WHEN THE PURCHASER DOESN'T COMPLETE: RIGHTS OF THE PURCHASER TO RESCIND

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INTRODUCTION

1. Purchasers may wish to rescind in a variety of circumstances, including as follows:

   (i) misrepresentation by the vendor including contravention of the Australian Consumer Law;

   (ii) breach of an essential term;

   (iii) breach of a warranty;

   (iv) off the plan contracts: cases focus on the vendor making optimistic statements in the marketing campaign.

2017 Law Society of NSW Form of Contract for the Sale of Land

2. Any analysis of whether a party can rescind a contract, ought to start with the contract itself. The various iterations of the NSW Law Society form of contract for the sale of

land, address the rights of the parties to rescind, and what the consequences of rescission might be (eg with or without compensation).

3. Relevant clauses include :
   a. *Cl's 6* & 7: purchaser can claim compensation for error or misdescription, as to *property, title or anything else*, but only before completion; and there is set out a mechanism for the vendor to rescind by serving a notice *if the claim is more than 5% of the price* .

   b. *Cl 10* places restrictions on rights of purchasers to make a claim or requisition or rescind or terminate in respect of 9 listed categories of things, e.g. location of dividing fences; certain services e.g. drainage pipe or telephone line, which for example benefits another property; *representations not set out in the contract,* easements and covenants, anything which is in substance disclosed, and so on.

      Although this can fend off a claim in common law negligent misrepresentation , it cannot exclude claims under the *ACL* or *Contracts Review Act*.

   c. *Cl 12*: inspections and certificates (especially when read in context of section 52A *Conveyancing Act*).

   d. *Cl 19* deals with rescission, and stipulates that if there is a right to rescind <u>under the contract</u> (cf a right under the *Conveyancing Regulations*), it must be exercised by notice served <u>prior to completion</u> and despite the making of requisitions or objections etc.

   e. *Cl 20*:

      i. acknowledgment that anything said to be attached, is in fact attached;

      ii. provisions as to service of notices;

      iii. statement that any dimensions are only approximate (relevant to representations of units sold "off the plan").

f. *Cl 23 .8*: rights of purchasers to rescind if certain costs greater than 1% of the purchase price etc.

g. *Cl 28*: Unregistered plans –where purchaser buys a lot in an unregistered plan, then there is a right to rescind if the plan is not registered by a given time (6 months under the contract, though this is almost invariably changed at a developer's instance, in special conditions).

h. *Cl 29*: conditional contracts.

Many contracts are conditional on e.g. finance; obtaining a development consent; or a developer completing by the sunset date , obtaining registration of a plan of sub division and like matters. *Cl 29* deals with the *purchaser's right to rescind* in certain circumstances, if the condition is not met despite *reasonable efforts* being used.

In *Maloy v Jelacic* [2003] NSWSC 23, completion was conditional on the vendor obtaining a building certificate , but it was held at the first trial that the vendor did not take all reasonable steps to achieve that, & the vendor was held not entitled to rescind & the purchaser was granted specific performance. However, the vendor was given leave to re-open to lead evidence that council had performed a "back flip" and those orders were reversed: see para [35] of *Maloy (No 2)* [2003] NSWSC 412 , where the following was held:

"In these circumstances, a finding of *causal relationship between lack of activity and absence of the building certificate can no longer be justified, this being the essential determinant in a case of this kind*……There are now shown to have existed substantial causal links in the chain beyond the reach of any diligence and effort the defendants could have brought to bear. In a case such as this, the party seeking to challenge rescission as inconsistent with the contract and wrongful faces a twofold task ……."

The two tasks are to to show that the person the subject to te obligation had failed to use all reasonable endeavours to procure the relevant document (e.g. building

certificate ; registration of a strata plan etc ; and second, that it was that failure to use all reasonable endeavours which led to the problem at hand (e.g. non obtaining of the document).

For one of the most recent cases, see *Tamanna v Zattere* [2017] NSWSC 1388 (vendor's rescission of sales of units off the plan , held to be a repudiation. Focus on damages assessment)

FLIGHT V BOOTH: Caveat Emptor and the rule in *Flight v Booth, through the eyes of Sackar J in Raphael Shin Enterprises Pty Limited v Waterpoint Shepherds Bay Pty Limited* [2014] NSWSC 743.

4. Consistent with the common law, the vendor is obliged, on completion, to cause legal title to the property being sold, to pass to the purchaser free of any mortgage or other interests ,subject to any necessary registration: clause 16.3 of the NSW Law Society forms from at least 2005 till the 2017 iteration. Clause 16 as whole fleshes out that obligation by eg requiring the documents of title to be handed to the purchaser.

5. The primary rule in transactions for the sale of land is caveat emptor -- let the buyer beware. Historically, that has translated into the rule that a vendor only had to disclose *latent defects* in title whether or not known to the vendor.

6. The rule in *Flight v Booth* [1834] EngR 1087; (1834) 1 Bing (N.C.) 370; [1834] 1 Scott 190, [1834] 131 ER 1160, allows a purchaser to rescind a contract which contains a misdescription so substantial that what they have ended up with something that is materially different to what they contracted for.

   The particulars of sale of leasehold premises in Covent Garden which were being auctioned stated that under the original lease from the Duke of Bedford "no offensive trade was to be carried on; they cannot be let to a coffee house keeper, or working hatter". There does not seem to be any indication of the length of the lease in the judgment.

After successfully bidding the particulars were discovered to be cryptic and subject to other substantial restrictions against non-offensive trades also.

The sixth condition of sale provided that if, through any mistake, the estate should be improperly described or any error or misstatement be inserted in that particular, such error or misdescription should not vitiate the sale, but the vendor or purchaser should pay or allow a proportionate value according to the average of the whole purchase money, as a compensation either way.

7. The original lease was not required by the plaintiff's solicitor, although the plaintiff purported to rescind the contract and sought to recover a deposit paid.

8. The original lease was produced at the trial, and contained a proviso which provided, *inter alia*, that "if, at any time during the continuance of the said term, the trades or businesses of a brewer, baker, sugar-baker, vintner, victualler, butcher, tripe-seller, poulterer, fishmonger, cheesemonger, fruiterer, herb-seller, coffee-house keeper, distiller, dyer, brazier, smith, tinman, farrier, dealer in old iron, pipe-burner, tallow-chandler, soap-boiler, working hatter, or any or either of them, shall be used or exercised in or upon the said demised premises...it shall be lawful for the said duke, his heirs and assigns, to re-enter".

