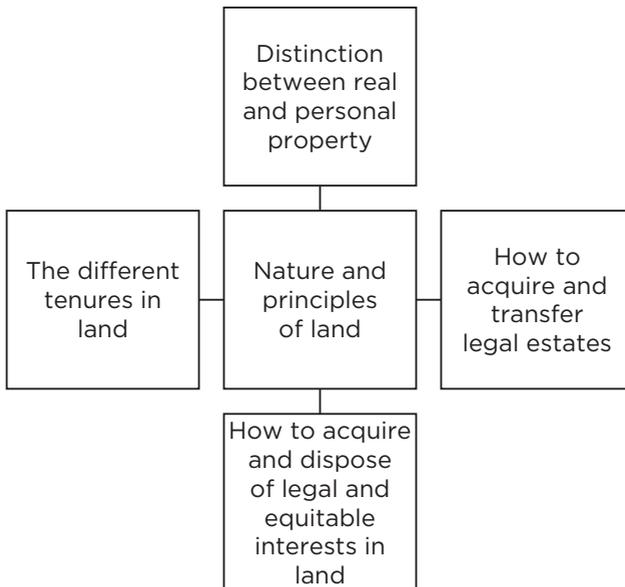


The nature and principles of land law

■ MAKE SURE YOU KNOW

This chapter will give you the necessary introduction to a wide range of basic principles that you must understand when considering a land law question, such as the differences between real and personal property, the different tenures in land, how to acquire and dispose of both legal and equitable interests and legal formalities required to create these interests.

There is no single explanation that we can give you which will explain exactly what 'land' is. It has a rich historical background and mix of common law, statute, policy and practice which is rarely seen in other legal disciplines. This chapter will start to explore some of these basic, but important, principles, which we will then cover in greater detail in the rest of this book.



■ SQE ASSESSMENT ADVICE

As you work through this chapter, remember to pay particular attention in your revision to:

- the distinction between real property and personal property/chattels
- different ways in which land can be owned
- how to acquire and transfer legal estates in land
- how to acquire and dispose of legal and equitable interests in land.

■ WHAT DO YOU KNOW ALREADY?

Try answering these questions before reading this chapter. If you find some difficult or cannot remember the answers, make a note to look more closely at that during your revision.

- 1) True or false? If you own a piece of land, you are entitled to take anything from that land, including gas, oil or water.

[The definition of land, page 4]

- 2) You have been contacted by Ebony who has recently purchased a property in the Derwent Valley, which is surrounded by around two acres of woodland, all of which are contained within her title deeds. She is extremely concerned that a local photography company are flying over her property and she is aware they are taking pictures of her woodland and she wants to stop them. Which of the following is true in relation to her property law rights?
 - a) As the woodland area is contained within Ebony's title deeds then she must inform the photography company that she does not give permission for them to fly over her land.
 - b) When someone purchases land, they purchase everything 'reaching up to the very heavens'. Ebony can file a trespass claim against the photography company, which on this basis would be successful.
 - c) There is nothing Ebony can do to stop the photography company taking pictures, but they have no right to sell them without her permission. Ebony will be entitled to any profits from any sales they make.
 - d) Ebony's legal rights in the property will only extend to such a height as is necessary for her ordinary enjoyment of the land. Any aircraft flying above that height would not be trespassing on the land.
 - e) Case law indicates that light aircraft flying at below 8,000ft will be classed as trespassing upon land. Ebony would need

to obtain proof of the distance the photography company are flying at before she can assert her legal rights for trespass on her land.

[The definition of land: Airspace, page 5]

- 3) True or false? A fixture is anything which is part of the land and that could only be removed by demolishing or causing damage to the same.

[Fixtures and chattels, page 6]

- 4) James and Nicola have recently purchased a house together. They both contributed equally to the purchase price with a small contribution from a mortgage company. They are both named on the title deeds as the legal owners. What type of interest do they have in this property?
- They both have a legal and equitable interest in the property.
 - They only have a legal interest as they are named on the title deeds.
 - They only have an equitable interest due to their equal contribution. The legal interest will be in the name of the mortgage company.
 - James will have a legal interest and Nicola will have an equitable interest.
 - Nicola will have a legal interest and James will have an equitable interest.

[The distinction between legal and equitable estates in land, page 8]

- 5) True or false? Restrictive covenants are always legal interests in land and permanently binding on future owners.

[Legal interests in land, page 10]

WHAT IS LAND?

There is no specific definition of what would encompass all 'land'. One definition has been provided by the Law of Property Act 1925 (LPA 1925) but before we consider this, a sensible starting point would be to break 'land' down into two separate components and consider the distinction between **real property** and **personal property**. The LPA 1925 does not provide clarity between these two types of property, but it does give us some important terms that we will consider throughout this chapter.

