



Scottish Technical Award in
**Sale of Residential
Property**



MOL Sample Workbook



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QUALIFICATIONS

INTRODUCTION TO THE SAMPLE WORKBOOK

This sample workbook is a guide to the learning materials for the Scottish Technical Award in Sale of Residential Property, 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 can be found on the MOL and NFOPP websites. The full list of qualifications specific to Scotland is as follows.

Award in Introduction to Residential Property Management Practice (Level 5)

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 5)

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 6)

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 6)

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 Residential Inventory Management and Practice (Level 6)

This programme covers the law and practice of inventory management and also some aspects of residential letting and property management to set the context within which the inventory manager works.

- 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

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Certificate (Level 7)

The Level 7 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 8)

The 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 8)

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 8)





Scottish Technical Award in
SALE OF RESIDENTIAL PROPERTY

Unit 1

**General Law, Health, Safety and Security in
Relation to the Sale of Residential Property**

Produced for



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SECTION 3

Basic Land Law

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

The areas of land law that you as an estate agent need to understand are

- what is meant in law by 'land'
- the meaning of 'real rights'
- the distinction between ownership and other legal interests in land



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 real rights
- understand the different real rights that exist over land

3.1 THE LAW OF PROPERTY

Land law in Scotland is part of the general law of property, which is concerned with legal rights in all kinds of objects. However, because land is unique, special rules have developed which only apply to land. In recent years, there have been major reforms of Scottish land law by the Scottish Parliament.



SELF CHECK QUESTION 1

What do you think is meant in law by the word 'land'?

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



Heritable Property

Property in Scottish law is classified as either **heritable** or **moveable** property. The most important type of heritable property is land and things attached to and growing on land. This includes buildings.

Generally, all other types of property such as vehicles, furniture and money are moveable property.

A person who owns heritable property has a legal right of exclusive possession of that property, which runs from the centre of the earth to the outer limits of space. In theory, as figure 3.1 shows, the owner of land owns everything underneath it and everything above it.

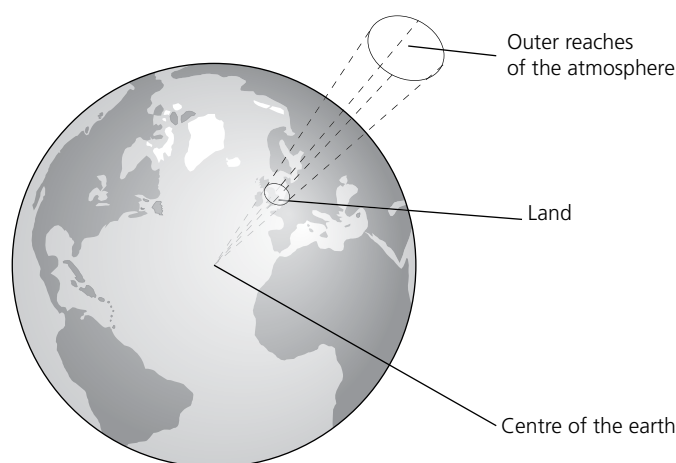


fig 3.1

Parliament has modified this legal theory to take account of practical matters. For example, aircraft are allowed to fly through the airspace above the land. Also, land can be split horizontally and vertically and owned separately. Minerals below ground may belong to someone other than the owner of the land. For example, coal and oil, and gold and silver belong to the state or the Crown. Where a building of more than a single storey is divided into flats, different people may own these.

3.2 LEGAL RIGHTS

There are two legal rights that are recognised and enforced by the courts. They are

- personal rights
- real rights

A **personal right** is simply a right to take legal action against another person to enforce a personal obligation. In land law many personal rights exist. Some are agreed between a purchaser and seller of land in their contract of sale, or exist between neighbours to prevent a nuisance.

A **real right** is a right in a piece of property. It represents the legal relationship existing between an individual and the property. Examples of people with real rights are owners, tenants or secured creditors. This right can be enforced against anyone who challenges or interferes with that right.

Real rights are important in land law. In some cases, it is necessary to perform some specific act in order to obtain a real right. This is necessary to 'publicise' your right to the world.

In many cases it is simply an act of registering your legal right in a public register, for example a right of ownership registered in the Land Register.

