Contents of Volume 1

Preface to Third Edition ................................................................. v.1
Preface to Second Edition ............................................................... vii
Preface to First Edition ................................................................. ix

Chapter 1

INTRODUCTION

I Definitions .................................................................................. 1-1
§1 In General............................................................................... 1-1
§2 Vendor and Purchaser............................................................. 1-1
§3 Sale and Agreement of Sale or Agreement for Sale............. 1-2
§4 Agreement or Contract to Sell............................................... 1-3
§5 Conditional Sale.................................................................. 1-4
§6 Contract for the Sale of Land ............................................... 1-4
§7 Open Contract.................................................................... 1-8

II Juridical Nature of a Contract for the Sale of Land.................. 1-9
§8 In General............................................................................ 1-9
§9 Label Unimportant ............................................................... 1-9
§10 A Lease............................................................................ 1-9
§11 Option to Purchase .............................................................. 1-10
§12 Assurance ........................................................................ 1-10
§13 Agency............................................................................. 1-11
§14 Exchange ......................................................................... 1-11
§15 Licence............................................................................. 1-11
§16 Encumbrance .................................................................. 1-12
§17 Trust ............................................................................... 1-12
§18 Chose in Action ................................................................. 1-14
§19 Mortgage .......................................................................... 1-15
§20 Agreement for Sale Disguised as a Mortgage ................. 1-18
§21 Statutory Modifications ...................................................... 1-19
§22 The Rule Against Perpetuities as Affecting the Contract..... 1-20
§23 The Doctrine of Conversion .............................................. 1-22
§24 Ademption ........................................................................ 1-23
§25 Where Testator Mentally Incompetent .............................. 1-25

III Torrens System .......................................................................... 1-25
§26 In General.......................................................................... 1-25

IV Judgments by Third Persons Against Purchasers.................. 1-26
§27 In General.......................................................................... 1-26
§28 Bankrupt Debtor................................................................. 1-28

Chapter 2

LAND AND INTERESTS THEREIN

I Legal Signification ..................................................................... 2-1
§29 In General.......................................................................... 2-1
II Fixtures ................................................................. 2-5
§30 Test: Chattel or Fixture ........................................... 2-5
§31 Affixing by Purchaser ........................................... 2-9
§32 Express Covenant as to Buildings ......................... 2-10
§33 Personal Property Security Acts ............................... 2-11

III Crops ................................................................. 2-17
§34 Fructus Industriales .............................................. 2-17
§35 Fructus Naturales .................................................. 2-18
§36 Intervening Third Party Rights ................................. 2-18

IV Timber ................................................................. 2-19
§37 In General .......................................................... 2-19
§38 Profit a` Prendre .................................................... 2-22

V Gravel ................................................................. 2-23
§39 In General .......................................................... 2-23

Chapter 3

PARTIES

I Parties in General ..................................................... 3-1
§40 Contract Rules ..................................................... 3-1

II Agents ................................................................. 3-2
§41 Creation of the Agency Relationship ............................ 3-2
§42 Delegatus non Potest Delegare ................................. 3-4.1
§43 Authority Strictly Construed ..................................... 3-4.2
§44 Powers of Attorney .............................................. 3-6
§45 Ratification of Oral Agreement ................................. 3-6.2
§46 Ordinary Authority Given to Real Estate Agent ........... 3-7
§47 Effect of Stating Price ............................................ 3-8
§48 Obstensible Authority and Estoppel of Principal ........... 3-8
§49 Ratification .......................................................... 3-10
§50 Breach of Implied Warranty of Authority .................... 3-11
§51 Action Involving Disputed Agency .............................. 3-11
§52 Repudiation by Principal Precluding Subsequent Offer of
Performance ......................................................... 3-12
§53 Action by Agent for Specific Performance .................... 3-12
§54 Liability of Agent Contracting in his Own Name .......... 3-13
§54A Sealed Contract Rule .......................................... 3-14
§55 Sheriffs and Auctioneers ........................................ 3-14
§56 Appointment by Infant of Agent ............................... 3-15
§57 Revocation of Authority by Death ............................. 3-16
§58 Revocation by Insanity of Principal ........................... 3-16

III Aliens ................................................................. 3-16
§59 In General .......................................................... 3-16

IV Partners ............................................................... 3-16.2
§60 In General .......................................................... 3-16.2
§61 Statutory Provisions .............................................. 3-17
§61A Limited Partnership ............................................ 3-18
§62 Sale by Partner of Firm’s Land ................................. 3-18

