

Athabasca University
LGST 369 Commercial Law
(Revision C10)
Detailed Syllabus

Textbook

McInnes, M., Kerr, Ian R., VanDuzer, J. Anthony, and Lavoie, M., (2023). ***Managing the Law: The Legal Aspects of Doing Business*** (6th Ed.). Toronto: Pearson (E-text supplied as course study material)

Course Overview

LGST 369: Commercial Law is a three-credit course at Athabasca University. This course is designed to inform businesspeople and those dealing with businesses of the core legal principles, laws, and institutions that govern trade and commerce in Canada. It will help businesspeople to anticipate and, if possible, avoid legal problems, and to know when to seek legal advice. Consumers and customers will learn about their legal rights. This course supports efforts to make the commercial laws of Canada understandable and responsive to the needs of ordinary citizens. Commercial Law will assist everyone to understand and make use of the law in pursuing their legitimate interests.

Course Learning Outcomes

After completing LGST 369 students should be able to:

1. Explain the structure of the Canadian legal system and describe common legal processes.
2. Explain the basic principles of Canadian tort, contract, and property law, and describe the common forms of business organization in Canada.
3. Analyze factual situations and identify legal problems which might arise from them to avoid problems if possible.
4. Analyze legal problems and apply problem solving techniques to identify possible responses and choose from among them.
5. Identify and evaluate potential legal risks and liabilities from a business perspective.
6. Use this knowledge and these skills to assert and protect rights and interests, seeking and instructing professional help when necessary.

Unit 1: The Canadian Legal System, Litigation, and Risk Management (Ch 1 and 2)

After studying this unit, you should be able to:

1. Explain how a business can analyze risks, assess risk management strategies, and use legal techniques to deal with those risks.
2. Create a map of the law that includes four areas of public law and three areas of private law that are important to business people.
3. Identify three sources of law and provide examples of how each can affect business people.
4. Explain the meaning of a “duty to consult” with the Indigenous peoples of Canada, how it arises under the Constitution, and what affect it may have on business.
5. Identify and explain the people and the stages involved in a court case.
6. Identify different levels of courts and explain the importance of the court hierarchy.
7. Explain the importance of administrative tribunals and discuss three types of alternative dispute resolution.

Unit 2: Tort Law – Introduction and Intentional Torts (Ch 3 and 4)

After studying this unit you should be able to:

1. Explain how torts are different from crimes and contracts and identify three broad categories of torts.
2. Explain how liability insurance and vicarious liability operate within tort law.
3. Identify and explain four types of tort remedies and two types of alternative compensation schemes.
4. Explain how three torts that protect people—assault, battery, and false imprisonment—may affect businesses.
5. Explain the rules governing trespass to land and describe how those rules affect businesses.
6. Identify and explain three complete defences and two partial defences.

Unit 3: Tort Law – Torts Affecting Business and Negligence (Ch 5 and 6)

After studying this unit, you should be able to:

1. Describe the tort of conspiracy, and explain the risks that arise when two or more companies plot together against another business.
2. Outline the elements of the tort of deceit.
3. Identify and discuss the elements of three torts related to land: occupier's liability, nuisance, and the rule in Rylands v Fletcher.
4. Describe the nature and function of the concept of a duty of care.
5. Describe the standard of care and explain how it applies in cases involving professional services or products liability.
6. Explain how courts assess causation in negligence cases.
7. Identify and explain three defences that are available against a claim for negligence.

Unit 4: Contract Law – Formation, Consideration, and Privity (Ch 7 and 8)

After studying this unit, you should be able to:

1. Explain the general nature of a contract and identify the essential elements of an enforceable contract.
2. Describe the concept of intention to create legal relations, and explain how the courts decide whether the parties intended to create legal relations.
3. Define the term "offer" and explain how offers operate in the creation of contracts.
4. Define the term "acceptance" and explain how acceptances operate in the creation of contracts.
5. Explain the nature of consideration and the role it plays in the formation of contracts.
6. Explain the importance of the doctrine of privity and identify five ways to work around the doctrine.

Unit 5: Contract Law – Contractual Terms and Defects (Ch 9 and 10)

After studying this unit, you should be able to:

1. Explain the nature and effects of pre-contractual misrepresentations.
2. Explain how contractual terms arise and how they are interpreted.
3. Identify six types of boilerplate clauses and explain their significance.
4. Identify six types of parties that suffer from contractual incapacity, in whole or in part.
5. Identify and explain three types of unfair bargaining that may entitle an innocent party to rescind a contract.