9. “It was not proved that the plaintiff had ever seen the lease or heard it read, or was aware of the terms of the proviso, until the day of trial. The headnote suggests that the lease was produced at the sale and that the proviso was publicly read, but this evidence was objected to and the arbitrator received it only to negative any wilful concealment or misrepresentation on the part of the defendant: at 373. Nevertheless, in the judgment, Tindal CJ accepted that the reading of the lease at the auction by the auctioneer was no excuse for a misdescription of the terms of the lease in the particulars of sale: at 379.

10. Tindal CJ adopted the express finding of the arbitrator that the misdescription of the premises stood clear of any fraud and must be taken "to have originated either from ignorance, inadvertence, or accident": at 376.

11. Tindal CJ began the analysis of the legal question by noting "it is extremely difficult to lay down, from the decided cases, any certain definite rule which shall determine what misstatement or misdescription in the particulars shall justify a rescinding of the contract, and what shall be the ground of compensation only". His Honour identified discrepancies between various cases before setting out at 377 the well-known rule quoted above.

12. However, Tindal CJ continued to give further consideration to the terms of the lease and stated that the particulars at the auction would lead any person to conclude "that he was not prevented by the terms of the lease from carrying on any trade in it, except those which were of a class generally acknowledged to be offensive, and the two enumerated trades of coffee-house keeper and working hatter": at 377-378. The actual restriction in the lease "would extend to prevent trades of the most innocent and inoffensive kinds from being exercised on the premises": at 378.

13. Critically, Tindal CJ observed that:
...indeed, the very terms of the sixth condition of sale scarcely apply to a case **where the difference of value is so uncertain and arbitrary as in the present case**. The condition, that the parties are to pay or allow a proportionate value according to the average, will comprehend a case where there is half an acre more or less than is described, or cases which resolve themselves into simple calculations of that nature; but how will it govern such a misstatement as the present?

14. *Held:* The purchaser was entitled to rescind the contract and recover his deposit. Even though a misdescription may be unintended, where it is a material and substantial point, and a court could infer that the purchaser would not have bid for the property, the purchaser is not restricted to recovering compensation but may choose to rescind.

"To my mind, a fuller and careful reading of Flight v Booth *would seem to suggest that the rule which is said to arise from it has two key aspects; first and foremost, the identification of the misdescription that is so substantial and material that it may be reasonably supposed that the purchaser might never have entered into the contract at all and the purchaser is not bound to resort to the clause of compensation. The second aspect, however, is that where the difference of value is so uncertain and arbitrary as a result of the misdescription, it is clearer that compensation will not be sufficient and the*

contract must be avoided altogether."

"While the observation of Tindal CJ that a compensation clause "comprehends a case where there is half an acre more or less than is described" of course begs the question of the size of the property to which half an acre is being compared, it seems to me that where differences of value based on a claim of misdescription can be calculated with reasonable precision (although they not be "simple calculations") and especially in circumstances where the evidence of such valuation is uncontested, the principle in *Flight v Booth* may not have much work to do in the modern era."

The facts in *Flight* were quaint and are unlikely to be replicated in modern times.

per Sackar J in *Raphael Shin Enterprises Pty Limited v Waterpoint Shepherds Bay Pty Limited* [2014] NSWSC 743.

15. In *Birch v Robek* [2014] VCC 68 , the purchaser was held entitled , on the basis of *Flight v Booth* , to rescind a contract for the purchase of an apartment "off-the-plan" because it was *at least 3% smaller than represented*.

16. Birch, the purchaser, had made it clear to the vendor that the apartment she was after needed to have a minimum internal area of 40m2 so as to satisfy the requirements of her financier.The sales brochure handed represented that the internal area would be 40.5m2 as did the architectural plans included in the contract.

    The measurement was calculated in accordance with the *Property Council of Australia* Method of Measurement Residential, although this was not stated on the brochure or the architectural plans. However, as is known to valuers, but not necessarily to lay persons at the lower end of the market, there are *four different methods of measurement of residential property*:

    a. *Property Council of Australia (PCA) Method of Measurement*

    b. *Title*: based on the title boundaries as shown on the plan of subdivision.

c. *Internal finished surface*

d. *Useable floorspace*.

17. Contracts were exchanged for $359,00. Later, ANZ's valuer measured the area as 32m^2 (based on useable floorspace); valued the unit lower than the sale price and refused to extend finance ; and the purchaser rescinded and commenced proceedings to recover her deposit . The vendor claimed for loss on resale.

18. Depending on the methodologies used to used to measure the floor space, it ranged from 32.6 to 39.3m^2 (ie the highest measurement was 3% less than the area of 40.5m^2 represented by the vendor).

19. The Court , applying *Flight v Booth* endorsed the purchaser's right to rescind. The vendor was held unable to take refuge in a disclaimer that the internal measurements may be taken using various methodologies which may produce different results.

20. A conspectus of factors inferred that the difference in size was *sufficiently substantial to allow the purchaser to rescind the contract*, including another term of the contract ; & that the the apartment was small and as a consequence , any difference in size would have a relatively bigger impact.

21. It was held that the purchaser would also have been entitled to the return of her deposit on the basis of misleading or deceptive conduct under the *Australian Consumer Law.*

    The court noted the sales campaign was not aimed at surveyors or developers who might have understood the nuances in the measurement jargon..

22. As discussed in *Kannane & Ors v Demian Developments P/L* [2005] NSWC 1193; 12 BPR 23 305 at [39], the rule still applies to this day, notwithstanding that a contract provides that no error or misdescription should annul the sale and confines the purchaser to claiming compensation. Followed in para [82] of *Section 79 Pty Ltd as Trustee for the 79 Trebla Family v Suburban Land Agency* [2017] ACTSC 37.

LATENT AND PATENT DEFECTS

23. *A latent defect* is one which purchasers or their experts expert are not reasonably able to discover on inspection of the property. Generally, these have to be disclosed by the vendor, whether the vendor knows about them or not.

    "Where an undisclosed defect is "substantial" or "essential", the purchaser may terminate the contract. This obligation may be modified by contract and it is subject to several qualifications ……." para [47] of *Festa Holdings* [2004] NSWCA 228 and further at para [49]:

    "…….*The focus of attention is upon the vendor's capacity to deliver title having regard to the subject matter of the contract for sale.* Necessarily one is looking at a state of affairs represented to exist at that point of time…."

