

QLTS SCHOOL LTD.

Revision Notes – Property Law

The Solicitors Qualifying Examination – SQE

Sample Material

way.

- items which are found below the surface of the land belong to the owner of the land, subject to the Treasure Act 1996, which provides that all treasure belongs to the Crown.
- both ‘corporeal’ hereditaments (i.e. tangible property that can be inherited), such as mines, minerals, buildings etc., as well as ‘incorporeal’ hereditaments – conceptual, intangible rights that exist “only in contemplation”.
- items found on the surface of the land belong to the landowner who has the right to claim it; but where the true owner of the item cannot be found, or where the landowner has no knowledge of the item, it will belong to the finder of the item, as the finder holds title superior to the owner of the property on which the lost object was found (Hannah v Peel (1945) 1 KB 509; Parker v British Airways Board [1982] 1 QB 1004).
- wild animals killed on the land, fishing, wild plants.
- a stretch of watercourse that runs on or under the land on the boundary of his land, up to its centre.
- fixtures which become part of the land.

Personal Property

An interest in anything that is not land, such as money, televisions, books, etc.

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Fixtures and Fittings

Fixture or fitting?	Test
<ul style="list-style-type: none"> • Fitting – an object with its own identity which is not attached to the land (will not pass with the land). • Fixture – objects affixed/annexed to land or to a building so as to become part of the land or building, but which may be removeable in certain circumstances. • Improvement – a fitting which has become a permanent addition to the premises. 	<p><i>Elitestone Limited v Morris</i> [1997]:</p> <ul style="list-style-type: none"> • Degree of annexation test – something free-standing will be a fitting even if <i>temporarily connected</i>. Anything attached to the land will be a fixture. • Purpose of annexation test – is the attachment for more convenient use as a <i>fitting</i>? e.g. <i>water supply for a moveable washing machine</i> (will therefore be considered a fitting), or for more convenient use/enhancement of the land or building? e.g. a cinema screen as part of a 'home cinema' (will be considered a fixture or improvement).

Landlord or tenant's fixtures?	
<ul style="list-style-type: none"> • Landlord's fixtures - fixtures that were in-situ on the grant of the lease or were installed or paid for by the landlord. • Items abandoned by the installing tenant become the property of the landlord, and any of the landlord's fixtures replaced by a tenant remain landlord's fixtures. 	<ul style="list-style-type: none"> • Tenant's fixtures - items affixed to the premises by or on behalf of the tenant and belong to a recognised category of tenant's fixture, affixed with the intention of removing it as and when appropriate.

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2. Property Rights, Estates, and Interests in Land

Property/Proprietary Rights

- These are rights in connection with the **possession, use and enjoyment of land**.
- A property right is distinguished from a personal right in that it is **alienable** (it can be given away or sold), and it is **enforceable against third parties**.
- Proprietary rights may be **estates** (freehold and leaseholds) or **interests** (such as easements or profits) in land.
- Proprietary rights may be **legal** (enforceable against all the world) or **equitable** (bind all except a purchaser of the legal estate who has given value for it and knows nothing about the right).

Estates in Land

All land in England and Wales notionally belongs to the Crown absolutely. It is only possible for a subject to own a set of rights in the land known as an **estate in land**.

The estate can be:

- *A fee simple absolute in possession (freehold)* – in perpetuity;
- *A term of years absolute (leasehold)* – for a fixed period of time;
- *profit à prendre in gross* – for a fixed period of time or in perpetuity;
- *rentcharge* – for a fixed period or in perpetuity.

Interests in Land

It is possible for a person to acquire rights over an estate which is owned by someone else. Such rights can exist at law or in equity.

Legal Interests

There are a limited number of interests which can exist at law, known as **legal interests**. These are listed at section

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1(2) of the LPA 1925 and which principally consist of:

- an easement over a freehold or leasehold estate;
- a rentcharge existing for a fixed period of time or in perpetuity;
- a charge by way of legal mortgage;
- a charge on land created otherwise than by an instrument;
- rights of entry annexed to a rentcharge or leasehold estate.

Legal interests are said to “**bind the world**”. This means that if they are properly constituted in law, then they will bind everyone, regardless of whether they are acting in good faith, give consideration or do not have knowledge of the existence of the right.

Equitable Interests

All other interests in land which are not capable of existing as legal interests exist in equity only and are regarded as **equitable interests**.

The enforceability of an equitable interest (in unregistered land only) against a third party is governed by the **Doctrine of Notice**.

