
**PROPERTY LAW & PRACTICE
PRE-COURSE MATERIALS
STUDENT INSTRUCTIONS
AND
DOCUMENT BUNDLE**

STUDENT INSTRUCTIONS

1 Introduction

These Pre-Course Materials:

- are for the core practice area of Property Law & Practice (PLP) on the LPC
- are to be undertaken prior to starting the PLP course
- are designed to give you a foundation upon which to build your studies on the PLP course
- consist of pre-reading, a land law test and an introduction to the basic outline of a property transaction

2 Teaching Aims

In this Study Unit we will:

- Set in context the PLP Course on the LPC
- Give you an opportunity to revise and test your knowledge of land law
- Consider the basic outline of a property transaction

3 Learning Outcomes

When you have completed this Study Unit you will be able to:

- Apply your knowledge of land law during the PLP course
- Understand the basic outline of a property transaction

4 Activity 1

Read “An Introduction to the Property Law & Practice Course” at Document 1 of the Document Bundle.

5 Activity 2

5.1 You should revise the following fundamental topics of land law which have been identified by the Solicitors’ Regulation Authority (SRA) as subjects that you are expected to know and understand before you start an LPC:

- Contract & tort;
- Legal estates and legal interests;

- Equitable interests (including licences)
- Easements;
- Freehold Covenants;
- Release (Commonhold);
- Leasehold Covenants;
- Joint ownership;
- The differences and similarities of registered and unregistered title; and
- Mortgages.

The SRA list of topics can be accessed at <http://www.sra.org.uk/enrol/> Please see the heading on the web page entitled “What you are expected to know” which contains a link to a PDF document. You should read this as it contains further details of each of the above topics.

- 5.2** To assist you in revising land law we have set some revision questions for you to work through at Document 2 of the Document Bundle. If you struggle with any of the questions we suggest that you look at your land law notes and/or a land law text book such as ‘A textbook on Land Law’ by Mackenzie and Phillips.
- 5.3** Review your answers to the Land Law revision questions against the suggested answers at Document 3 of the Document Bundle and make sure that you revisit and understand any questions that you have got wrong or do not understand.

6 Activity 3

- 6.1** Read the document called Outline of a Simple Property Transaction at Document 4 of the Document Bundle.

**PROPERTY LAW & PRACTICE
PRE-COURSE MATERIALS
DOCUMENT BUNDLE**

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DOCUMENT 1

AN INTRODUCTION TO THE PROPERTY LAW & PRACTICE COURSE

Welcome to Property Law and Practice. The course consists of 11 study units and a revision study unit. Our aim is to introduce you to a variety of property transactions over the forthcoming months.

- In Study Units 1-4 you will act for the purchasers of registered freehold residential property
- In Study Units 5 and 6 you will act for the sellers of commercial freehold premises
- In Study Unit 7 you will act for the landlord on the grant of a commercial lease
- In Study Units 8 and 9 you will act for the assignee of a commercial lease
- In Study Unit 10 you will act for the seller of part of a commercial property
- In Study Unit 11 you will be introduced to unregistered land and acting on a development sale.

The skill of writing is assessed in the context of Property Law and Practice and there will be opportunities for you to practise this skill during the course. At the end of Study Unit 6 you will be required to complete a piece of writing work and hand it in to your tutor for feedback. A further opportunity to practise the skill of writing is given at the end of the PLP course and before the revision session.

The skills of drafting, interviewing, advocacy and practical legal research are pervasive subjects so may appear during the PLP course as well.

For each study unit there will be directed reading, on- line questions and other preparatory tasks for you to complete before you attend the workshop for the relevant study unit. It is important that you prepare thoroughly for the workshops as they will be conducted on the basis that you have done the necessary preparation.

DOCUMENT 2

LAND LAW REVISION QUESTIONS

1. What estates in land are capable of existing at law?
2. What interests in land are capable of existing at law?
3. Name three interests in land which are recognised in equity but not at law.
4. Name three interests that are classified as an unregistered interest which overrides a registrable disposition (also known as overriding interests) under the Land Registration Act 2002.
5. How can the category of interests that are neither registered estates nor registered charges (in other words minor interests) be protected under the LRA 2002?
6. Explain the meaning of a good leasehold title.
7. A purchaser of an absolute title will take subject to what interests?
8. What is required in order to create or dispose of a legal estate or legal interest in land?
9. Explain the provisions of s2 of the Law of Property (Miscellaneous Provisions) Act 1989.
10. Mr & Mrs X purchased a home in the name of Mr X for £90,000. Mrs X contributed 1/3 of the deposit of £9,000; the balance of the purchase price was funded by a mortgage of £81,000. Both Mr & Mrs X worked. Mr X paid the mortgage and Mrs X met the household expenses. After 5 years Mrs X gave up work to look after the house, she decorated the house from top to bottom, and, later looked after their young children. Mr X took over as the sole breadwinner. Can Mrs X claim an equitable interest in the house? If so, on what basis?
11. What is the process of overreaching?
12. What are the four unities?
13. When must the four unities be present?
14. Name three ways in which a joint tenancy may be severed.
15. Can a beneficial co-owner require the sale of a co-owned property? If so, how?

