1 Revenue Implications in Property and Commercial Transactions	
1.1 The Practitioner's Role	
1.2 NSW State Taxes	
1.2.1 Relevant Legislation	
1.2.2 Transfers	
1.2.3 Dutiable Property	
1.2.4 Abolition of Duty	
1.2.5 Apportionment	
1.2.6 Anti-Avoidance Provisions	
1.2.7 Liability to pay duty	
1.2.8 No Double Duty	
1.2.9 Ad Valorem and Nominal Stamp Duty	
1.2.10 Duty Concessions and Exemptions	
1.3 Commonwealth Taxes	
1.4 Goods and Services Tax	
1.4.1 Taxable Supplies	
1.4.2 Exemptions from GST	
1.4.3 Who must register for GST?	
If your business is under these thresholds, registration for GST is optional	
1.4.4 When you must apply for registration	
1.4.5 Buying and Selling a Business	
1.4.6 Reporting GST to the ATO	
1.4.7 Buying and Selling Real Property	
1.5 Capital Gains Tax	
1.5.1 CGT Discounts and Concessions	
1.5.2 CGT Events	29
2 Contract for Sale and Purchase of Land: Vendor and Purchaser's Interest	30
2.1 Overview	30
2.2 Solicitor's should not act for both vendor and purchaser	
2.3 Agency Agreements	37
2.3.1 Exclusive Agency	38
2.4 Draft Contract for the Sale of Land	
2.4.1 The Contract	
2.4.2 The Standard Contract for the sale and purchase of land 2014 edition	
2.5 Instructions	
2.5.1 Preliminary Issues	
2.5.2 Finance	
2.5.3 Cooling-off/Anti-Gazumping Legislation	
2.5.4 Warnings	
2.5.5 Enquiries	
2.5.6 Costs	
2.6 Vendor Disclosure	
2.6.1 Vendor Disclosure Legislation – s52A Conveyancing Act and Conveyance	
of Land) Reg. 2010 - Prescribed Documents	
2.6.1.1 Section 149(2) Environmental Planning and Assessment Act 1979	49
2.6.1.2 Sewerage Service Diagram	
2.6.1.3 Folio of the Register	
2.6.1.4 Deposited Plan	
Positive Covenant	
2.6.1.6 Consequences of vendor's failure to annex prescribed documents	
2.6.2 Vendor Disclosure Legislation - s52A Conveyancing Act and Conveyanci	
of Land) Pag 2010 - Vandor Warranty	0 (

	2.6.2.1 Remedies for breach of vendor warranty	51
	2.7 Additional Documents	
	2.8 Recent Building Work Requirements - Home Building Act 1989	
	2.9 Purchaser's Finance	
	2.10 Tenancy	
	2.11 Purchaser's Pre-exchange Property Enquiries/Inspections	
	2.11.1 Purchaser's Use of the Property	
	2.11.2 Illegal or Non-complying Structures	
	2.11.3 Building Certificates	
	2.11.4 Land development	
	2.11.5 Fixtures and Fittings	
	-9	
3		
	3.1 Exchange	
	3.2 Cooling-Off Period	
	3.3 Execution of Contracts	62
	3.3.1 By Individuals	
	3.3.2 By Corporations	
	3.3.3 Under Power of Attorney	
	3.3.4 General	
	3.4 Methods of Exchange	
	3.4.1 Physical exchange	
	3.4.2 Exchange by Post or DX	
	3.4.3 Exchange by Telephone	
	3.5 The Deposit	
	3.5.1 Reduced Deposit	66
	3.6 Caveat	
	3.7 Following Exchange	
	3.8 Post Exchange Searches and Enquiries	
	3.8.1 Folio Searches	
	3.8.2 Local Council enquiries	
	3.8.3 Section 149D Building Certificate	
	3.8.4 Section 603 Certificate Local Government Act	
	3.8.5 Section 66 Certificate Sydney Water Act 1994	
	3.8.6 Land Tax – Office of State Revenue	
	3.8.7 Other common enquiries	
	3.9 Survey and Building Certificate	
	3.9.1 Survey Reports	
	3.9.1.1 "Peg Out Survey"	
