

CONTENTS

<i>Table of Cases</i>	xix
<i>Table of Legislation</i>	xxvi
<i>Table of Secondary Legislation</i>	xxxii
<i>Table of Solicitors' Rules</i>	xxxiii

1 INTRODUCTION	1
A AN INTRODUCTION TO CONVEYANCING	1
Our approach in this book	1
An introduction to conveyancing	2
A conveyancing timeline	3
Conveyancing of unregistered land	3
B CONVEYANCING OF REGISTERED LAND	5
Conveyancing of registered land	5
Key points summary: Registered land conveyancing procedures	27
C DEFENSIVE LAWYERING IN CONVEYANCING	28
Defensive lawyering and the conveyancing process	28
Key points summary: Defensive lawyering and the conveyancing process	33
D CONVEYANCING AND INFORMATION TECHNOLOGY	33
Useful websites	35
Key points summary: Some of the hardware and software facilities available	35
E THE FUTURE OF CONVEYANCING	36
Gazumping and conveyancing reform	37
One-stop conveyancing and conveyancing call centres	38
Energy performance certificates	40
E-conveyancing	40
The Law Society Conveyancing Quality Scheme	46
2 TAKING INSTRUCTIONS AND OTHER INITIAL MATTERS	48
INTERVIEWING THE CLIENT	48
General considerations	48
Estate agents	49
Client care and advice on costs	50
Advice on co-ownership	52
Advice on finance	54

Advice on survey	59
Law Society Conveyancing Protocol	61
Professional conduct	63
PRACTICAL CHECKLISTS	68
Acting for either seller or buyer	68
Acting for seller—additional considerations	69
Acting for buyer—additional considerations	69
Acting for buyer and lender	69
<hr/>	
3 THE DRAFT CONTRACT	70
A PREPARATORY STEPS BY SELLER'S PRACTITIONER	70
Evidence of seller's title	70
Investigating the seller's title	72
Checking for any other occupiers	74
Seller's duty of disclosure	76
Seller's capacity to sell	77
B FORMATION OF THE CONTRACT	78
Impact of Section 2 of the Law of Property (Miscellaneous Provisions) Act 1989	78
Impact of the Contracts (Rights of Third Parties) Act 1999	80
Lock-out agreements	81
C CONTENTS OF THE CONTRACT	82
Particulars of sale	82
Conditions of sale	82
Some important areas covered by conditions of sale	84
Key points summary: Vacant possession and completion	85
Key points summary: Deposit	88
D SALES OF PART	90
Lender's consent	90
Description in the contract	91
Importance of a good plan	91
Negating implied grant of easements in favour of buyer	92
Grant and reservation of new easements	92
Creating new covenants	92
A worked example of a sale of part	93
E SPECIAL CONSIDERATIONS	95
Auction contracts	95
Conditional contracts	96

Key points summary: Conditional contracts	97
Option agreements	97
Contract races	99
Seller not yet registered as proprietor	100
Sub-sales	101
PRACTICAL CHECKLISTS	102
Pre-drafting	102
Contents of contract	102
Sale of part	102
<hr/>	
4 PRE-CONTRACT SEARCHES AND ENQUIRIES, TOWN AND COUNTRY PLANNING	104
A PRE-CONTRACT SEARCHES	104
Why do searches?	104
What searches should you do and when?	105
The National Land Information Service (NLIS)	122
The effect of the Protocol	123
Key points summary: Pre-contract searches	123
B PRELIMINARY ENQUIRIES	124
Why raise enquiries?	124
What enquiries should you raise, and when?	125
The effect of the Protocol	129
Commercial property enquiries	131
Key points summary: Preliminary enquiries	133
C TOWN AND COUNTRY PLANNING	133
Planning and conveyancing	133
Changes of use	135
Planning enquiries	137
Enforcement notices and stop notices	139
Building regulations	139
Key points summary: Town and country planning	140
PRACTICAL CHECKLISTS	140
Searches	140
Enquiries	141
Planning	141
<hr/>	
5 DEDUCTION AND INVESTIGATION OF TITLE	143
Introduction	143

