

Timeline map — where each topic sits

The sale moves through stages; most topics attach to one. Use this to place the facts in time, then jump to the topic.

Stage	What happens	Topics in play
1 · PRE-CONTRACT	V prepares contract & attaches prescribed documents; P investigates; caveat emptor governs the rest	1 (intro), 2 (disclosure / s 52A), 3 (affectations)
2 · EXCHANGE	Contract formed on exchange of counterparts; deposit payable; P's equitable interest arises	4 (formation), 5 (deposit)
3 · COOLING-OFF	Residential only; 5 business days (10 off-the-plan); waived by s 66W	5A (cooling-off)
4 · AFTER EXCHANGE, BEFORE COMPLETION	Risk & trusteeship; requisitions; title / description problems surface; caveat to protect priority	6 (subject matter), 7 (requisitions), 8 (errors), 9 (title defects), 10 (structures), 11 (risk)
5 · COMPLETION / SETTLEMENT	Vacant possession given; outgoings adjusted; time made essential by NTC	12 (rates), 13 (vacant possession), 14 (time for completion)
6 · CROSS-CUTTING / POST	Misrepresentation, remedies, planning, title systems, mortgages & e-conveyancing run across stages	15, 16, 17, 18, 19, 22

Examinable topics

Every topic on examinable list, in order. Each starts on its own page.

- Topic 1** Introduction to conveyancing
- Topic 2** Vendor's duty of disclosure; caveat emptor and pre-contract enquiries
- Topic 3** Inquiries and adverse affections
- Topic 4** Formation of an enforceable contract for the sale of land
- Topic 5** Exchange of Contracts and payment of deposits
- Topic 5A** Cooling-off rights and obligations
- Topic 6** Subject matter of sale
- Topic 7** Requisition and objections
- Topic 8** Errors and misdescriptions and claims
- Topic 9** Title defects
- Topic 10** Legality of structure and user
- Topic 11** Risk and duty of care pending completion
- Topic 12** Rates and notices
- Topic 13** Vacant possession
- Topic 14** Time for completion
- Topic 15** Misrepresentation
- Topic 16** Remedies for breach
- Topic 17** Planning Law and Conveyancing
- Topic 18** Specialised Title Systems, including Strata
- Topic 19** Mortgages, leases and other interests
- Topic 22** E-conveyancing

Topic 5: Exchange of Contracts and payment of deposits

SPOT IT A deposit problem — not paid on time, a post-dated cheque, a split deposit, more than 10%, forfeiture on default, or a claim for relief against forfeiture. (Cooling-off is now Topic 5A.) First fork: is the disputed sum a true deposit paid as earnest, or a part-payment / default-triggered penalty?

A • The deposit — nature, payment, functions

RULE A deposit is an earnest of performance and part-payment (*Howe v Smith*). 10% is treated as a genuine pre-estimate of loss; more than 10% is generally a penalty. It is payable on signing by the purchaser, not on exchange.

TEST

1. Was the deposit paid as and when required?
2. Is it a true deposit or merely part-payment? (Only a true deposit is forfeitable — the label is not conclusive.)
3. Does it exceed 10% (penalty risk)?

CASE

- ***Brien v Dwyer*** — a deposit is an earnest of performance and must be paid when contracting; a post-dated cheque is not payment, so the vendor could rescind.
- ***Sorrell v Finch*** — a deposit paid to an agent as stakeholder is held for the purchaser until the contract is binding.

APPLY The deposit was [paid / not paid] as and when required (a post-dated cheque is not payment — *Brien v Dwyer*) and is [a true deposit / mere part-payment]. As it [exceeds / does not exceed] 10%, V [may / may not] forfeit it.

B • Split deposits, penalties & relief against forfeiture

RULE Only money paid as earnest on exchange is a true deposit; a balance payable only on default is a penalty and unenforceable. Equity relieves against penalties, not genuine deposits; s 55 Conveyancing Act gives statutory jurisdiction to order return of the deposit with or without interest.

TEST

1. Is the disputed sum earnest paid on exchange, or an amount triggered only by default? Default-triggered → penalty.
2. Does forfeiture exceed 10%?
3. Relief factors (s 55(2A); *Kestral*): windfall to vendor, sharp practice, substantial resale profit → refund if unjust / inequitable.

CASE

- ***Luu v Sovereign Developments*** — a clause requiring top-up to a 10% deposit only on default is a penalty and unenforceable.
- ***Iannello v Sharpe*** — the vendor keeps the deposit paid on exchange but cannot recover a further sum payable only on default.
- ***Tanwar v Cauchi*** — relief against forfeiture of a genuine 10% deposit is exceptional; it needs unconscionable conduct — fraud, mistake, accident or vendor-induced default.

APPLY The sum in issue was payable [on exchange / only on default], so it is [a true deposit / a penalty] (*Luu*; *Iannello v Sharpe*). Relief under s 55 [is / is not] available, as [unconscionable conduct is / is not] present (*Tanwar v Cauchi*).