    At [52] the Court of Appeal endorsed these words from a previous case: "*When considering whether there is a defect in title one must direct one's mind to what it was that the purchaser was led to expect then ask `whether the purchaser was obtaining something essentially what it bargained for or whether it was obtaining something so materially altered in character as to be in substance a different thing from that contracted for'*

24. *A patent defect* is one which is visible or which a purchaser inspecting the property with reasonable care ought to discover. *Caveat emptor applies to such defects* and the vendor does not have to disclose them. .

25. A *defect in title* affects the vendor's ability to pass an unencumbered title to the property being sold. It covers those matters 'within the vendor's knowledge which detract from his right to convey the estate he has agreed to sell or which prevent him from conveying his title free of encumbrance': Holland J in *Dormer v Solo Investments* [1974] 1 NSWLR

428. Examples are undisclosed easements, restrictive covenants, leases, & encroachments. [1]

26. A defect affecting only the *quality , value or use* of property does not constitute a defect in title; and again, *caveat emptor* applies to such matters and as such, the purchaser must normally ascertain defects as to *quality* before exchange.

Examples include town planning restrictions , structural issues, termites, contamination, heritage listing, noise, land prone to flooding , breach of development consent [2].
A further example in this category is a 'proposal' which might at some future time affect the property , of which vendor is aware at the date of contract: *Dormer v Solo Investments*, but see the statutory obligation to give disclosure, below.

Stambovsky v. Ackley, 169 A.2d 254 (N.Y. App. Div. 1991), is widely known as the *Ghostbusters* ruling, is a case in the New York Supreme Court, Appellate Division, held the purchaser (from New York, and unaware of the local Nyal district infamy) entitled to rescind because the fact of the house being haunted, was not disclosed prior to sale. There is an extensive Wikipedia entry.

See to *Deverick v Hedley* (2000), NZ.[3]

27. Although a failure to disclose a defect in quality or a proposal affecting the property known to the vendor will not entitle the purchaser to rescind the contract nor to damages, such matters may well provide a basis to resist an action for specific performance by a vendor or for recovering the deposit under s55(2A), *Conveyancing Act*: *Tsekos v FCA* [1982] 2 NSWLR 347.

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[1] A paper by Tony Cahill viewed online February 2018, *Vendor disclosure and warranty* for the AIC NSW Regional Seminar April 2017, gives examples as *undisclosed easements, restrictive covenants, leases, & encroachments.*

[2] : See the *Cahill* paper (ibid) .

[3] referenced by Diane Skapinker in her February 2008 paper *Vendor Disclosure and Conveyancing (Sale of Land) Regulation 2005* revisited. I acknowledge that I have drawn on this paper for ideas as to topics to address, layout and certain cases.

28. *Cleaver v Schyde Investments* [2011] EWCA Civ 92, concerned a notice of a planning application which had not been passed on by the seller's solicitors; and the purchaser obtained rescission for innocent misrepresentation. The case is interesting because the judge looked at the UK standard form contract settled by their *The Law Society*, which he observed, had

    "… no axe to grind on behalf of either vendors or purchasers" and which had promulgated the clause, "taking into account judicial criticism of its predecessors."

    "….. both parties were aware of and wished (if possible) to exploit the development potential of the property. The planning position (and any change to it between the answer to enquiries and completion) was of obvious materiality. *Yet the mere existence of an application for planning permission can hardly be said to make the property different in quantity, quality or tenure from what it had been represented to be*."'

29. In *Szanto v Bainton* [2011] NSWSC 278, White J held that the mere possibility that Sydney Water may exercise a statutory power to enter and do work on a property was not a defect in title, although , if notice had been given of the intended exercise of power, things may have been different: [39].

    White J also held that although the purchaser was entitled to rescind for breach of a statutory warranty under section 52A(7) of the *Conveyancing Act* 1919, "such a breach would not mean that the vendors were not able to proceed to completion at the time they served the notice to complete, where the purchaser had not made a claim, nor sought rescission": at [44].

30. See further *Borda v Burgess* [2003] NSWSC 1171 (an undisclosed mining lease) ; and *Carpenter v McGrath* (1996) 40 NSWLR 39, (potential for the council issuing a demolition order does not constitute a defect in title).

RESCISSION FOR DEFECT IN TITLE OR DAMAGES ?

Including consideration of the doctrine of election

31. Where there is a substantial defect and the purchaser is entitled to an abatement of the purchase price it is not open to the vendor to give a notice to complete or to force specific performance without at least offering compensation: see *Ping v Pearce Paradise Pty Ltd* (1982) 2 BPR 9419, 9426, a case where the vendor was in breach of its duty to take reasonable care of the property between contract and completion.

    Other examples are cases where the vendor has promised to build a house on the property sold and there have been serious defects in the building: see *Tildesley v Clarkson* [1862] EngR 422; (1862) 30 Beav 419; 54 ER 951 and *Doyle v East* [1972] 1 WLR 1080.

32. In *Raphael Shin v Waterpoint Shepherd's Bay* [2014] NSWSC 743, the vendor entered into a contract for the sale of land, intended to be used for a restaurant. It issued a side letter which imposed a contractual obligation on it to lawfully drill a penetration into a concrete slab so stairs could be built, linking the unit to be used as the restaurant, with a storage space.

33. The vendor did the penetrations, without development consent and then the parties fell into dispute over, inter alia, whether the vendor would procure council consent so that the penetrations were lawfully done. The purchaser had spent circa $1m fitting out the premises in anticipation of settlement, but did not complete.

34. The purchaser/ plaintiff claimed that damages were an alternative to statutory rescission pursuant to a number of causes of action. It was held that the purchaser *would have been* entitled to damages for breach of contract *had it completed the contract*, but it did not.

    [407] ……. …… *the unauthorised works did not constitute a defect in title* and to the extent that they constituted a breach of statutory warranty RSE could have sought compensation or (in certain circumstances) exercised a right to rescind but has

done neither……Waterpoint was entitled to demand that RSE complete the contract (see the discussion at [141]-[160]).

[408] …….. the side letter in my opinion was not incorporated into the sale of land contracts ……..

