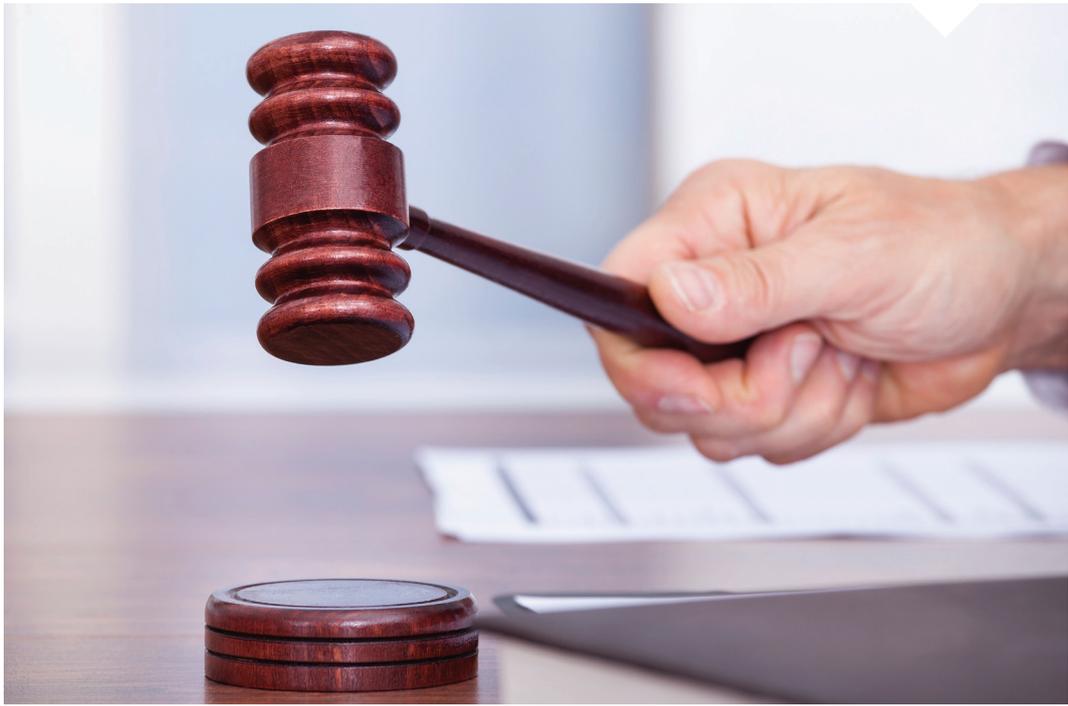


Technical Award in
Real Property Auctioneering



MOL Sample Workbook



propertymark
QUALIFICATIONS

INTRODUCTION TO THE SAMPLE WORKBOOK

This sample workbook is a guide to the learning materials for the Technical Award in Real Property Auctioneering, written and provided by MOL on behalf of the National Federation of Property Professionals Awarding Body (NFOPP AB).

The full range of property qualifications available from MOL/NFOPP AB is as follows.

Award in Introduction to Residential Property Management Practice (Level 2)

This is an introductory qualification offering basic knowledge in the most important subject areas related to residential letting and property management.

- Unit 1 General Law, Health, Safety and Security in Relation to Residential Letting and Property Management (Level 3)
- Unit 2 Customer Service within the Property Sector
- Unit 3 Introduction to Residential Property Letting Practice
- Unit 4 Introduction to Residential Property Management Practice

Award in Introduction to the Sale of Residential Property (Level 2)

This is an introductory qualification offering basic knowledge in the most important subject areas related to the sale of residential property.

- Unit 1 General Law, Health, Safety and Security in Relation to the Sale of Residential Property
- Unit 2 Customer Service within the Property Sector
- Unit 3 Regulations Relating to the Sale of Residential Property
- Unit 4 Practice Relating to the Sale of Residential Property

Technical Award in Residential Letting and Property Management (Level 3)

This programme is designed as an introduction to the knowledge and understanding required by those working, or aspiring to work, in residential letting agency.

