

Lecture 9, Mar 9, 2026

Contracts (Continued)

- Contracts can shift and limit risks
 - The party at risk of a liability typically gets insurance for that risk
- “Good faith” is required in all contracts between parties – the court will see that the parties have acted honestly
 - This is even more important in insurance; the insured must not misrepresent facts and the insurer must act in good faith when assessing and paying claims
 - Commercial parties also expect a basic level of good faith but not as much as a fiduciary duty required in insurance
 - A breach of contract, even intentional, does not automatically mean a contractual breach of good faith
 - * e.g. a party can breach the contract intentionally for economic efficiency, if the price rises, and this would not be in breach of good faith
 - Generally the parties must perform their duties honestly and not arbitrarily, and have regard to the interests of their partner
 - * e.g. not informing a partner that you can no longer perform a service could be seen as not acting in good faith
- The tort of contract breach by unlawful means is when a party deliberately interferes with a contract between two other parties; the interfering party can be sued for damages
 - Requires that the defendant used unlawful means and intended to harm the plaintiff (not accidentally)
 - * e.g. deliberately spreading bad information about a party to make them lose their contract
- The *limitation period* is the period within which the injured party can commence legal action
 - Limitation periods typically start from the time of reasonable discovery of the cause of legal action
 - Contracts can change the limitation period
 - All provinces have their own statutes which govern this; for most things in Ontario this is 2 years (Limitations Act)
- Duties in tort and contract can coexist, i.e. one can be sued for both contract and tort damages (concurrent liability)
 - Tort damages can be claimed even after the contract ends
 - The contract can define the duty of care
 - Indemnity clauses are often laid out
- International treaties are contracts between countries; however parties often have no real power to enforce rights in case of a breach

Property Law

- Property is a collection of different rights, and different people may own different parts or different rights of the same property
- Types of property:
 - Real property – land and things that are attached to it, e.g. land, buildings, fixtures
 - * Real property is divisible, e.g. through leasing, or trustees who own in another’s name
 - * All real property was once owned by the government, which transferred its rights to private owners
 - The government retains the right to certain things, such as to expropriate the land or certain resources such as minerals and oil
 - e.g. private land rights only go down to a certain depth
 - * Types of ownership:
 - *Fee simple* is a form of property right that grants most powers, allowing sale, lease, occupation, and mortgaging of the property
 - *Registered or legal ownership* is the name of the owner of a property appearing on the title deed

- *Equitable ownership* is the beneficiary; e.g. in a trust the trust is the legal owner, and the beneficiary is the equitable owner
 - *Leasehold interest* gives access to the property but does not the land
 - *Divisible interests* is when ownership is shared
- * Rights associated with real property includes mortgage, license (contractual right to use), restrictive covenant, easement (right to use), lien (right to register a debt against land), lease (right to occupy the property), profit a prendre (the right to extract value from the land)
- Personal property – tangible (*chattels*, i.e. things) or intangible (intellectual property)
 - Real property can become personal and vice versa (e.g. when you install something, it goes from a thing to a fixture)