6. Identify and explain four types of contractual mistakes and their associated remedies.
7. Explain the rules that govern the types of contracts that must be evidenced in writing, the nature of the writing requirement, and the legal consequences of non-compliance.
8. Define the concept of contractual illegality and explain how Canadian courts have reformulated the traditional rules.

Unit 6: Contract Law – Discharge, Breach, and Remedies (Ch 11 and 12)

After studying this unit, you should be able to:

1. Explain how a contract can be brought to an end through performance, including payment of the price.
2. Identify and explain seven ways in which the parties can bring a contract to an end through agreement.
3. Identify and explain three ways in which a contract can be brought to an end through operation of law.
4. Describe the difference between conditions, warranties, and intermediate terms, and explain the circumstances in which a plaintiff is entitled to discharge a contract for breach.
5. Define the term “damages” and explain six ways in which damages may be calculated following a breach of contract.
6. Identify two equitable remedies and explain when they are available in contract law.
7. Explain how exclusion clauses operate and identify situations in which they will not be enforced.
8. Identify the elements of unjust enrichment and explain why that cause of action may be important in contractual contexts.

Unit 7: Special Contracts – Sale of Goods and Negotiable Instruments (Ch 13 and 14)

After studying this unit, you should be able to:

1. Explain when the Sale of Goods Act will apply and why knowledge of that statute is important for risk management.
2. Outline the rules that determine when property and risk pass under a sale of goods.
3. Identify and explain ten contractual terms that are implied by the Sale of Goods Act.
4. Identify and explain four general remedies, as well as four special remedies for sellers, that are available under the Act.
5. Explain the nature of negotiable instruments and identify three ways in which they differ from most contracts.
6. Identify three types of negotiable instruments and explain the essential differences between them.

Unit 8: Real Property, Sales, and Mortgages (Ch 15 and 16)

After studying this unit, you should be able to:

1. Name three types of common law estates and explain how they differ from one another.
2. Describe the process of expropriation and explain why it often creates ethical issues.
3. Explain how co-ownership, joint tenancy, and condominium ownership differ.
4. Define the different forms of non-possessory interests in land and explain how these types of interest can be created.
5. Explain the different types of leases and leasehold obligations.
6. Outline the basic difference between an assignment and a sublease.
7. Describe the forms of Indigenous interests in land that exist in Canada.
8. Explain the basic differences between a registry system and a land titles system, and indicate which system operates in your jurisdiction.
9. Explain the risk management issues that arise in the purchase of land.
10. Outline the purpose of an agreement of purchase and sale and explain the role of the conditions that are frequently contained in that type of agreement.
11. Describe the remedies that may be available if an agreement of purchase and sale is breached.
12. Describe a mortgage, including the terms of the contract and remedies for default.
13. Describe how Indigenous rights to land affect mortgages on that land.

Unit 9: Personal and Intellectual Property (Ch 17 and 18)

After studying this unit, you should be able to:

1. Explain how personal property rights can be acquired and lost.
2. Define the term “bailment” and explain the rules that determine when a bailor or a bailee may be held liable.
3. Explain the nature and importance of property insurance, and identify five other types of business insurance.
4. Explain the competing interests that intellectual property laws seek to balance.
5. Explain the scope of copyright protection and how copyright law protects against infringement.
6. Outline the protection offered under trademark law, and determine whether an action for trademark infringement or passing off may succeed.
7. Discuss the patentability of inventions, and identify possible grounds of infringement.
8. Explain how intellectual property law protects industrial designs.

Unit 10: Business Organizations – Agency and Partnerships (Ch 20 and Ch 21 - Topics 21.1 to 21.3)

After studying this unit, you should be able to:

1. Explain how an agency relationship can be created and terminated.
2. Distinguish between the actual authority of agents to enter into contracts on behalf of their principals and their apparent authority to do so.
3. Describe situations in which an agent’s fiduciary duty to act in the best interests of a principal and the agent’s duty of care protect the principal.
4. Identify the obligations that a principal owes to their agent even if the principal has not expressly agreed to them.
5. Explain how a principal can manage the risk of being held liable for contracts entered into by their agents that they have not authorized and for torts their agents commit.
6. Explain how questions may arise as to whether a person is an agent in several common kinds of business relationships, such as a joint venture.
7. Describe the special legal requirements imposed on agents working in some areas, like real estate, that are designed to protect people who deal with them.
8. Explain the advantages and disadvantages of a sole proprietorship.
9. Identify and apply the factors that determine when a partnership comes into existence.
10. Describe strategies for managing the risk of being a partner.
11. Distinguish between general and limited partnerships.