	3.9.2 Building Certificates	
	3.10 Requisitions	
	3.11 Duty	
	3.11.1 Payment of Duty	
	3.12 Transfer	
	3.12.1 Manual Transfer	
	3.12.2 Electronic Transfer	76
4		
	4.1 Arrangements to Settle	77
	4.2 Insurance	
	4.3 Adjustments	79
	4.3.1 Land Tax	79
	4.3.1.1 What is land tax?	
	4.3.1.2 Exemptions from Land Tax	80

	4.3.2 Council and Water Rates	81
	4.3.2.1 Council Rates	82
	4.3.2.1.1 Reduced Rates	
	4.3.2.2 Water Rates	
	4.3.2.3 Water Usage	
	4.4 Completion	
	4.4.1 Time	
	4.5 Settlement Statement and Sheet	
	4.6 Settlement Agenda	
	4.7 Cheques	
	4.8 Order on Agent	
	4.9 Place for Completion	
	4.10 Settlement	
	4.11 Final Search	
	4.12 Registration	
	4.12.1 National Electronic Conveyancing and Clause 30	
	4.13 Final Report to Client	94
5	Mortgages and Securities	96
	5.1 Steps in a Mortgage Transaction – Overview	
	5.2 Finance for the residential buyer	
	5.2.1 Interest rates	
	5.3 Investigation of Mortgagor's Title	
	5.4 Mortgage Terms and Covenants	
	5.4.1 Drafting mortgage covenants	101
	5.4.2 Repayment of the principal sum	
	5.4.3 Interest Provisions	102
	5.4.4 Insurance	102
	5.4.4.1 Insurance for Strata Title Property	
	5.4.4.2 Insurance Under the National Credit Code	
	5.4.5 Covenant to repair	
	5.4.6 Right to redeem mortgage before the due date	104
	5.4.7 Power of attorney by mortgagor	
	5.4.8 Default	
	5.4.8.1 Foreclosure: An Alternative to Mortgagee's Sale	
	5.4.8.2 Defences of the Mortgagor	
	5.4.10 Need for mortgagee's consent to leases	
	5.5 Mortgage Duty	
	5.6 Discharge	
	5.7 Variations of Mortgages	
	5.8 Postponement of Mortgages	
	5.9 Sub-mortgages	
	5.10 THE NATIONAL CONSUMER CREDIT PROTECTION ACT 2009 (CTH) (NCCPA) A.	112 ND
	NATIONAL CREDIT CODE	
	5.11 Financing Commercial Transactions	
	5.11.1 Commercial Freehold Interests	
	5.11.2 Commercial Leasehold Interests	
	5.11.3 Personal Property	
	5.11.4 SOLICITORS' ADVISING ON LOAN OR SECURITY DOCUMENTS AND	
	PROVIDING EVIDENCE OF ADVICE	116
_	Commercial Leases	
6		
	6.1 Terminology: Lessor and Lessee	
	U.C. LUIENIGHUI LIUUHIV	1 1 /

