



January 2022
Level 6
CONVEYANCING
Subject Code L6-Unit 17

THE CHARTERED INSTITUTE OF LEGAL EXECUTIVES

UNIT 17 - CONVEYANCING

CASE STUDY MATERIALS

Information for Candidates on Using the Case Study Materials

- This document contains the case study materials for your examination.
- In the examination, you will be presented with a set of questions which will relate to these case study materials. You will be required to answer **all** the questions on the examination paper.
- You should familiarise yourself with these case study materials prior to the examination, taking time to consider the themes raised in the materials.
- You should take the opportunity to discuss these materials with your tutor/s either face-to-face or electronically.
- It is recommended that you consider the way in which your knowledge and understanding relate to these case study materials.

Instructions to Candidates Before the Examination

- A clean/unannotated copy of the case study materials is attached to this examination.
- You are permitted to take your own clean/unannotated copy of the case study materials and a statute book, where permitted, into the examination. You are **NOT** permitted to take any other materials including notes or textbooks.
- In the examination, candidates must comply with the CILEX Examination Regulations – Online Examinations or with the CILEX Examination Regulations – Online Examinations with Remote Invigilation.

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ADVANCE INSTRUCTIONS TO CANDIDATES

You are a trainee lawyer in the firm of Kempstons, The Manor House, Bedford MK42 7AB. You have just started work in the Property Department and your supervising partner is Andy Aynsworth.

Andy acts for Mr and Mrs Morgan and has asked you to take over the day-to-day conduct of their sale and purchase. He has provided you with the following documentation:

- Document 1:** Memorandum dated 6 January 2022
- Document 2:** Attendance note dated 5 January 2022
- Document 3:** Official copies of the register for 20 Chapel Drive, Giffard Park, Milton Keynes MK14 5LA
- Document 4:** Extracts from Lease dated 15 July 1972 relating to 20 Chapel Drive, Giffard Park
- Document 5:** Conveyance dated 23 November 1985 relating to Windy Ridge, 6 Sea Lane, Ingoldmells, Lincolnshire PE25 1NH
- Document 6:** Extracts from Conveyance dated 9 December 1980 relating to Windy Ridge, 6 Sea Lane, Ingoldmells
- Document 7:** Standard Conditions of Sale (5th Edition - 2018 Revision)

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Document 1

MEMORANDUM

To: Trainee Lawyer
From: Andy Aynsworth
Date: 6 January 2022
Subject: Mr and Mrs Morgan's sale and purchase

Yesterday, I took instructions from a couple who are moving from Milton Keynes to a quiet coastal village in Lincolnshire to start a new life.

Full details are in the attached attendance note. I would like you to take over the day-to-day conduct of the transactions.

The sale and purchase are to be synchronised. Apparently, the seller of the property in Lincolnshire is buying a new build.

If you have any queries, please contact me. My extension number is 4055 and my email address is a.aynsworth@kempstons.com

Regards,

Andy

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Document 2

ATTENDANCE NOTE

Date : 5 January 2022

From : Andy Aynsworth

Time taken : 56 mins

Clients: Edward Morgan and Suzanne Frances Morgan

Subject : Sale and purchase

Background

I attended Mr and Mrs Morgan today for an initial interview, to take instructions in respect of their sale of 20 Chapel Drive, Giffard Park, Milton Keynes MK14 5LA and their purchase of Windy Ridge, 6 Sea Lane, Ingoldmells, Lincolnshire PE25 1NH.

The clients produced individual original passports which were in date, and I took copies of these for the file. They also produced a utility bill in respect of their present property, which was in order.

After Mr Morgan's first marriage was dissolved, he bought this property and his late mother Olga resided there until her death last year. Later, his children moved in. About five years ago, Suzanne moved in with him and they married. Mr Morgan is a musician and commutes daily to London, where he teaches at a music college. Mrs Morgan is an in-house artist working for a magazine based in Milton Keynes. Both would like a complete change of lifestyle and have decided to move to the coast so that they can develop their interests and participate fully in coastal living. Mr Morgan's children, Christian aged 32 and Molly aged 30, are currently living at the property, but only Christian will be moving with them, as Molly will be moving in with her boyfriend and will remain in Milton Keynes. Mrs Morgan has no children.

Neither Mr or Mrs Morgan owns any other property.

1. Sale details

Property: 20 Chapel Drive, Giffard Park, Milton Keynes MK 14 5LA. It is a detached leasehold house.

Sale price: £400,000

Deposit: A 10% deposit is required.

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- Additional items:** The buyers have agreed to pay an additional £1,500 in respect of items of furniture and white goods: washing machine, fridge/freezer, carpets and black leather three-seater settee.
- Agents:** Taylors, Milton Keynes - particulars of sale have been received **[NOTE TO CANDIDATES: NOT SUPPLIED]**. Robert Brown is dealing with the sale. Email: robertbrown@taylorsmk.com
- Buyers:** Richard Henson and Fiona Anne Henson of 123 Mounthill Avenue, Old Stratford, Milton Keynes MK12 5AL.
- Buyer's finances:** Mortgage with Nationwide Building Society and dependent sale.
- Buyer's lawyers:** George King and Co, 15 High Street, Central Milton Keynes. Sunita Patel is dealing with the matter (Ref: SP/OF/104Hen). Email: sunita.patel@georgeking.co.uk
- Required completion date:** As soon as possible, but to tie in with purchase.
- Fees:** Agreed fees £900 + VAT plus disbursements.

2. Purchase details

- Property:** Windy Ridge, 6 Sea Lane, Ingoldmells, Lincolnshire PE25 1NH.
- Agents:** Lovells, Church Street, Skegness PE 24 6AY. Lacey Hart (email: lacey.hart@lovellsproperty.co.uk) is dealing with this transaction.