C1-2
§ 63 Evidence of Partnership........................................................ 3-18
§ 64 Trustee Relationship............................................................ 3-19
§ 65 Contract not Executed by All Partners…………………………… 3-20

V Co-Owners ....................................................................................... 3-21
§ 66 In General........................................................................ 3-21

VI Personal Representatives............................................................ 3-22.1
§ 67 Statutory Provisions .......................................................... 3-22.1
§ 68 Trust for Sale .................................................................... 3-28
§ 69 Trustees........................................................................... 3-30
§ 70 Limits on the Non-Statutory Power of Sale ………………… 3-30.1
§ 71 Effect of Beneficiaries Consenting……………………………. 3-31
§ 72 Approbation of Court………………………………………….. 3-31
§ 73 Personal Representative Selling to Himself………………….. 3-32
§ 74 Administrator Becoming Trustee……………………………… 3-34
§ 75 Real Estate Agent as Executor………………………………….. 3-34
§ 76 Purchase of Land as Investment by Trustee………………….. 3-35
§ 77 Mortgage Investments by Trustees…………………………….. 3-36
§ 78 Trustee under Absolute Conveyance or Transfer……………… 3-36
§ 79 Where Conveyance or Transfer “In Trust”………………….. 3-36
§ 80 The Vendors and Purchasers Act……………………………… 3-39
§ 81 Devolution to Personal Representative……………………… 3-39
§ 82 Personal Representative Becoming Trustee………………….. 3-40
§ 83 Cessation of Statutory Power of Sale for Administration Purposes………………………………….. 3-41
§ 84 Death of Deceased Caused by Next of Kin………………….. 3-42
§ 85 Foreign Administrators and Executors……………………… 3-42.1
§ 86 Commorientes Legislation……………………………………….. 3-42.1

VII Companies ..................................................................................... 3-42.2
§ 87 Power to Hold and Dispose of Land…………………………….. 3-42.2
§ 88 Extra-Provincial Companies……………………………………… 3-45
§ 89 Inquiries Necessary by Person Dealing with Company……… 3-46
§ 90 Fiduciary Position of Directors…………………………………… 3-48
§ 90A Piercing Corporate Veil………………………………………….. 3-49
§ 91 By-laws of Charter Corporation…………………………………… 3-50
§ 92 Doctrine of Ultra Vires…………………………………………… 3-51
§ 93 Pre-Incorporation Contracts……………………………………… 3-53
§ 94 Company with Torrens Title……………………………………… 3-55
§ 95 Conveyance to Corporation Sole……………………………… 3-55
§ 96 Dissolution and Escheat…………………………………………… 3-55

VIII Infants ........................................................................................ 3-57
§ 97 When Contract Void or Voidable………………………………… 3-57
§ 98 Infants’ Relief Act, 1874…………………………………………… 3-59
§ 99 Equity Requires Restitution……………………………………… 3-59
§ 100 Recovery by Infant………………………………………………… 3-60
§ 101 Deed of Infant……………………………………………………… 3-60
§ 102 Bankruptcy of Infant……………………………………………… 3-61
§ 103 Infant as Agent……………………………………………………… 3-61
§ 104 Dower……………………………………………………………….. 3-61