6.3 Preliminary Questions	118
6.4 Operation of the Retail Leases Act 1994	
6.4.1 Definitions	
6.4.2 Retail Shop Businesses to which the Act applies	119
6.4.3 Exemptions	
6.5 Retail Lease Bond Scheme	
6.6 Leasing Procedures and Disclosure Requirements of Lessor and Lessee	
6.6.1 Before the Lease is entered into	122
6.6.2 Where an Agreement for Lease is required	124
6.6.3 Formal Requirements of an Agreement for Lease	
6.6.4 Conveyancing Procedures	
6.7 Formal Requirements of Leases	
6.7.1 Capacity	126
6.7.2 When should a lease be registered?	
6.7.3 Commercial Building Disclosure	
6.7.4 Subdivision approval	
6.7.5 Mortgagee's Consent	
6.7.6 Foreign acquisition	
6.8 Lease Costs and Disbursements	
6.9 Lease Duty	
6.10 Drafting and Negotiating Commercial Leases	
6.10.1 Role of the Lessor's Solicitor	
6.10.2 Role of the Lessee's Solicitor	
6.10.3.1 Parties	
6.10.3.2 Premises	
6.10.3.3 Term – commencement date and duration	
6.10.3.4 Option for renewal	131
6.10.3.4.1 Ineffective exercise of option for renewal	
6.10.3.5 Rent	
6.10.3.6 Rent Review	
6.10.3.7 Outgoings - Rates, taxes and other expenses	
6.10.3.9 "Make Good"	
6.10.3.10 Signs	
6.10.3.11 Covenants relating to user	
6.10.3.11.1 Trading Hours	136
6.10.3.11.2 Drafting the user covenant	
6.10.4 Checklist for Drafting Lease Provisions	
6.10.5 Guarantees	
6.10.6 Implied covenants	137
6.11 Assignment, Subleases and Mortgages of the Lease	
6.12 Variation of the Lease	
6.13 Surrender of Lease	
6.14 Termination for breach	
6.15 Termination by notice	
6.16 Expiry	
6.17 Capital Gains Tax (CGT)	
6.19 Mediation6.19	
6.20 'Green' leases & BEEDA	
6.21 Steps for Registered Lease	
6.22 LPI Lease Form 07L	
7 Business Structures	149