Estate Agents' particulars of sale **[NOTE TO CANDIDATES: NOT SUPPLIED]** describe the property as:

'A detached property with extensive landscaped gardens and mature trees. Situated in an idyllic village next to the attractive village green. The nearby historic church, famous for its stained-glass windows, attracts many visitors. The property itself has stunning views over the North Sea and the recently built North Sea Observatory, which offers first class amenities including a superb café, is 4 miles along the coast.'

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Seller:	Dorothy Deborah Jean Isherwood.
Seller's Lawyers:	Skidbrooke and Co., Property Lawyers, 48 Delaware Street, Skegness PE 25 2AJ (for the attention of Mario Fraterno) email: m.fraterno@skidbrookes.co.uk
Purchase price:	£450,000
Deposit:	Coming from sale, plus clients have further funds available if a full 10% deposit will be required.
Additional items:	The clients have agreed to pay an additional £2,500 in respect of furniture in living room and master bedroom.
Finances:	Mortgage already agreed from Lincolnshire Building Society (£80,000), and Mrs Morgan has savings (being part of an inheritance from her late mother) to cover the remainder.
Completion:	To be contemporaneous with sale.
Fees:	£900 + VAT plus disbursements. Clients have already sent £250 'on account'.
Further details on purchase:	It is the clients' intention to run a bed and breakfast business at the property. They also intend keeping chickens and bees in the garden and selling their produce on the front drive.

Mrs Isherwood is buying a new-build retirement flat locally.

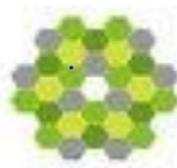
3. Other information

The lawyers in each of the transactions will adopt The Law Society's Conveyancing Protocol ('the Protocol'). The Standard Conditions of Sale (5th edition - 2018 Revision) ('the Standard Conditions') will be used in both transactions.

The clients' ID has been checked and is correct. Client care letters have been sent on both matters.

[NOTE TO CANDIDATES: CLIENT CARE LETTERS ARE NOT PROVIDED AND ARE NOT REQUIRED FOR THIS ASSESSMENT]

DOCUMENT 3



Land Registry

Official copy
of register of
title

Title Number BM 070947

Edition date 30 August
2000

- This official copy shows the entries subsisting on the register on 5 January 2022 at 14:38:24.
- This date must be quoted as the 'search from date' in any official search application based on this copy.
- The date at the beginning of an entry is the date on which the entry was made in the register.
- Issued on 5 January 2022 at 14:38:24.
- Under s.67 of the Land Registration Act 2002 this copy is admissible in evidence to the same extent as the original.
- This title is dealt with by the Land Registry, Coventry Office.

A: Property Register

This register describes the land and estate comprised in the title.

BUCKINGHAMSHIRE: MILTON KEYNES

- 1 (20.11.1995) The Leasehold land shown edged with red on the plan of the above title filed at the Registry and being 20 Chapel Drive, Giffard Park, Milton Keynes MK 14 5LA
- 2 The mines and minerals are excepted.
- 3 (20.11.1995) Short particulars of the lease(s) (or underleases) under which the land is held are:

Date: 15th July 1972
 Term: 999 years from 15th July 1972
 Rent: £20 per annum
 Parties: (1) Milton Keynes Housing Association
 (2) Stuart Evans
- 4 There are excepted from the effect of registration all estates, rights, interests, powers and remedies arising upon, or by reason of, any dealing made in breach of the prohibition or restrictions against dealings therewith inter vivos contained in the said Lease.
- 5 Unless otherwise mentioned the title includes any legal easements granted by the registered lease(s) but is subject to any rights that it reserves, so far as these easements exist and benefit or affect the registered land.

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B: Proprietorship Register

This register specifies the class of title and identifies the owner. It contains any entries that affect the right of disposal.

Title : Absolute

- 1 (20.11.1995) PROPRIETOR: EDWARD MORGAN and OLGA ANNABELLA MORGAN both of 20 Chapel Drive Giffard Park Milton Keynes (MK14 5LA).

End of register

[NOTE TO CANDIDATES: THE TITLE PLAN IS NOT INCLUDED AND IS NOT REQUIRED FOR THE EXAMINATION.]

DOCUMENT 4

Extracts from Lease of 20 Chapel Drive, Giffard Park dated 15 July 1972 and made between Milton Keynes Housing Association (1) and Stuart Evans (2).

Tenant's covenants

.....

2. The Tenant for himself and his successors in title hereby covenants with the Landlord:

- (a) To pay all local taxes and rates as applicable
- (b) To insure the demised premises at the Tenant's expense in a sum and with an insurance company to be approved by the Landlord
- (c) To pay the annual rent reserved in this lease on or before 25th December in each calendar year.

[NOTE TO CANDIDATES: THE GROUND RENT RESERVED IN THE LEASE IS £20 PER ANNUM UNTIL 2012 AND THEREAFTER AT £100 PER ANNUM.]

.....

- (g)
 - (i) Not to assign underlet mortgage or part with possession of the whole or any part of the demised premises without the consent of the Landlord or its successors in title first obtained in writing at the Tenant's request and at the Tenant's expense
 - (ii) In the event of any such approved assignment underlease or mortgage to give notice with sufficient details to the Landlord within one month of the event taking place and to pay a registration fee in accordance with the current schedule of fees obtainable from the Landlord or its agent

....

