and Numerical Registering Co. v. Sampson* (1875), L.R. 19 Eq. 462 at 465). Commitment to this view has been subject to ebbs and flows in the last 200 years – see especially P.S. Atiyah, *The Rise and Fall of Freedom of Contract* (Oxford: Clarendon Press, 1979).
3. The consequences of the law's adoption of an objective approach to expressions of assent – or, indeed, any other statement or act in a contractual setting – will be further examined in detail at ▼HCO-10▼. Contracts will be created not where actual assent was communicated by the parties, but when the parties' actions would have led an objective observer to conclude that a contract had been created. Similar approach is taken towards the interpretation of contracts: see ▼HCO- 104▼.
4. Thus, for example, one leading scholar states that "[t]he law of tort is concerned with (common law) wrongs, other than breach of a binding promise" which is the proper subject matter of contract law: A. Burrows, "Dividing the Law of Obligations", in A. Burrows, *Understanding the Law of Obligations* (Oxford: Hart Publishing, 1998), 1 at 5. Whether such a neat division can be maintained is questioned in S.M. Waddams, *Dimensions of Private Law* (Cambridge University Press, 2003), Chapter 8.
5. The most important of these social values are the compensation of the injured and the deterrence of the tortfeasor: see, *e.g.*, *Dobson (Litigation Guardian of) v. Dobson*, [1999] S.C.J. No. 41, [1999] 2 S.C.R. 753, 214 N.B.R. (2d) 201, 174 D.L.R. (4th) 1 at para. 48 (S.C.C.).
6. See L.D. Smith, "The Province of the Law of Restitution" (1992) 71 Can. Bar Rev. 672 at 673-76. Following the judgments of the Supreme Court of Canada in *Deglman v. Guaranty Trust Co. of Canada*, [1954] S.C.J. No. 47, [1954] S.C.R. 725, [1954] 3 D.L.R. 785 (S.C.C.) and *Pettkus v. Becker*, [1980] S.C.J. No. 103, [1980] 2 S.C.R. 834, 117 D.L.R. (3d) 257 (S.C.C.), unjust enrichment was firmly established as an independent cause of action which required proof of three elements: (1) an enrichment on the part of the defendant; (2) a corresponding deprivation of the plaintiff; and (3) no juristic reason for the enrichment and depravation. This last element requires an examination of the reasons and circumstances of the wealth transfer to see whether it is so impaired – for example, because the plaintiff was mistaken in making it – as to require its reversal. Nevertheless, the actual mechanics of this last element have been greatly confused by the Supreme Court since *Garland v. Consumers' Gas Co.*, [2004] S.C.J. No. 21, [2004] 1 S.C.R. 629, 237 D.L.R. (4th) 385 (S.C.C.): see further L.D. Smith, "Demystifying Juristic Reasons" (2007) Can. Bus. L.J. 281.
7. Nevertheless it is a dangerous and misleading to view these three sources as without any overlap. An important English scholar, the late Peter Birks, relying in large part on his reading of Roman law, had attempted to create a comprehensive classification of the private law obligations that sought to distinguish its source based on its essential characteristic thereby foreclosing any overlap between the sources: see, *e.g.*, "Introduction" in Peter Birks, ed., *English Private Law* (Oxford: Oxford University Press, 2000). But this view neither accurately reflects the history of the common law of contract nor how the common law currently works: see S.M. Waddams, *Dimensions of Private Law* (Cambridge University Press, 2003).
8. A.W.B. Simpson, "The Rise and Fall of the Legal Treatise" (1981) 48 U. Chic. L. Rev. 632 and A.W.B. Simpson, "Innovation in Nineteenth Century Contract Law" (1975) 91 L.Q.R. 247 are two important treatments of this development. This development initially consisted of rearranging existing case law that had been until then organized around discrete categories of consensual commercial relationships – agency and bailment, for example – around a unifying principle derived from the work of the French jurist Robert Pothier who in his *Traité des obligations* put forth his version of the will theory of contract that stipulated that contractual liability stemmed from the mutual assent of the parties or, as the idea was also expressed, a meeting of the parties' mind. See also D. Ibbetson, *A Historical Introduction to the Law of Obligations* (Oxford: Oxford University Press, 1999), at 220*ff* and P.A. Hamburger, "The Development of the Nineteenth-Century Consensus Theory of Contract" (1989) 7 Law & Hist. Rev. 241.
9. See S.A. Smith, *Contract Theory* (Oxford: Oxford University Press, 2004).
10. The main academic debate is over whether there is a single justification for enforcement of rights that fall under the rubric of contract and, if there is, what is it. The leading unified theories are a right-based theory that argues that contract law is really about enforcing promises – see, *e.g.*, C. Fried, Contract as Promise: *A Theory of Contractual Obligation* (Cambridge MA: Harvard University Press, 1981) – and, a consequentialist theory that claims that contract law is really about promoting economic efficiency – see, *e.g.*, C.J. Goetz & R.E. Scott, "Enforcing Promises: An Examination of the Basis of Contract" (1981) 89 Yale L.J. 1261. Against these unified theories, some contract law theorists have argued that contract law seeks to protect and uphold a series of distinct objectives. The most influential example of this position is L.L. Fuller and W.R. Perdue, "The Reliance Interest in Contract Damages" (1936-37) 46 Yale L. Rev. 52 and 573. See further S.A. Smith, *Contract Theory* (Oxford: Oxford University Press, 2004).