- Unit 1 General Law, Health, Safety and Security in Relation to Residential Letting and Property Management
- Unit 2 Legal Aspects of Letting and Management
- Unit 3 Residential Property Letting Practice
- Unit 4 Residential Property Management Practice

Technical Award in the Sale of Residential Property (Level 3)

The Technical Award in the Sale of Residential Property is designed as an introduction to the knowledge and understanding required by those working, or aspiring to work, in residential estate agency or new homes sales.

- Unit 1 General Law, Health, Safety and Security in Relation to the Sale of Residential Property
- Unit 2 Law Relating to Residential Property Sales
- Unit 3 Practice Relating to Residential Property Sales
- Unit 4 Property Appraisal and Basic Building Construction/Defects

Technical Award in Commercial Property Agency (Level 3)

The Technical Award in Commercial Property Agency is designed as an introduction to the knowledge and understanding required by those working, or aspiring to work, in commercial property agency.

- Unit 1 General Law, Health, Safety and Security in Relation to Commercial Property Agency
- Unit 2 Practice and Law Relating to Commercial Property Agency
- Unit 3 Law Relating to Commercial Property
- Unit 4 Commercial Property and Business Appraisal and Basic Building Construction

Technical Award in Real Property Auctioneering (Level 3)

This programme is designed as an introduction to the knowledge and understanding required by those working, or aspiring to work, in estate agency where auctioneering is an important part of the work of the agency.

- Unit 1 General Law, Health, Safety and Security in Relation to Real Property Auctioneering
- Unit 2 Law Relating to Real Property Auctions
- Unit 3 Real Property Auctioneering Practice and Procedures
- Unit 4 Property Appraisal and the Auction Process

Technical Award in Chattels Auctioneering (Level 3)

This programme is designed as an introduction to the knowledge and understanding required by those working, or aspiring to work, in chattels auctioneering.

- Unit 1 Health and Safety, Security and General Law Relating to Chattels Auctioneering
- Unit 2 Law Relating to Chattels Auctions
- Unit 3 Chattels Auctioneering Practice and Procedures
- Unit 4 Chattels Appraisal and the Auctioneer's Duties and Liabilities

Technical Award in Residential Inventory Management and Practice (Level 3)

This programme covers the law and practice of letting agency and inventory management in England and Wales.

- Unit 1 General Law, Health, Safety and Security in Relation to Residential Inventory Management and Practice
- Unit 2 Legal Aspects of Residential Inventory Management and Practice
- Unit 3 Residential Letting and Property Management
- Unit 4 Residential Inventory Management and Practice

Technical Award in Residential Tenancy Deposit Protection and Management (Level 3)

This programme is designed as an introduction to the knowledge and understanding required by those working, or aspiring to work, in residential letting agency and who will be dealing with tenancy deposits.

- Unit 1 General Law, Health, Safety and Security in Relation to Residential Letting and Property Management
- Unit 2 Legal Aspects of Letting and Management
- Unit 3 Handling, Protecting and Processing Residential Tenancy Deposits
- Unit 4 Returning Residential Tenancy Deposits and Dispute Resolution Procedures

Certificate (Level 4)

The Level 4 Certificate programmes are designed for more experienced people working within agency such as senior negotiators, managers and principles. The full certificate has 8 units, but the first two are carried forward from the relevant technical award. There are four additional technical units specific to each pathway, and two common office/people management units.

The common management units are

- Unit 7 Introduction to Office Management
- Unit 8 Advanced Office Management (Level 5)

The two pathways and their technical units are as follows.