- (k) Not to use the demised premises or any part thereof for any purpose other than as a private dwellinghouse without the consent of the Landlord or its successors in title first obtained in writing at the Tenant's request and at the Tenant's expense

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....Landlord's right of re-entry

5. If any part of the rent hereby reserved (whether formally demanded or not) remains unpaid for 14 days after it falls due, or if the Tenant does not comply with any of his covenants or obligations in this Lease, or if the Tenant shall die or become bankrupt the Landlord may enter the demised premises (or any part of it in the name of the whole) whereupon the Term hereby demised shall immediately cease and determine (but without prejudice to any prior right of action or remedy which may have accrued to the Landlord).

[NOTE TO CANDIDATES: YOU NEED ONLY BE CONCERNED WITH THESE EXTRACTS AND NOT WITH THE REMAINDER OF THE LEASE. YOU MAY ASSUME THAT THE REMAINDER OF THE LEASE, INCLUDING ANY PLANS, IS SATISFACTORY.]

DOCUMENT 5

CONVEYANCE RELATING TO
WINDY RIDGE, 6 SEA LANE, INGOLDMELLS

THIS CONVEYANCE is made the 23rd day of November One thousand nine hundred and eighty five **BETWEEN MARSHALL BUILDERS (SKEGNESS) LIMITED** whose registered office is situate at 102 Acacia Avenue Skegness in the County of Lincolnshire (hereinafter called "the Vendor") of the one part and **ALBERT DOUGLAS ISHERWOOD** and **DOROTHY DEBORAH JEAN JONES** both of 128 Cliff Terrace Cromer in the County of Norfolk (hereinafter called "the Purchasers") of the other part.

WHEREAS:

- (1) The Vendor is seised of the property hereinafter described for an estate in fee simple in possession subject as hereinafter mentioned but otherwise free from incumbrances.
- (2) The Vendor has agreed to sell the property to the Purchasers for the sum of Twenty-seven thousand pounds (£27,000).

NOW THIS DEED WITNESSETH as follows:

1. IN CONSIDERATION of the sum of Twenty seven thousand pounds (£27,000) paid by the Purchasers to the Vendor (the receipt whereof the Vendor hereby acknowledges) the Vendor as beneficial owner **HEREBY CONVEYS** unto the Purchasers **ALL THAT** freehold land together with the dwellinghouse and appurtenances built thereon and known as "Windy Ridge" 6 Sea Lane Ingoldmells in the County of Lincolnshire **ALL WHICH** property is more particularly delineated and edged red on a plan annexed to a Conveyance dated the Ninth day of December One thousand nine hundred and eighty and made between Maurice Ernest Weaver of the one part and the Vendor of the other part (hereinafter called "the 1980 Conveyance") **TOGETHER WITH** the rights granted in the 1980 Conveyance **AND SUBJECT TO** the covenants set out in the 1980 Conveyance but otherwise free from incumbrances **TO HOLD** the same unto the Purchasers as beneficial tenants in common in equal shares.

2. The Purchasers (with the object and intent of affording to the Vendor a full and sufficient indemnity in respect of any breach of the said covenants but not further or otherwise) **HEREBY JOINTLY AND SEVERALLY COVENANT** with the Vendor and any person deriving title under them that they will at all times hereafter observe and perform the said covenants and shall keep the Vendor and its estate and effects indemnified against all actions claims demands and liabilities in respect thereof so long as the same shall affect the property hereby conveyed and shall remain subsisting and capable of taking effect.

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CASE STUDY MATERIALS

3. It is hereby certified that this transaction does not form part of a larger transaction or of a series of transactions in which the amount or value or the aggregate amount or value exceeds the sum of Thirty thousand pounds (£30,000).

IN WITNESS whereof the Vendor has affixed its common seal and the Purchasers hereto have hereunto set their hands and seals the day and year first before written

THE COMMON SEAL of MARSHALL BUILDERS (SKEGNESS) LIMITED was hereunto affixed in the presence of:

Chris Marshall (Director)
Adrienne Marshall (Company Secretary)



DOUGLAS ISHERWOOD in the presence of:

Edward Wood
Solicitor at Procter and Co Skegness



DOROTHY DEBORAH JEAN JONES
in the presence of:

Edward Wood
As above



[NOTE TO CANDIDATES: YOU MAY ASSUME THAT THIS CONVEYANCE:

- HAS BEEN DULY STAMPED, WITH THE CORRECT AD VALOREM AND PD STAMPS
- HAS BEEN CORRECTLY EXECUTED
- DID NOT TRIGGER FIRST REGISTRATION AS LINCOLNSHIRE WAS NOT IN A COMPULSORY REGISTRATION AREA AT THAT TIME.]

DOCUMENT 6

EXTRACTS FROM CONVEYANCE RELATING TO
"WINDY RIDGE", 6 SEA LANE, INGOLDMELLS
DATED 9 DECEMBER 1980

THIS CONVEYANCE is dated the Ninth day of December One thousand nine hundred and eighty and made between **MAURICE ERNEST WEAVER** of "Windy Ridge" 6 Sea Lane Ingoldmells in the County of Lincolnshire (hereinafter called "the Vendor") of the one part and **MARSHALL BUILDERS (SKEGNESS) LIMITED** whose registered office is at 102 Acacia Avenue Skegness (hereinafter called "the Purchaser") of the other part

WHEREAS:

- (1) The Vendor is seised of the property herein described for an estate in possession.
- (2) The Vendor has agreed to sell the property to the Purchaser for the sum of Fifteen thousand pounds (£15,000).