▼HCO-2▼ Sources of contract law. The law of contracts in the common law provinces of Canada remains for the most part unregulated by legislation and the responsibility for the application and development of the rules and principles of the law rests on the judges of those courts.[1] The law of contracts is still found principally in the decisions of the courts on the disputes that have been brought before them. This fact has important consequences. Perhaps the most important is that it must never be forgotten that judges are individuals who, though they have

sworn to uphold the law, are nevertheless moved by their own consciences and what they believe is right.[2] A second consequence of the fact that the law is developed by judges is that the process by which judicial decisions are made constrains both what rules can be developed, particularly in the short run, and the freedom of judges to express their preferences in the outcome. The judicial process is characterized by the way in which the parties participate in the process. The parties' participation consists in their right to present the facts to the court and to make reasoned arguments. The courts' independent access to the facts is very limited — and must be limited — if the process of adjudication is not to be fatally compromised.[3] These two rights are inextricably linked. The parties cannot know — though of course it is the parties' counsel who cannot know — what facts might be relevant unless they also know the criteria that will shape their arguments. And the idea of a reasoned argument presupposes that the criteria and standards of argument are also known. A court which ignores the arguments of counsel or which adopts a rule or principle for decision that counsel did not address, whether or not counsel should have done so, denies the possibility of reasoned argument on that point. If counsel have not addressed the issues or have not presented the facts that the court might have liked to have before it, the most that the court can do is to suggest that counsel consider the issues and the facts: the court cannot find facts on its own or apply criteria that counsel have not put before it. The constraints imposed on the development of the law by the need to protect the integrity of the process by which judicial decisions are made are real and can sometimes make an attempt to develop the law very difficult. Counsel have to be given at least a suggestion that, for example, the Supreme Court of Canada will entertain an argument that might address a fundamental, generally accepted principle if the Court thinks that that principle is in need of reconsideration. Counsel can seldom spend their clients' money on arguments that have no hope of success.

Notes

1. See, *e.g.*, *Friedmann Equity Developments Inc. v. Final Note Ltd.*, [2000] S.C.J. No. 37, [2000] 1 S.C.R. 842, 188 D.L.R. (4th) 269, 7 B.L.R. (3d) 153 (S.C.C.), where the Supreme Court explicitly considered its role in the development of long-standing technical rules of contract law in face of arguments to abolish the rule.
2. The most famous statement of this position is B.N. Cardozo, *The Nature of Judicial Process* (New Haven: Yale University Press, 1921). But this view needs to be carefully circumscribed if it is not to become a parody as well as a travesty of the law. As one of the leading judges of the second part of the twentieth century as well as a noted treatise writer, Lord Goff said in a lecture: "When we talk about a desired result, or the merits of any particular case, we can do so at more than one level. There is the crude, purely factual level — the plaintiff is a poor widow, who has lost her money, and such like. At another level, there is the gut reaction, often most influential. But there is a more sophisticated, lawyerly level, which consists of the perception of the just solution in legal terms, satisfying both to the gut and the intellect." (R. Goff, "The Search for Principle" in G. Jones & W. Swadling eds., *The Search for Principle: Essays in Honour of Lord Goff of Chieveley* (Oxford: Oxford University Press, 1999) 313 at 325).
3. An example of just such a compromised judgment is provided by the trial judgment in *Cronk v. Canadian General Insurance Co.*, [1994] O.J. No. 1564, 19 O.R. (3d) 515, 6 C.C.E.L. (2d) 15, (Ont. Gen. Div.), vard [1995] O.J. No. 2751, 25 O.R. (3d) 505, 128 D.L.R. (4th) 147 (Ont. C.A.). The trial judge rejected a well-established rule for determining the damages for wrongful dismissal by relying on material that he found by his own research and which had not been disclosed to counsel.