Equitable interests can include:

- **the interest of a beneficiary under a trust:** where one person holds a legal estate on behalf of another;
- **estate contracts:** a contract to create or transfer a legal interest gives rise to an equitable interest until the contract formalities are completed;
- **interests not created formally:** for a legal estate or interest to operate at law, it must now be registered at HMLR. Failure to register will mean that the estate or interest will exist in equity only;
- **restrictive covenants-** only ever equitable.

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Formalities and requirements for the disposal of interests and contracts for the sale of land

- A deed must be clear on its face that it is a deed. Deeds submitted to the Land Registry as part of the conveyance must be in the prescribed form.
- The deed is executed by being signed and witnessed then delivered.
- Companies may execute and deliver deeds:
 - by affixing the company seal; or
 - by two authorised signatories; or
 - by the director of a company signing in the presence of a witness; or
 - by a person with suitable power of attorney.

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Section 52 LPA – all conveyances of land or any interest must be in writing (except leases not exceeding three years).

Section 2(1) LP (MP) Act – a contract for the disposition of any legal estate or interest in land must be in writing, must be signed by all of the parties to the contract and must contain all of the terms of the contract in one document, either expressly or by express reference to another document.

Rule 206 LRR 2003 – Deeds submitted to the Land Registry must be in the prescribed or directed form.

3. Unregistered Land

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Registered vs Unregistered Land

- Land in England and Wales was historically unregistered, with title being deduced from the title deeds.
- Land Registration Act 1925: first major Act which attempted to bring all land in England and Wales onto the registered system.
- Unregistered land has to be registered when a “trigger” event (such as a conveyance or the grant of a mortgage) occurs.

Deduction of Title

Title documentation must be provided showing an unbroken chain of title from the Good Root of Title to the seller.

- **Good Root of Title:** a document which is at least 15 years old, deals with legal and beneficial interest in the property and contains no defects or errors in the validity of the seller’s title.
- **Property Description:** the root should contain a description of the property from which it can be identified.
- **Pre-Root Title:** requisitions cannot be made on the pre-root title apart from requests for: a pre-root power of attorney under which any document was executed; pre-root encumbrances on the property which may still subsist; any pre-root documents containing a plan.
- **Post-Root Title:** the following should not be abstracted: deeds affecting equitable interests which will be overreached on sale; wills where the testator died after 1925; leases which have expired due to the effluxion of time.
- Any other transactions, such as conveyances, mortgages, grants of probate, trust deeds, leases affecting the property, court orders, should be produced with evidence.

Land Charges

Certain encumbrances on unregistered land must be registered as Land Charges under the Land Charges Act 1972 in order to have effect:

Class C(i)	A second (or "puisne") legal mortgage which is not protected by the deposit of title deeds.
Class C(ii)	Limited Owner's Charge – an equitable charge acquired by a tenant for life by settled land or statutory owner who discharges death duties or other liabilities affecting the land, and to which special priority is given by the statute.
Class C(iii)	General Equitable Charge – all charges not excluded by the Act which cannot be registered as other land charges.
Class C(iv)	Estate Contract – a contract to create or convey a legal estate or interest in land.
Class D(i)	HM Revenue & Customs Charge – a charge to HM Revenue & Customs where a liability to pay inheritance tax has not been discharged.
Class D(ii)	Restrictive Covenants – restrictive covenants created after the 1 st of January 1926.
Class D(iii)	Equitable Easements – equitable easements created after the 1 st of January 1926.
Class F	Matrimonial Home Rights – rights of spouses who occupy a matrimonial home but have no interest in it.

Legal interests not registrable as Land Charges will bind the world.

Equitable interests not registrable as Land Charges will be subject to the Doctrine of Notice:

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	the register under special directions of The Registrar
Form K13	Application for cancellation of a Land Charge of Class F
Form K14	Declaration in support of an application for registration or rectification
Form K15	Application for an official search (not applicable to registered land)
Form K16	Application for an official search (bankruptcy only)
Form K17	Land charges certificates of result of search (no subsisting entries)
Form K18	Land charges certificates of result of search (entries revealed)
Form K19	Application for an office copy of an entry in the register
Form K20	Application for a certificate of the cancellation of an entry in the register
Form K21	Application for an inspection of an entry in the register

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person claiming it before the disposition took place and he failed to disclose it; or (b) it is not obvious on a reasonably careful inspection of the land at the time of the disposition that the person claiming the interest is in actual occupation: Sch 3 para 2 LRA 2002.

