

Athabasca University

LGST 369 Commercial Law

Detailed Syllabus

Textbook: McInnes, M., Kerr, I., VanDuzer, J. A., & Carmody, C. (2011). *Managing the Law: The Legal Aspects of Doing Business* (3rd ed.). Toronto: Pearson Education Canada

Unit 1 Law and the Legal System

Introduction

Welcome to *Legal Studies 369*, a course that introduces you to the legal environment of business and commerce.

The main purpose of this course is to encourage you to think about the legal consequences of certain actions or inactions in the workplace. The more technical term for this is *risk management*, which your textbook (p. 2) defines as “the process of identifying, evaluating, and responding to the possibility of harmful events.”

This course is not intended to eliminate your need for professional legal advice. Rather, it should help you to make workplace decisions with legal consequences in mind, thereby minimizing the likelihood of your encountering serious legal difficulties. If you do encounter legal trouble, however, you should be able to identify the problem and know when to get help from a lawyer.

Consider, for example, a couple of enterprising students want to operate a landscaping business over the summer months to earn money for tuition. Here are a few of the decisions they will have to make and the possible legal implications of each:

- What legal form of business should they adopt?

The answer to this question will affect the prospects for financing, the issue of control of the business, and who will be liable for debts or damages incurred by the business. The students need to know how lenders use legal mechanisms to secure payment for debt. They also need to know the differences between incorporation and partnerships, and in each case, who is responsible for running the business and who is responsible for the liabilities of that business.

- Should they obtain liability insurance?

The students need to assess the likelihood of being sued for something covered under the policy. They must examine their activities and determine where they might be acting negligently. They should also know something about the legal concept of negligence.

- Should they have their customers sign written agreements for landscaping work to be done?

Does this kind of seasonal/casual work require a written agreement? What can they do if the job is more expensive to complete than they first thought?

As you can imagine, this list could go on and on. Coming up with good answers to these questions requires a basic knowledge of contract law. To make good decisions in these areas you need a base of legal knowledge to draw on. If things do go wrong, you need to know when you are in “over your head.”

This unit begins with a general picture of how the legal system works. This material may not specifically help you to make decisions with legal consequences in mind, but is critical nevertheless. It provides the necessary background and context for the discussion of specific legal rules. In any encounters with the legal system or lawyers, you will better understand what goes on, what questions to ask, and how to use your lawyer more effectively.

Learning Objectives

After completing this unit, you should be able to:

1. define risk management, and state why it is an important concern for anyone conducting business.
 2. explain what law is and describe the sources of Canadian law.
 3. compare and contrast judge-made law and legislation, public law and private law, and procedural law and substantive law.
 4. describe the principal parts of the Canadian legal system, and identify the different types of courts.
 5. outline the hierarchy of court functions, and describe how a case might proceed through the hierarchy on appeal.
 6. describe the major steps of civil litigation procedure in Canada, and define pleadings, class actions, costs, and contingency fee agreements.
 7. explain the difference between obtaining and enforcing a judgment.
 8. explain the role and effect of the Canadian Charter of Rights and Freedoms, and describe the conditions under which legislation may be challenged in the courts.
 9. describe the role of judges and lawyers in the legal system.
 10. outline the factors that should be considered in deciding to pursue litigation.
 11. list the advantages and disadvantages of Alternate Dispute Resolution (ADR) versus litigation.
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Unit 2 Forming Contracts

Introduction

What is a contract? Most of us have an intuitive sense of “contract,” the notion that two parties come to an agreement or make promises to each other, and if one party does not follow through as promised, the other party could sue.

It is interesting that the courts should step in to enforce promises that private individuals or businesses make to each other. Why should public resources be used to support these private arrangements?

Society has determined that it is in its own best interests to encourage compliance with certain agreements by allowing recourse to the courts if those promises aren't kept. In a sense, the parties involved write their own law; they determine what action or inaction could precipitate a lawsuit. Thus, the substance of Units 2 through 5 will be the rules surrounding when and whether courts will enforce private agreements.