NOW THIS DEED WITNESSETH as follows:

1. **IN CONSIDERATION** of the sum of Fifteen thousand pounds (£15,000) paid by the Purchaser to the Vendor (the receipt of which sum the Vendor hereby acknowledges) The Vendor as beneficial owner **HEREBY CONVEYS** unto the Purchaser **ALL THAT** freehold land together with the dwellinghouse and appurtenances built thereon and known as "Windy Ridge" 6 Sea Lane Ingoldmells in the County of Lincolnshire **ALL WHICH** land is more particularly delineated on the plan annexed hereto and thereon edged red **TOGETHER WITH** the right to pass and repass with or without vehicles at all times of the day and night over the unadopted road known as Sea Lane fronting the property hereby conveyed subject to contributing a fair proportion of the cost of maintaining the same from time to time **AND TOGETHER ALSO** with the right to connect into and use all pipes wires and services serving the property in perpetuity **SUBJECT TO** the covenants set out in the Schedule hereto but otherwise free from incumbrances.

.....

THE SCHEDULE hereinbefore referred to

For the benefit and protection of the Vendor's retained land showed hatched blue on the said plan annexed hereto the Purchaser **HEREBY COVENANT** with the Vendor and his successors in title to observe and perform the following covenants:

1. Not to use the land hereby conveyed for any trade or business.
2. Not to keep pigs goats poultry or bees on any part of the land hereby conveyed.

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3. Not to park any caravan boat or commercial vehicle at the front of the land hereby conveyed.
4. Not to erect any television aerial or radio masts or satellite dishes upon the land hereby conveyed without the prior written consent of the Vendor.
5. Not to extend or otherwise alter the existing dwellinghouse on the land hereby conveyed nor erect any other buildings without the prior written consent of the Vendor.
6. Not to allow the fences marked with an inward "T" on the plan annexed hereto to fall into disrepair.
7. Not to lop top or fell any tree within the curtilage of the land hereby conveyed without the prior written consent of the Vendor.

IN WITNESS whereof the Vendor has hereunto set his hand and seal and the Purchaser has affixed its common seal hereto the day and year before written

SIGNED SEALED AND DELIVERED



In the presence of:

Christine Bright

205 Arcacia Avenue
Skegness
Housewife

**THE COMMON SEAL of MARSHALL BUILDERS
(SKEGNESS) LIMITED** was hereunto affixed in the
presence of:



Adrienne Marshall (Company Secretary)

[NOTE TO CANDIDATES: YOU MAY ASSUME THAT:

- **THIS CONVEYANCE HAS BEEN DULY STAMPED, WITH THE CORRECT AD VALOREM AND PD STAMPS**
- **IT HAS BEEN CORRECTLY EXECUTED**
- **IT DID NOT TRIGGER FIRST REGISTRATION AS LINCOLNSHIRE WAS NOT IN A COMPULSORY REGISTRATION AREA AT THAT TIME**
- **A COPY OF THE CONVEYANCE PLAN HAS NOT BEEN ATTACHED TO THE COPY CONVEYANCE PROVIDED BY THE SELLER'S LAWYER.]**

DOCUMENT 7

STANDARD CONDITIONS OF SALE (FIFTH EDITION—2018 REVISION)

(NATIONAL CONDITIONS OF SALE 25TH EDITION, LAW SOCIETY'S CONDITIONS OF SALE 2011)

This form is reproduced for educational purposes only. Reproduced by kind permission of the Solicitors' Law Stationery Society and the Law Society of England and Wales.