IX Husband and Wife………………………………………………………… 3-62

February 2014 C1-3 (V & P) (2014 – Rel. 2)
<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>§105</td>
<td>Relationship as Affecting Capacity to Contract</td>
<td>3-62</td>
</tr>
<tr>
<td>§106</td>
<td>Severance of a Joint Tenancy</td>
<td>3-66.1</td>
</tr>
<tr>
<td>§107</td>
<td>Presumption of Advancement</td>
<td>3-71</td>
</tr>
<tr>
<td>§108</td>
<td>Resulting Trust</td>
<td>3-74</td>
</tr>
<tr>
<td>§109</td>
<td>Constructive Trust</td>
<td>3-80.5</td>
</tr>
<tr>
<td>§110</td>
<td>The Constructive Trust and “Common Law” Relationships</td>
<td>3-80.11</td>
</tr>
<tr>
<td>§111</td>
<td>Purchase of Property in Name of One Person Only</td>
<td>3-87</td>
</tr>
<tr>
<td>§112</td>
<td>Homestead Legislation</td>
<td>3-88</td>
</tr>
<tr>
<td>§113</td>
<td>Object of Legislation</td>
<td>3-88</td>
</tr>
<tr>
<td>§114</td>
<td>Dispensing with Consent</td>
<td>3-90</td>
</tr>
<tr>
<td>§115</td>
<td>Specific Performance with an Abatement of Price</td>
<td>3-92</td>
</tr>
<tr>
<td>§116</td>
<td>Destruction by Fire of Homestead</td>
<td>3-93</td>
</tr>
<tr>
<td>§117</td>
<td>Veterans’ Land Act</td>
<td>3-93</td>
</tr>
<tr>
<td>§118</td>
<td>British Columbia</td>
<td>3-95</td>
</tr>
<tr>
<td>§130</td>
<td>In General</td>
<td>4-1</td>
</tr>
<tr>
<td>§131</td>
<td>Mutuality</td>
<td>4-5</td>
</tr>
<tr>
<td>§132</td>
<td>Contracts Within the Statute</td>
<td>4-5</td>
</tr>
<tr>
<td>§133</td>
<td>Fraud</td>
<td>4-7</td>
</tr>
<tr>
<td>§134</td>
<td>Contracts Not Within the Statute</td>
<td>4-7</td>
</tr>
<tr>
<td>§135</td>
<td>Collaterally Connected Contracts</td>
<td>4-10</td>
</tr>
<tr>
<td>§136</td>
<td>Executed Contract</td>
<td>4-12</td>
</tr>
<tr>
<td>§137</td>
<td>Oral Contract a Good Defence</td>
<td>4-12.1</td>
</tr>
<tr>
<td>§138</td>
<td>Effect of Statutory Requirements</td>
<td>4-12.2</td>
</tr>
<tr>
<td>§139</td>
<td>Memorandum Made after Contract</td>
<td>4-13</td>
</tr>
<tr>
<td>§140</td>
<td>Pleading the Statute</td>
<td>4-13</td>
</tr>
<tr>
<td>§141</td>
<td>Part Performance</td>
<td>4-14</td>
</tr>
<tr>
<td>§142</td>
<td>The Doctrine</td>
<td>4-14</td>
</tr>
<tr>
<td>§143</td>
<td>Marshalling of Evidence</td>
<td>4-19</td>
</tr>
<tr>
<td>§143</td>
<td>Taking Possession</td>
<td>4-20.1</td>
</tr>
</tbody>
</table>

Chapter 4

STATUTE OF FRAUDS

I

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>§130</td>
<td>In General</td>
<td>4-1</td>
</tr>
<tr>
<td>§131</td>
<td>Mutuality</td>
<td>4-5</td>
</tr>
<tr>
<td>§132</td>
<td>Contracts Within the Statute</td>
<td>4-5</td>
</tr>
<tr>
<td>§133</td>
<td>Fraud</td>
<td>4-7</td>
</tr>
<tr>
<td>§134</td>
<td>Contracts Not Within the Statute</td>
<td>4-7</td>
</tr>
<tr>
<td>§135</td>
<td>Collaterally Connected Contracts</td>
<td>4-10</td>
</tr>
<tr>
<td>§136</td>
<td>Executed Contract</td>
<td>4-12</td>
</tr>
<tr>
<td>§137</td>
<td>Oral Contract a Good Defence</td>
<td>4-12.1</td>
</tr>
<tr>
<td>§138</td>
<td>Effect of Statutory Requirements</td>
<td>4-12.2</td>
</tr>
<tr>
<td>§139</td>
<td>Memorandum Made after Contract</td>
<td>4-13</td>
</tr>
<tr>
<td>§140</td>
<td>Pleading the Statute</td>
<td>4-13</td>
</tr>
<tr>
<td>§141</td>
<td>Part Performance</td>
<td>4-14</td>
</tr>
<tr>
<td>§142</td>
<td>The Doctrine</td>
<td>4-14</td>
</tr>
<tr>
<td>§143</td>
<td>Marshalling of Evidence</td>
<td>4-19</td>
</tr>
<tr>
<td>§143</td>
<td>Taking Possession</td>
<td>4-20.1</td>
</tr>
</tbody>
</table>

C1-4
Chapter 5

OFFER AND ACCEPTANCE

I

§175 Necessity for Mutual Assent .......................................................... 5-1
§176 Offer by Letter ........................................................................... 5-6
§177 Counter-Offer