Time for deduction and investigation of title	143
Deduction of title to unregistered land	144
Deduction of title to registered land	146
Investigation of title	147
Key points summary: Discharge of mortgages	154
Persons disposing of land in different capacities	155
Key points summary: Sale by mortgagees	156
Key points summary: Personal representatives	159
Key points summary: Dispositions by co-owners	161
Key points summary: Dispositions by an attorney	165
Key points summary: Dispositions by charities	166
Voluntary dispositions	168
Key points summary: Voluntary dispositions	171
Settled Land	171
Key points summary: Settled Land	173
A practical example of investigating an unregistered title and raising requisitions	173
Lost or destroyed title deeds	177
PRACTICAL CHECKLISTS	177
Acting for the seller	177
Acting for the buyer	178

6 PREPARING FOR AND IMPLEMENTING EXCHANGE OF CONTRACTS: DEATH OR INSOLVENCY BETWEEN EXCHANGE AND COMPLETION	179
A BEFORE EXCHANGE	179
Acting for the buyer—matters to attend to before exchange	179
Acting for the seller—matters to attend to before exchange	186
B IMPLEMENTING EXCHANGE OF CONTRACTS	187
Methods of exchange	187
Telephone formulae	188
C AFTER EXCHANGE	191
Action to be taken immediately after exchange	191
The effect of a binding contract	191
Seller's duty as trustee	192
Risk and responsibility for buildings insurance	192
Key points summary: Risk and insurance	194
Protecting the contract by registration	194

Occupation by the buyer before completion	195
Key points summary: Occupation by the buyer before completion	197
Variation of the contract between exchange and completion	197
D DEATH OR INSOLVENCY OF CONTRACTING PARTIES BETWEEN EXCHANGE AND COMPLETION	197
Death	197
Key points summary: Death of a contracting party between exchange and completion	199
Insolvency	200
Key points summary: Insolvency	203
PRACTICAL CHECKLISTS	204
Before Exchange	204
Action to be taken immediately after exchange	205
<hr/>	
7 THE PURCHASE DEED AND MORTGAGE	206
A THE PURCHASE DEED	206
Introduction	206
General matters	207
Valid execution	208
Types of purchase deed	211
Key points summary: Which form of purchase deed to use	219
Drafting considerations	219
B THE MORTGAGE	220
Introduction	220
Joint representation of borrower and lender	221
Commercial mortgages	226
The mortgage deed	227
Post-completion steps	229
Further advances	230
Subsequent mortgages	230
Key points summary: Further advances and subsequent mortgages	233
Mortgage fraud	233
Key points summary: Mortgage fraud	235
PRACTICAL CHECKLISTS	235
The purchase deed	235
Acting for the lender	236
The <i>CML Lenders' Handbook</i>	236

8 PRE-COMPLETION PROCEDURES AND COMPLETION	239
A PRE-COMPLETION PROCEDURES	239
What Are Pre-Completion Procedures?	239
Pre-completion when acting for the seller	243
Pre-completion when acting for the buyer	244
Pre-completion searches	245
Completion statements	258
Key points summary: Pre-completion procedures	259
B COMPLETION	259
Date, time, and place for completion	260
When your client is selling as well as buying: synchronization	261
Mechanics of completion	261
Key points summary: Completion	268
PRACTICAL CHECKLISTS	268
Pre-completion	268
Completion	270
9 POST-COMPLETION PROCEDURES: DELAYS AND REMEDIES	271
A POST-COMPLETION PROCEDURES	271
Acting for the seller	272
Acting for the buyer	275
Key points summary: Stamp Duty Land Tax	279
Key points summary: Post-completion procedures	288
B DELAYS AND REMEDIES	288
Delays	288
Remedies	292
Key points summary: Delays and remedies	299
PRACTICAL CHECKLISTS	299
Post-completion	299
Delays and remedies	301
10 LEASEHOLDS AND COMMONHOLD	302
A AN INTRODUCTION TO LEASEHOLDS	302
General introduction	302
What you might expect in a lease	303
Dealing with leases when acting for a lessee or lender	312