▼HCO-3▼ Purposes of the law of contract. The rules of the law of contracts can only be understood in light of the functions that the law of contracts has in Canadian society. Those functions are derived from the fact that the Canadian economy is based on markets and on the freedom of individuals and business entities to plan their relations as, in general, they see fit.[1] At a very basic level the purpose or function of the law of contracts is to protect the reasonable expectations of the parties to any contract.[2] This statement of the purpose of the law is vague but it is not vacuous. It emphasizes the importance of the parties' actual expectations as matters of fact which may be subject to proof and it entails the need to consider what the application of any rule (or the achievement of any result) will do to those expectations. It may well be that the parties' actual expectations in any particular relation cannot be protected for any one of a number of reasons, and litigation will often force a court to say that one party's expectations must be defeated if the other's are to be protected. A focus on expectations, however, avoids the great danger of forgetting that the law exists to achieve goals, to do things that need to be done: in other words, to make things better — whatever "better" might mean at any time or in any context — and that every decision must be assessed in the light of how far and how well it contributes to this goal.

Notes

1. For a long period of time, protecting this freedom was taken by many judges to be the cardinal (if not exclusive) virtue of contract law: see, *e.g.*, *Printing and Numerical Registering Co. v. Sampson* (1875), L.R. 19 Eq. 462 at 465, *per* Jessell M.R. Contemporary Canadian case law still recognizes that the freedom to be able to plan one's affairs is an important value but is prepared to recognize other important values: see, *e.g.*, *Hartshorne v. Hartshorne*, [2004] S.C.J. No. 20, [2004] 1 S.C.R. 550, 236 D.L.R. (4th) 193, [2004] 6 W.W.R. 1, 47 R.F.L. (5th) 5, 25 B.C.L.R. (4th) 1 at paras. 69 and 81-82 (S.C.C.), where the majority of the Supreme Court was prepared to give significant deference to parties' freely negotiated marriage contract even where such an arrangement might produce a significantly different division of the parties' property upon breakdown of the parties' marriage with what is mandated by provincial legislation dealing with partition of assets upon marital breakdown whereas the minority thought that the majority approach threatened to undermine the other main objective, viz., ensuring that the division is fair to both parties at the time of the breakdown.
2. See *Corbin on Contracts* (St. Paul: West Publishing Co., 1963) (Vol. 1, p. 2, § 1): "That portion of the field of law that is classified and described as the law of contracts attempts the realization of reasonable expectations that have been induced by the making of a promise." This purpose is explicitly accepted and used as the basis for the court's decision in *Ebrahimi v. Westbourne Galleries Ltd.*, [1973] A.C. 360 at 379, [1972] 2 All E.R. 492 at 500 (H.L.). While this case is a "corporation law" case, corporate law is based on the law of contracts and Lord Wilberforce's statement is as applicable in the general sense as in the special sense. Lord Steyn, in delivering the Sultan Azlan Shah Lecture, relying on B. Reiter and J. Swan, "Contracts and the Protection of Reasonable Expectations" in B. Reiter and J. Swan, eds., *Studies in Contract Law* (Toronto: Butterworths, 1980) at 1, 7, defined reasonable expectations as follows: "That brings me to consider what the reasonable expectations of the parties means. The expressions that will be protected are those that are, in an objective sense, common to both parties" ("Contract Law: Fulfilling the Reasonable Expectations of Honest Men" (1997) 113 L.Q. R. 433 at 434). See also C. Mitchell, "Leading a Life of its Own? The Roles of Reasonable Expectation in Contract Law" (2003) 23 Oxford J. Legal Stud. 639, and B.J. Reiter, "A Study in Reasonable Expectations: A Rebuttal to Geoff R. Hall" (2008) Can. Bus. L.J. 95. In *Martin v. American International Assurance Life Co.*, [2003] S.C.J. No. 14, [2003] 1 S.C.R. 158 at 165-66, 223 D.L.R. (4th) 1 at 8, [2003] 6 W.W.R. 1 at 7-8 (S.C.C.), *per* McLachlin C.J.C., writing for the Court, accepted that insurance contracts should be interpreted "in a manner that gives effect, as far as is possible, to the reasonable expectations of the parties" and rejected a proposed interpretation offered by the insurer because it was unclear that it was consistent with the reasonable expectations of insurers in part because the expectations of the insurers are not the only expectations at issue. The insured party also has expectations that must be taken into consideration. Any adequate interpretation must attempt to strike a balance between these two sets of expectations, and the two sets of interests that underlie them. Insurers cannot reasonably expect the court to adopt an interpretation that gives more protection to their interests than to those of the insured.