Certificate in Residential Letting and Property Management

- Unit 3 Legal Aspects Relating to Residential Letting and Management
- Unit 4 Practice Relating to Residential Property Management
- Unit 5 Appraisal and Residential Property Letting Practice
- Unit 6 Applied Law Relating to Residential Letting and Management (Level 5)

Certificate in the Sale of Residential Property

- Unit 3 Legal Aspects Relating to Residential Estate Agency
- Unit 4 Practice Relating to Residential Estate Agency
- Unit 5 Market Appraisal, Value and Inspection Relating to Residential Estate Agency
- Unit 6 Building Design and Defects for Residential Estate Agency (Level 5)

Technical Award in

REAL PROPERTY AUCTIONEERING

Unit 1

**General Law, Health, Safety and Security in
Relation to Real Property Auctioneering**

Produced for



propertymark QUALIFICATIONS

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INTRODUCTION

This unit acts as a basic introduction to the Technical Award in Real Property Auctioneering. It covers issues of health and safety and security, both within your workplace (ie a regular estate agency office with an auctioneering department) and also outside your office, for example when you are showing potential buyers around properties for sale, or at the auction venue.

It then moves on to consider some basic aspects of general law which impact on the provision of estate agency services and auctioneering. It covers basic land law and finishes with some key facts about discrimination, data protection and money laundering that are useful within an estate agency and auctioneering context.



LEARNING OBJECTIVES

Having completed this unit you will know and understand

- basic concepts about the Health and Safety at Work etc Act 1974 (HASAWA) and other security issues
- how this relates to yourself and others within the workplace and outside when dealing with appraisals and viewings and at the auction venue
- safety and security issues on properties, including dealing with keys and property information
- basic facts about the legal system in England and Wales
- basic land and property law
- basic contract law dealing with offer, acceptance and consideration
- key facts about the law of torts, particularly concerning negligence, occupiers' liability and vicarious liability
- the law on discrimination covering sexual, racial, disability and age discrimination
- an outline of the Data Protection Act 1998
- the regulations concerning money laundering
- the requirements for taking deposits at the auction sale

SECTION 3

Basic Land Law

Land law is a wide-ranging subject area. We will look at specific aspects of land law and will concentrate on areas that estate agents/auctioneers come into contact with, especially those areas that may have an effect on market appraisals of residential property.

The areas as an estate agent/auctioneer you to need to understand are

- the legal definition of land
- the meaning of tenure
- the two legal estates in land

You should also have some understanding of legal and equitable interests in land that are relevant to your work.



LEARNING OBJECTIVES

Having completed this section you will know and understand how to

- explain the structure and application of land law
- explain the meaning of tenure
- describe legal estates and legal and equitable interests

3.1 THE MEANING OF TENURE

The law of tenure deals with the way in which land is held.



SELF CHECK QUESTION 1

Write down what you think is meant in law by the word 'land'.

Compare your answer with the one given at the end of this section.

The **Law of Property Act 1925** gives a definition of 'land' as

... including ... buildings or parts of buildings ...and other corporeal hereditaments; also a rent, and other incorporeal hereditaments, and an easement right, privilege, or benefit in, over, or derived from land ...

What this means in plain English is that land involves not just the surface of the earth, but anything which is built on the land, and any right attaching to the land such as a right of way. It also includes anything below ground level and anything above the ground.

In theory, as figure 3.1 shows, ownership of land in the law of England and Wales involves everything from the centre of the earth to the outer reaches of the atmosphere.

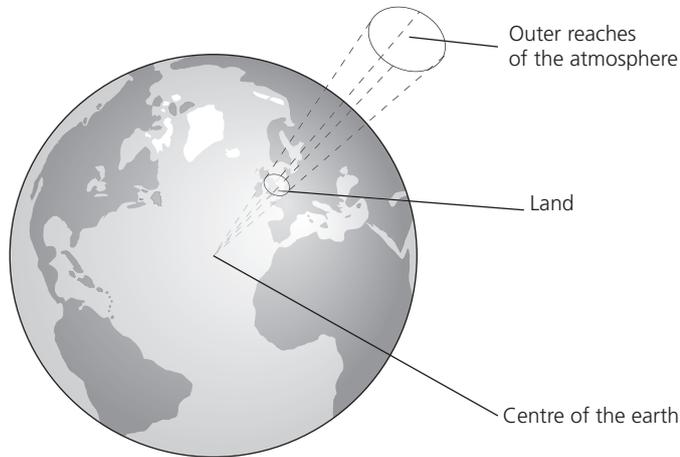


fig 3.1

As already stated, the definition in the Act gives the theory. In practice, Parliament has modified this so, for example, minerals below ground such as coal and oil, and gold and silver, belong to the state or the Crown. Also, aircraft are allowed to fly through the airspace above land.