[409] ……. even assuming however the side letter was so incorporated it does not follow that even if Waterpoint were in breach of such a contract it could not serve and rely upon a notice to complete. *It seems to me that if it could be argued that the vendor's breach of obligation only sounded in damages then the vendor could still demand completion if he offers appropriate compensation. Clause 7 of the standard form of contract here provides a compensation procedure for breaches of obligations by the vendor. Indeed there is authority for the proposition that the vendor is entitled to serve a notice to complete even if compensation has not in fact been offered."*

[412] The notion or concept that was being discussed by Tindal CJ of course was in the context of a misdescription which could be properly described as "in a material and substantial point", and that such misdescription had it been made obvious to the purchaser he might not ever have entered the contract at all. Here on the facts but for the question of consent the physical changes effected were on any view precisely what RSE wanted. The only questions were consents and approvals and even then Mr Shin was content to purchase the properties in their absence at a reduced price. *In the words of Tindal CJ at 378, this is not a case 'where the difference of value is so uncertain and arbitrary' but rather a case where the relevant condition of sale would 'comprehend a case where there is half an acre more or less than is described, or cases which resolve themselves into simple calculations of that nature'.* Clearly such a calculation had already been done by Mr Shin.

[413] …….. Barrett J ……..t*hought the property needed to be described as "altogether useless" for the purposes for which it was made*. This is simply not so on the facts of this case.

[429] The measure of that damage however in my view would have been the difference between the value of the two properties with a hole or a staircase compared to the combined value of the two individual lots without a hole."

"[432] In my view, my findings that the defendant was in breach of the terms of the side letter to obtain all necessary consents and approvals for the penetration work outlined in that letter did not entitle the plaintiff to refuse to complete the contracts for the purchase of the restaurant and the storage lot.

[433] It seems to me that the plaintiff's loss of the fitout was incurred by its own decision not to complete the sale of land contracts. …….Waterpoint did nothing to cause such a loss.

[434] I have rejected the plaintiffs contention that it would never have purchased the properties without them being connected by authorised penetrations…….

[435] ……. Mr Shin …….. was prepared to buy the two lots with unauthorised penetrations for $300,000 less in any event.

[436] RSE well knew when it commenced and completed the fitout that no consents or approvals had been obtained. The plaintiff was not phased by any of this but was prepared to undertake an expensive fitout and run the restaurant and *more to the point run the risk*.

……

"Whilst the side letter and its implicit representation do, on my analysis, give rise to a claim in damages on the part of RSE I do not consider it had a right to rescind. That is because it is important in determining the ultimate remedy available to consider the offending conduct in context: *Butcher v Lachlan Elder Realty Pty Ltd* [2004] HCA 60; (2004) 218 CLR 592 at [37] per Gleeson CJ, Hayne and Heydon JJ and at [109] per McHugh J."
Raphael Shin v Waterpoint Shepherd's Bay [2014] NSWSC 743 para [389].

35. An important case considering the situation of where the vendor's breach of obligation only sounds in damages, and its right to require completion , is *Alexus Pty Ltd v Pont Holdings Pty Ltd* [2000] NSWSC 1171; (2000) 10 BPR 18,371 per Young J at [23].

THE DOCTRINE OF ELECTION

36. In *Section 79 Pty Ltd as Trustee for the 79 Trebla Family v Suburban Land Agency* [2017] ACTSC 370 , Clause 18 of the a commercial contract for the sale of land provided that the buyer was entitled to compensation on completion (and the price would be reduced accordingly) for an error or misdescription if the buyer made a claim for compensation before completion, unless the buyer knew the true position before the date of the contract.

A dispute arose over a pedestrian access easement and Sec 79 (ie the plaintiff) claimed $704,318.24 for error or misdescription . The LDA rejected the plaintiff's claim and its riposte was to issue a Notice to Complete. The plaintiff said it would commence proceedings for a declaration that the contract was void and unenforceable and for return of the deposit, and served a "Default Notice" claiming that the LDA had not provided a lease substantially upon the terms and conditions of the Specimen Lease.

The LDA argued that that the plaintiff had elected to claim compensation for loss of land value due to the access easement, and that the plaintiff could not later exercise the right to rescind and claim return of the deposit.

The Court rejected LDA's submission, noting as follows from paras [104]ff , being an almost verbatim extract pruned of the numerous case citations:

The words or conduct required to constitute an election must be unequivocal in the sense that it is consistent only with the exercise of one of two alternative and inconsistent sets of rights. That may be done, for example, by the exercise of contractual rights during a period of delay, so as to induce the other party to believe that performance of the contract was insisted upon. It may also be done by unequivocal conduct evincing an intention to affirm the wronged party's obligations to perform.

The election must have been communicated to the other party *in unequivocal terms.*

But if "…*an act is consistent both with the continuance of a contract and the reservation of a right to terminate, the right to terminate is not lost by the doing of the act"* : [106], citing the well known case of *Immer* where it was held that when Immer, as the purchaser, forwarded settlement documents to the vendor, it was merely intimating that it was not intending to exercise its right to rescind.

"109. Undoubtedly, the right to claim compensation and continue with a contract is inconsistent with the right to terminate the contract.

110. However, for the doctrine to apply, there must be an unequivocal election to pursue one right to the exclusion of the other. *As the plurality pointed out in Immer, where a party to a contract has indicated that it intends to continue with the contract (thereby maintaining the status quo), a court may need to be cautious about concluding that the party is electing to abandon a right to rescind.* In *Immer* at 43, the plurality found that it could not truly be said that Immer was "confronted" with the need to make a choice at the time that it forwarded settlement documents (suggesting an intention to keep the contract on foot), even less that it was abandoning for all time its right to rescind the contract.

At [111] , the court then noted the distinction between cases where the party's conduct is unequivocal and cases where the party's conduct is merely some evidence of an election to affirm; holding that "*in the latter case the party's knowledge of a right of election will be relevant to a determination of whether there has been an election*" and continued as follows:

112. *In this case, the letter of 13 August 2015 stated that the plaintiff was pursuing a claim for compensation, indicating that the plaintiff intended to continue with the contract. The plaintiff was legally represented and must have been aware of its right to rescind. However, the letter did not state that the plaintiff was abandoning its right of rescission. The situation is analogous to that in Immer. Read in context, the plaintiff's letter of 13 August 2015 was not an irrevocable election. The dealings between the parties had not reached a critical point where the plaintiff was "confronted" with a stark*

choice and made an unequivocal election to abandon its right to rescission. The plaintiff's expressed intention had no adverse impact on the LDA."