Unit 11: Business Organizations – Corporations (Ch 21 -Topics 21.4 and 21.5, and Ch 22)

After studying this unit, you should be able to:

1. Describe the process of incorporating and organizing a corporation.
2. Describe the implications of the separate legal existence of corporations.
3. Explain the division of power amongst shareholders, directors, and officers to manage and control the corporation.
4. Identify the basic characteristics of shares of a corporation.
5. Describe the basic structure for the governance of corporations.
6. Identify the liability risks associated with being a director or an officer of a corporation.
7. Explain strategies that can be used by directors and officers to manage liability risk.
8. Describe the rights of shareholders and how they are exercised.
9. Identify the legal remedies available to shareholders when management acts contrary to their interests and explain when they are available.
10. Describe the ways in which securities law complements corporate law governance rules.
11. Explain how the allocation of power contemplated in corporate law amongst shareholders, directors, and officers does not always operate in practice.
12. Explain what is meant by corporate social responsibility and how the law can encourage it.
13. Explain when a corporation will be liable for contracts, crimes, and torts based on the actions of people acting on its behalf.

Unit 12: Secured Transactions and Creditors' Rights (Ch 23)

After studying this unit, you should be able to:

1. Explain how financial institutions and other creditors can manage the risk of default by people who have obligations to them.
2. Describe three ways for a business to finance the acquisition of assets that are equivalent to borrowing money and giving the lender a security interest in the assets acquired.
3. Explain how a creditor can obtain a security interest in all the property that the debtor owns, including property acquired in the future.
4. List the steps that a creditor should take to protect their security interest in a debtor's property most effectively under personal property security laws.
5. Outline the risks for a person who acquires property from someone who has previously given security interests in that property and explain how to manage them.
6. List the steps that should be followed by secured creditors to enforce their rights against the personal property of debtors.

7. Explain how a guarantee by one person of another's obligation reduces risk for the creditor to whom that obligation is owed.

Unit 13: Employment Law (Ch 26)

After studying this unit, you should be able

1. Develop business strategies to ensure that pre-employment practices comply with employment legislation.
2. Distinguish between employees and dependent and independent contractors.
3. Explain the difference between non-competition and non-solicitation covenants.
4. Outline the circumstances in which a business is liable to third parties for the conduct of its employees and describe three ways in which a business can improve the supervision of its employees.
5. Identify the basic features of employment standards, health and safety, workers' compensation, and human rights legislation.
6. Distinguish between summary dismissal, wrongful dismissal, and constructive dismissal, and define just cause for dismissal as well as the notice periods that must be provided when dismissing an employee without cause.
7. Distinguish between severance packages and settlement packages and discuss the post-employment obligations of employees.

Assessment

To receive credit for LGST 369 you must complete five written assignments and a final exam, receiving an overall course mark of at least 50% and a mark of at least 50% on the exam.

The weightings for each item of assessment are as follows:

| Activity | Credit Weight | Date Due |
|-------------------|----------------------|-----------------|
| Assignment 1 | 10% of final grade | After Unit 3 |
| Assignment 2 | 10% of final grade | After Unit 6 |
| Assignment 3 | 10% of final grade | After Unit 8 |
| Assignment 4 | 10% of final grade | After Unit 11 |
| Assignment 5 | 10% of final grade | After Unit 13 |
| Final Examination | 50% of final grade | After all Units |

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|--------------|----------------------------|--|
| Total | 100% of final grade | |
|--------------|----------------------------|--|

Final Exam

The final examination is worth 50% of your total course mark. **In order to pass this course you must obtain a mark of 50% or higher on the exam.** It is a closed book 3-hour exam written in person on a computer at an authorized testing center or through ProctorU. By arrangement with the University, it may be written anywhere in the world.

Part A of the exam consists of 25 multiple choice and true/false questions covering the whole course (50 marks – 2 marks each).

Example: Some of these questions may involve analysis of fact scenarios like the two following:

- a. Elise owns and operates a convenience store. Because that store is located near a high school, it loses a great deal of profit to shoplifting. Last week, Elise caught Hakan in the act of stealing a magazine. She physically detained him and called the police. The police arrived and placed Hakan in handcuffs. At that point, Elise calmly and intentionally punched Hakan in the face and said, “I’ve been waiting a long time for the chance to do that.” Elise has a liability insurance policy that she purchased from the Pacific All Risk Insurance Co (PARI).