§178 Conditional Offer

II Offer (Withdrawal) ................................. 5-10

§179 When Offer Made Without Valuable Consideration 5-10

§180 Withdrawal to be Communicated 5-12.1

§181 Evasion by Offeror of Acceptance 5-12.1

§182 “Escape Clause” 5-12.1

III Lapse ................................................... 5-12.2

§183 In General ............................. 5-12.2

§184 Bankruptcy of Offeror 5-13

IV Assignment ................................................. 5-13

§185 Offer (Assignment of) ................. 5-13

IVA Absence of Formal Document .................................. 5-14

§185A Absence of Formal Document 5-14

V Unqualified Acceptance ........................................ 5-14.1

§186 Unqualified Acceptance 5-14.1

VI Form of Acceptance ............................................. 5-15

§187 In General ...................................... 5-15

§188 Conformity to Offer ............................. 5-18.1

§189 Condition Precedent ............................. 5-19

§190 Condition Precedent Preventing Formation of Contract 5-28.5

§191 Condition Precedent Suspending Performance 5-30.1

§192 Withholding Delivery of Contract 5-36

§193 Extrinsic Evidence .......................... 5-36

VII Acceptance (Time and Place) ........................................... 5-36.1

§194 Time ........................................ 5-36.1

§195 Place ........................................ 5-39

VIII Parties Not Ad Idem ................................................. 5-40

§196 Material Term Left to Future Agreement 5-40

§197 Misunderstanding ............................... 5-43

§198 Non est Factum ........................................ 5-45

§199 Vagueness or Uncertainty ....................... 5-50

§200 Want of Mutuality ................................ 5-65

§201 Rights of Parties after Failure of Negotiations 5-66

§202 Homestead Legislation ............................. 5-68

§203 Right to Call for a Conveyance ................... 5-68

§204 Materiality of an Alteration in a Contract or Other Instrument ... 5-69

§205 Alteration by Stranger ........................... 5-70

§206 Date of Instrument .............................. 5-70.1

§207 Filling in Blanks .................................. 5-71

IX Collateral Oral Agreements ....................................... 5-71

§208 In General .......................................... 5-71

§209 Obligation of Vendor to Construct Road 5-77

§210 Warranty ........................................ 5-78
Chapter 6

OPTIONS

§211 Definition ........................................................................ 6-1
§212 Option as Affected by the Rule Against Perpetuities ............... 6-5
§213 Right of Pre-emption or First Refusal.................................... 6-8.1
§214 Exercise of Option ............................................................. 6-17
§215 Money Paid by Optionee on Account of Price.......................... 6-26
§216 Effect of Option not to Perform Contract ............................... 6-26
§217 Option in Favour of Mortgagee or Lessee ............................... 6-26
§218 Agreement of Sale or Absolute Conveyance or Transfer
Intended as Mortgage ............................................................. 6-29
§219 Consideration...................................................................... 6-29
§220 Extension of Time or Waiver ................................................. 6-32
§221 Duration of Option............................................................. 6-33
§222 Conditions Precedent to Exercise of Option.............................. 6-34.1
§223 Assignment of Option by Optionee ......................................... 6-39
§223A Transfer or Mortgage of Land by Optionor ............................. 6-41

Chapter 7

MISREPRESENTATION, UNDUE INFLUENCE AND FRAUD

I Fraudulent Misrepresentation ........................................................ 7-1
§224 In General........................................................................ 7-1
§225 Distinguished from Contract or Promise................................... 7-4.1
§226 Materiality ....................................................................... 7-4.1
§227 Inducement ....................................................................... 7-7
§228 Relevant Inquiries as to Truth of Representation ......................... 7-12
§229 Misrepresentation as to Quality of Land, Including
Buildings..................................................................................... 7-14
§230 Misrepresentation as to State of Title .................................... 7-15
§231 Misrepresentation as to Value of Land, Including Buildings ......... 7-16
§232 Erroneous Opinion as to Legal Effect of Term in Contract ......... 7-17
§233 Further Examples of Material Misrepresentations ....................... 7-18
§234 Further Examples of Immaterial Misrepresentations .................... 7-24
§235 Clause Excluding Representations Dehors the Contract ............. 7-29
§236 Patent and Latent Defects as to Quality .................................. 7-32
§237 Purchase “As Is” or “With All Faults” ...................................... 7-43
§238 Disclosure by Purchaser .................................................... 7-44.1
§239 Disclosure by Vendor .......................................................... 7-45
§240 Completely Constructed House .............................................. 7-50.3
§241 Sale of Uncompleted House .................................................. 7-51
§242 Tort Liability of Builder-Vendor ............................................. 7-55
§243 Negligent Misrepresentation .................................................. 7-57