VENDOR'S DUTY OF DISCLOSURE: Section 52 A *Conveyancing Act*

37. 'Vendor disclosure' legislation came into effect in 1986, and required vendors to provide information to purchasers about the property to allow them to exchange contracts quickly (and so reduce 'gazumping') See: *Nguyen v Taylor* (1992) 27 NSWLR 48 at 52 , and the with respect, as always excellent paper by Tony Cahill referenced herein.

38. Section 52A(2), *Conveyancing Act (CA) extends a vendor's duty of disclosure beyond latent defects in title in 3 ways*:

    a. by requiring vendors of land to attach *prescribed documents* to contracts for sale of land;

    b. by deeming vendors of land to make *warranties* about the property;

    c. by implying *prescribed terms* into contracts for sale of land.

39. Section 52A(2), *Conveyancing Act (CA)* stipulates that a vendor:
    (a) shall, before contract is signed by or on behalf of the purchaser, attach prescribed documents to contract; and
    (b) is deemed to have included in contract certain prescribed terms, conditions and warranties.

40. By Clause 20 of the 2017 form of contract , the purchaser acknowledges that anything said to be attached to contract was so attached by the vendor prior to the purchaser signing it. But *Gibson v Francis* (1989) NSW ConvR 55-548 held such a clause is not a basis to estop a purchaser from exercising its statutory remedy.

Section 52A(3), CA – reliance on prescribed documents

41. Where a vendor attaches certain prescribed certificates or documents issued, then a purchaser or mortgagee can in the manner articulated, rely on it.

Prescribed Documents

42. Clause 4(1) of *Conveyancing (Sale of Land) Regulation* 2017 ("*CSOL Reg*") says that the prescribed documents are those specified in Schedule 1 as are relevant to the land the subject of the contract for sale etc .

43. The *CSOL Reg* is drafted in a technical and complex manner and ought be read each time one is considering which documents one must attach.

44. Examples of prescribed documents include:

    a. Section 149 certificate (unless land is not within a local govt area);

    b. Diagram from recognised sewerage authority (if available in ordinary course of administration) indicating location of authority's sewer in relation to the land;

    c. Property certificate;

    d. Copy of plan for the land issued by Dept of Lands/ LPI (except in case of limited title land);

    e. Copies of all deeds, dealings and instruments lodged/ registered at LPI shown on relevant property certificate creating easements, profits a prendre, restrictions on use or positive covenants burdening or benefiting (any part of) the land, together with copies of all Memoranda referred to in any such instrument;

    f. notice to vendors and purchasers of prescribed size and print;

g. smoke alarm notice.

45. Prescribed Documents do not include surveys, building certificates, leases.

46. The Regulation does not specify when the Prescribed Documents need to be obtained before exchange.

47. An 'old' document will satisfy the 'Prescribed Documents' requirement. But since information in such a document may be out of date, the vendor may breach a Prescribed Warranty: *Verman v McLaughlin* (1990) NSW ConvR 55-521.

48. Parties cannot contract out of Prescribed Document provisions - s52A(4) of *CA* renders void any provision, whether in sale contract or any other agreement which 'purports to exclude, modify or restrict' or would 'have the effect of excluding, modifying or restricting any such provision'.

49. Other statutes might also require documents to be attached to a contract for the sale of land eg section 95, *Home Building Act* 1989 in relation to owner- builders

Remedy for breach of Prescribed Documents requirement – s52A(6), CA

50. The regulations may make provision for the remedies available to a purchaser under a contract for the sale of land and the penalties which may be incurred by a vendor under such a contract for failure to comply, both as regards documents and warranties.

51. *Remedy for failure to attach Prescribed Documents – CSOL Reg, Secs 19 & 20*

a. Sec 19(1)(a) - purchaser may rescind the contract for failure by vendor to attach to the contract the prescribed documents;

b. Sec 18 - purchaser rescinds a contract for the sale of land by notice in writing served on the vendor:
(a)if the purchaser's right to rescind arises from vendor's failure to attach prescribed

documents - at any time within 14 days after the making of the contract, unless the contract has been completed

52. Notice may be given as provided in Sec 170 of the Act or in such other manner as the contract or option may specify.

Prescribed Warranty – s52A(2)(b), CA

53. A vendor under a contract for the sale of land shall be deemed to have included in the contract such terms, conditions and warranties as may be prescribed.

54. Sec 9 of the *CSOL Reg* provides that for the purposes of s52A(2) (b), the prescribed warranty for a contract for the sale of land is that set out in Pt 1, Sch 3.

55. Part 1 - Warranty in contract

1 The vendor warrants that, as at the date of the contract and except as disclosed in the contract:
(a) the land is not subject to an adverse affectation, and
(b) the land does not contain any part of a sewer belonging to a recognised sewerage authority, and
(c) the section 149 certificate attached to the contract specifies the true status of the land the subject of the contract in relation to the matters set out in Schedule 4 to the Environmental Planning and Assessment Regulation 2000 , and
(d) there is no matter in relation to any building or structure on the land (being a building or structure that is included in the sale of the land) that would justify the making of any upgrading or demolition order or, if there is such a matter, a building certificate has been issued in relation to the building or structure since the matter arose, and
(e) if the land is burdened or purports to be burdened by a positive covenant imposed under Division 4 of Part 6 of the Conveyancing Act 1919 , no amount is payable under section 88F of that Act in respect of the land, and
(f) the land is not subject to an annual charge for the provision of coastal protection services under the Local Government Act 1993.

56. For the purposes of this warranty:

(a) land is "subject to an adverse affectation" if anything listed in *Part 3 of Schedule 3* to the Conveyancing (Sale of Land) Regulation 2017 applies in respect of the land, and
(b) an authority or other entity *has a proposal in respect of land if, and only if, the authority or entity has issued a written statement and the substance of the statement is inconsistent with there being no proposal of the authority or entity in respect of the land*, and
(c) without limiting the way in which it may otherwise be disclosed, an *adverse affectation* is taken to be disclosed in a contract if any of the following is attached to the contract:
……
[NOTE : matters (c) to (e) excised] .

57. Analogous warranties , remedies and provisions are prescribed in relation to options and land subject to strata schemes.