Contents

xv

Liability on covenants in leases: enforcement	314
Lease variations	315
Key points summary: An introduction to leases	315
B NEW LEASES	316
Lease-specific changes in the conveyancing process	316
Acting for the lessor	318
Acting for the lessee	319
Key points summary: New leases	320
C EXISTING LEASES	321
Lease-specific changes in the conveyancing process	321
Acting for the seller	321
Acting for the buyer	323
Key points summary: Existing Leases	325
D STATUTES AND LEASES	325
Leasehold Reform Act 1967	325
Right to buy—Housing Acts 1985 and 2004	326
Landlord and Tenant Act 1987	327
Leasehold Reform, Housing and Urban Development Act 1993	328
Landlord and Tenant (Covenants) Act 1995	328
E THE COMMONHOLD AND LEASEHOLD REFORM ACT 2002	329
Key points summary: Statutes and leases and commonhold	332
PRACTICAL CHECKLISTS	333
New leases	333
Existing leases	334
<hr/>	
11 NEW PROPERTIES	335
Introduction	335
Acting for the developer	335
Documentation	336
Key points summary: Buyer's concerns on draft contract of new property	339
Structural defects insurance	344
Difficulties of synchronizing completion of a related sale transaction	347
Key points summary: Synchronizing completion of a related sale transaction	347
PRACTICAL CHECKLISTS	348
Matters for developer's practitioner to consider	348
Items to be sent to the buyer's practitioner	348

12 COMMERCIAL CONVEYANCING	349
A AN INTRODUCTION TO COMMERCIAL CONVEYANCING	349
General introduction	349
Key points summary: VAT and commercial conveyancing	352
B COMMERCIAL LEASES	354
Lease contents	355
Forfeiture	364
Enforceability of covenants	366
Key points summary: Commercial leases	368
C SELLING AND BUYING TENANTED PROPERTIES	369
Contractual matters where SCs are used	369
The Standard Commercial Property Conditions (SCPC)	370
Tenanted properties: the buyer's perspective	377
Conditional contracts	379
Completion matters	380
Key points summary: Selling and buying tenanted properties	380
PRACTICAL CHECKLISTS	381
Commercial lease contents	381
Tenanted properties	381
13 BUSINESS TENANCIES AND THE LANDLORD AND TENANT ACT 1954, PART II	382
Introduction	382
Agreements to which the 1954 Act applies	383
Requirement for 'tenancy'	383
Tenancies excluded from statutory protection	384
Requirement for 'occupation'	387
Requirement for 'the purposes of a business'	388
Meaning of 'business'	389
Methods of termination under the 1954 Act	390
After the end of the contractual term—tenant's notice under S 27(2)	391
Landlord's notice under S 25	392
Definition of 'the holding'	399
Definition of 'competent landlord'	400
Section 40 notices	401
Action by recipient of s 40 notice	402
Rules for service of notices	403

Contents	xvii
Key points summary: s 25 notices and s 26 requests	404
Interim rent applications	404
Landlord's statutory grounds of opposition	407
Key points summary: Statutory grounds under S 30(1)	414
Tenant's right to compensation for failure to obtain a new tenancy	415
The terms of the new tenancy	416
Key points summary: Terms of the new lease	421
Court order for new tenancy	422
PRACTICAL CHECKLISTS	422
Summary of the 1954 Act	422
Acting for landlord	423
Acting for tenant	424
Negotiating the terms of the renewed lease	425
Key reforms introduced on 1 June 2004	425
 APPENDIX 1 List of Useful Websites	 427
APPENDIX 2 The Law Society Conveyancing Protocol	429
APPENDIX 3 Standard Conditions of Sale (5th edition) (National Conditions of Sale, 25th edition, Law Society's Conditions of Sale 2011)	452
APPENDIX 4 Law Society's Standard Form of Contract	463
APPENDIX 5 Example of an Epitome of Title	466
APPENDIX 6 Precedent for Conveyance of Part of Unregistered Land	468
APPENDIX 7 Completion Information and Requisitions on Title	471
APPENDIX 8 Specimen Completion Statements	476
APPENDIX 9 Law Society's Code for Completion by Post (2011 edition)	481
APPENDIX 10 Standard Commercial Property Conditions (2nd edition)	482
APPENDIX 11 The <i>CML Lenders' Handbook</i> for England and Wales: PART 1	490
APPENDIX 12 Mortgage Deed	513
APPENDIX 13 Guide to Completing Prescribed Clauses: Text That Must Be Included	514
APPENDIX 14 Specimen Land Registry Official Copy Entries and Title Plan	517



Visit the Online Resource Centre at www.oxfordtextbooks.co.uk/orc/abbey-richards12_13/ to access additional appendices and other useful materials and information. Use the following login details for password-protected resources:

Username: abbeyrichards

Password: freehold

Special Condition Making Contract Conditional Upon Satisfactory Local Search

Precedent for Lock-Out Agreement

Statutory Declaration/Certificate as to Non-revocation for Powers of Attorney more than 12 months old at the date of the disposition for which they are used