Topic 5A: Cooling-off rights and obligations

SPOT IT A cooling-off problem — can P walk away after exchange, and on what terms? Forks: is it residential property? has the period run? was cooling-off waived or shortened by a valid s 66W certificate? was the prescribed cooling-off statement given at all?

A • The right, the period and forfeiture

RULE Cooling-off applies to residential property (s 66Q) and starts on exchange. The period is 5 business days, or 10 business days for off-the-plan contracts, ending at 5pm on the last day. During it P may rescind for any reason on written notice (s 66U), forfeiting 0.25% of the price to V (s 66V). Cooling-off relates only to residential property — everything needed on it is in the contract for sale.

TEST

1. Is it “residential property” (s 66Q) — ≤ 2 dwellings / vacant land for one residence / single-residence strata; NOT non-residential or > 2.5 ha?
2. Has the period run — 5 business days (10 for off-the-plan), from exchange to 5pm on the last day?
3. Notice of rescission served in time and signed by P or P’s solicitor?
4. On rescission in the period, P forfeits 0.25% of the price (s 66V).

CASE

- **ss 66Q, 66S–66V** — define residential property, the period, the rescission right and its 0.25% consequence.

APPLY *The property [is / is not] residential under s 66Q, and P served notice [within / outside] the period ([5 / 10] business days from exchange). So cooling-off rescission [is effective, P forfeiting 0.25% under s 66V / is unavailable because the period had passed].*

B • Exclusions and waiver (s 66T; s 66W certificate)

RULE Cooling-off does not apply where a s 66T exclusion is engaged: a s 66W certificate is given, sale by public auction, a contract made on the same day the property was offered at auction but passed in, or the exercise of an option. Waiver or shortening is only effective with a valid s 66W certificate — signed by an independent solicitor / conveyancer certifying the required statements. P can elect for no cooling-off under s 66W.

TEST

1. Any s 66T exclusion — 66W certificate, public auction, passed-in at auction same day, or exercise of an option?
2. If waived / shortened, is the s 66W certificate valid (independent adviser; required form and statements)?
3. Auction carve-out: no cooling-off for property sold at auction, or passed in and sold same day.

CASE

- **s 66T** — lists the exclusions; a valid s 66W certificate waives or shortens the period.

APPLY *Here [a s 66W certificate was given / the property sold at auction / it passed in and sold the same day], so under s 66T cooling-off [does not apply]. As the s 66W certificate [is / is not] valid, the waiver [is / is not] effective and P [may / may not] rely on cooling-off.*

C • Missing cooling-off statement (s 66X)

RULE If the prescribed cooling-off statement is not given as required, P may rescind at any time before completion without forfeiting the 0.25% — a stronger right than the ordinary in-period rescission.

TEST

1. Was the prescribed cooling-off statement given as and when required?
2. If not, has completion occurred yet?
3. If not given and not completed → rescind under s 66X, no 0.25% forfeiture.

CASE

- **s 66X** — missing prescribed statement → P may rescind any time before completion without forfeiture.

APPLY *The prescribed cooling-off statement was [not given], so under s 66X P may rescind any time before completion without forfeiting 0.25% — a stronger right than s 66U, because the statutory statement was omitted.*

Topic 10: Legality of structure and user

SPOT IT There is a structure on the land that may be unapproved / illegal, or the question involves survey certificates or building (information) certificates. Ask whether the vendor's warranty is satisfied and what protects the purchaser.

A · Illegal / non-complying buildings

RULE The vendor warrants (Sch 2) that no matter about a building or structure would justify an upgrading or demolition order — i.e. that extensions, garages and pergolas have proper approval. Councils have broad power to order demolition of unapproved works (EP&A Act ss 9.34–9.37; Sch 5) and can seek a mandatory injunction.

TEST

1. Is there a structure without approval?
2. Would it justify an upgrading / demolition order?
3. Is the warranty saved by a building certificate?

CASE

- **Marinkovic v Pat McGrath Engineering** — a building information certificate confirms compliance and cures the warranty; councils retain power over unauthorised works.

APPLY *The [extension] appears unapproved and would justify a demolition order, so the Sch 2 warranty is breached unless a building certificate has issued; the council may seek demolition or a mandatory injunction (Comfytex).*

B · Building & survey certificates

RULE A building certificate is obtained from council, which checks a survey against approval records; if the structures are compliant it issues the certificate (good for 7 years) and the warranty is satisfied even where a structure would otherwise justify an order. A building information certificate confirms compliance at a point in time. Very old structures without records may be treated as exempt at council's discretion. Survey certificates are not compulsory to attach.

TEST

1. Has a building certificate issued (curing the warranty)?
2. Is it current (within 7 years)?
3. Is a survey needed to show boundaries / encroachments?

CASE

- **Svanasio v McNamara** — survey certificates.
- Note (your materials): the survey certificate is not a compulsory document to attach; a building information certificate is what cures the warranty.

APPLY *A building certificate [has / has not] issued within 7 years, so the warranty is [satisfied / breached] even where a structure would otherwise justify an order; a survey [confirms / would reveal] whether the structures sit within the boundary (Svanasio; survey is not compulsory to attach).*