3.2 THE TWO LEGAL ESTATES

Technically, all land is held by the Crown. Everyone else enjoys rights of ownership and possession by virtue of the Crown.



SELF CHECK QUESTION 2

Land can be held in two ways. Which two words are used to describe the two legal estates in land?

Compare your answer with the one given at the end of this section.

Since the Law of Property Act 1925, there have been two legal estates which may be held in land. These are

- **freehold** (also known as 'fee simple absolute in possession')
- **leasehold** (also known as a 'term of years absolute')

Another legal estate has now been added by the **Commonhold and Leasehold Reform Act 2002**. The new legal estate is **commonhold**.

Freehold

At common law, freeholders can in theory do anything they like with their land. In practice, this right is limited.



SELF CHECK QUESTION 3

Who or what do you think can restrict the freeholder's right to use the land as they wish? Write down any restrictions you can think of.

Compare your answer with the one given at the end of this section.

Leasehold

A leasehold is derived from a freehold interest (or another leasehold interest) and has two key elements, which are

- a fixed duration
- exclusive possession

The duration of the lease can be for whatever term is agreed between the freeholder (or other leaseholder) and the leaseholder.



SELF CHECK QUESTION 4

You may have come across leases for different lengths of time. Write down the length of the leases you have come across.

Compare your answer with the one given at the end of this section.

The term or length of the lease is infinitely flexible and, as stated earlier, can be for any period agreed between the freeholder and the leaseholder.

The **exclusive possession** given under the lease allows the leaseholder to exclude all others from the premises, including the freeholder, for the duration of the lease (as long as they comply with the terms of the lease). The lease is a contract (legal agreement) between the freeholder and the leaseholder.

Head Lease and Sub-Lease

As mentioned earlier, a leasehold is created from an existing freehold interest. It is also possible to create a lease from an existing leasehold interest.

As you can see from figure 3.2, the original leaseholder would have the head lease, and the newly created lease would be a sub-lease. Any other leases that are created would also become sub-leases.

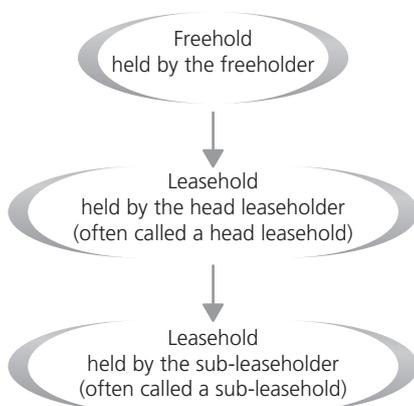


fig 3.2

Two important elements here are that

- each newly created sub-lease will be for a shorter period than the previous one
- during the period of tenancy, the tenant occupier will have the same powers as an owner would, subject to the terms of the lease, which means that during the lease term they have exclusive possession and can exclude all others. So, in the case of a sub-leaseholder they can exclude the head leaseholder and the freeholder

Commonhold

This is a system which will allow a number of units to share a freehold, for example a development of flats or a mixed development of commercial and residential uses. Previously, such developments needed to have leasehold units. It is, therefore, a variation of a freehold.

3.3 LEGAL AND EQUITABLE INTERESTS IN LAND

It is possible, while owning a property, that others may have certain rights over it. These are called 'interests', and can be legal or equitable (as derived from common law).

Legal interests are listed in the Law of Property Act 1925, but we are particularly interested in one of the legal interests listed – **easements**.

Of the equitable interests that can exist, we are particularly interested in covenants and especially **freehold covenants**.

Easements

An easement is a right over land. The person who has the benefit of the easement may have the right to use the land of another, which may as a consequence restrict the use of the land of another in some way.