II Fraudulent Misrepresentation by Agents ...................................... 7-68.10
§244 In General....................................................................... 7-68.12
§245 Liability of Agent for Damages ............................................ 7-70.5
§246 By Third Party as Agent ...................................................... 7-70.9
§247 By Developer .................................................................... 7-70.9
§248 By Sub-agent..................................................................... 7-71
§249 By Co-agent...................................................................... 7-71
§250 By Stranger ...................................................................... 7-71
Chapter 9

DEDUCTION AND INVESTIGATION OF TITLE

I Abstract ................................................................. 9-1
§297 In General ................................................................. 9-1
§298 Purpose of Abstract ..................................................... 9-1
§299 Sufficiency of Abstract .................................................. 9-1
§300 Commencement ........................................................... 9-2
§301 Registry Acts ............................................................. 9-4
§302 Torrens System ............................................................ 9-5

II Possession ....................................................................... 9-6
§303 Unauthorized Possession by Purchaser ......................... 9-6

III Knowledge of Vendor’s Title............................................. 9-6
§304 When Knowledge of Vendor’s Title Precludes Objections . 9-6

IV Trust ............................................................................... 9-7
§305 Notice of Trust ............................................................ 9-7

V Evidence of Ancient Documents ....................................... 9-9
§306 In General ................................................................. 9-9

VI Production of Title Deeds ............................................... 9-12
§307 Covenant Limiting Production of Title Deeds ................. 9-12

VII Defect of Title ................................................................ 9-13
§308 Defect of Title Created by Purchaser ............................... 9-13

VIII Release ......................................................................... 9-13
§309 Effect of Release by Submortgagee ................................. 9-13

IX Marital Status .................................................................. 9-14
§310 Sufficiency of Statutory Declarations ............................. 9-14

X Land Use ......................................................................... 9-14
§311 Purchaser Disappointed in Available Use of Land ............ 9-14

XI Good Title ........................................................................ 9-15
§312 Purchaser Entitled to a Good Title Notwithstanding Exercise of Pre-Payment Privilege ......................... 9-15

August 2013

C1-9

(V & P) (2013 – Rel. 8)
XII “Clouds” on Title
§313 Duty of Vendor to Remove “Clouds”

XIII Encumbrances
§314 Meaning of “Encumbrance”
§314A Encumbrances as Defined in the Torrens Acts
§314B Caveats
§315 Amount to be Deducted from Purchase Price for Encumbrance

XIV Mortgage
§316 Right of Purchaser to Keep Mortgage Alive
§316A Forged Mortgage Discharge Statement
§316B Erroneous Mortgage Discharge Statement

XV Purchaser’s Termination of Contract
§317 Vendor’s Failure to Convey or to Perfect his Title

XVI Consideration
§318 Total Failure of Consideration

XVII Delay
§319 Damages for Delay in Conveying

XVIII Vesting Order where Vendor Dead or Cannot be Found
§320 Apart from Statute
§321 Statutory Jurisdiction
§322 The Missing Vendor (British Columbia) and the Curator Bonis
§323 Statutory Protection of Purchaser Relying upon Order of Court

XIX Abatement of the Purchase Price Allowed
§324 In General
§325 Failure of Spouse to Consent to Sale of Land, Including Homestead
§326 Failure of Spouse to Consent to Sale of Homestead Only
§327 Tenancy by Entireties
§328 Annulment Clause: Vendor Reserving Right to Rescind
§329 Matters of Conveyance
§330 Bar of Dower
§331 Damages
§332 Failure of Vendor in Maintenance of Property or to Implement Warranty
§333 Principle on Which Compensation Calculated by the Court
§334 Nature of Decree for Specific Performance with Compensation
§335 Vendor Entitled to Specific Performance or Damages Where Defect Trifling or Problematical

XX Abatement of the Purchase Price Not Allowed
§336 In General
§337 Purchaser’s Election “to take all he can get”
§338 Innocent Misrepresentation and Compensation .............................. 9-55

XXI Marketable Title .................................................................................. 9-55
§339 In General......................................................................................... 9-55