Key term: real property

Real property relates to all property which is generally considered to be immovable. So, this would be the land itself, but it also relates to any third-party rights in the land.

Key term: personal property

Personal property relates to anything which is not the 'real' property, so anything that could be moved.

The definition of land

We can now consider the partial definition of land that is provided for by the LPA 1925 which is as follows:

'Land' includes land of any tenure, and mines and minerals, whether or not held apart from the surface, buildings or parts of buildings ... and other corporeal hereditaments; ... and other incorporeal hereditaments, and an easement, right, privilege, or benefit in, over, or derived from land; ... and 'mines and minerals' include any strata or seam of minerals or substances in or under any land, and powers of working and getting the same ...; and 'hereditament' means any real property which on an intestacy occurring before the commencement of this Act might have devolved upon an heir.

So, as you can see, this could be quite confusing if read without a greater understanding of what 'land' can consist of. We shall break this down further as follows:

Land of any tenure

This means land which is freehold or leasehold. We will consider these in greater detail in **Chapter 4** and **Chapter 5**.

Mines and minerals

This is usually considered with an old Latin maxim translated to 'he who owns the land owns everything reaching up to the very heavens and down to the depths of the earth'; however, that does not give the owner unlimited rights and the courts and statute have set out some exceptions to this. Any coal, natural gas or oil beneath the land are deemed, by statute, to be the property of the Crown.

Revision tip

Fracking is something which is generating increasing concern with the public and as such, it is something that is now regularly raised with practitioners. This falls within a 'mine and mineral' so knowing who owns or has the rights to these is necessary to advise a client on these issues.

Airspace

This is another important consideration when looking at who owns the 'land' above the physical property. The courts have given clarification on the Latin maxim: 'he who owns the land owns everything reaching up to the very heavens and down to the depths of the earth', when considering cases relating to airspace and actions of trespass. **Practice example 1.1** gives an example of this.

Practice example 1.1

The owner of a large country estate has brought an action in trespass against a local company for flying over and taking photographs of his land. Does the airspace form part of the claimant's land?

These are the facts of *Bernstein v Skyviews* [1978] and the judge held that the owners' rights in the airspace above the land extended 'to such height as is necessary for the ordinary use and enjoyment of his land'. Above this height the landowner has no more rights than the public as aircraft flying at a normal height do not trespass upon land. The claimant lost the case.

Corporeal hereditaments

This is an old expression, but it simply means 'any real property having a physical form'. The hereditaments part simply means 'something that can be inherited'. Historically, for inheritance purposes it was essential for parties to establish the extent of real property. This would not only include the actual buildings on the land, but any other tangible items such as plants, animals, water and fixtures. Fixtures will be considered separately in this chapter.

Revision tip

When revising, keep in mind these distinctions:

- Plants: 'Land' will include any plants, trees and flowers that are attached to it and form part of it.

- **Animals:** Strangely, animals can form part of the 'land' but only if they are found dead on the land. Wild animals will not form part of the land while they are alive.
- **Water:** This is a rather complicated provision but, generally, any water which passes over or flows through the land will not form part of it. Landowners may have rights to take from the water, such as fishing rights, but they cannot extract great volumes of this water without prior permission from the appropriate authority.

Incorporeal hereditaments

These are the opposite to corporeal hereditaments and relate to anything that does not have a physical form, such as a right of way, rights of light or receiving rent from the land.

Fixtures and chattels

Fixtures and **chattels** are considered under the heading of 'corporeal hereditaments', but they also have their own particular set of rules when determining which items fall into which category and so it is best to consider these separately. A good starting point is to understand what both terms mean.

Key term: fixture

Fixtures are objects that are considered to form part of the land and which will be transferred with that land automatically when it is sold, for example, a fitted kitchen unit. If the structure could only be removed by some form of demolition, then it is likely to be a fixture.

Key term: chattels

Chattels are personal possessions and have no connection or fixture with the land. Chattels will remain in possession of the owner and removed by them when they sell the land. For example, pictures on the walls.

Practice example 1.2 gives an example of how to differentiate between fixtures and chattels.

Practice example 1.2

The owner of a weaving mill purchased some looms to use with the mill (a loom is a device used to hold the threads under tension). They were attached to the stone floor by nails into wooden beams

and could easily be removed. The owner failed to keep up mortgage repayments and the mill was repossessed. Were the looms fixtures (forming part of the land the mortgage company could repossess) or were the looms chattels and remained in possession of the owner?

These are the facts of *Holland v Hodgson* [1872] where the judge said that the test to determine whether an item was a fixture or a chattel was twofold. There needed to be consideration of:

- a) the degree of annexation, which indicates that if detaching the object from the land would mean destroying it or causing significant damage, then it would be a fixture. If on the other hand it is simply resting on the land by virtue of its own weight, such as a wooden bungalow resting on concrete pillars, it would be considered a chattel.
- b) the purpose of annexation, which does not consider the physical attachment, but considers why the item has been placed on the land. If there is an intention that it will be a permanent addition then it will be a fixture. If, however, it is there merely for convenience or for the purpose of creating a temporary improvement, then it will be a chattel.