Learning Objectives

After completing this unit, you should be able to

1. identify when, in the course of contractual negotiations, a legally enforceable agreement has been concluded.
 2. identify situations where the intent is to create legal obligations by agreements and situations where such agreements can be problematic.
 3. explain and apply the rules concerning an offer.
 4. explain and apply the rules concerning an acceptance.
 5. identify the types of promises that constitute an exchange of value between parties.
 6. identify when consideration is flawed so that an agreement will not be legally enforceable.
 7. identify situations where an agreement may be enforceable in the absence of consideration.
 8. explain privity of contract and describe its importance in enforcing contractual obligations.
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Unit 3 Contractual Defects

Introduction

As you have seen, the heart of a contractual arrangement is the offer and acceptance of mutual promises that have legally recognized value. However, there are a number of problems that can occur at the point of entering into an agreement. This unit looks at things that could affect whether or not the agreement will be legally enforceable.

Learning Objectives

After completing this unit, you should be able to

1. identify legal entities that have a limited capacity to contract, and describe how to avoid unenforceable agreements with these entities.
2. explain when an agreement may be unenforceable because of illegality of object.
3. identify a covenant in restraint of trade, and outline the circumstances under which such covenants may be enforceable.
4. differentiate between misrepresentation and breach of contract.
5. identify situations in which silence may constitute a misrepresentation.
6. define three types of misrepresentation, and explain the legal consequences of each.
7. determine when a contract must be in writing to be enforceable.

8. define categories of mistake, and explain the legal consequences of each, if it were a factor during contract formation.
 9. define categories of unfair bargaining, and explain the legal consequences of each, if it were a factor during contract formation.
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Unit 4 The End of the Contractual Relationship

Introduction

In most contracts, there comes a point at which you are no longer obligated to perform under the agreement. You eventually get “off the hook,” so to speak. Any future failure to do the things you had promised will not have any legal consequences.

Note, however, that we are only talking about no obligations in terms of **further performance**. You would still be responsible for any damages arising from what you had previously done to fulfill the contract. For example, say you have a contract to supply donuts to a weekly sales meeting. This unit looks at when you would no longer be responsible for supplying those donuts. If you had failed to supply donuts in the past, or if you had supplied moldy donuts, you would still bear responsibility for damages pursuant to the supply contract.

Learning Objectives

After completing this unit, you should be able to

1. differentiate between discharge and breach of contract.
 2. describe how a contract may be discharged by performance.
 3. describe how a contract may be discharged by agreement.
 4. describe how a contract may be discharged by operation of law.
 5. describe the basis of discharge of a contract by breach.
 6. differentiate between a discharge by breach and suing for breach of contract.
 7. describe the remedies available for breach of contract.
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Unit 5 Business Relationships and Specialized Contracts

Introduction

The previous units examined the general legal principles that affect all private agreements between parties (contracts). However, additional legal rules apply to special types of agreements. This unit examines several specific types of agreements and the legal rules that apply to each of them.

Contracts for the sale of goods, bailment, and insurance all require an understanding of the concept of the *implied term*. An implied term is one that forms part of the contractual arrangement between parties, regardless of whether they expressly agree to it or not. The law inserts a term in the agreement or implies a term into it, and regardless of whether the parties are aware of the implied term, it will

be a part of their agreement. The focus of this unit is on contracts for the sale of goods, bailment, insurance, banking and credit. Contracts of employment, another specialized contract, are discussed in Unit 8.

Learning Objectives

After completing this unit, you should be able to

1. define and apply the criteria for identifying

- a contract for the sale of goods,
- a consumer transaction,
- a contract of bailment, and
- a contract of insurance.

2. define implied terms in relationship to contracts and identify the possible legal sources of implied terms.

3. identify the major implied terms set out in the *Sale of Goods Act* and apply them in specific fact situations.

4. identify the major implied terms set out in consumer protection legislation and apply them in specific fact situations.

5. identify the major implied terms set out in contracts of bailment and apply them in specific fact situations.

6. identify the major implied terms set out in contracts of insurance and apply them in specific fact situations.

7. define "negotiable instrument" and explain the role of banks in relation to such documents.

8. explain the difference between secured and unsecured creditors in relation to personal and real property, and the role of credit in financing business.

Unit 6 Tort Law: Negligence and Professional Liability

Introduction

What do you think of when you hear the term tort? If you speak French, you may think "wrong." If you like sweets, you may think "cake." And if you have some legal background, you may think "opposite of contract."

What is a tort? Loosely defined, it is a wrong committed against your person, your property, or your reputation. It is an action that inflicts harm on you. Your legal claim against the person who did the harmful act is not based upon any pre-existing or express agreement, as is a claim in contract. Rather, your claim is based on the expectations people in a society have of each other generally. If a person fails to live up to those expectations, he or she may be legally responsible for the harm that results.