Which of the following statements is TRUE?

- i. Elise almost certainly committed the tort of false imprisonment.
 - ii. PARI will probably be required to pay damages on Elise’s behalf with respect to Hakan’s claim for false imprisonment.
 - iii. If Elise is found liable for the tort of battery, she will probably have to pay the damages herself.
 - iv. If Elise is found liable for the tort of battery, the police department will also be held vicariously liable for the same tort.
 - v. none of the above
- b. Suneel committed the tort of battery against Jodi. The injuries that she suffered were unexpectedly severe. Suneel can be held fully liable for Jodi’s losses even if those losses were not reasonably foreseeable.

TRUE or FALSE?

Part B consists of six questions, each to be answered in a paragraph, that are drawn from the learning objectives listed in the Study Guide for Units 2, 3, 4, 5, 6, and 11 (30 marks – 5 marks each).

Example: Identify and explain four types of tort remedies and two types of alternative compensation schemes.

Part C requires you to write a short essay of several paragraphs on a topic chosen from Units 4 and 11. Two topics will be given, from which you will choose one. (10 marks)

Example: Identify, explain, and compare the different torts that fall under the heading of "interference with chattels."

Part D requires you to prepare a legal analysis of several paragraphs for a fact scenario taken from the Cases and Problems contained in the textbook for Chapters 10 and 21. Two scenarios will be given, from which you will choose one. (10 marks)

Example: Elsa is a member of an active neighbourhood association. The association runs frequent community events, issues a monthly newsletter to residents, lobbies municipal government, and engages in fundraising. Recently, they have decided to create a staff position to coordinate their efforts. Their advisory committee has been discussing whether to incorporate. Outline how the association's ability to enter into contracts in conducting its activities might impact its decision about incorporation.

Suggested Study Schedules

How should you study the course material?

The Study Guide indicates the readings from the text and the learning objectives to be achieved in that unit or section. Do the quiz for the unit after you have completed studying the full unit.

You may wish to experiment with different approaches to the materials to suit your preferred learning style. Try to work through an entire section, or a distinct part of a section, during each study session. As you begin your study session, note the break-points in the material you are planning to study, and determine where you will stop. By setting yourself a suitable breakpoint, you have also set a goal for the session and have provided yourself with a convenient stopping point.

LGST 369 is designed to allow individualized, independent study. You will plan your own study sessions and complete the course work according to your own planned timetable. It is your responsibility to set a pace that will enable you to meet your own learning needs and complete the course within the six-month course contract period.

Planning Your Study

Making progress through this course will require sustained study. During your study sessions, aim to work for periods of about an hour at a time. Then take a break before you start again. The length of your study session should be governed, to the extent possible, by the nature of the study in which you are currently engaged. Plan to finish a study session at a natural break-point.

Distance learning is based on the assumption that students will organize their study sessions in ways that make the most of their individual circumstances and resources, including time.

Students who approach their studies in a systematic and organized manner are more likely to complete the course successfully than those who do not plan a course of action for themselves. Therefore, this manual includes a suggested study schedule to assist you in budgeting your time and monitoring your progress. You should expect to spend approximately six hours per week in completing all of the work required for this course.

Please note that two study schedules for LGST 369 are presented here. Schedule A is designed to accommodate students who wish to complete the course in approximately 16 weeks or four months. Schedule B permits students to take full advantage of the six-month individualized study course contract, which is standard for a three-credit course at Athabasca University. Although your course contract may allow you six months from your start date to complete the course, we suggest that you try to follow a somewhat accelerated schedule. By doing so, you will have time to deal with any unforeseen interruptions to your studies. Feel free to alter this schedule to suit your personal circumstances.

Be sure to call your tutor if you have difficulty with the material, or if you are unable to adhere to the schedule as suggested. If you find yourself falling behind in your course work, contact your tutor immediately. He or she will be able to advise you as to what options are available to you. You may, of course, proceed more quickly than is suggested by these study schedules.