The judge held that the looms were fixtures as they had been attached to the land.

DIFFERENT WAYS IN WHICH LAND CAN BE OWNED

Now that you have some understanding of what 'land' is, it is important to understand the ways in which someone can own land. An important point to make at this stage is that whilst we talk of 'owning' land, the reality is that the Crown are the absolute owners of all land in England and Wales. This is a clear relic of the historical aspects of land law as the Crown hold the tenure of all land and have granted licences of this land to individuals who then hold an **estate in land**, whilst others may acquire an interest in land.

By itself, the term **tenure** has very little impact on everyday land law practices, but the doctrine of this term remains an important one to be aware of. All historical 'tenures' were ended under the Tenures Abolition Act 1660, but the Crown continue to hold 'tenure' of land which means that should someone who has been granted an estate in land (now commonly known as the landowner), die without relatives or a Will, then the land would pass back to the Crown.

Key term: tenure

Tenure means 'to hold' and is the relationship between the landowner and the Crown.

Key term: estate in land

The term estate denotes how long a person will own that piece of land. There are only two types of legal estates available today and those are freehold (forever) and leasehold (for a fixed term). These will be explained in much greater detail in **Chapter 4** and **Chapter 5**.

THE DISTINCTION BETWEEN LEGAL AND EQUITABLE ESTATES IN LAND

The legal system for land law in England and Wales is separated into two distinctive parts, which are law, or **legal ownership**, and **equitable ownership**. Whilst land law would be far simpler if everyone had demonstrable legal rights in land, everyday life usually allows for third parties to have rights over land that belong to others, such as the right to pass over a neighbouring drive to access your own property.

As such, you will see that we have this dual system of law, and it is common to see land ownership divided into these two separate parts of law and equity. You will see many references to this dual system of law and equity throughout this book as it is a key concept of land law.

Key term: legal ownership

The legal ownership can be more commonly referred to as the formal and paper ownership, so the name on the title deeds. This will represent who has the legal right to sell or transfer that piece of land.

Key term: equitable ownership

This relates to any beneficial rights an individual or third party may have in the property, including the right to take money from it.

It is important to have a good understanding of these principles as whilst the legal ownership, or paper deeds, could show the property is owned by two different individuals, just looking at the deeds will tell you nothing about what could happen in equity, or what is fair between these legal owners. So, we also need to be aware of the equitable rights that they each have in this property.

Whilst both terms will be explored further in later chapters, **Practice example 1.3** gives an example of how these two principles work.

Practice example 1.3

James and Nicola are the legal owners of 29 Domino Lane. If they are both named on the title deeds and so have legal (or paper) ownership, then they will both have the right to sell or transfer the property. What would their ownership rights be if they were not both named on the title deeds but had both contributed towards the purchase price?

This can be a common occurrence and if, for example, Nicola purchased the property in her sole name and is the only party shown on the legal title (title deeds) but James contributed £50,000 to the purchase price then James would hold an equitable interest by way of a resulting trust, which is explained later in this chapter. Nicola, however, would be the only person entitled to sell or transfer the legal title of the property, unless James obtains an order from the court.

Figure 1.1 shows how legal and equitable owners can be different people.

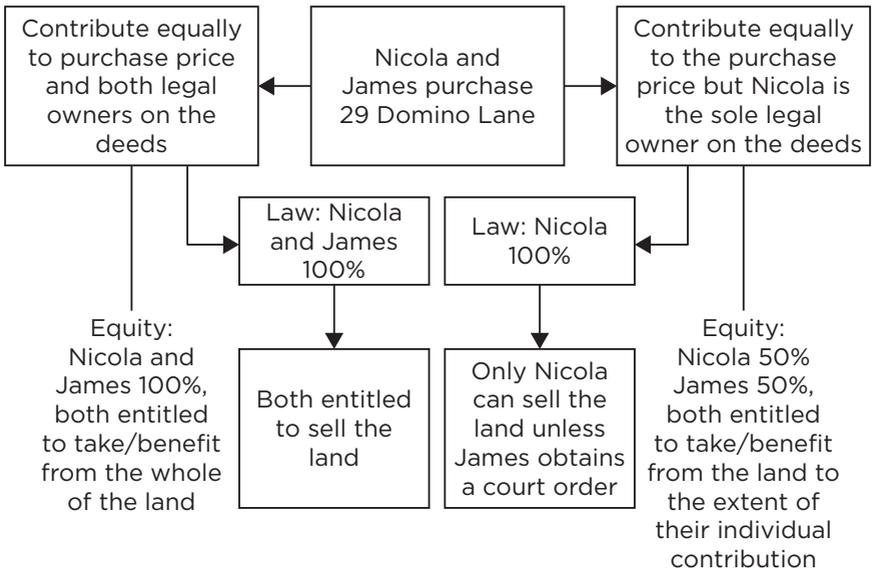


Figure 1.1: Understanding the difference between legal and equitable owners

To fully understand this principle, the next important consideration is exactly how individuals can acquire or transfer these legal estates, and how they can acquire legal and equitable interests in land.