- **a leasehold estate** in land granted to take effect in possession after the end of the period of three months beginning with the date of the grant and which has not taken effect in possession at the time of the disposition
- **Easements** – unregistered easements created by implication or prescription will only override a registered disposition where: (a) the easement is obvious on a reasonably careful inspection of the land; or (b) it is known to the person to whom the disposition is made; or (c) it has been exercised in the 12 months prior to the disposition: Sch 3 para 3 LRA 2002.
- Profit a prendre – with easements

Interests which should not be registered

Some interests are not able to be registered and therefore do not require registration in order to bind a purchaser of registered or unregistered land.

- **Interest under a trust of land.** Provided that the interest is overreached (see above) the purchaser will take the land free from it.
- **Leases for three years or less.** These do not have to be registered to take effect at law.
- **Leases with less than one year to run.**
- **Restrictive covenants between lessor and lessee.** Provided that these relate to the premises demised by the lease.

Entries on the Register

- **Notices** – entries on the charges register giving notice of a burden affecting the land. These can be:

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- Agreed Notices (entered by the proprietor of the land, entered with the proprietor’s consent or after satisfying the Registrar of the validity of the claim); or
 - Unilateral Notices (no consent by the proprietor and no requirement to satisfy the Registrar of the validity of the notice).
- All interests protectable as a Land Charge can be registered as notices. These are:
 - Legal charges (mortgages).
 - Equitable mortgages.
 - Estate contracts – contracts for freehold or leaseholds or contract for the option to purchase.
 - Restrictive covenants between freeholders.
 - Family Law Act 1996 home rights.
 - Easements other than implied legal easements.
 - Leases over seven years.
 - Bankruptcy petitions.
 - **Restrictions** – entries on the proprietorship register showing restrictions on the proprietor’s ability to deal freely with the estate, e.g., a Restriction demonstrating that an interest under a trust of land must be overreached on a sale.
 - A restriction will remain in the register until it is cancelled or withdrawn. It is not automatically cancelled following a disposition. Common restrictions are:
 - Form A Restrictions (restrictions on dispositions by a sole proprietor)
 - Form B Restrictions (dispositions by trustees – certificate required)
 - Form N Restriction (disposition by a registered proprietor of a registered estate or proprietor of charge – consent required)

- Form P Restriction (disposition by registered proprietor of registered estate or proprietor of charge — consent of proprietor of specified charge required)

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Cannot be protected by notices

- Interests under a trust of land (s. 33(a)(i), LRA 2002).
- Interests under a settlement under the Settled Land Act 1925 (s. 33(a)(ii) LRA 2002).
- Leasehold estates in land for a term of three years or less, except for any that have to be registered.
- Restrictive covenants made between lessor and lessee that relate only to the demised premises (s. 33(c), LRA 2002).
- Interests capable of registration under the Commons Registration Act 1965 (s. 33(d), LRA 2002).
- PPP leases.

Compulsory and Voluntary First Registration

Land must be registered where there is a:

- Transfer of the freehold estate.
- Transfer of the leasehold estate with more than seven years left to run.
- Grant of a lease for more than seven years.
- Grant of a reversionary lease (i.e. to take effect more than three months in the future).
- Grant of a lease with discontinuous possession.
- Grant of a first legal mortgage.

Land is registered by deducing title to the Land Registry, which will then transfer all information from the title deeds onto the Register of Title where it can be accessed electronically.

application for a court order under s.14 TOLATA to settle a dispute between co-owners or request an order for sale.

- The court can make **any order** concerning the exercise by the trustees of any of their functions, per s. 15, including making orders in relation to the sale of the property (such as if it should take place), or declaring the nature or extent of a beneficiary’s interest in the property, as the court thinks fit.
- In exercising its discretion under s.15, the court must consider the purpose of the trust, intentions of the settlor, the welfare of any minors, and the interest of secured creditors.
- In insolvency cases, s. 335A of the Insolvency Act rather than TOLATA is used, with the creditors’ needs taking priority.
- If land is sold, the proceeds of sale must be divided between the beneficiaries in accordance with their respective beneficial interests.
- If land is leased, the rental income must likewise be divided between the beneficiaries.
- Since TOLATA, trusts are trusts of land, with a power to sell – not trusts for sale, with an obligation to sell.

