

Law Reform Commission Of British Columbia

c/o British Columbia Law Institute
1822 East Mall, University of British Columbia
Vancouver, British Columbia V6T 1Z1
Voice: (604) 822 0142 Fax: (604) 822 0144 E-mail: bcli@bcli.org
Website: www.bcli.org

Backgrounder

LRC 92—Report on Deeds and Seals

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Introduction

Whenever it is necessary to record an agreement, the parties usually do so by making a simple contract. Sometimes, however, the parties may affix seals to the contract following their signatures. Affixing a seal has a profound effect in law.

An instrument executed under seal is called a deed. Obligations recorded in a deed are subject to an area of law in which the principles sometimes differ dramatically from those which are applied to a simple contract. Since few people are aware of these differences, executing an instrument under seal is a practice which is attended by some danger. Moreover, curious results are to be found in the cases where one legal consequence follows from a contractual obligation and another, totally different, consequence follows when the same obligation is contained in a deed.

Objectives

The heart of this project involves a consideration of two questions:

- (i) Do the formalities required to create a specialty obligation operate sensibly today?
- (ii) Are the legal distinctions that exist between specialty and simple obligations justifiable?

Rationale

It is difficult to see what aspect of contemporary life would emerge unscathed if people could not enter into binding arrangements. In general, the law acknowledges two methods for people to define the legal parameters of their dealings: the contract and the deed.

Deeds are not used very often anymore. Typically, the parties will enter into a simple contract. Many business arrangements, however, may also be the subject matter of a deed. Simply affixing a seal to a document at the time it is executed may be sufficient to transform

a simple contract into a deed. In many cases, a seal is added out of an excess of caution, if there is any doubt about sufficiency of consideration.

What few people realize is that adding a seal to a contract alters its character completely. Different principles of law now apply to the instrument. A contract is governed by the law of contract. The obligations contained in a sealed instrument, or deed, are governed by the law of covenant.

Why do different principles apply? For one reason, the theory underlying enforcement differs between deeds and contracts. For another reason, since deeds are so seldom used, the principles of law which govern them have not been subjected to the same kinds of refinements we have seen in the law of contract over the last 100 years.

In most cases nothing turns on the fact that a document has been executed as a deed. The parties treat it as though it were a contract. Where, however, something goes awry, ingenious counsel will, from time to time, delve into the ancient learning respecting deeds and come up with a highly technical argument that would not otherwise exist, to defeat the parties' expectations.

In this regard, the Commission will examine the historical development of the current law governing deeds, and reviews amendments to the law enacted or proposed in other jurisdictions.