Schedule A – 16 Weeks

| Week | Activity |
|------|--|
| 1 | <ul style="list-style-type: none"> • Read all information on the course website. • Make initial contact with your tutor. • Begin reading the online Study Guide and study Unit 1. • PowerPoint slide deck chapter summary for this unit. |
| 2 | <ul style="list-style-type: none"> • Study Unit 2 and PowerPoint slide deck chapter summary. |
| 3 | <ul style="list-style-type: none"> • Study Unit 3 and PowerPoint slide deck chapter summary. • Complete and submit Assignment 1. |
| 4 | <ul style="list-style-type: none"> • Study Unit 4 and PowerPoint slide deck chapter summary. |
| 5 | <ul style="list-style-type: none"> • Study Units 5 and 6 and PowerPoint slide deck chapter summary. |
| 6 | <ul style="list-style-type: none"> • Complete and submit Assignment 2. |
| 7 | <ul style="list-style-type: none"> • Study Unit 7 and PowerPoint slide deck chapter summary. |

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| 8 | <ul style="list-style-type: none"> • Study Unit 8 and PowerPoint slide deck chapter summary. • Complete and submit Assignment 3. |
| 9 | <ul style="list-style-type: none"> • Study Unit 9 and PowerPoint slide deck chapter summary. |
| 10 | <ul style="list-style-type: none"> • Study Unit 10 and PowerPoint slide deck chapter summary. |
| 11 | <ul style="list-style-type: none"> • Study Unit 11 and PowerPoint slide deck chapter summary. • Complete and submit Assignment 4. |
| 12 | <ul style="list-style-type: none"> • Study Unit 12 and PowerPoint slide deck chapter summary. • Arrange to write the final exam in Week 16. |
| 13 | <ul style="list-style-type: none"> • Study Unit 13 and PowerPoint slide deck chapter summary. |
| 14 | <ul style="list-style-type: none"> • Complete and submit Assignment 5. |
| 15 | <ul style="list-style-type: none"> • Study for the exam. • Review the learning objectives and the PowerPoint presentations for each unit. • Contact your tutor if you have any questions. |
| 16 | <ul style="list-style-type: none"> • Write the Final Exam. |

Congratulations on completing the course!

Schedule B – 23 Weeks

| Week | Activity |
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| 1 | <ul style="list-style-type: none"> • Read all information on the course website. • Make initial contact with your tutor. • Begin reading the online Study Guide and study Unit 1. • PowerPoint slide deck chapter summary for this unit. |
| 2 | <ul style="list-style-type: none"> • Study Unit 2 and PowerPoint slide deck chapter summary. |
| 3 | <ul style="list-style-type: none"> • Study Unit 3 and PowerPoint slide deck chapter summary. • Complete and submit Assignment 1. |
| 4 | <ul style="list-style-type: none"> • Study Unit 4 and PowerPoint slide deck chapter summary. |
| 5 | <ul style="list-style-type: none"> • Study Unit 5 and PowerPoint slide deck chapter summary. |
| 6 | <ul style="list-style-type: none"> • Begin studying Unit 6. |
| 7 | <ul style="list-style-type: none"> • Complete studying Unit 6 and PowerPoint slide deck chapter summary. |
| 8 | <ul style="list-style-type: none"> • Complete and submit Assignment 2. |
| 9 | <ul style="list-style-type: none"> • Begin studying Unit 7. |
| 10 | <ul style="list-style-type: none"> • Complete studying Unit 7 and PowerPoint slide deck chapter summary. |
| 11 | <ul style="list-style-type: none"> • Begin studying Unit 8. |

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| 12 | <ul style="list-style-type: none"> • Complete studying Unit 8 and PowerPoint slide deck chapter summary. |
| 13 | <ul style="list-style-type: none"> • Complete and submit Assignment 3. |
| 14 | <ul style="list-style-type: none"> • Begin studying Unit 9. |
| 15 | <ul style="list-style-type: none"> • Finish studying Unit 9 and PowerPoint slide deck chapter summary. |
| 16 | <ul style="list-style-type: none"> • Study Unit 10 and PowerPoint slide deck chapter summary. |
| 17 | <ul style="list-style-type: none"> • Study Unit 11 and PowerPoint slide deck chapter summary. • Complete and submit Assignment 4. |
| 18 | <ul style="list-style-type: none"> • Study Unit 12 and PowerPoint slide deck chapter summary. • Arrange to write the final exam in Week 23. |
| 19 | <ul style="list-style-type: none"> • Study Unit 13 and PowerPoint slide deck chapter summary. |
| 20 | <ul style="list-style-type: none"> • Complete and submit Assignment 5. |
| 21 | <ul style="list-style-type: none"> • Begin studying for the exam. • Review the learning objectives and the PowerPoint presentations for each unit. |
| 22 | <ul style="list-style-type: none"> • Complete studying for the exam and contact your tutor if you have any questions. |
| 23 | <ul style="list-style-type: none"> • Write the Final Exam. |

Congratulations on completing the course!