16. Mr and Mrs Jones are the registered proprietors of Blackacre. A restriction appears in the proprietorship register of the official copies to the property in the following form "No disposition by a sole proprietor of the registered estate (except a trust corporation) under which capital money arises is to be registered unless authorised by an order of the court". What does this restriction tell a buyer?
17. What are the requirements of a leasehold estate?
18. In what ways may a lease be brought to an end?
19. Explain the doctrine of privity of estate.
20. What are the main provisions of the Landlord and Tenant (Covenants) Act 1995?
21. What is the difference between an absolute, qualified and fully qualified covenant in a lease
22. What is the effect of s.19 (1) (a) of the Landlord and Tenant Act 1927?
23. State the difference between the rule in Wheeldon v Burrows and s62 LPA 1925 in relation to the acquisition of implied easements?
24. Better Builders built 4 detached houses on a small plot and have sold the plots to A, B, C and D. The sales were respectively completed in March, April, May and June 10 years ago. All the purchase deeds contained covenants that:
 - 1) The houses would be used as a private residence only (restrictive/negative covenant)
 - 2) The buyers would paint the exterior of the houses every 3 years (positive covenant)The houses are now owned by E, F, G and D respectively. E is proposing to convert part of his house into a dental surgery and neither G nor D have painted their house since they were built. Advise G.
25. In what way is a legal mortgage usually created?
26. What powers are implied in favour of a mortgagee by the Law of Property Act 1925?
27. Explain what steps a mortgagee should take before it can sell a property mortgaged to it?
28. How can an occupier of land obtain a legal freehold title to that land?

DOCUMENT 3

LAND LAW REVISION QUESTION ANSWERS

Note to students- references to the manual are reference to the PLP Manual that you will be given at the start of the course. At the time of writing the 2012/13 PLP Manual was not available. You will be supplied with new paragraph references if these have changed at the start of the course.

1. What estates in land are capable of existing at law?

Fee simple absolute in possession (freehold) (s1 (1) (a) Law of Property Act 1925 (LPA 1925)

Term of years absolute (leasehold) (s1 (1) (b) LPA 1925).

See paragraph 2.2.1 of the manual

2. What interests in land are capable of existing at law?

Easement, mortgage, rent charge and right of re-entry (s1 (2) (a)-(e) LPA 1925).

See paragraph 2.2.1 of the manual.

3. Name three interests in land which are recognised in equity but not at law

Any other interest not mentioned in either s1 (1) or (2) LPA 1925 will take effect as an equitable interest eg restrictive covenants, interest of a beneficiary under a trust (see paragraph 2.2.2 of the manual). Also interests which are not created formally e.g. Walsh v Lonsdale, interests which became equitable as a result of statutory reform e.g. easement for life, equitable estoppel (s1 (3) LPA 1925).

4. Name three interests that are classified as an unregistered interest which overrides a registrable disposition (also known as overriding interests) under the Land Registration Act 2002.

Leases for 7 years or less (Land Registration Act 2002 (LRA 2002) sch. 3 para 1), rights of persons in actual occupation (LRA 2002 sch. 3 para 2), certain legal easements (LRA 2002 sch. 3 para 3).

See paragraph 2.8.4 of the manual

5. How can the category of interests that are neither registered estates nor registered charges (in other words minor interests) be protected under the LRA 2002?

Notice, restriction (Ss 32-47 of LRA 2002)

See paragraph 2.8.2 and 2.8.3 of the manual.

6. Explain the meaning of a good leasehold registered title

The owners hold the lease subject to overriding interests, interests protected on the register, rectification and interests affecting the freehold title.

7. A purchaser of an absolute registered title will take subject to what interests?

Overriding interests, interests protected on the register, rights of rectification (s11 (4) LRA 2002).

8. What is required in order to create or dispose of a legal estate or interest in land?

A deed – s 52(1) LPA 1925.

9. Explain the provisions of s2 of the Law of Property (Miscellaneous Provisions) Act 1989

Contracts for the sale of an interest in land must be: in writing, contained in one document or two documents incorporating the same terms and be signed by both parties.