HOW TO ACQUIRE AND TRANSFER LEGAL ESTATES IN LAND

There are now only the two legal estates that we have already mentioned, those being freehold and leasehold. Any other type of interest in land would be considered an equitable interest.

The most common way in which someone can acquire the legal estate in land would be by one individual purchasing land from another individual or inheritance under a Will, a transfer from parents to their children or by other means such as adverse possession, which is outside the scope of this revision guide.

Regardless of the way in which this legal estate can be acquired or transferred, it must be created by a **deed**.

Key term: deed

The Law of Property (Miscellaneous Provisions) Act 1989 (L(MP)A) sets out the formal requirements of a deed, which are:

- It is clear on the face of it that it is intended to be a deed.
- It is validly executed as a deed by the parties that are subject to it.

For a legal estate, this deed must also be registered with HM Land Registry to be valid, but we shall consider that in greater detail in **Chapter 4**.

HOW TO ACQUIRE AND DISPOSE OF LEGAL AND EQUITABLE INTERESTS IN LAND

Determining how to create a legal estate is somewhat straightforward, but there is a greater level of complexity when considering how to determine the validity of legal and equitable interests in land.

Legal interests in land

There are currently four legal interests in land. These are:

- easements (**Chapter 6**)
- legal mortgages (**Chapter 8**)

- a rentcharge, which is paid by the landowner of a freehold estate to a third party who normally has no other interest in the property. These have changed significantly since the introduction of the Rentcharges Act 1977, which looks to extinguish all rentcharges by 2037.
- rights of entry, this could be to a third party to legally take or resume possession of a property, such as if a tenant has breached the terms of a lease.

As with legal estates, the creation and disposal of legal interests in land is quite straightforward and there must be a deed which meets the requirements of LP(MP)A 1989. This would also need to be registered with HM Land Registry to hold its legal status.

Figure 1.2 sets out the two legal estates and the four legal interests which can currently be created.

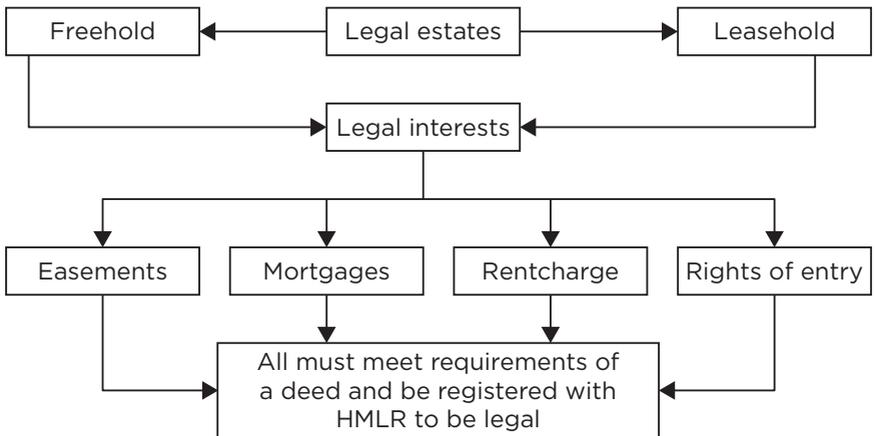


Figure 1.2: Legal estates and legal interests

The creation and disposal of equitable interests is more complicated.

Equitable interests in land

Should there be a failure to fully comply with the requirements to create a legal interest in land, such as not registering this with HM Land Registry, or if you have an interest which does not fall within the list shown in **Figure 1.2**, then that particular interest will take effect in equity only. The most common of these are:

- restrictive covenants
- beneficial interests under a trust
- estate contracts.

Restrictive covenants

These are considered in greater detail in **Chapter 7** and are rights over land by third parties who have no legal interest or ownership in the land. They are a promise by one landowner to another specifying certain things that they will not do upon the land. Some examples include:

- not keeping poultry or chickens on the land
- not altering the structure of the property without consent
- not using the property for any trade, business or other profession
- not keeping caravans or boats on the property.

Some of these covenants are a sign of the historical origins of how land was transferred, as the landowners would have tried to prevent certain competition within rural or farming communities; others are a sign of larger, modern developments where builders try to preserve the aesthetics of a housing estate and as such are part of a **building scheme**, which is a form of restrictive covenant.