Adverse affectations' – proof of 'proposals'

58. Cases on when a 'proposal' 'affects' the land:

a. There needs to be more than '*mere unofficial speculation'*: *Jones v Assef* (1976);

b. 'an intention given force to by adoption by means of a resolution of adoption by some process which gives the intention some operative effect'*: DNT Properties Pty Ltd v Knox* (1972);

c. a stage reached beyond mere informal intention or contemplation by the council and there should be 'a decision, whether it be called a recommendation or a proposal, which clearly authenticated the Council's recognition of the proposal to acquire the three properties": *Alusta Pty Ltd v Duncan* (1973);

d. "at this time there are no Commission works on the property ... however the parcel lies within an area under investigation for a major high voltage transmission line proposed to be constructed ... Associated with the line it will be necessary to acquire an easement 60 metres in width centred on the route: *Arias v Brigden* (1986) NSW ConvR 55-278;

e. "the land lies within an area under investigation for a high voltage transmission line proposed to be constructed...At the present stage of enquiry [the property] is affected by one of the alternative routes': *Korbol Holdings Pty Ltd v Johnson* (1987) NSW ConvR 55-337;

f. *Copmar Holdings v The Cth* (1989) NSW ConvR 55- 451: 'It is not enough that the statement is consistent with there being a proposal affecting the land if it is also consistent with there being no proposal ... [T]o give a right of rescission the statement must assert or imply a state of affairs which in substance is at variance or incompatible with the notion of there being no proposal affecting the land at the relevant date.' (McHugh JA)

(these cases have been, with respect, usefully collated by Ms Skapinker in her paper referenced herein).

Remedy for breach of Prescribed Warranty

59. Secs 17-19 *CSOL Reg* provides that:

a. The purchaser under a contract for sale of land may rescind the contract for breach of the prescribed warranty;

b. A purchaser rescinds a contract by notice in writing served on the vendor at any time before the contract is completed.

60. Contract may not be rescinded unless:

a. breach constitutes a failure to disclose to purchaser the existence of a matter affecting the land;

b. purchaser was unaware of existence of matter when the contract was entered into; and

c. matter is such that purchaser would not have entered into contract had he or she been aware of its existence.

61. Austin J considered a very similarly worded predecessor section of this regulation in *Mandalidis v Artline* (1999) 47 NSWLR 568.

Rescission for Damage Between Exchange and Completion

62. There are provisions in the *Conveyancing Act 1919* dealing with damage between exchange and completion: see Part 4, Division 7, and in particular sections 66L (power to rescind contract where land substantially damaged) and 66M (abatement of purchase price where land damaged). These provisions are used, for example, when fire damage occurs between exchange and completion: see *Bakhos v Fenner* [2007] NSWSC 641 and *Urban House Pty Ltd v Purnell Bros Pty Ltd* [2007] NSWSC 1248.

MISREPRESENTATION

63. In *Detmold v Oldtex Pty Ltd* [2005] NSWSC 11 97, the purchasers rescinded the contract because of the vendor's breach of section 52 of the *Trade Practices Act 1974*. The purchasers found on inspection (which the vendor had delayed) that the apartment sold "off the plan " *had been changed and its floor plan was a distant reltation to the draft floor plan in the initial contract signed years earlier.*

64. It was held as follows at [21] "that the original floor plan appealed to her as it meant that it was easy for people working in the kitchen to communicate with guests in the living

area, and also enjoy the view from the apartment: the entry into the downstairs bedroom was immediately opposite the entry to the flat: the downstairs bedroom had an en-suite bathroom, and the subject apartment would have an open, spacious feel to it."

Ms Detmold "would not have entered into the contract had the unit been configured in the way it was ultimately built".

For a recent example , see *Sunland Waterfront (BVI) Ltd & Anor v Prudentia Investments Pty Ltd & Ors (No 2)* [2012] VSC 239 (8 June 2012).

65. *Pisano v Williams*

In 2015, the NSWCA decided *Williams v Pisano* [2015] NSWCA 177. The Pisanos had purchased a home in Dover Heights which Pat Williams and his wife Georgia Dandris had owned, and which was substantially renovated prior to sale. The Pisanos claimed the home was riddled with building defects, which would cost over $1m to rectify. They initially put their claim on a large number of bases , including negligent answering of requisitions , but most of these bases fell away by the time of final submissions to the trial judge. The claim which was pressed against Mr Williams was that the sale had been in trade or commerce and the marketing brochure, which trumpeted the home as "master built", was misleading and deceptive, because it had in truth been presided over by Mr Williams' wife, Ms Georgia Dandris, as an owner-builder. As such, said the Pisanos, the representations contravened s 18 because they were misleading and deceptive and that they contravened s 30(1)(e) because they were false or misleading representations concerning the characteristics of the Property.

66. The author represented Mr Williams at the trial. It was accepted that the representations were misleading or deceptive. However, I submitted that the sale of the family home, even if after a renovation, was not and could not have been in trade or commerce. The learned trial judge preferred the argument of the Pisano's on that crucial point, but the NSWCA reversed that finding, holding relevantly as follows at paras [38]-[44]:

67. In ordinary circumstances, a person who sells his home, whether by private treaty or by auction and whether he conducts the negotiations personally or through a real estate

agent, would not be said to be undertaking those activities in the course of a trade or business or in a business context. Whether or not an estate agent is used and whether or not that agent advertises the house, by preparing brochures or other advertisements, and whether or not the agent sells by auction or merely negotiates a private treaty, the sale will normally remain a sale by the vendor of his house and not an act done in a business context. It is relevant to consider the character of the parties involved, which includes whether they are people who have engaged in or are about to engage in commercial activities, whether the transaction is motivated by business, as distinct from personal, reasons and whether the person whose conduct is under attack played an active part in the transaction.…

68. The mere fact that a joint owner of a residential property engages...in the renovation of the property with a view to selling the property at a profit, in circumstances where the joint owners reside in the property as their home for a significant period of time prior to the renovations, does not of itself lead to the conclusion that conduct engaged in connection with the sale of the property is conduct in trade or commerce....

69. Later in the judgment, Emmett JA made observations about the construction of Sec 236 ACL, which indicate the flexible, policy based approach now taken by courts, as opposed to the more rigid approach taken in the earlier cases, as set out above. HH, as will be seen from the extract below, held that the measure of damages must conform to the remedial purpose of the ACL and "to the justice and equity of the case".

Para [99] the measure of damages must be selected according to the "justice and equity of the case".

Para [100]"…general principles for assessing damages may have to give way to solutions better adapted to give the injured claimant an amount that will most fairly compensate for the wrong suffered".

Para 112: damages must be "fairly" reflect the liability imposed by Sec 18 and 30 *ACL*.

Para 106: this canvassed what the learned trial judge considered was called for by the justice and equity of the case.