Overreaching

- If the land is sold, the purchaser is able to **overreach** the equitable interests in the property by paying the purchase money to **at least two trustees** or a trust corporation (*Williams and Glyn’s Bank v Boland* [1980]). This frees the land from the equitable interests and those interests attach to the purchase money held by the trustees (s. 27 LPA 1925).
- Only rights capable of being converted into money can be overreached. Overriding interests of people in occupation can be converted into the beneficiary’s ‘share’ of the property’s value.
- Instead of having the right to live in a property, the beneficiaries receive a proportion of the proceeds of sale instead.

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Where one joint tenant dies, the survivor automatically inherits their equitable share in the property, in accordance with the **Doctrine of Survivorship**.

Severance of joint tenancies

A joint tenancy can be converted into a tenancy in common by the following methods of severance:

- notice in writing (s. 36(2) LPA 1925). This can be unilateral (so only the person severing becomes a tenant in common) and will be effective if delivered, even if never actually read: *Kinch v Bullard* [1999]
- mutual agreement (*Burgess v Rawnsley* [1975])
- act of a party operating on his own share- e.g. selling his equitable share to another
- disposal (including bankruptcy (*Re: Dennis (A Bankrupt)* [1996])
- act of a third party
- homicide
- Divorce does **not** automatically sever a joint tenancy. The court will consider whether there is sufficient immediate intention to receive a specific share made by either party to the divorce proceedings.

The severed equitable interest may be protected on the Register by a Form A Restriction.

Tenancies in Common

Where the beneficiaries hold the property as tenants in common, they each own a distinct and separate share of the beneficial interest in the property.

The presumption that “equity follows the law” will apply – in the absence of contrary evidence, a person who is a joint tenant of the legal estate is also a joint tenant of the equitable estate.

Exceptions to the presumption:

- where the transfer contains words of severance,

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the beneficiaries contributed unequally to the purchase price (*Stack v Dowden* [2007], *Jones v Kernott* [2011]);

- commercial situations, such as where persons take a joint tenancy interest in law in a property with the intention to operate a business from the premises (*Malayan Credit Ltd* [1986]);
- where the property is held by a partnership (*Lake v Craddock* (1732));
- where the parties have agreed to occupy separate areas of the property (also see *Malayan Credit Ltd* [1986]); and
- where joint mortgagees lend money to a borrower to purchase a property, they are presumed to hold the equitable estate in the mortgage as tenants in common, each having intended to “lend his own and take back his own” (*Morley v Bird* (1798)).

No legal tenancies in common: the equitable (beneficial) interests are structured; the legal estate is always held by the co-owners as joint tenants; joint tenancy of a legal estate cannot be severed; and there can be no tenancy in common of the legal estate (ss. 1(6), 34(1), 36(2) of the Law of Property Act 1925).

A tenancy in common ends when all the co-owners either: (i) sell the property (with all their shares) to someone else; (ii) convert to a beneficial joint tenancy; or (iii) one owner acquires all the shares in the property from the other co-owners.

Matrimonial Home Rights and Co-Ownership

- For cases where only one spouse is registered as the legal owner of the property.
- Matrimonial home rights are statutory rights which provide protection to a husband, wife or civil partner under the Family Law Act 1996.
- These apply where the matrimonial home is legally owned by one spouse but the other spouse has a right of occupation in the house not to be evicted by the other spouse without an order of the court.

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7. Covenants

A legally binding promise with regard to how land should or should not be used.

Original parties to covenants will always be bound by those promises – if the benefit and burden pass to successive purchasers, the covenants will be binding on them, too.

The benefit and burden of covenants pass in law and equity to an assignee of the legal estate in various circumstances:

Law	Benefit	Yes, if the benefit is: 1) expressly assigned 2) impliedly assigned, in that the covenant (as per the rule in <i>P & A Swift Investments v Combined English Stores Group plc</i> [1989] AC 632): a) touches and concerns the land (i.e., it imposes a benefit on any owner of an estate in the land, as opposed to the particular original owner; it affects the nature, quality, mode of user or value of the land of the reversioner; the covenant is not expressed to be personal); b) is intended to pass to successors (i.e. the benefit of the covenant would run with the land); c) at the time of the grant, the covenantee held a legal estate; d) the successor in title holds a legal estate.
	Burden	No. Assignor should consider the use of an indemnity covenant or the rule in <i>Halsall v Brizell</i> , below.
Equity	Benefit	<ul style="list-style-type: none"> • words of annexation, either express annexation or statutory, through s. 78(1) LPA 1925. • or • express assignment of the covenant; or • under rules relating to building schemes. Under schemes of development there: a) should be a common vendor b) properties laid out in plots c) vendor intended that successors could enforce the covenants and understood by purchasers Readily identifiable estate.
	Burden	The Rule as established in <i>Tulk v Moxhay</i> : 1. the covenant must be negative (i.e., no money should be spent to comply with it); 2. the covenant must accommodate the dominant