Key term: building scheme

A restrictive covenant that forms part of a building scheme simply means all the properties will be subject to the same restrictive covenants. There is a specific system of enforcement that requires every property to be both servient land and also dominant land for the other properties. This allows for mutual enforcement of these restrictive covenants between the landowners. These are terms that we will explore in greater detail in **Chapter 7**.

Beneficial interests under a trust

Whilst it is common for a trust of land to be made expressly between the parties, by way of a deed, this interest can also arise as an equitable interest and can be imposed in law in three ways:

- constructive trusts
- resulting trusts
- proprietary estoppel.

They all have the same basic principle, in that it is a claim by someone who believes they have a beneficial interest in the property, and they wish to try to override the legal ownership. However, both constructive and resulting trust can be implied by the court due to the actions of the parties, and proprietary estoppel acts as a defence to prevent one party going back on a promise or from taking advantage of another's misbelief about their own legal rights in a piece of land.

- *Constructive trusts* arise where one party, who is not a legal owner of the property, contributes substantially to the repayment of the mortgage or pays for some substantial improvements to the property. **Practice example 1.4** gives an example of how this could arise.

Practice example 1.4

Sarah purchases a property in her sole name for £275,000 and is the sole legal and equitable owner. Her mortgage repayments are £750 each month. After two years Georgina moves in with Sarah and starts contributing 50% to the mortgage payments each month; she also pays to renovate the house by contracting a single storey extension to the rear of the property and creating a large kitchen/diner/family room. The cost of this work amounts to around £50,000, which Georgina pays for using some inheritance. Sarah has spoken to Georgina about the property also being 'her house' and that everything is shared equally. Does Georgina have any interest in the property?

This is a very common scenario and there will be a plethora of case law which considers this exact issue. One of the most well-known cases is *Stack v Dowden* which is similar in nature to this example. Georgina does have grounds to show that a constructive trust has arisen due to the conduct of both her and Sarah. It is clear they both have a common intention, by their actions and words, to share the equitable ownership of the property and, as such, equity will assist Georgina here, in the event that Sarah tries to assert her legal rights in the property and tries to sell without making any contribution back to Georgina.

- *Resulting trusts* will only arise if one party has contributed to the purchase price of the property but is not a legal owner. **Practice example 1.4** shown above gives a very good example of how this equitable interest can arise.

Exam warning

You may receive a question asking which claim your client should make, either proprietary estoppel or constructive trusts, as those are the two which are very similar in nature. This is very difficult to answer without knowing the full context of the background between the parties, but generally, the preferred option for most parties would be a claim for a constructive trust, as the courts would usually look to provide relief to a claimant on the basis of what the parties

actually intended; whereas with proprietary estoppel, the relief is generally considered as a minimum to show justice has been served, and there can often be ongoing and complex familial connections when considering any award.

- *Proprietary estoppel* works to prevent one party going back on a promise or from taking advantage of another's misbelief about their own legal rights in a piece of land. For example, a landowner may encourage a third party to spend money or effort on the land and makes assurances or promises to this person which makes them believe they will eventually gain some right or benefit to the landowner's property. So, the basic elements of a claim are that a promise was made, there was reliance upon that promise, and someone acted to their detriment. **Practice example 1.5** explains how this could arise.

Practice example 1.5

Stephen worked together on the family farm with his father, Roger, for most of his life. He was paid a wage as an adult which was more or less in line with the drawings taken by Roger at that time. The farm was owned by Roger and Stephen's uncle, Geoffrey, but there had been repeated promises made to Stephen that he would inherit Roger's share in the farm. A disagreement arose between Stephen and Roger which resulted in the partnership being dissolved, and Stephen made a claim in proprietary estoppel seeking that he would inherit Roger's share of the farm. What would the court consider in this case?

These are the very brief facts of *Moore v Moore* [2018]. Stephen was successful in his claim based on the promises made to him throughout his lifetime, with some rather complex financial settlements for the care of his father. Proprietary estoppel cases are heavily dominated by those within farming industries and can be very difficult for the courts to deal with.

Estate contracts

This is very much interlinked with conveyancing practice, which is outside the scope of this revision guide, but it is still necessary to be aware of this as a possible equitable interest.

An estate contract will arise at a very specific point in a conveyancing transaction, which is when the parties have exchanged contracts. This is the point at which the transaction becomes legally binding between the parties.

There can sometimes be a delay between this exchange stage and the actual completion taking place. During this time the new owner does not legally own the property but is still legally obligated to pay for the property on the completion date. This could be a precarious position for the new owner, as they could have paid a substantial amount of money at this point without having anything tangible to show for it. As equity aims to achieve fairness, the new owner obtains an interest in the land which is known as an estate contract. It simply confers the right to acquire that piece of land on the agreed completion date.

Figure 1.3 sets out the equitable interests.