- 1. GENERAL**
- 1.1 Definitions**
- 1.1.1 In these conditions:
- 'accrued interest' means:
 - if money has been placed on deposit or in a building society share account, the interest actually earned
 - otherwise, the interest which might reasonably have been earned by depositing the money at interest on seven days' notice of withdrawal with a clearing bank less, in either case, any proper charges for handling the money
 - 'clearing bank' means a bank admitted by the Bank of England as a direct participant in its CHAPS system
 - 'completion date' has the meaning given in condition 6.1.1
 - 'contents price' means any separate amount payable for contents included in the contract
 - 'contract rate' means the Law Society's interest rate from time to time in force
 - 'conveyancer' means a solicitor, barrister, duly certified notary public, licensed conveyancer or recognised body under sections 9 or 23 of the Administration of Justice Act 1985
 - 'lease' includes sub-lease, tenancy and agreement for a lease or sub-lease
 - 'mortgage' means a mortgage or charge securing the repayment of money
 - 'notice to complete' means a notice requiring completion of the contract in accordance with condition 6.8
 - 'public requirement' means any notice, order or proposal given or made (whether before or after the date of the contract) by a body acting on statutory authority
 - 'requisition' includes objection
 - 'transfer' includes conveyance and assignment
 - 'working day' means any day from Monday to Friday (inclusive) which is not Christmas Day, Good Friday or a statutory Bank Holiday.
- 1.1.2 In these conditions the terms 'absolute title' and 'official copies' have the special meanings given to them by the Land Registration Act 2002.
- 1.1.3 A party is ready, able and willing to complete:
- if he could be, but for the default of the other party, and
 - in the case of the seller, even though the property remains subject to a mortgage, if the amount to be paid on completion enables the property to be transferred freed of all mortgages (except any to which the sale is expressly subject).
- 1.1.4 These conditions apply except as varied or excluded by the contract.
- 1.2 Joint parties**
- If there is more than one seller or more than one buyer, the obligations which they undertake can be enforced against them all jointly or against each individually.
- 1.3 Notices and documents**
- 1.3.1 A notice required or authorised by the contract must be in writing.
- 1.3.2 Giving a notice or delivering a document to a party's conveyancer has the same effect as giving or delivering it to that party.
- 1.3.3 Where delivery of the original document is not essential, a notice or document is validly given or sent if it is sent:
- by fax, or
 - by e-mail to an e-mail address for the intended recipient given in the contract.
- 1.3.4 Subject to conditions 1.3.5 to 1.3.7, a notice is given and a document is delivered when it is received.
- 1.3.5
- A notice or document sent through a document exchange is received when it is available for collection.
 - A notice or document which is received after 4.00 pm on a working day, or on a day which is not a working day, is to be treated as having been received on the next working day.
 - An automated response to a notice or document sent by e-mail that the intended recipient is out of the office is to be treated as proof that the notice or document was not received.
- 1.3.6 Condition 1.3.7 applies unless there is proof:
- that a notice or document has not been received, or
 - of when it was received.
- 1.3.7 A notice or document sent by the following means is treated as having been received as follows:
- by first-class post: before 4.00 pm on the second working day after posting
 - by second-class post: before 4.00 pm on the third working day after posting
 - through a document exchange: before 4.00 pm on the first working day after the day on which change: it would normally be available for collection by the addressee
 - by fax: one hour after despatch
 - by e-mail: before 4.00 pm on the first working day after despatch.
- 1.4 VAT**
- 1.4.1 The purchase price and the contents price are inclusive of any value added tax.
- 1.4.2 All other sums made payable by the contract are exclusive of any value added tax and where a supply is made which is chargeable to value added tax, the recipient of the supply is to pay the supplier (in addition to any other amounts payable under the contract) a sum equal to the value added tax chargeable on that supply.
- 1.5 Assignment and sub-sales**
- 1.5.1 The buyer is not entitled to transfer the benefit of the contract.
- 1.5.2 The seller cannot be required to transfer the property in parts or to any person other than the buyer.
- 1.6 Third party rights**
- Unless otherwise expressly stated nothing in this contract will create rights pursuant to the Contracts (Rights of Third Parties) Act 1999 in favour of anyone other than the parties to the contract.
- 2. FORMATION**
- 2.1 Date**
- 2.1.1 If the parties intend to make a contract by exchanging duplicate copies by post or through a document exchange, the contract is made when the last copy is posted or deposited at the document exchange.
- 2.1.2 If the parties' conveyancers agree to treat exchange as taking place before duplicate copies are actually exchanged, the contract is made as so agreed.
- 2.2 Deposit**
- 2.2.1 The buyer is to pay or send a deposit of 10 per cent of the purchase price no later than the date of the contract.
- 2.2.2 If a cheque tendered in payment of all or part of the deposit is dishonoured when first presented, the seller may, within seven working days of being notified that the cheque has been dishonoured, give notice to the buyer that the contract is discharged by the buyer's breach.
- 2.2.3 Conditions 2.2.4 to 2.2.6 do not apply on a sale by auction.
- 2.2.4 The deposit is to be paid:
- by electronic means from an account held in the name of a conveyancer at a clearing bank to an account in the name of the seller's conveyancer or (in a case where condition 2.2.5 applies) a conveyancer nominated by him and maintained at a clearing bank, or
 - to the seller's conveyancer or (in a case where condition 2.2.5 applies) a conveyancer nominated by him by cheque drawn on a solicitor's or licensed conveyancer's client account
- 2.2.5 If before completion date the seller agrees to buy another property in England and Wales for his residence, he may use all or any part of the deposit as a deposit in that transaction to be held on terms to the same effect as this condition and condition 2.2.6.
- 2.2.6 Any deposit or part of a deposit not being used in accordance with condition 2.2.5 is to be held by the seller's conveyancer as stakeholder on terms that on completion it is paid to the seller with accrued interest.
- 2.3 Auctions**
- 2.3.1 On a sale by auction the following conditions apply to the property and, if it is sold in lots, to each lot.
- 2.3.2 The sale is subject to a reserve price.
- 2.3.3 The seller, or a person on his behalf, may bid up to the reserve price.
- 2.3.4 The auctioneer may refuse any bid.
- 2.3.5 If there is a dispute about a bid, the auctioneer may resolve the dispute or restart the auction at the last undisputed bid.
- 2.3.6 The deposit is to be paid to the auctioneer as agent for the seller.
- 3. MATTERS AFFECTING THE PROPERTY**
- 3.1 Freedom from incumbrances**
- 3.1.1 The seller is selling the property free from incumbrances, other than those mentioned in condition 3.1.2.
- 3.1.2 The incumbrances subject to which the property is sold are:
- those specified in the contract
 - those discoverable by inspection of the property before the date of the contract
 - those the seller does not and could not reasonably know about
 - those, other than mortgages, which the buyer knows about
 - entries made before the date of the contract in any public register except those maintained by the Land Registry or its Land Charges Department or by Companies House
 - public requirements.
- 3.1.3 After the contract is made, the seller is to give the buyer written details without delay of any new public requirement and of anything in writing which he learns about concerning a matter covered by condition 3.1.2.
- 3.1.4 The buyer is to bear the cost of complying with any outstanding public requirement and is to indemnify the seller against any liability resulting from a public requirement.
- 3.2 Physical state**
- 3.2.1 The buyer accepts the property in the physical state it is in at the date of the contract unless the seller is building or converting it.
- 3.2.2 A leasehold property is sold subject to any subsisting breach of a condition or tenant's obligation relating to the physical state of the property which renders the lease liable to forfeiture.
- 3.2.3 A sub-lease is granted subject to any subsisting breach of a condition or tenant's obligation relating to the physical state of the property which renders the seller's own lease liable to forfeiture.
- 3.3 Leases affecting the property**
- 3.3.1 The following provisions apply if any part of the property is sold subject to a lease.
- 3.3.2
- The seller having provided the buyer with full details of each lease or copies of the documents embodying the lease terms, the buyer is treated as entering into the contract knowing and fully accepting those terms.
 - The seller is to inform the buyer without delay if the lease ends or if the seller learns of any application by the tenant in connection with the lease, the seller is then to act as the buyer reasonably directs, and the buyer is to indemnify him against all consequent loss and expense.
 - Except with the buyer's consent, the seller is not to agree to any proposal to change the lease terms nor to take any step to end the lease.
 - The seller is to inform the buyer without delay of any change to the lease terms which may be proposed or agreed.
 - The buyer is to indemnify the seller against all claims arising from the lease after actual completion; this includes claims which are unenforceable against a buyer for want of registration.
 - The seller takes no responsibility for what rent is lawfully recoverable, nor for whether or how any legislation affects the lease.
 - If the let land is not wholly within the property, the seller may apportion the rent.
- 4. TITLE AND TRANSFER**
- 4.1 Proof of title**
- 4.1.1 Without cost to the buyer, the seller is to provide the buyer with proof of the title to the property and of his ability to transfer it, or to procure its transfer.
- 4.1.2 Where the property has a registered title the proof is to include official copies of the items referred to in rules 134(1)(a) and (b) and 135(1)(a) of the Land Registration Rules 2003, so far as they are not to be discharged or overridden at or before completion.
- 4.1.3 Where the property has an unregistered title, the proof is to include:
- an abstract of title or an epitome of title with photocopies of the documents, and
 - production of every document or an abstract, epitome or copy of it with an original marking by a conveyancer either against the original or an examined abstract or an examined copy.
- 4.2 Requisitions**
- 4.2.1 The buyer may not raise requisitions:
- on any title shown by the seller before the contract was made
 - in relation to the matters covered by condition 3.1.2.
- 4.2.2 Notwithstanding condition 4.2.1, the buyer may, within six working days of a matter coming to his attention after the contract was made, raise written requisitions on that matter. In that event, steps 3 and 4 in condition 4.3.1 apply.
- 4.2.3 On the expiry of the relevant time limit under condition 4.2.2 or condition 4.3.1, the buyer loses his right to raise requisitions or to make observations.
- 4.3 Timetable**
- 4.3.1 Subject to condition 4.2 and to the extent that the seller did not take the steps described in condition 4.1.1 before the contract was made, the following are the steps for deducing and investigating the title to the property to be taken within the following time limits:
- | Step | Time Limit |
|--|--|
| 1. The seller is to comply with condition 4.1.1 | Immediately after making the contract |
| 2. The buyer may raise written requisitions | Six working days after either the date of the contract or the date of delivery of the seller's evidence of title on which the requisitions are raised whichever is the later |
| 3. The seller is to reply in writing to any requisitions raised | Four working days after receiving the requisitions |
| 4. The buyer may make written observations on the seller's replies | Three working days after receiving the replies |
- The time limit on the buyer's right to raise requisitions applies even where the seller supplies incomplete evidence of his title, but the buyer may, within six working days from delivery of any further evidence, raise further requisitions resulting from that evidence.
- 4.3.2 The parties are to take the following steps to prepare and agree the transfer of the property within the following time limits:
- | Step | Time Limit |
|---|---|
| A. The buyer is to send the seller a draft transfer | At least twelve working days before completion date |
| B. The seller is to approve or revise that draft and either return it or retain it for use as the actual transfer | Four working days after delivery of the draft |
| C. If the draft is returned the buyer is to send an engrossment to the seller | At least five working days before completion date |
- 4.3.3 Periods of time under conditions 4.3.1 and 4.3.2 may run concurrently.
- 4.3.4 If the period between the date of the contract and completion date is less than 15 working days, the time limits in conditions 4.2.2, 4.3.1 and 4.3.2 are to be reduced by the same proportion as the period bears to the period of 15 working days. Fractions of a working day are to be rounded down except that the time limit to perform any step is not to be less than one working day.
- 4.4 Defining the property**
- The seller need not:
- prove the exact boundaries of the property
 - prove who owns fences, ditches, hedges or walls
 - separately identify parts of the property with different titles
- further than he may be able to do from information in his possession.