		<p>tenement;</p> <ol style="list-style-type: none">3. the original parties must have intended that the burden should bind successors;4. the purchaser must have notice of the covenant and comply with equitable principles, such as acting in good faith. <p>The Rule in <i>Halsall v Brizell</i>:</p> <p>An exception to the rule that the burden of positive covenants cannot run with the land, provided that the burden is so inextricably linked with the benefit that one cannot be taken without the other, such as the only access to draining rights being by contributing to their maintenance.</p>
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8. Mortgages

A charge over property, using the property as security, granted by the estate owner (the mortgagor) to the mortgagee (the lender).

Normally created using a charge by way of legal mortgage but also possible to create a charge by way of demise (i.e. granting a long lease to the mortgagee which automatically terminates when the mortgage is repaid – (known as “provision for cesser on redemption”).

All new mortgages must now be registered to take effect at law (s. 27 (2) (d) LRA 2002) and trigger compulsory first registration of the estate: s. 4 LRA.

Rights of the Mortgagor

- Right to redeem – known as the equity of redemption. Any provision in the mortgage deed unduly restricting this right is invalid (*Fairclough v Swan Brewery Co Ltd* [1912]).
- Protection from unconscionable terms
- Unconscionable is a high threshold – not a bad deal or ‘unreasonable’ terms.
- Context dependent – less likely to be unconscionable in the commercial context when mortgagors entered the deal ‘with their eyes open’.
- Protection from undue influence – *Royal Bank of Scotland v Etridge (No 2)* [1998]. Lenders must go through a process of checks when there is suspicion that a more vulnerable party is being unduly influenced into agreeing a mortgage. This is if a lender is put on notice by a transaction – for example, if it benefits a business owned only by the husband, but the wife is a co-mortgagor. The law does not stop the undue influence but limits lenders’ liability in ensuring that all parties fully understand and accept the risks of the mortgage transaction.
- Right to lease – under s. 99 LPA 1925. This right can be excluded by the mortgage deed.
- Right to possession – the mortgagor has a right to

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remain in (and sue for) possession of the mortgaged property provided that the terms of the mortgage have not been breached. Right to sue (s. 98 LPA 1925).

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Rights of the Mortgagee

- Right to sue on the personal covenant – a mortgage will contain a personal repayment covenant by the mortgagor making him personally liable to the mortgagee for the mortgage debt.
- Right of foreclosure – if the mortgagor defaults, foreclosure vests the mortgagor’s title to the property in the mortgagee and extinguishes the mortgage, so the lender ends up with the property and does not have to pay the borrower any proceeds of sale in excess of the amount borrowed. It is therefore a draconian right and seldom used.
- Right to possession – a mortgagee is entitled to possession of the land from the date of the mortgage but the courts will not allow this right to be enforced if the mortgagor has not defaulted on the terms of the mortgage.
- Power of Sale – a statutory power to sell the property under s. 101 LPA 1925 and mortgages usually contain a wider express power of sale. The power must arise first under s. 101 LPA. Only then is it exercisable in particular circumstances, such as three months of arrears after notice given, or two months’ arrears of an interest only mortgage: s.103 LPA.
 - Buyer does not have to check that the mortgagee’s power of sale has become exercisable, only that it has arisen.
 - A sale by a mortgagee will overreach all rights and encumbrances which rank after the mortgage and will be subject to all rights and encumbrances which have priority over the mortgage (s.104 LPA 1925).
- Power to appoint a receiver – the mortgagee can appoint a receiver to collect the income from the land and use it to pay off the mortgage. A

Protection of third party interests in land

Where more than one party has an interest in a registered estate or charge, the general rule that decides the priority of each party's claim is that each interest ranks in accordance with the date of its creation: ss. 28 and 29 LRA 2002. Notices or restrictions (as appropriate) protect third party interests in land.

Conveyancing aspects of mortgages

It is usual for the mortgagor's solicitor to also be instructed to act jointly for the mortgagee in a conveyancing transaction.