▼HCO-4▼ Diverse values protected by contract law. Given that Canadian law of contracts exists to forward the diverse values that underlie Canadian society it is impossible to distil the objectives of Canadian contract law to a single value.[1] Nevertheless some values have been given prominence. Given that the law of contracts is fundamental to a society which, like that of Canada, depends to a large extent on markets and on the right of individuals to make such arrangements as seem good to them protection of the parties' ability to freely arrange their affairs has always been seen as an important value to be protected in contract law.[2] But while it has on occasion been seen as an absolute and paramount value underpinning contract law such view is certainly not now held.[3] This is because at another level, the law of contracts expresses important moral values and many of the most difficult problems that it has to deal with arise precisely because these moral values can conflict including with one another and the value of the freedom of contract.[4]

Notes

1. See, *e.g.*, *Miglin v. Miglin*, [2003] S.C.J. No. 21, [2003] 1 S.C.R. 303, 224 D.L.R. (4th) 193, 34 R.F.L. (5th) 255 (S.C.C.) (separation agreements); *Hartshorne v. Hartshorne*, [2004] S.C.J. No. 20, [2004] 1 S.C.R. 550, 236 D.L.R. (4th) 193, [2004] 6 W.W.R. 1, 47 R.F.L. (5th) 5, 25 B.C.L.R. (4th) 1 (S.C.C.) (marriage agreements); and *Bruker v. Marcovitz*, [2007] S.C.J. No. 54,

2007 SCC 54 (S.C.C.) (Jewish divorce agreements).

2. Of course, if applied without care, this attitude can lead to the precisely opposite result, *i.e.*, the defeat of reasonable expectations: see, *e.g.*, *Design Services Ltd. v. Canada*, [2008] S.C.J. No. 22, 2008 SCC 22 (S.C.C.).

3. See, *e.g.*, *Printing and Numerical Registering Co. v. Sampson* (1875), L.R. 19 Eq. 462 at 465, *per* Jessell M.R. P.S. Atiyah, *The Rise and Fall of Freedom of Contract* (Oxford: Clarendon Press, 1979) is an important study is this process. See also M.J. Trebilcock, *The Limits of Freedom of Contract* (Cambridge: Harvard University Press, 1993).