7.1 Content of Commercial Advice	149
7.2 Types of Business Structures	150
7.2.1 The Sole Trader	
7.2.1.1 Advantages	
7.2.1.2 Disadvantages	
7.2.1.3 Becoming a Sole Proprietor	151
7.2.1.4 Ongoing Costs	151
7.2.1.5 Ongoing Compliance Requirements	152
7.2.2 Partnerships	152
7.2.2.1 Advantages	
7.2.2.2 Disadvantages	
7.2.2.3 Setting up and Running a Partnership	
7.2.2.4 Ongoing Compliance Requirements of a Partnership	
7.2.2.4.1 Fiduciary obligations	
7.2.2.5 Partnership Agreements	
7.2.2.6 Limited Partnerships	
7.2.3 Companies	
7.2.3.1 Directors	
7.2.3.2 Shareholders	
7.2.3.3 Advantages	
7.2.3.4 Disadvantages	
7.2.3.5 Establishing and Maintaining a Company	
7.2.4 Trusts	
7.2.4.1 Establishing and Maintaining a Trust	
7.2.4.2 Ongoing Compliance Requirements - Trustee's Rights and Liabilities	
7.2.4.3 Unit Trust	
7.2.4.3.1 Advantages	
7.2.4.3.2 Disadvantages	
7.2.4.4 Discretionary Trust	
7.2.4.4.1 Advantages	
7.2.4.4.2 Disadvantages	
7.2.5 Franchises	162
7.2.5.1 Advantages	163
7.2.5.2 Disadvantages	164
7.2.6 Joint Ventures	164
7.2.6.1 Advantages	164
7.2.6.2 Disadvantages	164
8 Contract for the Sale of Business: Pre-Exchange	166
8.1 Initial Considerations	
8.1.1 'Caveat Emptor'	107
0.=== 0.==0,000.000.000.000.000.000.000.000.00	
8.2 Disclosure	
8.2.1 Are there disclosure obligations imposed on negotiating parties?	
8.2.2 Is there an implied obligation on negotiating parties to act in good faith?	
8.3 Due Diligence	
8.3.1 Pre-Exchange Searches and Inquiries	
8.4 Drafting an agreement	
8.5 The Contract for the Sale of Business – 2004 Edition	
8.5.1 Particulars of the Standard Contract (Pages 1-3)	
8.5.2 Standard Terms & Conditions (Pages 4-10)	175
8.5.2.1 Clause 1 - Definitions	175
8.5.2.2 Clauses 2 and 3 - Deposit	
8.5.2.3 Clause 4 – Trading Stock	
8.5.2.4 Clause 5 – Passing of Risk	
8.5.2.5 Clause 6 - Confidentiality	176

	8.5.2.6	Clause 7 – Certificates and Inspections	176
	8.5.2.7	Clause 8 - Audit	
	8.5.2.8	Clause 9 - How the vendor must conduct the business until completion	
	8.5.2.9	Clause 10 – Vendor's Promises	
	8.5.2.10	Clause 11 - Foreign Acquisitions and Takeovers Act	
	8.5.2.11	Clause 12 - Restrictions on rights of purchaser	
	8.5.2.12	Clause 13 - GST	
	8.5.2.13	Clause 14 - Requisitions	
	8.5.2.14	Clause 15 - Vendor's right to rescind	
	8.5.2.15	Clause 16 - Compliance with work orders	
	8.5.2.16	Clause 17 - Restriction on vendor's competition	
	8.5.2.17 8.5.2.18	Clause 19 - Adjustments	
	8.5.2.19	Clause 20 - Completion date	
	8.5.2.20	Clause 21 - Book debts	
	8.5.2.21	Clause 22 - Purchaser's Default	
	8.5.2.22	Clause 23 - Rescission	
	8.5.2.23	Clause 24 - Miscellaneous	
	8.5.2.24	Clause 25 - Time limits	
	8.5.2.25	Clause 26 - Training before and after completion	
	8.5.2.26	Clause 27 - Lease of premises – general provisions	
	8.5.2.27	Clause 28 - Grant of new lease	
	8.5.2.28	Clause 29 - Transfer of existing lease	
	8.5.2.29	Clause 30 - Consent to transfer of franchise	
	8.5.2.30	Clause 31 - Employees	
	8.5.3 Ad	ditional Conditions	180
	8.5.4 An	nexures	180
		llateral Documents	
		11	
		ent	
		nere Premises are Leased	
		ock-in-Trade	
		CK-III-11auc	
		tion	
		ease or Transfer of an Existing Lease	
		iability of the vendor and purchaser on and after the transfer of lease	
		ortgagee's consent	
		ctions on Vendor's Competition	
	8.12 Summ	ary of Pre-Exchange for Vendor and Purchaser	185
9	Contract fo	or the Sale of Business: Exchange and Post-Exchange	186
_		ge	
		tions on Title	
		's Post-Exchange Obligations with regard to Conduct of the Business and	
		tle for Transfer	
		nduct of Business	
		ansfer of Title	
		ser's Post-Exchange Obligations with regard to Duty, Finance, Training o	
	L	of Documents	
	9.4.1 Du	ty on the Contract	
	9.4.1.1	Agreement for Sale	
	9.4.1.2	Transfer of Lease & Deed of Assignment of a Lease	190
	9.4.1.3	Duty on Mortgagee's Consent	
		ance	
	9.4.2.1	Vendor Finance	
	9.4.2.2	Personal Property Securities Register	
	9.4.2.3	"Subject to Finance" Clauses	191