Common examples of easements include

- rights of way, such as a right to have access over adjacent land
- rights of light, such as a right that a property will not obstruct the natural passage of light to a neighbour's home
- rights of support, for example the right for a first floor flat to expect support from the flat beneath
- rights of water, for example the right for a property to have access to a water supply running through neighbouring land or extract modest amounts of water from a stream

There must be two pieces of land in different ownership for an easement to arise. They are

- land which enjoys the right over another person's land (this is called the dominant tenement)
- land over which the easement is exercised (this is called the servient tenement)

Easements can be expressly granted as easements, in which case the written document will refer to an easement. Alternatively, an easement may arise because someone has used the land of another

- uninterrupted
- without force
- without secrecy
- without permission

for an extended period of time. As a minimum this needs to be 20 years, but it will need to be 40 years if it is claimed an oral permission was given. (Note that if, at any time, written permission was ever given to occupy land or use it in some way, no right to an easement can be established.)

Figure 3.3 should help to explain what an easement is.

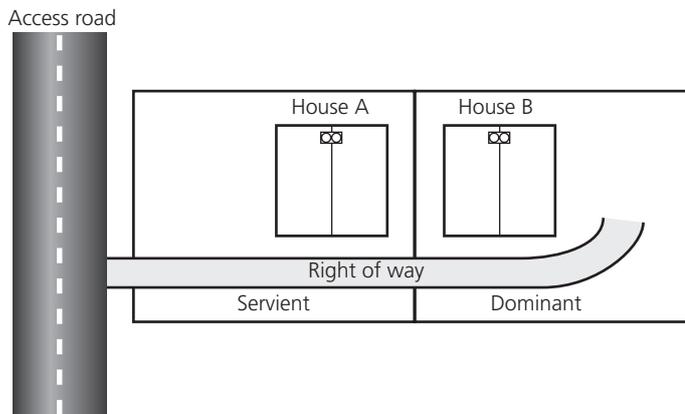


fig 3.3

House B benefits from an easement, in this case a right of way from the access road across the land of house A.



SELF CHECK QUESTION 5

Study figure 3.4. Which section of the drain needs an easement? Explain why.

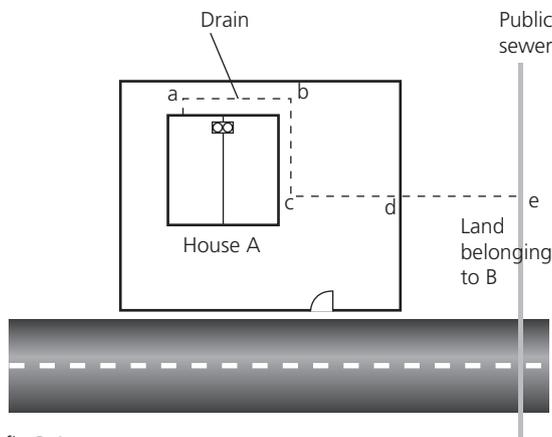


fig 3.4

Compare your answer with the one given at the end of this section.

Because easements are legal interests attaching to the land, they are passed from one owner to the other. The existence of an easement may have valuation consequences for the land affected by the easement. For example, the existence of a right of way across the garden of a house may be undesirable and reduce the value of the property, equally the benefit of an easement may increase the value of the property.

Freehold Covenants

We said earlier that an easement is a legal interest and gives the owner of the land benefiting from the easement the right to **do something** on or over the land of someone else.

A freehold covenant is an equitable interest because, unlike an easement, it owes its origins to equity. A freehold covenant can be restrictive (or negative) or can be positive. It allows someone with the benefit of the freehold which is restrictive to **stop** the owner of other land from using that land in some way.



SELF CHECK QUESTION 6

Can you think of a common freehold restrictive covenant that could apply to residential property? Compare your answer with the following text.

A common freehold restrictive covenant in residential property is a restriction not allowing business use of the property. Another would be not to build on land, but to keep it open and use only as, say, a garden.