4. See, *e.g.*, *Miglin v. Miglin*, [2003] S.C.J. No. 21, [2003] 1 S.C.R. 303, 224 D.L.R. (4th) 193, 34 R.F.L. (5th) 255 (S.C.C.) (separation agreements); *Hartshorne v. Hartshorne*, [2004] S.C.J. No. 20, [2004] 1 S.C.R. 505, 236 D.L.R. (4th) 193, [2004] 6 W.W.R. 1, 47 R.F.L. (5th) 5, 25 B.C.L.R. (4th) 1 (S.C.C.) (marriage agreements); and *Bruker v. Marcovitz*, [2007] S.C.J. No. 54, 2007 SCC 54 (S.C.C.) (Jewish divorce agreements) where the protection of the parties' freely entered into agreements had to be balanced against other fundamental concerns such as protection of spouses' financial position upon the breakdown of their marriage and freedom of religion. Interestingly, as the traditional model of marriage has loosened and Canadians have become more accustomed to thinking about their most personal relationships as something that they can develop as they and their partners see fit, some scholars have turned to contract to understand marriage: see, *e.g.*, R.E. Scott & E.S. Scott, "Marriage as Relational Contract" (1998) 84 Va. L. Rev. 1225 and R. Leckey, "Relational Contract and Other Models of Marriage" (2002) 40 Osgoode Hall L.J. 1. Of course, it would be wrong to assume that the trend is exclusively towards extending contractual enforcement to personal relationships. Thus, the changes which have occurred in the attitude of Canadian society to promises of marriage, from their role in the nineteenth century as important, even vital, legal arrangements on which the woman's financial future might well entirely depend, to that of 40 or 50 years ago, as almost humorous vestiges — "Why would anyone sue because she was jilted?" — of a barely (and badly) remembered society, to unenforceable promises, illustrate how also social attitudes to enforcement of certain promises can change. Ontario has abolished the action ((ON) *Marriage Act*, R.S.O. 1990, c. M.3, s. 32(1)), the British Columbia Law Reform Commission (Working Paper No. 39, 1983) has recommended its abolition and where it has not been legislatively abolished the common law has sometimes reached the same conclusion. See, *e.g.*, *Dupuis v. Austin*, [1998] N.B.J. No. 516, 168 D.L.R. (4th) 483 (N.B.Q.B.), but compare *Lakusta v. Jones*, [1997] A.J. No. 1248, [1998] 5 W.W.R. 453, 56 Alta. L.R. (3d) 214 (Alta. Q.B.). The abolition of an action for breach of promise of marriage does not mean that claims for the protection of reliance or for unjust enrichment may not be made. At the same time as the New Brunswick court condemned the action for breach of promise as the result of "stereotypical thinking" and, perhaps, as contrary to the equality provisions of the (CAN) *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11, the female plaintiff was allowed to claim in restitution for the recovery of what she had paid to support the man, a musician, in the expectation of sharing in his later success.

▼HCO-5▼ Range of contracts. Contract law covers a very wide range of relationships. These relationships are distinguished from one another on the basis of their duration,[1] sophistication[2] and relation[3] of the parties involved, uncertainty[4] and whether they are purely commercial[5] undertakings. Courts take these factors into consideration when they consider how to apply abstract principles of contract law to a particular set of circumstances that comes before the bench. In some instances they have even insisted that particular classes of contracts — for example, insurance contracts purchased by consumers[6] — require special treatment and rules and principles of their own.

Notes

1. A more subtle but pervasive and important distinction exists between contracts that arise in what may be called a transaction and those that arise because the parties are prepared to engage in a relation in which the benefits and risks cannot be known in advance and success will only be achieved if the parties work together. The two kinds of contracts may be termed "discrete" and "relational". The purchase of goods from a store may be a paradigm example of the former; an employment relation, the relation of principal and agent, a joint venture, a franchise or a long-term distributorship agreement are examples of the latter. (There is no conceptual or necessary functional difference between these relations and the more formal relations of partners and shareholders; the principal difference is that the problems which may arise in the latter have a statutory framework to deal with them. Two potential investors may regard the various forms by which their relation could be structured as functionally equivalent in the sense that any one may be appropriate to achieve their goals. Tax, investment and "governance" or decision-making concerns will often determine which form will be chosen.)

2. The level of intervention into judicial parties' contractual relationships is normally inversely proportional to the parties' — or, more often, each parties' — business and commercial sophistication. Thus consumer contracts receive a lot of intervention whereas financial transactions between sophisticated business entities very little.