The mortgagee's solicitor will usually carry out the same searches and enquiries that would be carried out when acting for a purchaser, including:

- standard conveyancing searches
- review of the mortgage offer on behalf of the mortgagor to advise them upon its effects;
- investigation of the legal title;
- investigation of the mortgagor, including bankruptcy search;
- advising the mortgagor on the execution of the mortgage deed.

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Endowment mortgages

Usually an interest-only loan with an endowment policy assigned to the mortgagee as additional security. Notice of the assignment must be served upon the assurance company on completion of the mortgage, and notice of reassignment served when the mortgage is redeemed.

Post-completion formalities

	<i>Unregistered freehold or unregistered leasehold >7 years to run.</i>	<i>Registered freehold or leasehold.</i>
<i>First legal mortgage.</i>	Compulsory first registration of title within priority period for Land Charges and two months in any event.	Registration within two months of completion.
<i>Subsequent legal mortgage.</i>	Registration of a Class C(i) Land Charge	Registration within two months of completion.

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9. Leases

Lease v Licence

A licence is the permission to use land and is a private contract, for example permission to stay in a spare room. No legal interest in the land is granted.

A lease by contrast grants a proprietary interest in land which is enforceable against third parties and is assignable.

Differences and features:

- Fixed period – leases must be granted for a determinable period of time and must have a definite start date and end date from the outset. (*Lace v Chandler* [1944]).
- Exclusive possession – the lease must give the lessee the right to exclusive possession of the demised premises, even as against the landlord: *Street v Mountford* [1985].
- Rental payments – the right to receive and the duty to pay rent are *not* essential features of a lease – *Ashburn Anstalt v Arnold* [1989]. However, there should be some form of consideration in a valid lease.

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Oral leases can also be legal

A lease made verbally which takes effect in possession for a term not exceeding three years, whether or not the lessee is given power to extend the term, at the best rent which can be reasonably obtained (i.e. market rent) without taking a fine will be a legal lease: s. 54(2) LPA and *Fitzkriston v Panayi*.

Landlord’s Implied Covenants

- Quiet Enjoyment – the landlord must allow the tenant to use the property free from physical disturbance or interruption.
- Not to derogate from grant – the landlord must not interfere with the tenant’s use and enjoyment of the demised land, e.g. by building on neighbouring land owned by the landlord. Commercial competition with the tenant is not generally a derogation from grant (*Port v Griffin* [1938]) unless it defeats the purpose of the grant of the lease, for example, if the landlord directly competes with the tenant in exactly the same area: *Oceanic Village v Shirayama Shokusan Co Ltd* [2001]
- Repair – repair of structure and exterior of building as well as installations for supply of water, gas, electricity and the sanitary installations and installations for space and water heating. These are the responsibility of landlords in leases of less than seven years: implied by statute in s. 11 Landlord and Tenant Act 1985. Tenants can withhold rent from a defaulting landlord to pay for repairs if they follow certain procedures (*Lee-Parker v Izzet* [1971]).

Landlord’s Express Covenants

- Insurance – depending on the type of building, either the landlord or the tenant may insure.
- Repair – the lease may make provisions as to who is to repair the building.

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- To enforce covenants – a provision requiring the landlord to impose and enforce similar covenants against other lessees in a block.

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Tenant’s Implied Covenants

- To pay rent and rates – payable in arrears unless specified otherwise.
- Not to commit waste – not to reduce the value of the premises or allow them to be reduced (i.e. by quarrying etc).
- To allow the landlord to inspect the premises.
- Not to deny the landlord’s title – the lessee must not claim to be the owner of the reversion or support a third party claim to the landlord’s title.
- To use the property in a tenant – like manner, meaning to prevent damage to the property, to keep the heating on so that pipes do not freeze in winter and so on.

Tenant’s Express Covenants

- Rent – may include rates, service charges and insurance premiums. Usually payable in advance. Usually also a suspension clause where property uninhabitable.
- Repair – tenant usually made responsible in a long lease.
- Not to assign or sublet – usually without landlord’s consent. Consent must not be unreasonably withheld (s. 19(1) Landlord and Tenant Act 1927).
- Alterations – structural and external alterations are normally forbidden, and any requirement to obtain the lessor’s consent will be subject to s.19 LTA 1927.
- User – restricting use of premises e.g. to residential only. Not subject to s.19 LATA 1927.