XXII Want or Defect of Title ....................................................................... 9-56.1
§340 In General......................................................................................... 9-56.1
§341 What Constitutes in Case of an Encumbrance ................................. 9-61
§342 Indemnity ......................................................................................... 9-62
§343 Obligation to Convey ................................................................. 9-63
§344 Vendor’s Obligation to Make a Good Title .................................... 9-63
§345 What Constitutes Where Vendor’s Title Rests upon an Agreement Wherein he is Purchaser ................................. 9-65
§346 Defect of Title ................................................................................... 9-66.1
§347 Objections Held Not to be Defects of Title ..................................... 9-76

XXIII Possessory Title ............................................................................... 9-81
§348 In General......................................................................................... 9-81
§349 Adverse Possession as Foundation for Possessory Title ............... 9-82.1
§350 The Crown......................................................................................... 9-99
§351 Proof of Possession ................................................................. 9-99
§352 Quieting of Titles Act ...................................................................... 9-103

XXIV Doubtful Title .................................................................................... 9-104.1
§353 In General......................................................................................... 9-104.2

XXV Presumption as to Fee Simple ............................................................ 9-104.2
§354 In General......................................................................................... 9-104.2
§355 Open Contract.................................................................................... 9-106

XXVI Purchaser’s Recovery of Moneys Paid, etc........................................ 9-106
§356 In General......................................................................................... 9-106
§357 Purchaser’s Lien on Default of Vendor ......................................... 9-109

XXVIA Purchaser’s Recovery for By-law Infractions .................................... 9-110
§357A In General....................................................................................... 9-110

XXVII When Vendor’s Inability to Make Title Due to Default of Purchaser .................................................. 9-111
§358 In General......................................................................................... 9-111

XXVIII Purchaser’s Right to Compensation in Lieu of Rescission .......... 9-112
§359 In General......................................................................................... 9-112

XXIX Acceptance of Title ......................................................................... 9-114
§360 In General......................................................................................... 9-114
§361 Provision for Accepting or Objecting to Title............................... 9-115
§362 Production of Title Deeds ............................................................... 9-116
§363 Vendor Bound to Answer Requisitions ......................................... 9-117
§363A Recession Clause — Vendor’s Inability to Answer Requisition .................................................. 9-120
§364 Vendor’s Statutory Declaration as to Mortgage Balance ............. 9-120
§365 When Production of Discharge of Mortgage Essential .................. 9-120

XXX Waiver of Objections Implied from Purchaser’s Acts .................... 9-120
§366 In General......................................................................................... 9-120

December 2013

C1-11

(V & P) (2013 – Rel. 12)
§367 Waiver by Purchaser Must be Unequivocal ........................................ 9-121
§368 Purchaser Taking Possession .......................................................... 9-122.1
§369 Acceptance of Keys ........................................................................ 9-123
§370 Possession Precludes Rescission ..................................................... 9-123
§371 Evidence as to Waiver of Objections .............................................. 9-124
§372 When Waiver May Be Inferred ....................................................... 9-125
§373 When Waiver Not Inferred ............................................................. 9-126
§374 Vendor May Lose Right to Relinquish upon Waiver ......................... 9-126

XXXI Date of Completion ........................................................................ 9-127
§375 In General ....................................................................................... 9-127

XXXII Effect of Purchaser’s Notice of Defect in Title ................................. 9-127
§376 In General ....................................................................................... 9-127

XXXIII When Purchaser Denied Rescission for Defect of Title .................. 9-129
§377 In General ....................................................................................... 9-129

XXXIV Purchaser’s Repudiation for Want of Title .................................... 9-131
§378 Repudiation Must be Prompt ............................................................ 9-131
§379 Right to Repudiate; When Lost ....................................................... 9-133
§380 Repudiation on a Ground Other than Want of Title ....................... 9-133
§381 Commencement of Action as Repudiation ....................................... 9-133
§382 Repudiation after Decree for Specific Performance ......................... 9-135
§383 Rescission and Restitutio in Integrum .............................................. 9-135

Chapter 10

REPU D I AT I ON OR ABD ONMENT

I Repudiation or Abandonment of Contract ............................................. 10-1
§384 In General ....................................................................................... 10-1
§385 Repudiation as Offer to Rescind ...................................................... 10-7
§386 Vendor Retaking Possession ............................................................ 10-8.3
§387 Election Must be Clear and Unequivocal ......................................... 10-9
§388 Consequences of Repudiation or Abandonment ............................... 10-10.1