What are some of these societal expectations? No one expects to resolve disputes by resorting to physical violence. If they do, the tort of battery may be committed, and the person who caused the injury may be legally obligated to compensate the person harmed. Similarly, we expect that people will be reasonably cautious and careful as they conduct their various daily activities and that they will try not to cause accidental harm. If they do, the tort of negligence may be committed, and the same legal result could follow.

Some situations can give rise to a claim either in contract or in tort. Suppose you hire a lawyer to do legal work for you. That is a contract. If he or she does not provide the work of the type and standard bargained for, there could be a claim for breach of contract. But if his or her careless work caused you to suffer a monetary loss (a type of harm to property), you may also have a claim in the tort of negligence.

With **concurrent claims** (situations where one could sue for compensation based either on a breach of contract or on tort), the injured party must decide which claim to rely upon. An injured party may successfully sue under both claims, but they can recover damages for only one. As your text points out, the selection generally depends on which type of action will result in the larger monetary award.

Learning Objectives

After completing this unit, you should be able to

1. define the term tort, and explain what is meant by a “cause of action in tort.”
2. describe how torts are different than crimes and contractual obligations.
3. differentiate between a fault-based system of tort compensation and other alternatives.
4. distinguish between intentional torts, unintentional torts such as negligence, and strict liability torts.
5. describe the legal remedies available to tort victims and how they are generally compensated.
6. identify the elements required for a successful claim in negligence and recognize when such elements could be proven in a given fact situation.
7. outline the defences available to someone defending an action in negligence and recognize when such defences could be proven in a given fact situation.
8. cite the legal bases for the liability of professionals in tort including negligent statements (misrepresentation) and recognize when such legal bases could be proven in a given fact situation.

Unit 7 Tort Law: Business Operations or Business Premises

Introduction

This unit looks at a variety of torts involving business premises. Although negligence is a common cause of action in tort, there are many other causes of action (basis upon which to sue) in tort. Remember, torts are born out of the expectations that people have of one another in society.

Many of the torts examined in this unit are also **crimes**, that is, actions that could lead to charges being laid under criminal or quasi-criminal/regulatory legislation (anything from the *Criminal Code of Canada* to local bylaws). Criminal and quasi-criminal law protects societal interests by dispensing punishment, deterrence, and rehabilitation. Suing in tort (the civil law process) aims to compensate the wronged party.

Negligence is an unintentional tort, that is, the offensive action accidentally caused harm. An intentional tort is one where the action that caused the harm was deliberate, although the harm itself may not have been intended.

The torts considered in this unit will be examined in the same manner used in considering negligence. Each section will

- begin with a definition.
- list the elements of the tort. (If the plaintiff is to be successful in suing, he or she will have to be able to prove **all** of these elements.)
- set out defences. (How might the defendant avoid liability if sued on the basis of this tort?)
- note the special features of the tort.
- provide illustrative examples.

Learning Objectives

After completing this unit, you should be able to

1. define an intentional tort and distinguish it from negligence.
 2. list the elements required for a successful occupiers' liability claim, identify the defences available to such a claim, and apply these in a given fact situation.
 3. list the elements required for a successful nuisance claim, identify the defences available to such a claim, and apply these in a given fact situation.
 4. list the elements required for a successful claim in a variety of intentional torts, identify the defences available for these torts, and apply these in a given fact situation.
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Unit 8 Employment Law

Introduction

The relationship between employer and employee is contractual. Consequently, all of the concepts covered in Unit 3 apply to contracts of employment.

What makes the contract of employment unique is the additional legal rules that apply to it, even though the parties do not expressly agree to them. These additional rules are the subject of this unit.

Learning Objectives

After completing this unit, you should be able to

1. apply criteria to evaluate whether a worker is an employee or an independent contractor.
2. outline the practical significance of determining whether a worker is an employee or an independent contractor.
3. distinguish between non-competition and non-solicitation agreements and understand when these may be used by employers.

