



THOMSON REUTERS

# Update Summary

PLEASE CIRCULATE IMMEDIATELY!

UPDATE 79

JUNE 2023

THE SALE OF LAND

N Wikramanayake QC

J Barber, Barrister (Vic)

Material Code 41907381

Print Post Approved PP255003/00448`

© Thomson Reuters (Professional) Australia Limited 2023

## **Looseleaf Support Service**

You can now access the current list of page numbers at

<http://www.thomsonreuters.com.au/support/product-support.aspx?id=/mediaTree/58599>. If you have any questions or comments, or to order missing pages, please contact Customer Care LTA ANZ on 1300 304 195 Fax: 1300 304 196 Email: [Care.ANZ@thomsonreuters.com](mailto:Care.ANZ@thomsonreuters.com)

## Chapter 12: Breach of contract and remedies

James Barber, Barrister (Vic) has reviewed and updated the chapter. Highlights include the following:

In recent decades a third category of contractual term has been recognised: “intermediate” or “innominate” terms. See [12.050].

Repudiation is conduct by a party that evinces an intention no longer to be bound by the contract or to fulfil it only in a manner substantially inconsistent with the party’s obligations and not in any other way. See [12.080].

Added new commentary: Frustration by Compulsory Acquisition. See [12.230].

The deposit should not be deduced from amounts that are claimed under causes of action separate and distinct from the purchaser’s failure to complete. See [12.240].

Updated commentary in relation to the conditions for rescission. See [12.250].

Updated commentary on the statutory relief against forfeiture of the deposit, including examples of relevant cases where courts have either ordered or refused to order the return of deposits under these statutory provisions. See [12.270].

New commentary in relation to recovery in respect of improvements to the land. Includes examples of cases where purchasers whose contracts were terminated for the purchaser’s breach have recovered, as well as cases where purchasers’ claims for compensation for improvements were refused on the basis that it was not unconscionable for the vendor to retain the benefit of them. See [12.300].

Where a vendor terminates for a purchaser’s breach, the purchaser may, in circumstances of unconscientious conduct by the vendor, obtain relief against forfeiture and a decree of specific performance. See [12.320].

Where equity in its original jurisdiction has created a new right founded on its own doctrines, and no limitations statute bars the remedy, equity is free of limitations and will grant relief or refuse it according to equitable principles including laches, fraud and so on. See [12.325].

An award of damages under the section is a statutory remedy that is discretionary and is not governed by common law rules such as causation, foreseeability, remoteness, or measure of loss and damage. See [12.330].

Following the making a decree for specific performance accompanied by liberty to apply, application may be made to the court under the liberty to apply for such orders as may be necessary to enforce the decree. See [12.340].