Turn over

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4.5 Rents and rentcharges

The fact that a rent or rentcharge, whether payable or receivable by the owner of the property, has been, or will on completion be, informally apportioned is not to be regarded as a defect in title.

4.6 Transfer

4.6.1 The buyer does not prejudice his right to raise requisitions, or to require replies to any raised, by taking any steps in relation to preparing or agreeing the transfer.

4.6.2 Subject to condition 4.6.3, the seller is to transfer the property with full title guarantee.

4.6.3 The transfer is to have effect as if the disposition is expressly made subject to all matters covered by condition 3.1.2 and, if the property is leasehold, is to contain a statement that the covenants set out in section 4 of the Law of Property (Miscellaneous Provisions) Act 1994 will not extend to any breach of the tenant's covenants in the lease relating to the physical state of the property.

4.6.4 If after completion the seller will remain bound by any obligation affecting the property which was disclosed to the buyer before the contract was made, but the law does not imply any covenant by the buyer to indemnify the seller against liability for future breaches of it:

- the buyer is to covenant in the transfer to indemnify the seller against liability for any future breach of the obligation and to perform it from then on, and
- if required by the seller, the buyer is to execute and deliver to the seller on completion a duplicate transfer prepared by the buyer.

4.6.5 The seller is to arrange at his expense that, in relation to every document of title which the buyer does not receive on completion, the buyer is to have the benefit of:

- a written acknowledgement of his right to its production, and
- a written undertaking for its safe custody (except while it is held by a mortgagee or by someone in a fiduciary capacity).