Remedies for breaches of covenant by the Tenant

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Non-Payment of rent

- Action for debt – the landlord may sue the tenant personally for the rent as a debt. Limitation period of six years.
- Commercial Rent Arrears Recovery (CRAR) – the landlord may enter the premises and take goods belonging to the tenant and sell them to pay-off rent arrears.
 - applies to commercial leases only (not residential or mixed used properties)
 - rent arrears of at least seven days
 - not applicable to insurance premium or service charges
 - the landlord is not entitled to recover rent once the lease has expired, other than in limited circumstances
 - any provision in a lease that purports to allow the landlord to seize and sell the tenant's property for non-payment of rent, is void
- Forfeiture – the landlord brings the lease to an end and evicts the tenant. There is a notice procedure for forfeiture. The landlord must do not act in a way that continues the tenancy, such as accepting rent arrears.

Breaches of other covenants

- Damages – the landlord may recover damages where he suffers loss as a result of a tenant's breach of covenant.
- Injunction or Specific Performance – to compel the tenant from continuing to breach the covenant (injunction) or to require the tenant to perform a certain action (specific performance).
- Forfeiture.

Enforceability of Covenants

		Pre-1996 Lease		Post-1996 Lease	
		Lessee	Lessee's Assignee	Lessee	Lessee's Assignee
Pre-1996 Lease	Lessor	Yes - privity of contract, even after assignment.	Yes, if the covenants touch and concern the land.		
	Lessor's Assignee	Yes, if the covenants touch and concern the land.	Yes, if the covenants touch and concern the land.		
Post-1996 Lease	Lessor			*Yes, but not after assignment.	All covenants.
	Lessor's Assignee			All covenants.	All covenants.

*Tenant is automatically released from covenants on assignment of tenancy (s. 5 Landlord and Tenant (Covenants) Act 1995). Landlord *may* be released from covenants on assignment of reversion, by serving a notice on the tenant and following the procedures set out by s. 8 Landlord and Landlord and Tenant (Covenants) Act 1995.

Landlords can also require tenants to sign an authorised guarantee agreement (AGA) to act as a guarantor against the breach of assignees.

NOTES:

Conveyancing aspects of leases

- Mortgages:
 - Good leasehold title may not be acceptable to the mortgagee.
 - The term of the lease must be acceptable to the mortgagee, who may not accept a shorter term.
 - The mortgagee may have specific requirements as to insurance.
 - The lease should contain proper repairing covenants.
 - Mortgagee will not usually accept a lease which contains a proviso for re-entry on the tenant's insolvency.

- Freehold title – evidence of this must be produced where the lease is for more than seven years.

- Ground Rent Receipts should be obtained to ensure that covenants have not been breached.

- Prescribed clause leases – require prescribed clauses to be drafted and set out at the front of the lease to aid in registration.

NOTES:

Appendix 1: Matrix showing enforceability of third party rights in registered and unregistered land

	UNREGISTERED LAND		REGISTERED LAND	
	Where registered?	When will it bind third parties?	Where registered?	When will it bind third parties?
Rights enforceable under common law				
Legal Easement	N/A	Exists <i>in rem</i> – binds everyone regardless of whether they have notice of it.	HMLR	<p><u>Express Grant</u> Burden must be noted on Charges register of servient title to bind a third party.</p> <p>Benefit must be noted on Property Register of dominant title to be enforceable.</p> <p><u>Implied or Presumed Grant</u> Automatically an overriding interest if they exist before first registration, but can be registered (against dominant and servient titles as above).</p> <p>If created after first registration, only overriding interests if (a) purchaser has actual knowledge of easement; or (b) easement is obvious on reasonably careful inspection. Can also be registered (against dominant and servient titles as above).</p>

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NOTES:

Covenant (Benefit)	N/A	<p><u>Original Covenantee</u> Exists <i>in rem</i> – binds everyone regardless of whether they have notice of it.</p> <p><u>Original Covenantee’s Assignee</u> Only where: (1) it touches and concerns the land; (2) it is intended to run with the land; (3) at the time of the grant the original covenantee held the legal estate.</p>	HMLR	<p><u>Original Covenantee</u> Must be noted on Property register of the dominant title to be enforceable.</p> <p><u>Original Covenantee’s Assignee</u> Only where: (1) it touches and concerns the land; (2) it is intended to run with the land; (3) at the time of the grant the original covenantee held the legal estate.</p> <p>Must be noted on the Property register of the dominant title to be enforceable.</p>
Covenant (Burden)	Land Charges	<p><u>Original Covenantor</u> Must be registered as a Class D(i) or D(ii) Land Charge to take effect at law.</p> <p><u>Original Covenantor’s Assignee</u> No liability.</p>	HMLR	<p><u>Original Covenantor</u> Must be noted on the Charges register of the servient title to bind a purchaser.</p> <p><u>Original Covenantor’s Assignee</u> No liability.</p>