3. Typically, the more interconnected and interdependent parties become on one another as result of their contractual relationship, the more courts will be compelled to protect that interdependence. Thus, for example, courts have established complex rules in situations where a wife guarantees with her own assets her husband's debts requiring that the creditor to ensure that the wife obtain independent legal advice prior to executing the guarantee: see, *e.g.*, *Royal Bank of Scotland v. Etridge* (No. 2), [2002] 2 A.C. 773, [2001] 4 All E.R. 449, [2001] 3 W.L.R. 1021 (H.L.). In a more commercial context, where parties have entered into a long-term distribution agreement where one party devotes [virtually] all its time to marketing the other's products in a particular region, the manufacturer will not be able to terminate the agreement without giving reasonable notice where the parties' agreement is silent on any period of termination as such period will enable the other party to wean itself off the relationship and, hopefully, find alternative business opportunities: see, *e.g.*, *Marbry Distributors Ltd. v. Avrecan International Inc.*, [1999] B.C.J. No. 635, 171 D.L.R. (4th) 436, 67 B.C.L.R. (3d) 102 (B.C.C.A.).

4. The longer the duration of a contract, the greater the uncertainty, or to put it differently, the greater the risk that the parties will miscalculate their agreement and will need to adjust it: See, *e.g.*, *Fort Frances (Town) v. Boise Casade Canada Ltd.*, [1983] S.C.J. No. 13, [1983] 1 S.C.R. 171, 143 D.L.R. (3d) 193 (S.C.C.).

5. Contracts governing family relationships receive special treatment: see *Miglin v. Miglin*, [2003] S.C.J. No. 21, [2003] 1 S.C.R. 303, 224 D.L.R. (4th) 193, 34 R.F.L. (5th) 255 (S.C.C.) (separation agreements); *Hartshorne v. Hartshorne*, [2004] S.C.J. No. 20, [2004] 1 S.C.R. 550, 236 D.L.R. (4th) 193, [2004] 6 W.W.R. 1, 47 R.F.L. (5th) 5, 25 B.C.L.R. (4th) 1 (S.C.C.) (marriage agreements); and *Bruker v. Marcovitz*, [2007] S.C.J. No. 54, 2007 SCC 54 (S.C.C.) (Jewish divorce agreements). Similarly, where a customer purchases goods and services to enjoy them the courts have now become prepared to recognize that such an interest as legitimate and are prepared to compensate customers when through the supplier's breach of contract they suffer a loss of that enjoyment: see *Ruxley Electronics and Construction Ltd. v. Forsyth*, [1996] A.C. 344, [1995] 3 All E.R. 268, [1995] 3 W.L.R. 118 (H.L.).

6. The Supreme Court of Canada has been very active — though not always consistently: see, *e.g.*, *Scott v. Wawanesa Mutual Insurance Co.*, [1989] S.C.J. No. 55, [1989] 1 S.C.R. 1445, 59 D.L.R. (4th) 660 (S.C.C.) — in protecting the consumers (and those who are intended to be protected by the insurance coverage) of insurance contracts given the special role insurance plays in peoples' lives as a means of ensuring peace of mind and security rather than the mere re-allocation of financial risk that insurance serves in purely commercial contexts. In *Fidler v. Sun Life Assurance Co. of Canada*, [2006] S.C.J. No. 30, [2006] 2 S.C.R. 3, 271 D.L.R. (4th) 1, [2006] 8 W.W.R. 1, 53 C.C.E.L. (3d) 1, 57 B.C.L.R. (4th) 1 (S.C.C.), the Supreme Court awarded damages mental distress on top of the payments the customer was entitled to under her disability insurance policy where the customer was denied such payments in breach of the policy because disability insurance is in large measure designed to save the policy holder from anxiety over their financial status associated with prolonged illness or disability.

Supplemental Readings

Contract Law

Introduction to Contracts, 2nd Edition (MacDougall)

Canadian Contractual Interpretation Law, 2nd Edition (Hall)

Canadian Contract Law, 3rd Edition, Student Edition (Swan)

General Principles of Canadian Insurance Law, 2nd Student Edition (Billingsley)

General

Legal Problem Solving – Reasoning, Research & Writing, 6th Edition and *The Ultimate Guide to Canadian Legal Research* (Fitzgerald)

Legal Writing and Research Manual, 7th Edition, Student Edition (Whitehead and Matthewman)

Understanding Lawyers' Ethics in Canada (Woolley)

Lawyers' Ethics and Professional Regulation, 2nd Edition (Woolley, Cotter, Devlin and Law)