4.7 Membership of company

Where the seller is, or is required to be, a member of a company that has an interest in the property or has management responsibilities for the property or the surrounding areas, the seller is, without cost to the buyer, to provide such documents on completion as will enable the buyer to become a member of that company.

5. RISK, INSURANCE AND OCCUPATION PENDING COMPLETION

5.1.1 The property is at the risk of the buyer from the date of the contract.

5.1.2 The seller is under no obligation to the buyer to insure the property unless:

- the contract provides that a policy effected by or for the seller and insuring the property or any part of it against liability for loss or damage is to continue in force, or
- the property or any part of it is let on terms under which the seller (whether as landlord or as tenant) is obliged to insure against loss or damage.

5.1.3 If the seller is obliged to insure the property under condition 5.1.2, the seller is to:

- do everything necessary to maintain the policy
- permit the buyer to inspect the policy or evidence of its terms
- if before completion the property suffers loss or damage:
 - pay to the buyer on completion the amount of the policy monies which the seller has received, so far as not applied in repairing or reinstating the property, and
 - if no final payment has then been received, assign to the buyer, at the buyer's expense, all rights to claim under the policy in such form as the buyer reasonably requires and pending execution of the assignment hold any policy monies received in trust for the buyer
- cancel the policy on completion.

5.1.4 Where the property is leasehold and the property, or any building containing it, is insured by a reversioner or other third party, the seller is to use reasonable efforts to ensure that the insurance is maintained until completion and if, before completion, the property or building suffers loss or damage the seller is to assign to the buyer on completion, at the buyer's expense, such rights as the seller may have in the policy monies, in such form as the buyer reasonably requires.

5.1.5 If payment under a policy effected by or for the buyer is reduced, because the property is covered against loss or damage by an insurance policy effected by or on behalf of the seller, then, unless the seller is obliged to insure the property under condition 5.1.2, the purchase price is to be abated by the amount of that reduction.

5.1.6 Section 47 of the Law of Property Act 1925 does not apply.

5.2 Occupation by buyer

5.2.1 If the buyer is not already lawfully in the property, and the seller agrees to let him into occupation, the buyer occupies on the following terms.

5.2.2 The buyer is a licensee and not a tenant. The terms of the licence are that the buyer:

- cannot transfer it
- may permit members of his household to occupy the property
- is to pay or indemnify the seller against all outgoings and other expenses in respect of the property
- is to pay the seller a fee calculated at the contract rate on a sum equal to the purchase price (less any deposit paid) for the period of the licence
- is entitled to any rents and profits from any part of the property which he does not occupy
- is to keep the property in as good a state of repair as it was in when he went into occupation (except for fair wear and tear) and is not to alter it
- if the property is leasehold, is not to do anything which puts the seller in breach of his obligations in the lease, and
- is to quit the property when the licence ends.

5.2.3 The buyer is not in occupation for the purposes of this condition if he merely exercises rights of access given solely to do work agreed by the seller.

5.2.4 The buyer's licence ends on the earliest of: completion date, rescission of the contract or when five working days' notice given by one party to the other takes effect.

5.2.5 If the buyer is in occupation of the property after his licence has come to an end and the contract is subsequently completed he is to pay the seller compensation for his continued occupation calculated at the same rate as the fee mentioned in condition 5.2.2(d).

5.2.6 The buyer's right to raise requisitions is unaffected.

6. COMPLETION

6.1 Date

6.1.1 Completion date is twenty working days after the date of the contract but time is not of the essence of the contract unless a notice to complete has been served.

6.1.2 If the money due on completion is received after 2.00 pm, completion is to be treated, for the purposes only of conditions 6.3 and 7.2, as taking place on the next working day as a result of the buyer's default.

6.1.3 Condition 6.1.2 does not apply and the seller is treated as in default if:

- the sale is with vacant possession of the property or any part of it, and
- the buyer is ready, able and willing to complete but does not pay the money due on completion until after 2.00 pm because the seller has not vacated the property or that part by that time.

6.2 Arrangements and place

6.2.1 The buyer's conveyancer and the seller's conveyancer are to co-operate in agreeing arrangements for completing the contract.

6.2.2 Completion is to take place in England and Wales, either at the seller's conveyancer's office or at some other place which the seller reasonably specifies.

6.3 Apportionments

6.3.1 On evidence of proper payment being made, income and outgoings of the property are to be apportioned between the parties so far as the change of ownership on completion will affect entitlement to receive or liability to pay them.

6.3.2 If the whole property is sold with vacant possession or the seller exercises his option in condition 7.2.4, apportionment is to be made with effect from the date of actual completion; otherwise, it is to be made from completion date.

6.3.3 In apportioning any sum, it is to be assumed that the seller owns the property until the end of the day from which apportionment is made and that the sum accrues from day to day at the rate at which it is payable on that day.

6.3.4 For the purpose of apportioning income and outgoings, it is to be assumed that they accrue at an equal daily rate throughout the year.

6.3.5 When a sum to be apportioned is not known or easily ascertainable at completion, a provisional apportionment is to be made according to the best estimate available. As soon as the amount is known, a final apportionment is to be made and notified to the other party. Any resulting balance is to be paid no more than ten working days later, and if not then paid the balance is to bear interest at the contract rate from then until payment.

6.3.6 Compensation payable under condition 5.2.5 is not to be apportioned.

6.4 Amount payable

The amount payable by the buyer on completion is the purchase price and the contents price (less any deposit already paid to the seller or his agent) adjusted to take account of:

- apportionments made under condition 6.3
- any compensation to be paid or allowed under condition 7.2

(c) any sum payable under condition 5.1.3.

6.5 Title deeds

6.5.1 As soon as the buyer has complied with all his obligations under this contract on completion the seller must hand over the documents of title.

