

LGST 369 Commercial Law (Revision 7)



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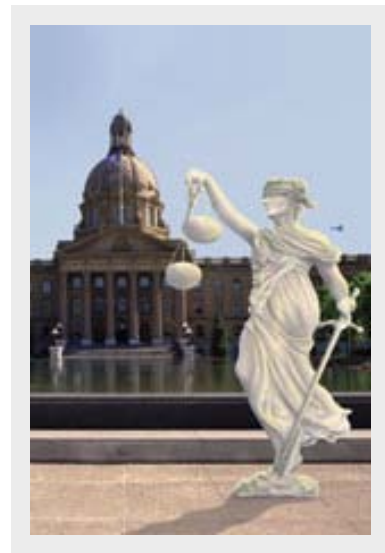
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Topic outline

Welcome to *Legal Studies 369: Commercial Law*.

This course is designed to provide you with practical legal knowledge that will be useful to you in the world of business. In other words, after you have completed this course, you should be able to make business decisions that will reduce the likelihood of legal liability. You should also be aware of how legal problems might be prevented and which issues require the professional advice of a lawyer.




The material in this course emphasizes the application of legal principles in realistic business situations and provides a good context for encounters you may have with lawyers or the legal system.



The *Student Manual*, which accompanies the course, is designed to supply you with essential information about the course and the procedures you should follow to complete the course successfully. **Before you begin your course work, read the *Student Manual* carefully.** If you have any questions about the course itself or how to proceed with your studies, please contact your tutor or the course coordinator.




As you make your way through the course materials, be sure to visit the [research and links](#) page on the Legal Studies web page. This page includes links to valuable legal resources, including statutes, case law, and advocacy groups.

Course Materials:




 [Student Manual](#)
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Unit 1 Introduction, Objectives, and Readings

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.
3. compare and contrast judge-made law and legislation, public law and private law, and procedural law and substantive law.
4. 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. define pleadings, class actions, costs, and contingency fee agreements.
7. explain the difference between obtaining and enforcing a judgment.
8. 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.

Reading Assignment

Managing the Law (2nd ed.), Chapters 1 and 2



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1.1 The Nature of Law

In many ways, the application of legal rules is a flawed method of regulating society and dealing with conflict. First, it is important to note how laws influence behaviour. Consider the limits to which behaviours can be addressed by recourse to the legal system, and think about the relationship between the application of the law and the concept of fair or just results.

Laws attempt to regulate behaviour by prescribing consequences (or a range of consequences) for certain actions or activities. Laws make certain behaviours undesirable, so that people will choose not to engage in them. It is assumed that people act of their own free will, and that they will choose to avoid legal sanctions. Nevertheless, in the interest of achieving business or personal goals, laws are sometimes deliberately breached. In such cases, people must be prepared to face the legal consequences.

It is true that judges attempt to control behaviour directly through orders for specific performance and injunctions. *Specific performance* is a court order for someone to do something, such as complete a contractual obligation or tear down a structure that does not comply with zoning bylaws. An *injunction* is a court order requiring someone to refrain from a certain activity, perhaps picketing or protesting in a particular area. People usually opt to obey orders for specific performance or an injunction because of the threat of being held "in contempt of court" if they do not. But again, people are sometimes willing to face the consequences rather than comply, and will avoid even direct attempts to control their behaviour.

Take the example of a farmer who had an excellent hay crop one year. Months prior to harvest, she agreed to sell 2,000 bales of hay to her neighbour, George, for \$100 per bale, but because there was a drought throughout most of the region, our farmer elected to sell her 2,000 bales to someone else for \$200 per bale. She had broken her agreement with George, and the law will prescribe legal consequences for that if George chooses to take legal action. But, no one can make her sell the bales to George. In fact, she might be financially better off to sell for the higher price and pay George whatever damages the law might require.

Note, however, that if our farmer's bales had been a unique commodity for which money would not provide adequate compensation, the courts would make an attempt to directly control her behaviour. An order for specific performance would be made, requiring sale of the bales to George. If she disobeyed that order, then she could be held in contempt of court.

The next thing to bear in mind is that laws do not address all behaviours that people find nasty or undesirable. For instance, if you are driving and someone makes a rude gesture at you, you have no legal recourse against that person. Is it a nasty or annoying behaviour? Absolutely, but there are no grounds to invoke legal principles.

Nevertheless, there does appear to be a trend in trying to invoke law to address personal grievances, an area where legal recourse has not played a great role. How far these claims will go is a good question. What do you think of the following situation?

Michael Croteau

Croteau, a Canadian father, is suing the New Brunswick Amateur Hockey Association after his 16-year-old son failed to win the league's most valuable player award. Michael Croteau is seeking about \$200,000 in psychological and punitive damages from the association.

<http://www.letsqosharks.com/hoser/02-1111-01.htm>

Finally, note that the application of law is, in a sense, a fairly mechanical process. Facts are proven, the relevant legal principles are applied, and an outcome is arrived at. This process should provide a result most consider to be just, fair, or ethical. However, it is critical to note that the process does not explicitly ask, "What result would be just here?" That question is irrelevant to applying legal principles. The matter of passing just or fair law is left to elected governmental bodies.

The advantage of this process is that the law is applied even-handedly, consistently, and predictably no matter what the factual context and no matter who the judge or jury. In this sense, then, law is always applied fairly, even though, on occasion, a particular result may be viewed as oppressive or unjust.

Having said that, it should be noted that consideration of what is just or fair is, on occasion, relevant. There are some legal problems that come before the courts that require a consideration of fairness in the interpretation of legal rules, or a consideration of what might be acceptable in a just society.

Nevertheless, as you encounter the factual scenarios presented in this course, you must fight the urge to predict results based on ethics, justice, or fairness.

Let's return for a moment to the farmer who reneged on her deal to sell hay to her neighbour, George. Say George managed to secure 2,000 bales at \$98 per bale after he learned the farmer was not going to sell to him. George is not entitled to compensation, because he did not suffer a loss due to her nondelivery. Is this fair or right? Perhaps not, but that is the result a consistent application of the law would bring.

As you work your way through this course, keep the following concepts in mind:

- legal rules generally try to control behaviour indirectly,

- legal rules do not address all undesirable behaviours, and
- the application of legal rules is not the same as the dispensing of justice or fairness.



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