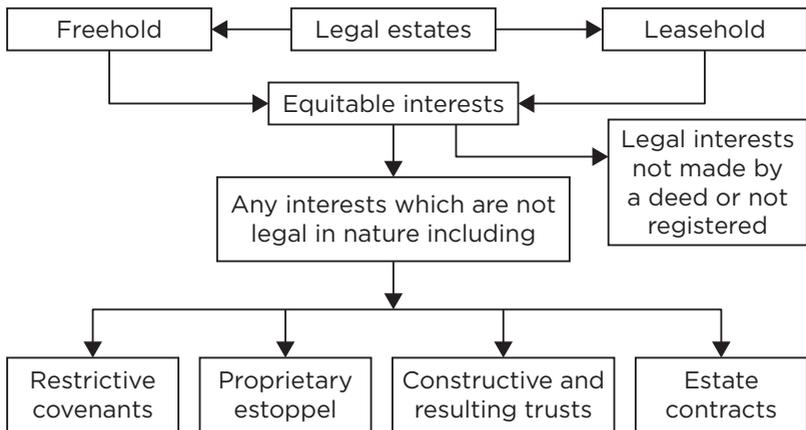


Figure 1.3: Equitable interests in land

Whilst the formation of these equitable interests can be quite subjective, it will be necessary to understand whether a new purchaser of that land would be bound by these interests. This will ultimately depend on whether the land in question is registered or unregistered, which we will consider in further detail in **Chapter 2** and **Chapter 3**.

■ KEY POINT CHECKLIST

This chapter has covered the following key knowledge points. You can use these to structure your revision around, making sure to recall the key details for each point, as covered in this chapter.

- What is land? This will include a consideration of what real property is, such as a house built on a piece of land which will be immovable, or only removed by being destroyed. This encompasses many different aspects, such as mines and minerals, airspace, corporeal hereditaments (tangible property) and incorporeal hereditaments (third party rights).

- You will need to understand the important distinction between fixtures, something that forms part of the land, and chattels, which can be removed from the land.
- Fixtures and chattels may also include consideration of the degree of annexation, so whether it is fixed to the land and only removable by being destroyed, or the purpose of annexation, so whether it is there simply as a temporary improvement.
- Remember that there are only two legal estates in land, those are freehold and leasehold.
- You will need to know the distinction between legal and equitable ownership. Legal ownership means the person who has the right to sell the property and equitable ownership means who has a right to take money from the land, such as the proceeds of sale.
- How to acquire and transfer legal estates in land, which is quite straightforward and any attempt to sell or transfer a legal estate must meet the requirements of a deed registered with HM Land Registry to be valid.
- How to acquire and dispose of legal and equitable interests in land, including knowing which interests are legal, such as easements and mortgages, and which are equitable, such as restrictive covenants and trusts.
- How to dispose of these legal and equitable interests in land will be considered in greater detail in **Chapter 2** and **Chapter 3**.

■ KEY TERMS AND CONCEPTS

- real property (**page 3**)
- personal property (**page 3**)
- fixtures (**page 6**)
- chattels (**page 6**)
- tenure (**page 7**)
- estate in land (**page 7**)
- legal ownership (**page 8**)
- equitable ownership (**page 8**)
- building scheme (**page 12**)

■ SQE1-STYLE QUESTIONS

QUESTION 1

A client, who owns a large area of undeveloped land, contacts a solicitor as he has discovered reserves of coal on his land. He asks the solicitor to

send him a copy of his title deeds as he has been informed by a friend that he can sell the coal unless there is an agreement with the Coal Authority confirming that they own this.

Which of the following best represents the legal position?

- A. For the Coal Authority to have any claim on this coal they need to have a specific legal agreement registered against the title deeds.
- B. There is no requirement for a specific agreement from the Coal Authority, the client is entitled to sell any coal he finds and can dig to any level he likes as he owns everything above and below his land.
- C. The client cannot extract this coal himself. He must ask the Coal Authority to do this for him. If they do they will cover all costs and give him 50% of the profits by way of compensation.
- D. There is no requirement for a specific agreement from the Coal Authority, the client is entitled to sell any coal he finds but he can only dig to 300m below the surface level.
- E. The client cannot extract this coal himself. All reserves of coal are owned by the Coal Authority who must grant licences for exploration and extraction of the same.

QUESTION 2

A client has recently purchased a property. Upon moving in, he has realised that the previous owners have removed all light fittings and light switches and replaced these with ones of far inferior quality. They have also removed a microwave that was integrated into the fitted kitchen unit and have caused damage to the surrounding cupboards when the microwave was removed. The client has spoken to the previous owner directly who has informed him that these items were their personal possessions, and they were told by their legal adviser to remove them.

How should the solicitor advise the client when considering these specific items?

- A. Whether these items are classed as fixtures or chattels will depend upon the degree of annexation and the purpose of annexation. If there is any damage caused when removing these, they will be classed as fixtures; if, however, there is no damage, but the item

was merely a temporary improvement then it will be a chattel. It is likely the client will only be able to make a claim for the microwave.