II Estoppel ................................................................................................ 10-20
§389 Doctrine of Estoppel ...................................................................... 10-20
§389A Estoppel by Record — by a Judgment of a Court of Record ......... 10-23
§390 Promissory Estoppel ...................................................................... 10-23
§391 Waiver of Contractual Condition .................................................. 10-26

Chapter 11

THE DOCTRINE OF FRUSTRATION

§392 In General ....................................................................................... 11-1
§393 Application to Contract for the Sale of Land .................................... 11-5
§394 Leases ............................................................................................. 11-7
# Summary of Volume 2

## Chapter 12 — The Contract

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>I</td>
<td>Construction of the Contract</td>
<td>12-1</td>
</tr>
<tr>
<td>II</td>
<td>Restrictive Covenants</td>
<td>12-24.1</td>
</tr>
<tr>
<td>III</td>
<td>Building Schemes</td>
<td>12-48.2</td>
</tr>
<tr>
<td>IV</td>
<td>Breach of Restrictive Covenant</td>
<td>12-51</td>
</tr>
<tr>
<td>V</td>
<td>Bylaws</td>
<td>12-62</td>
</tr>
<tr>
<td>VI</td>
<td>Covenants in Restraint of Trade</td>
<td>12-70.1</td>
</tr>
<tr>
<td>VII</td>
<td>Exceptions and Reservations</td>
<td>12-74</td>
</tr>
<tr>
<td>VIII</td>
<td>Rules as to Essentiality of Time</td>
<td>12-80.1</td>
</tr>
<tr>
<td>IX</td>
<td>When Time is of the Essence</td>
<td>12-91</td>
</tr>
<tr>
<td>X</td>
<td>Waiver</td>
<td>12-103</td>
</tr>
</tbody>
</table>

## Chapter 13 — Position of Parties Pending Completion

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>I</td>
<td>Possession</td>
<td>13-1</td>
</tr>
<tr>
<td>II</td>
<td>Interest versus Possession</td>
<td>13-11</td>
</tr>
<tr>
<td>III</td>
<td>Taxes</td>
<td>13-14</td>
</tr>
<tr>
<td>IV</td>
<td>Assignment of the Contract by the Vendor</td>
<td>13-16.1</td>
</tr>
<tr>
<td>V</td>
<td>Assignment of the Contract by the Purchaser</td>
<td>13-44</td>
</tr>
<tr>
<td>VI</td>
<td>Subpurchasers</td>
<td>13-54</td>
</tr>
<tr>
<td>VII</td>
<td>Cy-prés Execution of Contract</td>
<td>13-59</td>
</tr>
<tr>
<td>VIII</td>
<td>Purchaser’s Right to Mortgage</td>
<td>13-59</td>
</tr>
<tr>
<td>IX</td>
<td>Notice</td>
<td>13-60</td>
</tr>
<tr>
<td>X</td>
<td>Slander of Title</td>
<td>13-108</td>
</tr>
<tr>
<td>XI</td>
<td>Purchaser’s Right to an Injunction</td>
<td>13-108.2</td>
</tr>
<tr>
<td>XII</td>
<td>Purchaser’s Right to Rescission or Damages</td>
<td>13-108.2</td>
</tr>
<tr>
<td>XIII</td>
<td>Lease by Vendor</td>
<td>13-108.4</td>
</tr>
<tr>
<td>XIV</td>
<td>Lease by Purchaser</td>
<td>13-108.6</td>
</tr>
<tr>
<td>XIV A</td>
<td>Condominiums</td>
<td>13-108.8</td>
</tr>
<tr>
<td>XV</td>
<td>Subdivision by Vendor of Land Sold under Agreement of Sale</td>
<td>13-108.9</td>
</tr>
<tr>
<td>XVI</td>
<td>Insurance against Fire</td>
<td>13-108.10</td>
</tr>
<tr>
<td>XVI A</td>
<td>Title Insurance</td>
<td>13-109</td>
</tr>
<tr>
<td>XVII</td>
<td>Mechanics’ Liens</td>
<td>13-110</td>
</tr>
<tr>
<td>XVIII</td>
<td>Seed Grain Liens</td>
<td>13-145</td>
</tr>
<tr>
<td>XIX</td>
<td>Expropriation</td>
<td>13-146</td>
</tr>
<tr>
<td>XX</td>
<td>Vendors and Purchasers Acts</td>
<td>13-150.1</td>
</tr>
</tbody>
</table>