You may also find freehold positive covenants which commit the owner of land to actually do something, such as a positive covenant to fence boundaries. Positive covenants do not automatically pass with the land when a property is sold as they tend to be agreements between individuals. However, restrictive covenants will pass from one owner to the next in the same way that easements pass from one owner to the next.

Freehold covenants may have an influence on market appraisals. For example, you could be asked to appraise a house with a large plot of land and the existing building to one side of the land, as shown in figure 3.5.

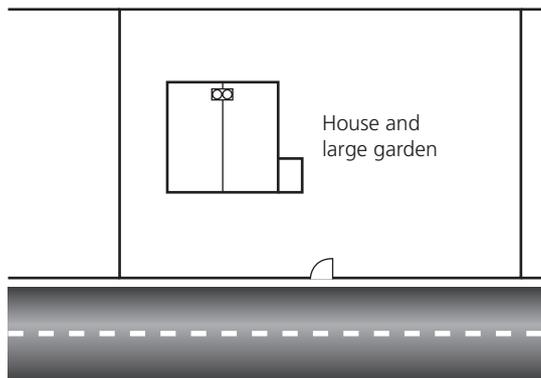


fig 3.5

You may think it is possible to develop the side garden by building another property. This is likely to increase the value of the house. However, if there is a freehold restrictive covenant saying the plot can only have one detached dwelling, you will not be able to build another property and the value will not increase.



SELF CHECK QUESTION 7

Which of the following are restrictive covenants and which are not?

- a) *A covenant not to park a caravan or truck/lorry on the site of the property*

- b) *A covenant to paint the house every two years*

- c) *A covenant not to build more than one house on a plot*

d) *A covenant not to build more than 10 houses on a development site*

e) *A covenant to build a boundary wall and then maintain it*

f) *A covenant not to build higher than eight metres above ground level*

Compare your answers with those given at the end of this section.



Summary

Having completed this section, you should now know that

- tenure is the way land is held legally
- land includes buildings and anything in, on or over the land
- certain things are excluded, such as some minerals including coal, oil, gold and silver
- land can be held as freehold or leasehold estates and now a commonhold estate
- leasehold can be for any term or length of lease by agreement
- legal and equitable interests can be held in addition to the two legal estates
- an easement is a legal interest, eg right of way, right of light or right of support, which is passed on when land/property is sold
- a freehold restrictive covenant is an equitable interest stopping someone from doing something to land or property, and is passed on when land/property is sold
- easements and freehold covenants may affect value

If you are unsure about any of these areas, go back and re-read the relevant part(s) of the text.



REVIEW EXERCISE

Look at figure 3.6, then answer the following questions. The access road is used by cottage A, but belongs to the owner of Dingle Hall. The septic tank is owned by cottage A, but is located on the land of farmer B. Cottage A takes water from the spring and along the pipeline to the house. Cottage owner A wants to build a double garage at location X next to the greenhouse of house C. The greenhouse has been there for around 60 years.

- a) Mark on figure 3.6 all the easements likely to be enjoyed by cottage A and any covenants you think are appropriate.

