

# NSW Conveyancing Law Study Guide

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## **Week 1 – Introduction to Conveyancing Law**

### **Overview**

- Conveyancing law governs the legal work involved in transferring interests in land from one party to another.
- In NSW, conveyancing is shaped by the Torrens title system, the standard form contract, vendor disclosure legislation, contract principles, professional duties and electronic settlement through PEXA.
- Conveyancing is not just paperwork. It requires issue spotting, risk management, advice, negotiation, drafting, searches, settlement calculations and client protection.
- The central practical question is usually: what must be disclosed, what has the purchaser contracted to take, what risk has passed, and what remedy is available if something goes wrong?

### **What Conveyancing Is**

- Conveyancing is the process of transferring legal title to land, or another interest in land, from the vendor to the purchaser.
- It includes preparing and reviewing the contract, identifying parties and title, advising on risks, negotiating special conditions, exchange, post-exchange searches, settlement and registration.
- For vendors, the focus is usually disclosure, contract preparation, managing risk and ensuring the vendor can give the title promised.
- For purchasers, the focus is usually checking title, searches, funding, duty, risk, defects, special conditions and settlement readiness.

### **The Conveyancing Timeline**

- Pre-contract / pre-exchange
  - Vendor prepares contract and prescribed documents. Purchaser inspects property, negotiates, considers finance/building/pest and requests amendments or special conditions.
- Exchange

- Identical contracts are signed and exchanged. The parties become bound, subject to any statutory cooling-off or special conditions. Deposit is usually paid on exchange.
- Post-exchange / pre-completion
  - Purchaser conducts searches, raises requisitions, arranges finance and duty. Vendor deals with mortgage discharge, replies to requisitions and settlement preparation.
- Settlement / completion
  - Purchaser pays balance of price, adjustments are completed, mortgage is discharged, transfer is lodged and the purchaser becomes entitled to possession.
- Post-completion
  - Registration, notices to authorities, post-settlement confirmations and practical handover issues are finalised.

### **Torrens Title and Ownership**

- Torrens title is based on registration. The register is the key source of legal title and interests affecting the land.
- Registered interests usually have priority. The title search identifies the lot/DP, registered proprietor, mortgages, easements, restrictions, covenants, caveats and other dealings.
- Old system title is now uncommon in standard residential conveyancing, but principles about title and conveyance still matter.
- Ownership can be sole ownership, joint tenancy or tenancy in common.
- Joint tenants
  - Co-owners hold together with right of survivorship. On death, interest passes to surviving joint tenant, not under the will.
- Tenants in common
  - Each owner has a distinct share. Shares can be equal or unequal and pass through the estate on death.

### **The Role of Solicitors and Conveyancers**

- The practitioner must identify the client, take instructions, explain legal effect, advise on risks, comply with professional duties and protect the client's position.
- The practitioner should not simply process forms. A client must understand important consequences, especially unusual risks, special conditions, deposits, rescission rights, settlement obligations and defects.
- Where acting for a vendor, the practitioner must help ensure the contract contains required documents and appropriate disclosure.
- Where acting for a purchaser, the practitioner must identify risk, advise on searches and raise issues before settlement.

### **Professional Duties and Risk Management**

- A solicitor must act in the client's best interests, provide competent and diligent service, act honestly and courteously, maintain confidentiality, avoid conflicts and follow lawful instructions.
- A licensed conveyancer has similar obligations to act honestly, fairly, professionally, competently and in the client's best interests.
- Good risk management requires written advice, file notes, confirmation of instructions, plain English explanations and clear warnings about time limits.
- If acting for both parties is permitted, informed written consent is needed. If a conflict arises, the practitioner should cease acting for both.

### **Key Case: McLennan v Clapham [2019] ACTSC 1**

**Facts:** A practitioner gave inadequate explanation of legal documents and transaction risks.

**Held:** The practitioner's advice was not sufficient in the circumstances.

**Principle:** A practitioner must properly explain documents, unusual provisions and consequences. Superficial advice may breach the duty of care.

**Exam use:** Use for professional negligence, client advice and the need for plain English explanations.

### **Key Case: Benson v MacLachlan [2001] NSWCA 263**

**Facts:** A dispute arose about the standard of care owed by conveyancers compared with solicitors.

**Held:** The court discussed whether conveyancers and solicitors should be judged similarly when performing conveyancing work.