9.4.3	Training	191
9.4.4	Preparation of Documents	191
10 Contra	act for Sale of Business: Pre-Settlement and Settlement	103
	ndor's Solicitor's Tasks Between Exchange and Settlement	
	rchaser's Solicitor's Tasks Between Exchange and Settlement	
	ljustmentsljustments	
10.3.1		
10.3.2	Employee Entitlements	
10.3.3	* *	
	rchaser's Pre-Settlement Searches	
	eparation for Settlement	
10.5.1		
10.5.2	· ·	
10.5.3	9	
10.6 Se	ttlement	
10.6.1	Time and Place	198
10.6.2	Telephone and Electricity	198
10.6.3	Stocktake	
10.6.4	At Settlement	198
10.6.5	Registration	199
10.7 Cla	osing the Accounts	
10.7.1	Documents to clients	
10.7.2	Safe custody	199
10.7.3	Final letter	199
11 Strata	Title	201
	levant Legislation	
11.1 Ke	Definitions	
11.1.1		
	.1.2 Lots and Common Property	
11.1	1 5	
11.1	.1.4 Alterations to Boundaries	203
11.1	.1.5 Initial Period	204
11.2 Un	nit Entitlement	205
11.3 Ov	vners Corporation	
11.3.1	ý 6	
11.3.2	· · · · · · · · · · · · · · · · · · ·	
11.3.3		
11.3.4	Meetings of Owners Corporation	
11.3		on 1
	se 10 209	1
11.3	.4.2 Proxy Voting - Strata Schemes Management Act, Schedule 2, Part 2 Divisionse 11 209)n 1
11.3		. 2
	sion 1 Clause 12	
	.4.4 Chairing Meetings - Strata Schemes Management Act, Schedule 2, Part 2 D	
	se 15 209	
11.3.5	Legal Advice	210
11.4 By	-Laws	210
11.4.1	Changes to By-Laws	
11.4.2	Exclusive Use/Special Privileges By-Law	212
11.5 Fii	nances of Strata Schemes	212
11.5.1	Administrative Fund	212
11.5.2	Sinking Fund	
11.5.3	Managing Agents	214

11.5.4 Records and Accounts to be kept by the Owners Corporation	
11.5.5 Estimates	217
11.5.6 Interest and Discounts on Contributions	218
11.5.7 Restrictions on Spending	218
11.6 Insurance	218
11.6.1 Owners Corporation obligation to obtain insurance	219
11.6.2 Other Insurance	
11.7 Disputes	221
11.8 Strata Provisions: Clauses 23 and 28 of the Contract for the Purchase and Sale o	f
Land – 2004 Edition	221
11.8.1 Clause 23.1	222
11.8.2 Clause 23.2	222
11.8.3 Clause 23.3	222
11.8.4 Clause 23.4	
11.8.5 Clause 23.5	
11.8.6 Clause 23.6	
11.8.7 Clause 23.7	
11.8.8 Clause 23.8	
11.8.9 Clause 23.9	
11.8.10 Clauses 23.10-23.12 & Section 118 Notice	
11.8.11 Clauses 23.13-23.16 & Section 109 Certificate	
11.8.12 Clause 23.17	
11.8.13 Clause 23.18	
11.8.14 Acting for the Vendor	
11.8.14.1 Implied Warranty	
11.8.14.2 Disclosure and Clause 23 of the Contract	
11.8.14.3 Instructions Checklist	
1	
11.8.15 Acting for the Purchaser	
11.8.15.2 Checklist for Purchaser's Solicitor	
11.9 Clause 28 of the Standard Contract - Unregistered Plans	
, and the second	
12 Powers of Attorney, Options & Residential Tenancies	
12.1 Powers of Attorney	235
12.1.1 Capacity	
12.1.2 Scope of Power	236
12.1.3 Power of Attorney under the Powers of Attorney Act 2003 (NSW)	236
12.1.3.1 Power under the Act	236
12.1.3.2 General Power of Attorney	237
12.1.3.3 Enduring Powers of Attorney	238
12.1.4 Powers by Deed	238
12.1.5 Registration	238
12.1.6 Checking Execution of a Document executed under a Power of Attorney	238
12.1.7 Duties	239
12.1.8 Termination	239
12.1.9 Appointment of an Enduring Guardian	240
12.2 Options	
12.2.1 Why use an option?	
12.2.1.1 Residential property – Part 4, Divisions 8 and 9	
12.2.2 Duty	
12.2.2.1 Duty payable upon Exercise of Option	
12.2.2.2 Duty on Transfer of an Interest under an Option	
12.2.3 Caveat	
12.2.4 Exercise of the Option	

12.2.5 Parties	244
12.2.6 Nominees	244
12.2.7 Options to purchase in leases	
12.2.8 Capital Gains Tax	245
12.3 Residential Tenancies	
12.3.1 Legislation	
12.3.1.1 Residential Tenancies Act 2010 (RTA)	
12.3.2 Residential Tenancy Agreements	
12.3.2.1 Costs:	247
12.3.2.2 Rent, Rent Increases and Bonds:	247
12.3.2.3 Mortgagee repossession	248
12.3.2.4 Termination	248
12.3.2.4.1 Termination, but no breach of residential tenancy agreement	
12.3.2.4.2 Termination for non-payment of rent solely	248
12.3.2.4.3 Termination for breach of agreement other than non-payment of re	ent248
12.3.2.4.4 Termination following sale of the premises	249