Liability limited by a scheme approved under the Professional Standards Legislation

70. HH was perhaps moved to make the observation that follow, about what the "justice and equity" of the case called for, by the facts of the case. There had been complaint about many elements of the home, including the misalignment of a wall, which was 100mm's out of square over its length of 3.8m's. Under cross examination, it was accepted that this misalignment was observable upon their pre purchase inspection (reflected in the finding at i.a [110]). Mrs Dandris had conceded at the trial that demolition and reconstruction of the wall was called for in order to rectify the breach of the statutory warranties. The cost of this work was just shy of $170,000.

71. The Pisanos had similarly complained about the kitchen island being out of plumb and requiring expensive rectification—even though this too had been observable pre purchase.

> [99] The task of a court is to select a measure of damages that conforms to the remedial purpose of the Law and "to the justice and equity of the case". The purpose of the Law is to establish a standard of behaviour in trade or commerce by proscribing certain conduct and by providing a remedy in damages for contravention of the proscription. Accordingly, the principles of common law that are relevant to assessing damages in contract or tort are not directly in point. However, they will normally provide useful guidance, in so far as the principles of contract and tort have had to respond to problems of a nature similar to the nature of the problems that arise in the application of the Law. While the principles of the common law are not controlling, they represent an accumulation of valuable insight and experience that will be useful in applying the Law.
>
> [100] In many cases, the measure of damages in tort is the appropriate guide in determining an award of damages under s 236. However, in assessing damages, it is not necessary to choose between the measure of damages in deceit or other torts and contract. The central requirement under s 236 is to establish a causal connection between the loss claimed and the contravening conduct. Once such a causal connection is found to exist, the principles in relation to remedies in contract, tort or equity such remedies will usually be of considerable assistance by way of analogy. However, the recoverable amount should not be limited by drawing an analogy with such remedies and, in particular cases, general principles for assessing damages may have to give way to

solutions better adapted to give the injured claimant an amount that will most fairly compensate for the wrong suffered.

72. Consistent with my submissions to the learned trial judge, Emmett JA made it quite plain that it is overly simplistic to say that the correct measure of loss in a case such as Pisano is diminution in value, arrived at by subtracting costs to rectify from the purchase price of the property. One must ask: what would the purchasers have done in the contra factual world where the misleading representation was not made e.g. would they have negotiated a lower price? would they have bought another home without defects? See paras [104] to [105].

RELIEF AGAINST FORFEITURE OF A DEPOSIT

73. "There is a broad generalised proposition in the textbooks that if a contract for the sale of land goes off then, unless the vendor *is solely at* fault, the vendor is entitled to keep the deposit, at least up to 10%, but that other monies paid under the contract may not be forfeited to the vendor as ordinarily equity will consider that to be a penalty. …… Per Young CJ in Eq in para [71] of *Mulkearns v Chandos Developments Pty Ltd (No 4)* [2005] NSWSC 511.

74. Section 55(2A) of the *Conveyancing Act 1919* (NSW) provides as follows:
"In *every* case where the court *refuses to grant specific performance* of a contract, or in any *proceeding for the return of a deposit*, the court may, *if it thinks fit,* order the repayment of any deposit with or without interest thereon."

General approach of the Courts to Sec 55 (2A)

75. One function of a deposit is as a guarantee; the other two functions are to demonstrate "earnestness" i.e. the genuine-ness of the buyer and it is also part of the price.
In *Chambers v Borness* [2014] NSWSC 890 para [16], the court held:

[16] I accept that those sums all represent monies to which the vendor is or was contractually entitled. But the consequence of not giving relief pursuant to s 55(2A) of

the Conveyancing Act would, in my view, be to bring about a result that is *so economically lop-sided that the exercise of the Court's discretion is justified in the circumstances.* I think the totality of the circumstances that I have outlined render it unjust or inequitable for the vendor to retain the deposit. *The disparity between the respective financial outcomes for the plaintiff and the defendant is too great*.

…… …..

As to developers, *including those who expend large sums on DA's in anticipation of settlement.*

76. In *Sydney Developments Pty Limited v Perry Properties Pty Limited* [2016] NSWC 515, Darke J held as follows:

[50] The purchaser submitted that in all the circumstances it would be unjust and inequitable to permit the vendor to retain the deposit that was paid on exchange. It was submitted that the vendor acted harshly and unfairly in rejecting the purchaser's requests for an extension of the time by which the second payment had to be made, and in refusing to agree to an amendment of Special Condition 25. It was also submitted that retention of the money would give the vendor an unwarranted windfall, particularly as it appeared that the value of the properties may have increased (as indicated by the vendor's statements about selling for $5 million). It was also pointed out that the purchaser had spent considerable sums of money in preparing development applications for the properties.

[51] I do not think that it would be unjust or inequitable to permit the vendor to retain the deposit that was paid on exchange. The vendor certainly took a hard line in the face of the purchaser's requests for more time. However, it was merely insisting upon performance of an obligation that the parties had agreed was essential. The contract has been entered into by two corporations for the sale of substantial property at a price of more than $4.65 million; the contract had been negotiated by solicitors retained by the parties. It may be the case (although there is no valuation evidence before the Court) that the properties have increased in value since the date of the contract, but it is by no means clear that the vendor will actually secure such a gain if the properties are re-sold. The purchaser may also have spent money in the preparation of development applications,

but it was under no contractual obligation to do so, and there is no suggestion that the vendor is entitled to the benefit of such expenditure.

77. For a summary of criteria relevant to Sec 55 2, see paras [140] ff of *Nelson v Bellamy* [2000] NSWSC 182, where the following general principles are articulated:

    a. Has the vendor received any windfall benefit? (such as the case where the vendor has in fact resold at a higher price?);

    b. However, even if there is no windfall to the vendor, the court may still give relief;

    c. Is non-completion a fault of the purchaser personally or a matter over which it had little control?;

    d. Was the purchaser's use of the property thwarted by some factor outside the purchaser's control?;

    e. Was there any mis-statement (even short of misrepresentation that would permit rescission) in the vendor's camp which affected the purchaser's decision?"