## Chapter 14 — Completion

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>I</td>
<td>Payment</td>
<td>14-6</td>
</tr>
</tbody>
</table>

August 2012

C1-13

(V & P) (2012 – Rel. 7)
VII. “Satisfactory” to the Purchaser — Meaning of ........................................ 16-54
VIII. Rescission by One Party Recognized by the Other ................................. 16-55
IX. Action for Specific Performance Precludes Contractual Determination ...... 16-55
X. Equitable Relief against Forfeiture by Vendor ......................................... 16-56
XI. Purchaser’s Lien ..................................................................................... 16-58
XII. Deposit versus Purchase Money ............................................................ 16-58
XIII. Specific Performance ........................................................................... 16-65

Chapter 17 — Remedies of Vendor

I. Summary of Remedies of Vendor .............................................................. 17-1
II. Vendor’s Action for Specific Performance: Equated with Action for Balance of Purchase Money .............................................................. 17-4
III. Parties ........................................................................................................ 17-14
IV. Claim for Relief from Forfeiture of Purchase Moneys or Deposit .......... 17-23
V. Adjournment ............................................................................................. 17-37
VI. Proof as to Amount Owing ........................................................................ 17-37
VII. Costs ......................................................................................................... 17-38
VIII. Judgment for Specific Performance with Consequential Relief ............ 17-41
IX. Effect of Order Nisi inCancellation Action ............................................. 17-46
X. Repudiation After Judgment ................................................................. 17-48
XI. Judicial Sale ............................................................................................. 17-49
XII. “Redemption Period” for Purchaser ....................................................... 17-53
XIIA. Payment of Purchase Price .................................................................... 17-55
XIII. Appointment of a Receiver .................................................................... 17-56
XIV. Final Order of “Foreclosure” (Cancellation) .......................................... 17-58
XV. Opening Up Final Order of “Foreclosure” (Cancellation) ....................... 17-60
XVI. Purchaser as Trespasser After Final Order ........................................... 17-61
XVII. Summary Default Proceedings ............................................................. 17-61
XVIII. Summary Landlord-and-Tenant Proceedings ...................................... 17-64
XIX. Purported “Rescission” by Vendor ......................................................... 17-66
XX. Vendor’s Action for Purchase Money ................................................... 17-70
XXI. Power of Vendor to Resell ..................................................................... 17-77
XXII. Vendor’s Lien ....................................................................................... 17-84
XXIII. Waiver of Vendor’s Lien ...................................................................... 17-92
XXIV. Subrogation of Third Party to Vendor’s Position under his Lien ............ 17-96
XXV. Alienation of Vendor’s Lien .................................................................... 17-96
XXVI. Vendor’s Lien versus Bona Fide Purchasers for Value ......................... 17-97
XXVII. Proceedings to Enforce Vendor’s Lien ............................................... 17-98
XXVIII. Purchaser in a Judicial Sale of Mortgaged Land ................................. 17-101
XXIX. Vendor’s Statutory Quasi-lien on Crops ............................................... 17-104.1
XXX. Extra-Judicial Determination of Contract ........................................... 17-111
XXXI. Equitable Relief from Forfeiture of Purchase Money .......................... 17-130
XXXII. Recovery by Vendor of Damages .................................................. 17-139
XXXIII. Ejectment ............................................................................... 17-164
XXXIV. Notional Landlord-and-Tenant Relationship .............................. 17-165

Summary of Volume 3

Chapter 18 — Remedies of Purchaser

I. Summary of Remedies of Purchaser .................................................. 18-1
II. Election of Remedy ....................................................................... 18-3
III. Purchaser's Action for Specific Performance .................................. 18-5
IV. Purchaser's Lien .......................................................................... 18-20
V. Recovery of Damages by Purchaser ................................................ 18-27
VI. Rescission by Purchaser ............................................................... 18-50
VII. When Question Arises as to Recovery of Purchase Monies .......... 18-53
VIII. New Home Warranties ................................................................. 18-54

Chapter 19 — Negligence of Solicitor and Standard of Care

............................................................................................................. 19-1

Chapter 20 — Recovery of Commission by Real Estate Agent or Broker

............................................................................................................. 20-1

Supplementary Table of Cases .......................................................... STC-1
Table of Cases .................................................................................. TC-1
Selected Legal Literature ................................................................. LL-1
Words and Phrases ........................................................................... WP-1
Index ................................................................................................. I-1