3. DRAFTING THE CONTRACT

- May either be standard form (SCPC) or tailor made (that normally incorporate SCPC's by reference)

FRONT PAGE OF SCPC

CONTRACT
(Incorporating the Standard Commercial Property Conditions (Third Edition))

For conveyancer's use only
Buyer's conveyancer........
Seller's conveyancer........
[Law Society Formula A/B/C/Personal exchange]
Time
The information above does not form part of the Contract

Date :
Seller :
Buyer :
Property (freehold/leasehold) :
Title Number/Root of title :
Specified Incumbrances :
Completion date :
Contract rate :
Purchase price :
Deposit : £
Balance : £

The seller will sell and the buyer will buy the property for the purchase price.

WARNING
This is a formal document, designed to create legal rights and legal obligations. Take advice before using it.

Signed
Authorised to sign on behalf of Seller/Buyer

- **Date** – leave blank (filled in at exchange)
- **Seller** – who has the legal title over the property (title documents)
- **Buyer** – all buyers must be listed
  - Company – provide: Name, Number, Reg. Address.
- **Property** (Freehold/Leasehold) – delete as appropriate
  - If *whole sale*: Provide description as in Prop. Reg.
  - If *part sale*: Provide reference to the title plan
  - If *unregistered*: Provide reference to conveyance
- **Title Number/Root of Title** - delete as appropriate
  - Registered land – title number (title documents)
  - Unregistered land – *"A conveyance of the property dated [date] and made between [parties]"*
- **Specified Incumbrances** – restrictive covenants and easements ***SCPC 4.1.2***
  - *"The covenant referred to in entry [x] in the Charges Register of title number [y]"* (do not list mortgage here)
- **Title Guarantee** (full/limited) - delete as appropriate
  - Limited only if the seller has little knowledge/interest in the property (e.g. auctioneer/trustee)
- **Completion Date** – adding a date overrides the SCPC
  - If left blank ***SCPC 9.1.1*** applies (20 working days from exchange)
- **Contract Rate** – *"4% above the base rate of Barclays Bank plc from time to time in force"*
- **Purchase** (Total Sum Payable including SDLT)
  - Must apportion the purchase price between the land and any chattels (overvaluation is HMRC fraud)
- **Deposit** – 10% of purchase price ***SCPC 3.2.2***
- **Contents Price** – (as applicable, do not pay SDLT on chattels)]
- **Balance** (difference of purchase price and deposit)

SPECIAL CONDITIONS

"1) A) This contract incorporates the Standard Commercial Property Conditions (Third Edition)

B) The terms used in this contract have the same meaning when used the Standard Commercial Property Conditions."

- Contract will use a special condition at end to incorporate SCPC's

"2) Neither party can rely on any representation made by the other, unless made in writing by the other or its conveyance, but this does not exclude liability for fraud or recklessness"

- Only written representations may be relied upon (e.g. enquiry replies)
- Special conditions 3-6 are incorporated by 'checking' the box

TITLE GURANTEE: SPECIAL CONDITION 3-4

a) Full Title guarantee *(most likely)*

- The seller has the right to sell the property (assumed by ***SCPC 7.6.2***)
- The property is free from all charges other than those:
  - Disclosed in the "specified incum." (***s.6(1) LP(MP)A 1994***); and
  - It did/could not reasonably know about (***s.3(1) LP(MP)A 1994***)

b) Limited Title Guarantee: Have little relevant knowledge of the property (check condition 3)

c) No Title Guarantee: Done by removing ***SCPC 7.6.2*** (no box is checked)

d) Vacant Possession: Handing over the property empty of chattels and people rights (box 4)

CONTENTS/FIXTURES: SPECIAL CONDITION 5

Contents:

Seller entitled to take all its contents with them as they are not part of property

SDLT payable on purchase price – goods apportioned to price to reduce tax

SDLT:	£0 – £150,000	nil%	(Calculated in layers)
	Next £100,000	2%	2% of £100,000 = £2000
	Above £250,000	5%	5% of remaining amount above 250k

If seller is selling contents & apportioning price check condition 5 and a list of contents should be attached

Fixtures:

If seller is going to remove fixtures, the second box at condition 5 should be checked and a list of fixtures attached

Another special condition should be drafted to "make good" any damage caused before completion

SPECIAL CONDITION 6,7, AND CONDITION A1

- ***Condition 6*** - checked if payment is being made from an account other than the one belonging to the buyer's conveyancer – account details in contract
- ***Condition 7*** - checked if the time of completion is to be different than ***SCPC 9.1.2*** standard of 2:00pm – often made later in day as precaution
- ***Condition 8*** - part sale condition not covered on PLP
- ***Condition A1*** - checked if sale is an old commercial property and seller has not opted to tax, VAT will not be payable – supply not a taxable one
- ***Additional special conditions*** - can be written to
  - Reflect party's agreement
  - Override SCPC conditions
  - Agree an indemnity covenant wording for completion
  - Dealing with non-owning occupiers
- ***Non-owning occupiers*** - often a separate document, signed by occupier, confirming they will waive possible interest in property and vacate on completion (important because actual occupation is an overriding interest)
  - *"I [occupier] declare that I have no legal or equitable interest in [address] and I will vacate the property on or before [time] on the [completion date]" + Print Name + Signature*

DRAFTING TIPS

WHO | WHAT | WHEN | WHERE | WHAT IF | TO WHOM

COMPENSATION

If either grounds (E), (F), and (G) are made out, the tenant may be entitled to compensation:

- Note that it must be solely one of these grounds (cannot be made out if both a non-fault and fault ground are made out)
- The compensation available is a multiplier of the rateable value of the premises (as set by the Valuation Office Agency)
    - If occupying for;
        - >14 years, twice the rateable value
        - <14 years, once the rateable value

INTERIM RENT (S.24A-S.24D)

Until the new lease is granted, T will continue to pay the old rent

Section 24A LTA 1924: either party, however, can apply to court for interim rent

- Payable from earliest ***STD/SCD*** which *could have been specified*

Amount of interim rent to be paid;

- LL willing to grant lease – interim rent set at market level (***s.24C***)
- LL unwilling to grant new lease – assessed on basis of yearly tenancy, usually 10-15% below market level (***s.24D***)

CONTENTS OF NEW LEASE

Typically, the parties will try to agree the terms of the new lease

If they cannot agree, the court will determine the terms

- ***S.33***: will be no longer than 15 years
- ***S.34***: court will account comparable and certain disregards

O'May v City of London: the terms of the renewed lease should be based on the current tenancy – any proposed deviation must be reasonable

Wallis Fashion Group: if an old lease is renewed, new alienation provisions can only require an AGA where reasonable

SECTION 27 LTA 1954 NOTICE

Under ***s.27***, T can terminate the tenancy without requesting a renewal lease

- There is no prescribed form requirement and notice is served on immediate landlord (not competent)
- If planning to leave *on or before* the ***CED*** it is not necessary to serve a ***s.27*** notice
- However, if *after* the ***CED***, notice must be ***served 3 months before*** the date on which T wishes to leave