6.5.2 Condition 6.5.1 does not apply to any documents of title relating to land being retained by the seller after completion.

6.6 Rent receipts

The buyer is to assume that whoever gave any receipt for a payment of rent or service charge which the seller produces was the person or the agent of the person then entitled to that rent or service charge.

6.7 Means of payment

The buyer is to pay the money due on completion by a direct transfer of cleared funds from an account held in the name of a conveyancer at a clearing bank and, if appropriate, an unconditional release of a deposit held by a stakeholder.

6.8 Notice to complete

6.8.1 At any time after the time applicable under condition 6.1.2 on completion date, a party who is ready, able and willing to complete may give the other a notice to complete.

6.8.2 The parties are to complete the contract within ten working days of giving a notice to complete, excluding the day on which the notice is given. For this purpose, time is of the essence of the contract.

6.8.3 On receipt of a notice to complete:

- if the buyer paid no deposit, he is forthwith to pay a deposit of 10 per cent
- if the buyer paid a deposit of less than 10 per cent, he is forthwith to pay a further deposit equal to the balance of that 10 per cent.

7. REMEDIES

7.1 Errors and omissions

7.1.1 If any plan or statement in the contract, or in the negotiations leading to it, is or was misleading or inaccurate due to an error or omission by the seller, the remedies available to the buyer are as follows.

- When there is a material difference between the description or value of the property, or of any of the contents included in the contract, as represented and as it is, the buyer is entitled to damages.
- An error or omission only entitles the buyer to rescind the contract:
 - where it results from fraud or recklessness, or
 - where he would be obliged, to his prejudice, to accept property differing substantially (in quantity, quality or tenure) from what the error or omission had led him to expect.

7.1.2 If either party rescinds the contract:

- unless the rescission is a result of the buyer's breach of contract the deposit is to be repaid to the buyer with accrued interest
- the buyer is to return any documents he received from the seller and is to cancel any registration of the contract.

7.2 Late completion

7.2.1 If there is default by either or both of the parties in performing their obligations under the contract and completion is delayed, the party whose total period of default is the greater is to pay compensation to the other party.

7.2.2 Compensation is calculated at the contract rate on an amount equal to the purchase price, less (where the buyer is the paying party) any deposit paid, for the period by which the paying party's default exceeds that of the receiving party, or, if shorter, the period between completion date and actual completion.

7.2.3 Any claim for loss resulting from delayed completion is to be reduced by any compensation paid under this contract.

7.2.4 Where the buyer holds the property as tenant of the seller and completion is delayed, the seller may give notice to the buyer, before the date of actual completion, that he intends to take the net income from the property until completion. If he does so, he cannot claim compensation under condition 7.2.1 as well.

7.3 After completion

Completion does not cancel liability to perform any outstanding obligation under this contract.

7.4 Buyer's failure to comply with notice to complete

7.4.1 If the buyer fails to complete in accordance with a notice to complete, the following terms apply.

7.4.2 The seller may rescind the contract, and if he does so:

- he may:
 - forfeit and keep any deposit and accrued interest
 - resell the property and any contents included in the contract
 - claim damages
- the buyer is to return any documents he received from the seller and is to cancel any registration of the contract.

7.4.3 The seller retains his other rights and remedies.

7.5 Seller's failure to comply with notice to complete

7.5.1 If the seller fails to complete in accordance with a notice to complete, the following terms apply.

7.5.2 The buyer may rescind the contract, and if he does so:

- the deposit is to be repaid to the buyer with accrued interest
- the buyer is to return any documents he received from the seller and is, at the seller's expense, to cancel any registration of the contract.

7.5.3 The buyer retains his other rights and remedies.

8. LEASEHOLD PROPERTY

8.1 Existing leases

8.1.1 The following provisions apply to a sale of leasehold land.

8.1.2 The seller having provided the buyer with copies of the documents embodying the lease terms, the buyer is treated as entering into the contract knowing and fully accepting those terms.

8.2 New leases

8.2.1 The following provisions apply to a contract to grant a new lease.

8.2.2 The conditions apply so that:

'seller' means the proposed landlord

'buyer' means the proposed tenant

'purchase price' means the premium to be paid on the grant of a lease.

8.2.3 The lease is to be in the form of the draft attached to the contract.

8.2.4 If the term of the new lease will exceed seven years, the seller is to deduce a title which will enable the buyer to register the lease at the Land Registry with an absolute title.

8.2.5 The seller is to engross the lease and a counterpart of it and is to send the counterpart to the buyer at least five working days before completion date.

8.2.6 The buyer is to execute the counterpart and deliver it to the seller on completion.

8.3 Consent

8.3.1

- The following provisions apply if a consent to let, assign or sub-let is required to complete the contract.
- In this condition 'consent' means consent in the form which satisfies the requirement to obtain it.

8.3.2

- The seller is to apply for the consent at his expense, and to use all reasonable efforts to obtain it.
 - The buyer is to provide all information and references reasonably required.
- 8.3.3 Unless he is in breach of his obligation under condition 8.3.2, either party may rescind the contract by notice to the other party if three working days before completion date (or before a later date on which the parties have agreed to complete the contract):
- the consent has not been given, or
 - the consent has been given subject to a condition to which a party reasonably objects. In that case, neither party is to be treated as in breach of contract and condition 7.1.2 applies.

9. CONTENTS

9.1 The following provisions apply to any contents which are included in the contract, whether or not a separate price is to be paid for them.

9.2 The contract takes effect as a contract for sale of goods.

9.3 The buyer takes the contents in the physical state they are in at the date of the contract.

9.4 Ownership of the contents passes to the buyer on actual completion

End of Case Study Materials

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