LPAB14 – Conveyancing – Cases

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Vendor's Duty of Disclosure; Caveat Emptor and Pre-Contract Enquiries

Case/Legislation	Facts	Decision/Rule
Conveyancing Act 1919 s 52A	Statutory duty of disclosure	Sets out vendor's obligations to disclose certain matters
Conveyancing (Sale of Land) Regulation 2022	Prescribes disclosure requirements	Details documents and information to be provided
Swimming Pools Act 1992	Disclosure of pool compliance	Vendor must provide pool compliance certificate
Swimming Pools Regulation 2008	Pool safety standards	Compliance required for sale
Home Building Act 1989	Disclosure of building works	Vendor must disclose relevant building works
Vendor's general law duty of disclosure – • a vendor must disclose latent defects in title, but does not need to disclose defects in quality, physical condition, or surrounding circumstances. • Caveat Emptor: generally, a vendor is not required to disclose defects in the quality of the property to the purchaser.		
Best v Glenville [1960] Latent v patent defect Latent must be disclosed	The property had an undisclosed latent defect in title. The defect was not discoverable by a reasonable purchaser inspecting the land or the title documents	• A vendor must disclose **latent defects in title** known to them. • Failure to disclose such defects is **misleading and can justify rescission**. • However, the vendor does **not** have to disclose **patent defects**—those discoverable by reasonable inspection.
Dormer v Solo Investments (1974) 1 NSWLR 428 *Not obligated to disclose a possibility*	Proposal for a natural gas pipeline had been lodged at the time of the contract for sale. The issue was whether the vendor (Solo Investments) had a duty to disclose this possibility to the purchaser (Dormer) and whether it constituted a defect in title allowing the purchaser to rescind the contract.	The court, per Holland J, decided that the mere existence of a possibility that the land might be affected in some way in the future (e.g., the potential for a pipeline) **was considered a defect in quality, not a defect in title.** The land had not yet become legally affected, and there was a possibility it might never be. The court held that the vendor was not obligated to disclose this possibility. **The existence of a possibility that might only affect the value of the land was not enough to impose a duty of disclosure on the vendor.**
Anderson v Daniels (1983) NSW ConvR 55-144 Active concealment – fraudulent misrepresentation	House in Epping had serious structural problems due to clay soil and inadequate foundations. **Vendors knew of the issue** after being told by a tradesman but chose to patch cracks and repaint to hide the defects.	• NSW Court of Appeal upheld the finding of **fraudulent misrepresentation**. • **Active concealment**, combined with misleading verbal explanations, amounted to intentional deception. • Vendors' conduct prevented proper inspection and misled purchasers about a serious structural defect.

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Case/Legislation	Facts	Decision/Rule
	During inspections, purchasers noticed repairs; vendors falsely reassured them that cracks were merely "settling" and the fresh paint was due to not having children. Cracks reappeared soon after completion; purchasers sued for deceit.	**Active concealment of a defect = a positive misrepresentation.** Vendor liable for non-disclosure
Tsekos v Finance Corporation of Australia (1982) 2 NSWLR 347	Non-disclosure of encumbrance The case involves the enforceability of a land sale contract where the purchaser later discovered a statutory defect affecting the property. Marrickville council had given notice of intention to resume the properties.	It was held that negotiations between a seller and the local authority for the resumption of property being sold did not have to be disclosed to a buyer. Affirmed a purchaser cannot rescind a contract due to the vendor's non-disclosure of defects and that a threat of resumption is not a defect in title. The case is significant because it **upholds the principle of caveat emptor**, or "let the buyer beware," where the purchaser is expected to be responsible for investigating the property's condition and title.
Vendor's statutory duty of disclosure		
Verman v McLaughlin (1990) NSW Conv 55-521 *Current planning controls*	Failure to disclose up to date planning controls	Statutory duty to disclose applies. Recission of contract upheld.
Port Stephens SC v Booth (2006) 148 LGERA 351 *Council's duty of care in planning decisions—must act with reasonable care*	Holiday cabin development with aircraft noise issues from RAAF base. Development was approved by council but did not impose noise attenuation conditions and relevant certificates understated the noise risk.	Council owed purchasers a duty of care when granting approvals and issuing certificates. It breached that duty by failing to investigate or warn properly. The "good faith" defence failed. Damages for overpayment and loss upheld. **Legal Principle:** Public authorities must exercise statutory planning powers with reasonable care to avoid foreseeable loss to purchasers.
Mid Density Developments v Rockdale MC (1993) 81 LGERA 104 *Council liable for negligent misstatement in planning certificate*	Council issued a s 149 certificate stating land was *not* flood-prone, though its own records showed otherwise. The purchaser relied on this and suffered loss.	Council owed a duty of care to ensure accuracy of certificates and was negligent. The "good faith" defence failed—mere honest mistake was insufficient.
Gibson v Francis (1989) 5 BPR 97,324 *Correct docs must be attached*	Incorrect plan attached to standard sale contract at auction. 8 days after contract was made, correct plan attached. Purchase sought to rescind. Vendors sought specific performance due to clause in	Vendor liability. Court allowed buyer to terminate contract. Clause does not estop a purchaser from exercising statutory warranty.

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Case/Legislation	Facts	Decision/Rule
	contract which acknowledges receipt of correct documents.	
Argy v Blunts and Lane Cove Real Estate (1990) 94 ALR 719 *Complete docs needed*	Solicitor oversight meant pages where missing from applicable zoning information attached to the contract.	Purchaser able to rescind contract based on breach of implied warranty. Also implied deliberate misrepresentation.
Pisano v Dandris (2014) 17 BPR 33,583 *Owner-builder liable for defective, misleadingly sold home*	Bruno and Sia Pisano bought a "newly renovated" home in Dover Heights from Georgia Dandris, an owner-builder, and her husband. Soon after purchase, major leaks, structural, and building defects emerged. The Pisanos sued for breach of statutory warranties, misleading conduct, and negligence.	• **Owner-builder liability:** Dandris breached the statutory warranties under s 18B of the Home Building Act 1989 (NSW) — the work was not done in a proper and workmanlike manner, materials were unsuitable, and the dwelling was not fit for occupation. • **Misleading conduct:** Dandris and her husband's representations that the house was "master built" and of high quality were misleading or deceptive under s 18 of the Australian Consumer Law. • **Negligence:** The husband owed and breached a duty of care to avoid economic loss to the purchasers. • **Damages:** Assessed on the cost of rectification as reasonable and necessary to make the home compliant and habitable **Legal Principle:** An owner-builder selling a dwelling owes statutory and common-law duties to ensure the building is properly constructed and that representations about quality are not misleading.
Williams v Pisano (2015) 90 NSWLR 342 *Private home sale not in trade or commerce under ACL*	The vendors, a married couple (Williams and Dandris), renovated their Dover Heights home under an owner-builder permit and later sold it to the Pisanos (as above) The trial judge (in Pisano v Dandris [2014] NSWSC 1070) found the vendors liable—holding the sale was "in trade or commerce."	• The NSW Court of Appeal overturned that finding on the ACL issue. • It held the **sale of a single residential property by private vendors was not conduct "in trade or commerce."** • Even though the renovation was profit-motivated and one vendor had interior-design ambitions, these facts did not make the sale a commercial transaction. • The use of a real-estate agent (who *was* acting in trade or commerce) did not make the vendors' conduct commercial, and the agent's business character could not be imputed to them. **Legal Principle:** Private sales of residential homes are generally **not "in trade or commerce"** under

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