4. distinguish between a rightful and wrongful dismissal at common law.
 5. define the concept of reasonable notice and identify criteria that will help determine reasonable notice.
 6. apply human rights legislation to the hiring and firing situations and actions that arise in the workplace and identify when actions taken in hiring or firing may be contrary to human rights laws.
 7. describe, generally, the employer's obligations to provide employees with a proper working environment.
 8. explain how the employment relationship is altered by collective bargaining.
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Unit 9 Business Entities and the Legal Regulation of Business

Introduction

All business is conducted within a particular legal framework, even if that legal vehicle is one that has not been expressly selected. Business people often reconsider the appropriateness of their business framework as their enterprises grow and change. The form a business takes will not only have significant tax implications, but also important implications for legal risks.

This Unit will also examine some of the most important legal frameworks governing business activities including competition law, environmental law, and international business law.

Learning Objectives

After completing this unit, you should be able to

1. list the distinguishing features of a sole proprietorship, a general partnership, a limited liability partnership (LLP), a limited partnership, and the corporate form and franchises.
2. describe the advantages and disadvantages of a sole proprietorship, a general partnership, a limited liability partnership (LLP), a limited partnership, and the corporate form and franchises.
3. list the basic steps required to establish the business forms listed above.
4. describe some of the unique features attached to the corporate form and describe how corporations are operated and governed.
5. describe what an agency relationship is, how one is created, and where it might arise.
6. explain the concept of an agent's scope of authority and assess what could happen if a contract is concluded outside the scope of that authority.
7. explain the purpose of competition law and the main provisions of the *Competition Act* of Canada.
8. describe the various laws governing protection of the environment in Canada and the impact of environmental liability on business.

9. explain some of the risks faced when transacting business internationally and describe some of the major agreements and treaties that affect international business.

Unit 10 Real Property, other Property Rights, and Property Insurance

Introduction

Real property, real estate, and land are interchangeable legal terms. The standard definition for these terms is “land, and anything relatively permanently attached thereto.” So, if you buy, sell, or own a piece of property, you also buy, sell, or own the dirt “and anything relatively permanently attached thereto.” Those attached items are called *fixtures*.

This unit also examines the basic law related to personal property and bailment, property insurance law, and intellectual property rights.

Learning Objectives

After completing this unit, you should be able to

1. define real property, and determine when an item becomes a fixture.
 2. explain the significance of Crown ownership of all real property.
 3. define an estate in land, and describe the various methods of holding an estate in land including fee simple, joint tenancy, tenancy in common, life estates, leasehold estates, and condominiums.
 4. describe the common major interests in land including easements/right of way, restrictive covenants, *profit à prendre*, mortgages, and leases.
 5. list the common covenants in a mortgage, and describe the remedies available to the mortgagee.
 6. list the common covenants in a commercial lease, and describe the remedies available to the landlord if the lease is breached.
 7. describe how the Land Titles and the Registry systems work to protect both the holders of interests in land and the prospective purchasers of land.
 8. explain the difference between real and personal property and the concept of bailment of goods.
 9. explain the basic principles of insurance law and how insurance assists business.
 10. explain what is meant by intellectual property and the differences between patents, trademarks, copyright and franchising.
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Assessment in this Course

To receive credit for *Legal Studies 369*, you must complete five written assignments and a final exam. The assignments are case study problems that require you to use your knowledge of law to analyze fact situations. Your answers should describe the legal issues raised by the facts, list and explain the

principles of law that apply to them, and give your opinion of the probable result if a court were asked to decide those issues.

The weightings for each item of assessment are as follows:

Activity	Credit Weight	Date Due
Assignment 1	5% of final grade	End of Unit 1
Assignment 2	10% of final grade	End of Unit 5
Assignment 3	10% of final grade	End of Unit 7
Assignment 4	10% of final grade	End of Unit 8
Assignment 5	15% of final grade	End of Units 9 and 10
Final Examination	50% of final grade	End of all Units
Total	100% of final grade	

Your final grade is determined by a weighted average of the grades you receive on all of these items. **To receive credit for this course, you must obtain at least 50% on the final exam and a minimum overall grade of D.**

Final Exam: The final examination is worth **50%** of your total course mark. It is a closed book exam written in person (not online) over 3 hours. By arrangement with the University it may be written anywhere in the world. Part A of the exam consists of multiple choice, true/false, and short answer (paragraph) questions covering the first eight Units of the course. Some of these questions present short scenarios similar to the assignments. Part B consists of true/false questions and one essay type question for each of Units nine and ten. For information on how to book your exam see the Athabasca University Student Manual.