10. Mr & Mrs X purchased a home in the name of Mr X for £90,000. Mrs X contributed 1/3 of the deposit of £9,000, the balance of the purchase price was funded by a mortgage of £81,000. Both Mr & Mrs X worked. Mr X paid the mortgage and Mrs X met the household expenses. After 5 years Mrs X gave up work to look after the house, she decorated the house from top to bottom, and, later looked after their young children. Mr X took over as the sole breadwinner. Can Mrs X claim an equitable interest in the house? If so, on what basis?

As the house is in the sole name of Mr X she may claim an interest under a resulting trust - direct contributions to deposit and mortgage or constructive trust - intention and detriment.

See paragraphs 2.3.2, 2.3.3 and 2.3.4 of the manual.

11. What is the process of overreaching?

The process of overreaching will apply where the legal estate is held on trust and the purchaser pays the purchase price to two trustees. In these circumstances the

beneficial rights are then 'swept off' the title and attach themselves to the capital money arising from the sale.

See paragraph 2.3.5 of the manual.

12. What are the four unities?

Possession, time, title and interest

See paragraph 2.3.7 of the manual.

13. When must the four unities be present?

Joint tenancy - but may also be present where property is held as tenants in common

See paragraph 2.3.7 of the manual.

14. Name three ways in which a joint tenancy may be severed

By written notice, by act operating on one share e.g. alienation, sale or bankruptcy, by mutual agreement, by course of mutual dealing showing an intention to sever s36 (2) LPA 1925

See paragraph 2.3.9 of the manual.

15. Can a beneficial co-owner require the sale of the co-owned property? If so how?

The court has jurisdiction under Ss14 & 15 Trusts of Land and Appointment of Trustees Act 1996 (TOLATA) to resolve a dispute as to sale and make directions for the sale of the property or otherwise. A beneficiary of a trust of land is able to apply under s14 and the court will take into account the s15 factors in making its decision.

16. Mr and Mrs Jones are the registered proprietors of Blackacre. A restriction appears in the proprietorship register of the official copies to the property in the following form "No disposition by a sole proprietor of the registered estate (except a trust corporation) under which capital money arises is to be registered unless authorised by an order of the court". What does this restriction tell a buyer?

This indicates that a trust is in existence and that any disposition of the legal estate must be effected by a minimum of two trustees. This type of restriction also indicates that the Mr and Mrs Jones hold the beneficial estate as tenants in common. The proportions in which the couple hold the beneficial estate is not recorded on the register.

See paragraph 2.8.3 of the manual.

17. What are the requirements of a leasehold estate?

Exclusive possession and certainty of duration.

18. In what ways may a lease be brought to an end?

Surrender/merger

Forfeiture

Repudiation

Frustration

Effluxion of time

Notice to quit

Disclaimer

See paragraph 2.6.7 of the manual.

19. Explain the doctrine of privity of estate

Where a lease or the reversion has been assigned (i.e. sold) there will be privity of estate between the successors to the original parties.

See paragraph 2.6.4 of the manual

20. What are the main provisions of the Landlord and Tenant (Covenants) Act 1995?

The Landlord and Tenant (Covenants) Act applies to leases granted on or after 1 January 1996. On assignment of such a lease the lessee is automatically released from continuing liability under the lease covenants (s5). A lessor can require the outgoing lessee to enter into an authorised guarantee agreement (s17).

21. What is the difference between an absolute, qualified and fully qualified covenant in a lease?

An absolute covenant is an absolute bar/prohibition against doing something. A covenant not to assign the lease is an example of an absolute covenant.

A qualified covenant requires the landlord's consent. A covenant to assign the lease without the landlord's consent is an example of a qualified covenant against assignment.

A fully qualified covenant is a covenant that requires the landlord's consent but states that the landlord's consent will not be unreasonably withheld.

22. What is the effect of s.19 (1) (a) of the Landlord and Tenant Act 1927?

S19(1)(a) Landlord and Tenants Act 1927 adds to a qualified covenant against assignment or parting with possession that consent must not be withheld unreasonably.

23. State the difference between the rule in Wheeldon v Burrows and s62 LPA 1925 in the acquisition of implied easements

The rule in Wheeldon v Burrows applies if a quasi easement is continuous and apparent and/or reasonably necessary, and the land must be in prior common occupation.

S62 rights must be exercised at time of conveyance. There must also be prior diversity of occupation.

See paragraph 2.4.4 of the manual.