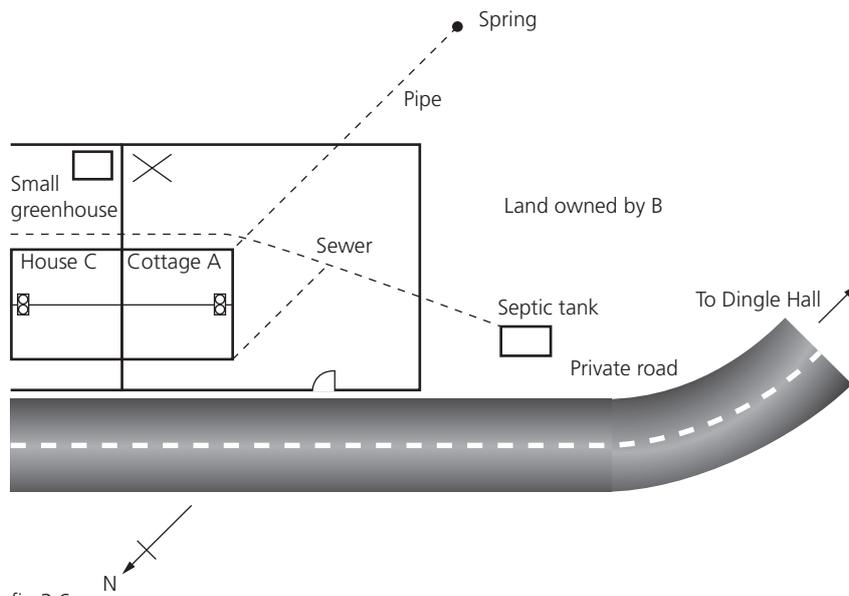


fig 3.6

- b) If A wants to build the garage, could C object? If C could object, what reason could C give for objecting?

Suggested answers to the review exercises are given at the end of this unit.



ANSWERS TO SELF CHECKS

QUESTION 1

You might have said the surface of the earth where plants, trees and grass grow. You might also have said the buildings constructed on the land. Both of these are correct, but in law 'land' is even more than this.

QUESTION 2

You should have said freehold and leasehold. These are the two common names for the legal estates that exist.

QUESTION 3

Parliament has restricted a freeholder's right to do what they want with their land. Parliament, through various Acts, has imposed legal controls on the use of land. These include such things as planning controls and laws of nuisance. For example, making too much noise at a property is a nuisance. Neighbours could complain and action could be taken to reduce or eliminate noise levels.

QUESTION 4

You may have said almost anything, but the common leasehold terms (or lengths) are

- weekly (such as council tenants)
- monthly (such as residential tenants of private landlords or housing associations)
- six months (such as the typical minimum length for an assured shorthold tenancy of privately rented residential accommodation)
- one year (such as many agricultural tenancies)
- 10, 15, 20 or 25 years (including many leases on commercial premises such as your own offices)
- 99 or 125 years (common on long leases of residential property)
- 999 years (common on long leases of residential property in the north west and south of England)

QUESTION 5

House A will need an easement for section d-e of the drain as it then passes through the land belonging to B to connect to the public sewer.

QUESTION 7

Scenarios a), c), d) and f) are restrictive freehold covenants preventing the owners of land or property from doing something.

Scenarios b) and e) are positive freehold covenants requiring the owner of land or property to do something.

Glossary

civil law

law covering non-criminal activities between individuals and organisations

common law

law developed from custom, ie all law not enacted by Parliament

consideration

the legal term for the element of exchange (one of the essential elements of a legally binding contract). The consideration does not necessarily have to be money – it can be goods or property, for example. Also, the consideration does not have to reflect fair value

contract

an agreement recognised in law that can be enforced by the courts. It may be written, spoken, a mixture of written and spoken, or implied by the conduct of the parties involved. Contracts for the sale of property must be in writing and signed by all parties. They set out the agreed terms by which both the seller and the buyer are committed to proceed to completion

covenant

a promise or obligation, usually contained in a deed, made by one party to another (see also **positive covenant** and **freehold covenant**)

criminal law

law covering activities thought to be detrimental to the state or society

damages

a remedy under common law. The party awarded damages will be put in the same position as if the contract had been performed. Damages claimed have to be reasonable

direct discrimination

treating someone less favourably than another because of a protected characteristic

DSE

display screen equipment

easement

a right which someone may enjoy over another property, for example a right of way or right of light, or drainage rights. They are expressly created for particular purposes, such as having access to a neighbour's land in order to carry out repairs to your own property. Easements are passed on when land is sold

equitable

a matter derived from equity

equity

a system that fills the gaps in common law on the basis of what is fair. It has two main remedies – specific performance and injunctions

freehold

the highest legal estate that can be held in land, where the owner has permanent and absolute tenure and can dispose of the land as they wish. The owner can do anything they wish to with their own land, subject only to the rights of others, such as leaseholders' interests, rights of neighbours and statutory obligations, for example complying with Town and Country Planning Acts (see also **leasehold**)

freehold covenant

a promise or an obligation restricting the use of land or property, which is binding on subsequent owners, eg not using residential property for business use (see also **positive covenant**)