Lease	N/A	Exists <i>in rem</i> – binds everyone regardless of whether they have notice of it.	HMLR	<p><u>Not exceeding 3 years</u> Overriding interest – no registration needed.</p> <p><u>More than 3 but not exceeding 7 years</u> Must be made by deed.</p> <p>Overriding interest – no registration needed.</p> <p><u>More than 7 years</u> Must be made by deed.</p> <p>Must be registered with own title number and noted on superior title.</p>
Rentcharge	N/A	Exists <i>in rem</i> – binds everyone regardless of whether they have notice of it.	HMLR	Must be registered with own title number and noted on servient title.
Rights enforceable in equity				
Equitable Easement	Land Charges	Must be registered as a Class D(iii) Land Charge against the owner of the servient estate.	HMLR	No effect on third parties, unless registered using a notice on the servient title.

NOTES:

Covenant (Burden)	Land Charges	<p><u>Original Covenantor</u> Restrictive covenants must be registered as a Class D(i) or D(ii) Land Charge against the owner of the servient estate.</p> <p><u>Original Covenantor's Assignee</u> Rule in <i>Tulk v Moxhay</i> determines whether the burden passes in equity to an assignee of the servient estate: (1) negative covenants; (2) original covenantee owned land benefited by the covenant; (3) covenant touches and concerns the dominant land; (4) covenantee complies with the principles of equity.</p> <p>Rule in <i>Halsall v Brizell</i> applies where a benefit is obtained in connection with a positive covenant.</p> <p>Initial registration as a Land Charge against the original covenantor is sufficient – it does not have to be re-registered against original covenantor's assignee.</p>	HMLR	<p><u>Original Covenantor</u> No effect on third parties, unless registered using a notice on the servient title</p> <p>The <i>Tulk v Moxhay</i> test must be satisfied for the burden to bind an assignee of the original covenantor's estate. The rule in <i>Halsall v Brizell</i> also applies.</p>
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Covenant (Benefit)	N/A	<p><u>Original Covenantee</u> Original covenantee will never have to claim in equity. They can rely on the common law doctrine of privity of contract and sue the original covenantor (even if the original covenantor has disposed of the servient estate).</p> <p><u>Original Covenantee’s Assignee</u> Benefit only passes where: (a) words of annexation used; (b) benefit of covenant expressly assigned; (c) land in a building scheme.</p> <p>Covenantee should ensure that burden of covenant is registered against covenantor at Land Charges Registry.</p>	HMLR	<p><u>Original Covenantee</u> Same as position in unregistered land.</p> <p><u>Original Covenantee’s Assignee</u> Benefit only passes where: (a) words of annexation used; or (b) benefit of covenant expressly assigned; or (c) land in a building scheme.</p> <p>No effect on third parties, unless registered using a notice on the Charges register of the servient title.</p>
Estate Contract	Land Charges	Must be registered as a Class C(iv) Land Charge in order to bind a purchaser of the affected legal estate.	HMLR	No effect on third parties unless registered using a notice on the charges register of the affected title.

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Equitable Charge	Land Charges	<u>Puisne Mortgage</u> Must be registered as a Class C(ii) Land Charge in order to bind a purchaser of the affected legal estate. <u>General Equitable Charge</u> Must be registered as a Class C(iii) Land Charge in order to bind a purchaser of the affected legal estate.	HMLR	<u>All equitable charges</u> No effect on third parties unless registered using a notice on the charges register of the affected.
Interest of a beneficiary under a trust	N/A	No registration possible. Evidenced by documentation contained within the title deeds (e.g. memorandum of severance).	HMLR	Where a legal estate is the subject of a trust of land, the beneficiaries should apply for a Form A Restriction to be entered onto the title to ensure that overreaching takes place.
Matrimonial Home Rights	Land Charges	Takes effect as an equitable charge. Must be registered as a Class F Land Charge in order to bind a purchaser of the affected legal estate.	HMLR	Takes effect as an equitable charge. Must be registered using a notice in the charges register of the affected title.

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