- B. If the previous owner received advice from their legal adviser to remove these items then there is nothing the client can do, even if the advice is incorrect.
- C. These items are all classed as chattels and the previous owner is entitled to remove them. There is nothing further the client can do.
- D. These items are all classed as fixtures. The previous owner should not have removed them. The client must make a claim in the small claims court to recover any money lost in replacing these items.
- E. Whether these items are classed as fixtures or chattels will entirely depend upon the degree of annexation only. If there is any damage caused when removing the items, they will all be classed as fixtures. The client will be able to make a claim for all items that have been removed.

QUESTION 3

A client has sought advice in respect to legal ownership of the property that she lives in with her husband. She has received a copy of the title deeds and it is only her husband who has legal ownership of the property. The client informs her solicitor that she was the one who paid the full purchase price for the property at the time and is now concerned that she will have to leave the property should her husband die before her and that she will have no way of getting her money back. She is now approaching her 80th birthday and wishes to make sure all her financial affairs are in order before she updates her Will.

Which of the following best represents the client's legal position?

- A. The client is not shown as a legal owner on the title deeds and as such she does not have any legal ownership or entitlement to benefit from the property.
- B. Regardless of whether the client is shown on the title deeds, she can clearly show that she has legal ownership in the property as she has paid for the purchase of the property in full. The property will automatically transfer to her on her husband's death.
- C. As she has contributed to the purchase price the client will hold an interest in the property. Her husband owns the whole of the legal ownership but holds this on trust for the client by way of a resulting

trust. The client is entitled to 100% of the equity if the property is sold.

- D. As she has contributed to the purchase price, the client will hold an interest in the property. However, as she is married this will be limited to a 50% interest. If the client's husband dies, the property will be sold, and she will receive 50% of the equity.
- E. As she has contributed to the purchase price, the client will hold an interest in the property. The client's husband owns the whole of the legal ownership but holds this on trust for her by way of a constructive trust. The client is entitled to 100% of the equity if the property is sold.

QUESTION 4

A Building Society has sought legal advice on their interest in 84 Lower Mast Farm, upon which they were granted a mortgage five years ago. The legal owners have defaulted on the mortgage and the Building Society wish to seek possession of the property. They have obtained a copy of the title deeds which do not show their legal interest. It has transpired that whilst the Deed was correctly executed, it was never registered with HM Land Registry.

Which of the following best represents the legal position of the Building Society?

- A. For a legal interest in land to be valid, there must be a valid deed and it must be executed. If this has happened then there is nothing for the Building Society to worry about and their legal interest is protected.
- B. For a mortgage to be a valid legal interest, there must be a valid deed, it must be executed and it must also be registered with HM Land Registry to take effect as a legal interest. If it has not been registered in this way then the mortgage will be an equitable one only. The Building Society can still assert their rights in full if they register a notice against the title deeds.
- C. For a mortgage to be a legal interest it must be executed and it must also be registered with HM Land Registry to take effect as a legal interest. If it has not been registered in this way then the Building Society have no way of enforcing any of their rights.
- D. As the Building Society has contributed towards the purchase price, they can clearly demonstrate that they have an equitable interest in the land by way of a constructive trust.

- E. For a mortgage to be a valid legal interest, there must be a valid deed and it must be executed and they must register a restriction in the property register of the title deeds. If these have been satisfied then there is nothing for the Building Society to worry about and their legal interest is protected.

QUESTION 5

A client has sought advice on the validity of an agreement made with a neighbour over the purchase of a small strip of the neighbouring land. This was a verbal agreement between them, and the neighbour told the client that the land would be left to him in his Will. The neighbour has recently died and the client has been made aware that there is no Will and the entire neighbouring estate, including the strip of land promised to him, has been inherited by the neighbour's family. They are now refusing to uphold the verbal agreement.

Does the client have any demonstrable interest in the neighbouring land?

- A. As the neighbour had verbally promised this land to the client there was no need for a deed. As long as the parties were in agreement with the transaction then it will be valid and the client can enforce this agreement against the neighbour's family.
- B. As the neighbour had verbally promised this land to the client then there was no need for a deed and the client can rely on the doctrine of promissory estoppel to enforce this agreement against the neighbour's family.
- C. As the neighbour has verbally promised this land to the client then there would be no legal estate demonstrated unless a deed has been signed and it has been registered with HM Land Registry. That would have then transferred the land from the legal ownership of the neighbour to the client. As this has not happened and the land has not been left in a Will then the client will have no claim against the neighbouring estate.
- D. As the neighbour has verbally promised this land to the client then this would be a legal interest in the land by way of right of entry. The client has the right to use the land for as long as he wishes in accordance with the agreement made.
- E. As the neighbour has verbally promised this land to the client then this would be an equitable right by way of a constructive trust. The client has the right to use the land for as long as he wishes in accordance with the agreement made.