78. To this may be added factors articulated in *Havyn's* case, NSWCA [2005] 182, and the other cases cited below, as follows:

    a. The jurisdiction conferred by s55(2A) is wide and no limiting gloss should be placed upon its words, which allow a Court to order a deposit to be returned "if it thinks fit".

    b. it is not necessary for an applicant to show special or exceptional circumstances before an order under s55(2A) can be made.

    c. Although the jurisdiction is wide, it is not unbounded and the Court must consider the context of a deposit and should not take adopt an approach which weakens the proper function of a deposit as an earnest for performance.

d. For this reason it is important for a Court when considering the discretion under s55(2A) to consider the terms and conditions of the contract, and the circumstances of its breach which gave rise to the forfeiture of the deposit, and to be careful to avoid characterising a deposit as a windfall merely because it is forfeited;

e. hardship to the purchaser: eg what proportion of their assets have been spent on the deposit and other associated costs? *Havyn* CA para [160]. A sub issue is whether the disparity in financial outcomes of vendor and purchaser would be too great, if the deposit were forfeit*: Chambers v Borness* [2014] NSWSC 890 para [16];

f. general reasonableness of the purchaser's attitude , including whether the purchaser took up a correct legal position: *Havyn* (ibid);

g. has the purchaser treated the giving of a deposit with 'due seriousness", having regard to its function as an earnest of seriousness ? : para [9] *of Chambers v Borness* [2014] NSWSC 890;

h. the ultimate question is whether it would be 'unjust in the circumstances' or 'unjust and inequitable' or there is 'sufficient to warrant a departure from holding the purchaser to its obligations under the contract': *Chambers v Borness* (ibid) para [15];

i. resale by the vendor at a substantially higher price can be weighed in the balance (although on its own is insufficient to merit the exercise of the discretion) : para [68] *Nassif & Ors v Caminer* [2009] NSWCA 45;

j. relevant to windfall is that the vendor must pay agent's commission: (ibid).

Havyn para's [159] ff and other cases *eg Nassif & Ors v Caminer* [2009] NSWCA 45 show how judicial (and other) minds can differ on factors relevant to the exercise of the discretion. In *Nassif*, there was both disagreement between the trial judge and the appeal judges; and also as between the minority judge and majority judges on appeal.

REPUDIATION AND BREACH OF AN ESSENTIAL TERM

79. Clauses in the 2017 form of contract for the sale of land, which touch on the topic of what , and what isn't, an essential term include:Cl. 2 (deposit); Cl. 8.2; C. l 9 ; & Cl. 21.6 (normally, the time by which something is fixed to be done, is not essential. The usual example would be the date for completion, which absent any special conditions or anything in the nature of property sold to indicate otherwise, is not essential).

80. A valid and binding contract may be repudiated by conduct falling into one of two categories:

81. (i) conduct amounting to a renunciation of liabilities under the contract, which evinces an intention no longer to be bound by the contract; or

(ii) conduct demonstrating an intention to fulfil the liabilities under the contract *only* in a manner substantially inconsistent with relevant contractual obligations and in no other way : *Shevill v Builders Licensing Board* (1982) 149 CLR 620 at 625-6; *Laurinda Pty Ltd v Capalaba Park Shopping Centre Pty Ltd* (1989) 166 CLR 623 at 659, per Deane and Dawson JJ.
A formula used in many cases ot convey the above, is that a party is not ready , willing or able to perform its obligations eg *Harold R Finger & Co Ltd v Karellas* [2015] NSWSC 354 (repudiation of a heads of agreement).

Before the contract can come to an end, however, the 'innocent' party must first accept the repudiation: *Automatic Fire Sprinklers Pty Ltd v Watson* (1946) 72 CLR 435.

To determine whether the conduct amounts to repudiation, the courts will consider whether the reasonable person in the position of the 'innocent' party would consider that the conduct of the 'defaulting' party *conveys* renunciation of the contract as a whole, or renunciation of a fundamental obligation or obligations under the contract: *Laurinda v Capalaba* at 659, per Deane and Dawson JJ.

It is not necessary to show that the 'defaulting' party intended to repudiate the contract. The test is objective.

(the above is a lightly edited and interpolated extract from a paper by Amy Baker of Nigel Bowen Chambers published in the Nov/ Dec 2009 edition of *Precedent*, viewed online February 2018).

82. When parties to a contract agree that a term is essential it usually amounts to an agreement that the term goes to the root of the contract so that if it is breached, the innocent party may regard it as a fundamental breach and terminate the contract without notice.: paras [113] and [132] of *CMA Recycling Victoria Pty Ltd v Doubt Free Investments Pty Ltd* [2011] TASSC 71. After citing various authorites for the above, the learned judge at [113] said further that the provisions of the lease there under dispuate, recording that certain terms were essential, seemed to serve no purpose other than the preservation of the right under common law to terminate for breach of an essential term .The issue seems to have been whether notice provisions ha dto be complied with prior to termination, with the court holdign they did not have to be due to the breach of an essential condition.

    Bear in mind that the issue is primarily one of construction of the agreement.

83. Breach of a fundamental term is not necessarily the same thing as repudiation; this seems an open question at law : para [138] of *CMA Recycling Victoria; and* repudiation and breach of essential term are not mutually exclusive: repudiation can occur without breach of an essential term and, conversely, a breach of an essential term can occur without repudiation**.**

84. The application of these principles to a contract for the sale of and, is seen in *G R Securities Pty Ltd v Baulkham Hills Private Hospital Pty Ltd* (1986) 40 NSWLR 631:

    "The vendor then argued that, if a conditional contract came into existence by the acceptance of the offer of 21 March, it could not become unconditional until all the conditions were fulfilled and that they were not fulfilled. This argument cannot succeed. By letter dated 10 April 1986 the vendor claimed that the parties had not entered into a legally binding contract and said that it did not wish to proceed further in the matter. Where one party to a contract makes it impossible for a condition of the contract to be

fulfilled, the condition is to be taken as satisfied……. *The repudiation of the vendor has prevented the purchaser from complying with conditions 2, 3 and 4 of the letter of 21 March 1986.* The vendor did not contend that the purchaser has failed to comply with the other conditions. Accordingly, the claim that the contract is terminated by reason of the non-fulfilment of conditions fails."

ACKNOWLEDGEMENTS

85. I have found following papers extremely useful and have referred in my paper to a number of cases referred to by those learned commentators:

Vendor Disclosure and Warranty, by Mr Tony Cahill for the AIC NSW Regional Seminar, April 2017

Vendor Disclosure and Conveyancing (Sale of Land) Regulation 2005, by Diane Skapinker, Feb 2008

Paper by Amy Baker of Nigel Bowen Chambers published in the Nov/ Dec 2009 edition of *Precedent*, viewed online February 2018

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