

Publisher's Note

2019 — Release 2
Previous release was 2019-1

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Stark & MacLise

Domestic Contracts, 2nd ed.

This text contains the expert analysis and commentary, practical guidance and sophisticated materials you need to draft effective domestic agreements. Domestic Contracts includes detailed checklists, sample agreements, sample marriage, separation and same gender cohabitation clauses, case annotations, as well as authoritative commentary and relevant case law.

This release features updates to case law, clauses and commentary.

Highlights

- **Marriage Agreements — Essential Validity — Property and Spousal Support — Case Law** — Husband applied to set aside marriage contract and claimed division of family property (including cabin placed in wife's sole name and trust set up as tax-savings device to maximize family income) — Prenuptial agreement found fully valid and merited full deference — Husband's claim for spousal support which he relinquished in the agreement was also dismissed: *Gordon v. Nielson*, 2018 SKQB 207, 2018 CarswellSask 371 (Sask. Q.B.)

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- **Marriage Agreements — Formal Validity — Independent Legal Advice — Case Law** — Wife maintained that cohabitation and property agreement should be set aside on a number of grounds including that she did not receive independent legal advice from her lawyer; that she signed under duress; that she did not understand agreement, that lawyer she met with had been retained by husband, that one of key pages of agreement was missing when she signed agreement, and that her signature on husband’s copy was forgery — Trial judge found that agreement was valid - Wife appealed — Appeal dismissed — Trial judge did not make erroneous fact findings not supported by evidence — Record of proceedings before trial judge failed to establish any basis at law to support allegation of reasonable apprehension of bias: *Skolney v. Nisha*, 2018 ABCA 364, 2018 CarswellAlta 2552, [2018] A.W.L.D. 4878 (Alta. C.A.)
- **Separation Agreements — Spousal Support — Case Law — Variation of Spousal Support — Pensions** — Parties entered into separation agreement that provided for husband to pay spousal support — Spousal support could be reviewed at the request of either party when the husband retired, or at an earlier date, if both parties agreed in writing. — Agreement provided that any review “shall take into account that the RCMP pension has already been divided pursuant to this Agreement.” — Husband applied to review and terminate spousal support – Spousal support was reduced — Wife was entitled to ongoing spousal support as she contributed significantly to husband’s wealth and was underpaid spousal support: *Graham v. Graham*, 2018 BCSC 1888, 2018 CarswellBC 2912 (B.C.S.C.)
- **Separation Agreement Clauses** — New and updated separation agreement clauses relating to rental accommodation including: Possession by One Party (including division of personal effects) — Giving up Month to Month Lease (including division of damage deposit) — Giving up Month to Month Lease After Alternative Accommodation found (including responsibility for payment of rent and dividing cost of cleaning expense)