■ ANSWERS TO QUESTIONS

Answers to ‘What do you know already?’ questions at the start of the chapter

- 1) The correct answer was false. Mines and minerals have been deemed by statute to be the property of the Crown. Other corporeal hereditaments, such as plants and animals can form part of the land, except for water, but landowners can be granted rights to take from the water.
- 2) The correct answer was D. Airspace is only included in the land to such a height as is necessary for the ordinary use and enjoyment of the land. Whilst that can be subjecting in nature, it is not expected that any landowner will need to use airspace to the height that aircraft will use and as such it is not considered trespass.
- 3) The correct answer was true. A general rule is that if you need to destroy or damage an item to remove the same then it would be considered a fixture and form part of the land. Where there is any ambiguity over this then the courts would look at the degree and purpose of annexation to determine whether something is a fixture or chattel.
- 4) The correct answer was A. They are both named on the title deeds and so both hold the legal estate in the land. They also both contributed equally to the purchase price and as such they are both entitled to the equity from the land and so hold the equitable interest together.
- 5) The correct answer was false. Restrictive covenants are only ever going to be equitable interests in land. They may be permanently binding on future owners, but that does not in itself make it a legal interest.

Answers to end-of-chapter SQE1-style questions

Question 1:

The correct answer was E. This is because despite ‘mines and minerals’ being included within the statutory definition of land, all mines were privatised in 1994 and as such, statute now confirms that reserves of coal will not belong to individual landowners. Options A–D are all incorrect as they suggest that the client can extract the coal, either with permission or in the absence of any legal agreement registered against the title deeds.

Question 2:

The correct answer was A. This is because whether an item is a fixture or a chattel is usually fairly straightforward, but where there

is any ambiguity you need to consider the degree of annexation and the purpose of annexation. Here, the microwave was part of a fitted kitchen and damage has been caused when removing it, meaning it is a fixture. The light fittings and switches, however, are unlikely to have caused damage when being removed and so the purpose of annexation would be considered; here it would seem obvious that they were fitted to create a temporary improvement and so would be a chattel. Option B is incorrect as if there has been incorrect legal advice given then the client may well have a private action against that solicitor and so it is incorrect to say there is nothing he can do. Options C, D and E are incorrect as they do not consider that one of the items is a fixture and the other is a chattel.

Question 3:

The correct answer was C. This is because this is a clear example of a trust, which provides an equitable right to the party who does not have legal ownership of the property. Option A is incorrect as whilst it is true that the client does not have legal ownership, this also states that she has no entitlement to benefit from the property, which is incorrect. Option B is incorrect as legal ownership of property does not transfer automatically. There must always be a deed registered with HM Land Registry. Option D is incorrect as this states that the client's interest is limited to 50%; as she contributed 100% of the purchase price then it is not limited to 50% simply due to their marriage. Option E is incorrect as this refers to a constructive trust. The distinction between the resulting and constructive trust is that this was a direct contribution to the purchase price, which makes this a resulting trust.

Question 4:

The correct answer was B. This is because this is a clear example of the principles of fairness that equity provides. It would be unjust for the mortgagee to lose their investment due to no fault of their own. The requirements have not been met for this to be a legal mortgage and so it will automatically fall to an equitable interest. They do need to register a notice against the title deeds, which is considered further in Chapters 2 and 8. Options A and E are incorrect as legal interests are only valid if they are made by a deed and registered. Option C is incorrect as it states that the Building Society have no way of enforcing their rights; however, if they register a notice against the title deed, they can enforce their rights. Option D is incorrect as the grant of a mortgage does not confer an equitable interest upon a mortgage lender by way of a constructive trust.

Question 5:

The correct answer was C. This is because there is no legal estate here as there is no deed and it has not been registered. The neighbour could have left the land in a Will as landowners are entitled to transfer land in this way, but as he has not done this then the rules of intestacy will apply, and the client has no claim on the estate on a verbal promise. Option A would not be the best answer since it is notoriously difficult to demonstrate a valid verbal agreement. Option B is incorrect as you do not have enough information to demonstrate that there is promissory estoppel here, which requires a person to act to their detriment on the promise of another. We do not know that the client has acted to his detriment. Option D is incorrect as rights of entry are legal interests and so must be made by a deed. Option E is incorrect as you would need to demonstrate that the client has made a significant contribution to the upkeep or other payment on the land. You do not have this information to be able to select this as an answer.

■ KEY CASES, RULES, STATUTES AND INSTRUMENTS

The SQE1 Assessment Specification does not require you to know any case names, or statutory materials, for the topic of land law. Despite this, you may find it useful to become familiar with these statutes:

Law of Property Act 1925

Law of Property (Miscellaneous Provisions) Act 1989.