HASAWA

the Health and Safety at Work etc Act 1974

indirect discrimination

to apply conditions which put people with a particular protected characteristic at a disadvantage, compared with others who do not share that characteristic

injunction

a remedy under equity, where the court orders a party **not** to do a certain act

invitation to treat

an invitation by a seller to a buyer to negotiate over the price of a property

judicial precedent

a method of deciding a new case by referring back to decisions in old cases

leasehold

where a tenant is granted exclusive possession of land by the freeholder for a fixed period. One of the two legal estates that can be held in land (see also **freehold**)

legal

a matter based in law

legislation

laws contained in Acts of Parliament. Also known as statute law

market appraisal

advice given to a potential seller on the saleability, method of sale, recommended asking price and anticipated selling price of their property. A market appraisal will reflect the state of the market, the property (its accommodation and condition) and the seller's needs (financial needs and timescale)

negligence

a common tort, where an act breaches a duty of care and this causes damage, harm or loss

positive covenant

a promise or obligation which commits the owner of land to do something, eg to fence boundaries (see also **freehold covenant**)

private law

a branch of the law that deals with the relationship between individuals, and between individuals and corporate bodies, rather than the relations between these and the state, for example law of contract, tort, property

public law

a branch of the law that deals mainly with the duties and powers of the state itself, ie the relationship of government and local authorities with each other, and with us as individuals, for example constitutional law

specific performance

a remedy under equity, where a person who has breached a contract is made to fulfil the contract terms

statute law

laws contained in Acts of Parliament. Also known as **legislation**

subject to contract

when an offer is made to purchase a property 'subject to contract', all dealings are subject to the actual exchange of the contract itself. Nothing is binding on either the seller or the buyer until the contracts are exchanged

tenure

a collective term relating to the nature of the owner's title to a property, ie the way the land is legally held. This may be freehold, leasehold, or commonhold

tort

a legal wrong. The law of tort is the protection of certain interests of one person against certain types of wrongful conduct by another person

vicarious liability

where an employer is liable for the torts (wrongs) committed by an employee in the course of their employment

Reading List

For those of you who want to study further any sections of this unit, the following reading and reference list is suggested. This is not an exhaustive list and you will find other books, articles and references on the same topics.

When looking through books, articles and references, and when searching on the web, take care to check the date the material was created. This is particularly important for legal references where the law may change from time to time, but also applies to other areas.

If you are working in estate agency/auctioneering, you should always be aware of changes that take place in law or practice as these will affect the way in which you do your job. If you or your company belong to one of the professional bodies, they will usually keep their members up to date with changes that will affect their working practices.

Dictionary of Property and Construction Law, Jack Rostron (ed), Spon, London 2002

Law of Estate Agency, John R Murdoch, Estates Gazette, London 2009

RICS UK Residential Property Standards (Blue Book), 5th edition, RICS Books 2011 (frequently updated – last update August 2014)

Selling Residential Property, NAEA/PSNTO, 2002

You may also find it useful to check the following publications regularly for relevant articles

Estate Agency News

Estates Gazette

Negotiator Magazine (now part of Property Drum)

Property Professional

Useful Websites

citb.co.uk – Construction Industry Training Board (for health and safety publications)

equalityhumanrights.com – Equality and Human Rights Commission

gov.uk/government/organisations/department-for-communities-and-local-government – Department for Communities and Local Government

hmrc.gov.uk – HM Revenue and Customs

hse.gov.uk – Health and Safety Executive

ico.gov.uk – Information Commissioner's Office (for wider information on data protection)

jmlsg.org.uk – Joint Money Laundering Steering Group

legislation.gov.uk – (for Acts of Parliament)

naea.co.uk – National Association of Estate Agents

nava.org.uk – National Association of Valuers and Auctioneers

rics.org – Royal Institution of Chartered Surveyors



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