

Suggested amendments to the draft contract re 9 Castle Hill

1. There are some typographical errors. The seller's address is 9 Castle Hill not 9 Castle Lane. The balance of the purchase price has been incorrectly calculated and should read £180,000.
2. The seller's full name Julian Doyle (as shown in the [conveyance of 4th May 1987](#) when he purchased the property) should be stated, not "Reverend Doyle".
3. From an examination of the [conveyance of 4th May 1987](#) it can be seen that Mildred Harriet Doyle was a joint purchaser with her husband Julian Doyle, so on the face of it her name should be added to the contract as joint seller with her husband. Julian and Mildred Doyle hold (or held) the property as joint tenants rather than tenants in common (see clause 5 of the [conveyance of 4th May 1987](#)). If Mrs Doyle has died then a copy of her death certificate will be required as evidence of Julian Doyle's entitlement to her interest by survivorship. As a matter of title, the Law of Property (Joint Tenants) Act 1964 should also be considered as we need to be sure that severance of the joint tenancy did not occur before the death of Mrs Doyle. See our [letter raising requisitions on title](#).
4. Enquiry should be made of the aunt to establish whether she has any interest in the property, perhaps by a contribution towards the purchase price. As she is in actual occupation and the land is unregistered she may have an interest which would override first registration by virtue of the Land Registration Act 2002, Schedule 1, para 2. She should be asked to formally release any rights and confirm that she will vacate the property on completion. The following is a suggested form of wording:

'In consideration of your today entering into a contract with Julian Doyle for the purchase of the property known as 9 Castle Hill Blakey, I Constance Shorey agree to release any equitable interest I may have in the property, such interest, if any, being transferred to the proceeds of sale of the property. I also agree to vacate the property on or before completion.'

If it transpires that Mildred Doyle is joined with her husband as co-seller then a sale to them as trustees would overreach any equitable interest Aunt Constance might have (*City of London Building Society v Flegg* [1988] AC 54). However this case does not guarantee that the aunt will vacate. As a matter of good practice a release in the terms above should be sought.

5. The description refers to the correct property but there are deficiencies. The alternative of leasehold should be deleted because we know that the land is freehold. There is no need to refer to a plan (and it is unnecessary to attach one as this is not a sale of part transaction). The property is adequately described in the conveyance to the seller in 1987 and should therefore read simply:

'All that land known as 9 Castle Hill Blakey more particularly described in a conveyance dated 4th May 1987 made between (1) Emily Hannah Rush and (2) Julian Doyle and Mildred Harriet Doyle ("the 1987 Conveyance").'

6. The root of title needs to be more specific. 'Conveyance on sale' is too vague and should be replaced with 'the 1987 Conveyance' which is the definition of the above conveyance. The 1987 Conveyance is more than 15 years old and is a good root of title.
7. The title guarantee has been left blank. If the seller is the beneficial owner as well as the legal owner (as appears to be the case) it is appropriate for a full title guarantee to be given and this should be inserted (note that if it is left blank a full guarantee will be given anyway by Standard Condition 4.6.2).
8. The completion date is not introduced until contracts are exchanged, when a specific date is inserted.
9. The contract rate of interest is unreasonably high because the Law Society interest rate is normally set at 4% above the base rate of one of the clearing banks. The effect of this clause is to put the rate at 8% above base! A fairer suggestion would be the Law Society interest rate for the time being in force (this can be achieved by leaving the clause blank—see standard condition 1.1.1(e)) or say, 4% above the base rate of one of the clearing banks.
10. We are told that the price includes some carpets, curtains, and items of furniture and these should be itemized on an attached list (see Special Condition 3). The Law of Property (Miscellaneous Provisions) Act 1989 s.2 requires all agreed terms to be incorporated into the contract, failing which the contract is rendered invalid. The buyer may also wish to consider an apportionment of the purchase price between the price for the land and the price for the chattels. This will bring about a small stamp duty saving because stamp duty is not payable on the cost of chattels.
11. Delete the second alternative in Special Condition 4 as the property is being sold with vacant possession.
12. In Special Condition 5 the latest time for completion is far too early where, as is the case here, the clients' purchase price is being financed by the monies they are receiving on their sale. We are unlikely to receive the completion monies on the sale in time to pay over the completion monies on the purchase by 12 noon. Our clients would thus be in breach of contract and liable to pay Julian Doyle interest on the balance of the purchase monies at the contract rate. Unless the clients' purchaser's solicitors can be persuaded to agree in the related sale contract a completion time of earlier than 12 o'clock (which is unlikely), we should insist on the deletion of Special Condition 5 so that the position is governed by standard condition 6.1.2. This provides for a latest completion time of 2 p.m. Alternatively we could compromise at say, 1.30 p.m. provided we ensure that the stipulated time in our related sale contract is earlier.
13. Delete Special Condition 6 and state that the deposit shall be held by the seller's conveyancer's as stakeholder. This is safer for the buyer because a stakeholder deposit must remain in the seller's solicitor's bank account until completion. It should thus be easily recoverable if the seller defaults.

If the deposit is held by the solicitor as agent for the seller then the agent is entitled to hand over the money to the seller before completion. In this event, if the seller defaults the buyer may have difficulty in recovering the deposit.

Alternatively Special Condition 6 could be deleted and not replaced with anything in which case standard condition 2.2.6. would govern the position. This provides for the deposit to be held as stakeholder unless the seller intends to use it as a deposit on a related purchase of a residence in England or Wales. The various options should be explained to the clients and their instructions sought.

14. Delete the final special condition or at least qualify it. As drafted, the clause prohibits the buyer from relying on *any* representations, even replies to solicitors' pre-contract enquiries. A reasonable qualification to the clause would be the addition of the words, 'other than the written replies of the seller's solicitors to the pre-contract enquiries of the buyer's solicitors'. This is acceptable to most property practitioners.
15. Details of the parties' conveyancers should be entered at the foot of the last page.