

Land Law and Conveyancing Law (3) The passing of risk from vendor to purchaser

In December 1991, the Commission published a Report on [Land Law and Conveyancing Law: \(3\) The passing of risk from vendor to purchaser \(LRC 39-1991\)](#), following a 1987 request by the Attorney General, which looked at the question as to when the risk of damage to the property should pass from the vendor to the purchaser.

It had been noted that under the law as it stood, the person most likely to suffer was the purchaser of land. The Commission were of the opinion that it was not sufficient to deal with the issue solely in the standard conditions of sale, as this gives rise to uncertainty and also allows parties to contract out of these provision, particularly a vendor in auction or tender conditions.

The Commission's principal conclusion was that the risk of damage should remain with the vendor until completion unless the purchaser has gone into possession of the property prior to completion. It also recommended that where there has been substantial damage to the property a purchaser should not be obliged to complete. The Commission's recommendation was that a statutory provision should be enacted to provide that:

- (i) The risk will pass to the purchaser in all situations where the purchaser goes into possession of the premises, or on completion of the purchase, whichever is the earlier.
- (ii) Where the purchaser does not go into possession prior to completion, the risk will remain with the vendor.
 - a. In the case of substantial damage to the property, the vendor must give notice of the damage to the purchaser whereupon the purchaser will have the right to rescind the contract within ten days of the receipt of such notice. If the purchaser elects not to rescind, or fails to do so, he will be entitled to an abatement of the purchase price to be assessed on the basis of the reduction in the value of the property. If the purchaser elects not to rescind or fails to do so, the vendor will be entitled to seek specific performance of the contract with an abatement of the purchase price.
 - b. Where the purchaser accepts that the damage is substantial, or it is found on arbitration to be such, and agrees to complete or where the purchaser accepts that the damage is non-substantial the purchaser shall pay interest to the vendor on the balance of the abated purchase price from the date of the damage or the agreed completion date, whichever is the later up to the date of the actual completion at a rate equivalent to the yield (at issue and before deduction of tax if any) on the long-dated security of the Government last issued before the date on which the transaction shall actually be closed (allowance having been made in the calculation of the said yield for any profit or loss which might occur on the redemption of the security), ("The lower rate")
 - c. In the case of non-substantial damage to the property, the purchaser will be required to complete but shall be entitled to damages only, again on the basis of the reduction in value.
 - d. Where the purchaser claims that the damage is substantial and it is subsequently agreed or found on arbitration to be non-substantial, the purchase shall pay interest on the full balance of the purchase price for the same period as in the

previous paragraph at a rate which shall be 4 per centum per annum above “the lower rate”.

- (iii) Where a vendor has served a valid completion notice and damage for which the vendor was not responsible has subsequently occurred to the property, the vendor should, on completion, be entitled to interest on the balance of the purchase money from a date seven days after the service of the completion notice, the purchaser continuing to be entitled to an abatement of the purchase money in respect of the damage. The interest should be calculated on the basis of the full rather than the abated purchase price.
- (iv) The vendor shall not be liable for inconsequential damage or insubstantial deterioration from reasonable wear and tear in the course of normal occupation and use or from operations to vacate the premises undertaken with reasonable care, and not materially affecting value.
- (v) Any disputes as to whether the damage is substantial or as to the amount of any abatement in the purchase price of damages shall be determined by an arbitrator, who in default of agreement shall be appointed by the President of the Incorporated Law Society of Ireland.
- (vi) Persons should not be entitled to contract out of the legislation in the case of any sale of residential property of which vacant possession is to be given.

Draft Legislation in Report

Incorporated into draft Bill in Report on [*Reform and Modernisation of Land Law and Conveyancing Law \(LRC 74-2005\)*](#).

Information on Implementation

Recommendations of the Commission were implemented by the *Land and Conveyancing Law Reform Act 2009*.