**Principle:** Conveyancing work requires proper professional care, not a merely administrative approach.

**Exam use:** Use where a practitioner fails to explain searches, title defects, contract risks or settlement consequences.

### **Client Capacity, Undue Influence and Elder Abuse**

- Capacity is presumed, but red flags require the practitioner to make further inquiries.
- Capacity is decision-specific, time-specific and situation-specific. A person may have capacity for one decision but not another.
- Red flags include age, confusion, illness, pressure from relatives, unusual transactions, instructions coming through someone else, or a beneficiary controlling the meeting.
- The practitioner should speak to the client alone, ask open questions, check understanding, make file notes and consider a capacity assessment if concerns remain.
- Undue influence is a risk where the client's decision appears to be controlled by someone else, especially where that person benefits from the transaction.

### **Key Case: McFarlane v McFarlane [2021] VSC 197**

**Facts:** An older person transferred property in circumstances involving family pressure and inadequate independent advice.

**Held:** The transaction was affected by undue influence.

**Principle:** Practitioners must take independent instructions and be careful where a family member benefits from a vulnerable client's transaction.

**Exam use:** Use for elderly clients, family pressure, capacity concerns and undue influence in conveyancing.

### **Verification of Identity and Client Authorisation**

- Electronic conveyancing requires proper verification of identity and client authorisation under participation rules and electronic conveyancing requirements.
- VOI is a fraud prevention measure. The practitioner must take reasonable steps to identify the client and authority to deal with the property.
- Client authorisation allows the practitioner to sign and lodge electronic documents on behalf of the client. Without authority, the practitioner should not sign or certify.

### **Key Case: Astell v Australian Capital Territory [2016] ACTSC 238**

**Facts:** A fraudster was able to deal with property and proceeds were sent overseas.

**Held:** The case demonstrates the serious risk of property fraud.

**Principle:** Proper identification, authority checks and fraud controls are essential in conveyancing.

**Exam use:** Use for VOI, identity fraud and why practitioners must confirm the real client and authority.

### Exam Focus

- Always identify who the client is and whether instructions are valid.
- For capacity questions: mention presumption, red flags, private conference, open questions, capacity assessment and file notes.
- For professional duty questions: explain practical steps, not just abstract duties.
- For process questions: use the timeline—pre-contract, exchange, post-exchange, settlement and registration.
- If someone other than the client dominates, immediately discuss independence, conflict and undue influence.

## Week 2 – The Contract for Sale of Land

### Overview

- The contract is the central document in a conveyancing transaction. It identifies the parties, property, price, inclusions, exclusions, prescribed documents, warranties, special conditions and settlement obligations.
- In NSW, the Law Society standard form contract is commonly used. It works with the Conveyancing Act 1919 (NSW), Conveyancing (Sale of Land) Regulation 2022 and other legislation.
- A good exam answer must combine common law contract principles, statutory requirements and standard contract clauses.

### Contract Formation and Exchange

- Land contracts must be treated differently from ordinary informal agreements because writing, signature and exchange requirements are central.
- Before exchange, negotiations and even agreement on price may not be enough to create a binding contract.
- Exchange normally involves each party signing an identical counterpart and the counterparts being exchanged. The date of exchange is the contract date.
- The deposit is usually paid on or before exchange. Once exchanged, the parties are bound subject to cooling-off, special conditions or valid rescission rights.

### Key Case: *Alan v Carbone (1975) 132 CLR 528*

**Facts:** Question whether a land sale contract was binding before formal exchange.

**Held:** A binding NSW land contract is usually formed by exchange of counterparts.

**Principle:** Exchange is the ordinary mechanism creating binding obligations in NSW land contracts.

**Exam use:** Use whenever facts involve signed contracts, negotiations or whether parties are bound.

### Key Case: *GR Securities Pty Ltd v Baulkham Hills Private Hospital Pty Ltd (1986) 40 NSWLR 631*

**Facts:** The court considered whether parties intended to be bound before exchange.

**Held:** There is a rebuttable principle that parties are not bound unless exchange occurs.

**Principle:** In NSW, no binding land contract is usually intended before exchange unless facts clearly show otherwise.

**Exam use:** Use where a party says there was an agreement before exchange.