24. Better Builders built 4 detached houses on a small plot and have sold the plots to A, B, C and D. The sales were respectively completed in March, April, May and June 10 years ago. All the purchase deeds contained covenants that:

1) The houses would be used as a private residence only (restrictive/negative covenant)

2) The buyers would paint the exterior of the houses every 3 years (positive covenant)

The houses are now owned by E, F, G and D respectively. E is proposing to convert part of his house into a dental surgery and neither G nor D have painted their house since they were built. Advise G

G can sue E if: 1. burden has passed to E - see Tulk v Moxhay and 2. benefit has passed to G - annexation, assignment or building scheme

G cannot be sued as the burden of a positive covenant does not pass BUT D can be sued as a party to the original covenant provided G can establish the benefit has passed to him (see above)

See paragraph 2.5 of the manual.

25. In what way is a legal mortgage usually created?

Charge (s85 LPA 1925)

It must be implemented by deed

See paragraph 2.7.1 of the manual

26. What powers are implied in favour of a mortgagee by the Law of Property Act 1925?

Possession

Sale

Appointment of a receiver

Lease

See paragraph 2.7.6 of the manual

27. Explain what steps a mortgagee should take before it can sell a property mortgaged to it

Check mortgage to ensure validity and power to take possession and power of sale

Check enforceability e.g. events of default/ need for s103 LPA 1925

See paragraph 2.7.6 of the manual.

28. How can an occupier of land obtain a legal freehold title to that land?

By adverse possession of

- unregistered land for the prescribed period (generally 12 years)
- registered land if the prescribed period has been established before the LRA 2002.

DOCUMENT 4

AN OUTLINE OF A SIMPLE PROPERTY TRANSACTION

Some students say that they find it difficult to understand where each step in a property transaction fits into the transaction as a whole. The information below gives an outline of a simply property transaction. There then follows a summary of the main stages of a transaction in diagram form.

Please spend time familiarising yourself with the various steps and with some of the terminology used in a property transaction

Pre-contract and exchange of contracts

1. The seller, usually with the assistance of a property agent, puts the property on the market. The seller and buyer enter into an informal arrangement (which has no legal effect).
2. The seller and buyer each instruct solicitors.
3. The buyer arranges a survey and finance (if necessary).
4. The seller's solicitor prepares the draft contract and deduces title. In other words the seller demonstrates to the buyer that the seller owns the property and can convey it. The seller's solicitor sends the buyer's solicitor a draft contract package.
5. The buyer's solicitor investigates title.
6. The buyer's solicitor makes pre-contract searches and enquiries and raises any necessary requisitions (special requisitions on title) with the seller's solicitors.
7. The buyer's solicitor amends the draft contract, if necessary. Both solicitors must agree to any amendments.
8. The seller's solicitor replies to the buyer's enquiries appropriate and/ or requisitions on title.
9. The buyer's solicitor checks that the buyer has the finance to proceed with the purchase and deals with any conditions attached to the finance. He also checks the buyer's survey.
10. The buyer's solicitor prepares a contract report for the buyer.
11. The buyer and seller each sign an identical agreed contract. Their solicitors exchange contracts (usually over the telephone by following a formula set by the Law Society). The buyer's solicitor pays a deposit to the seller's solicitor. This is the first time that there is a legally binding agreement between the buyer and seller so that there will be legal implications if either party attempts to withdraw or depart from the terms of the contract

Post-exchange of contracts and pre-completion

12. The buyer's solicitor prepares the appropriate purchase deed (if not already submitted to the buyer with the draft contract). The purchase deed, once properly executed and dated, will convey the legal estate to the buyer.
13. The seller's solicitor replies to the questions in the Completion Information and Undertakings form. The solicitors for the parties usually agree that the Law Society's Code for Completion by Post will govern the completion of the transaction.
14. The buyer's solicitor checks finance arrangements and requests the funds from the lender in time for completion.
15. The buyer's solicitor makes pre-completion searches and then checks the results
16. Each solicitor sends their client a bill of costs and a statement of account and the seller's solicitor asks the selling agents for their commission account.

Completion and post- completion

17. The buyer's solicitor makes sure that he has cleared funds for completion and via the bank system by a direct credit transfer sends the seller's solicitor the amount required to complete in accordance with the completion statement.
18. The seller's solicitor discharges the seller's mortgage if there is one and in due course will provide the buyer with evidence that the mortgage has been discharged. The seller's solicitor usually settles the selling agent's account and deducts his own costs and disbursements before paying the net sale proceeds to the seller.
19. The buyer's solicitor submits any Stamp Duty Land Tax forms to HMRC and pays Stamp Duty Land Tax, if necessary, and then applies for registration of title at Land Registry.
20. The buyer's solicitor receives the Title Information Document from Land Registry and deals appropriately with it and any other appropriate title documentation.

OUTLINE OF A SIMPLE PROPERTY TRANSACTION