The greatest real right a person can have is **ownership**, but there are other real rights that are important in land law. The ones we are particularly interested in are

- **leasehold** rights in land
- **servitudes** over land
- **real burdens** over land



SELF CHECK QUESTION 2

There are two recognised legal rights. Which two words are used to describe the two legal rights?

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

3.3 OWNERSHIP

The system of land ownership was based on feudal law, which meant that there were two different parties with different legal rights in the same piece of land. The 'vassal' (owner) had the right to occupy and use the land but a 'superior' could control the land use.

The feudal system was abolished in November 2004 by an Act of the Scottish Parliament. The concept of the superior has been abolished, so the owner is now the outright owner of the land.

There are also special rules to clarify the ownership of parts of a tenement building, for example the area of ground covered by the building (which is known as the 'solum') and roof space, common stairs and passageways.

Ownership is the most extensive property right that can be held. This means that in theory the owners can do anything they like with the land. In practice this right is limited.



**SELF CHECK QUESTION 3**

Who or what do you think can restrict the landowner'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.

3.4 LEASEHOLD RIGHTS IN LAND

A person who owns land may allow others to occupy and use the land. A **lease** is a contract that creates personal rights between the owner and the tenant, based on the lease terms.

A lease can create a real right for the tenant, which means the tenant can enforce the lease against any future owners of the property. There are five key elements

- 1 The tenant must have exclusive possession.
- 2 There is a definite date known as the 'ish', on which the lease is to end, but the law will presume one year if there is no specified date.
- 3 There must be a continuing rent.
- 4 It must be in writing (unless for less than one year).
- 5 It must be created in the proper manner with the appropriate notices.

The exclusive possession given under the lease allows the tenant to exclude all others from the premises, including the landlord, for the duration of the lease (as long as the tenant complies with the terms of the lease).

The duration of the lease can be for whatever term is agreed between the landlord and the tenant, but there are some legal restrictions on the length of leases.

The rules are that

- residential leases for more than 20 years are prohibited
- leases for more than 175 years are prohibited after 9 June 2000

Parliament has not stated that these leases cannot be renewed. A short assured tenancy for a residential property could be created for 20 years and then allowed to go into **tacit relocation** (silent renewal) and each period thereafter would be treated as a new tenancy, even though a new document had not been prepared.

Tacit Relocation (Silent Renewal)

A lease is not ended by the arrival of the ish date unless certain legal formalities are complied with or the tenant gives up possession voluntarily. If the formalities are not complied with, the lease is regarded in law as being renewed by the tacit consent of the parties. It is renewed for one year, or the same period of the original lease if it was for less than one year.



SELF CHECK QUESTION 4

You may have come across leases for different lengths of time. What lengths of leases have you encountered?

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

3.5 SERVITUDES AND REAL BURDENS

It can be the case that someone who does not own a piece of land has some rights over that land. This can happen where a landowner has rights over land owned by someone else, but which is next to their own land.

These rights are real rights, and they can be enforced by and against successive owners of the two pieces of land.

There must be two pieces of land in different ownership. They are

- the **benefited land**, which is the land that enjoys the right over another person's land
- the **burdened land**, which is the land over which the right is exercised



Servitudes

A servitude is a right over land. It is a right attached to a piece of land that gives the owner rights over another piece of land that may be owned by someone else.

Servitudes may be positive or negative. A **positive servitude** gives someone the right to do something. A **negative servitude** prevents someone from doing something.

Common examples of positive servitudes include

- rights of way – a right of access over adjacent land
- rights to put drains or pipes in or over the ground to carry water, sewage, gas, etc
- the rights of water – to draw water from a source such as a stream or well on the burdened land
- rights to obtain building materials such as sand, gravel, slate or stone
- a right of support, for example a first floor flat to expect support from the flat beneath

There are three ways to create a servitude. They are

- **expressly** in a registered deed which refers to the servitude
- **implied** by law in limited circumstances, for example a right of way over neighbouring land to access land that would otherwise be land locked
- **acquired by prescription**, which is the continuous use for 20 years. The use must be open, peaceful and without judicial interruption

Servitudes were affected by the land law reforms in 2004 in two important ways.

The first is the **servitude right of light and prospect**. This is a **negative servitude** that prevents the owner of the burdened land from building in such a way as to restrict light or view from the benefited land. This servitude can only be created expressly. This type of servitude has now been converted into a real burden (which we will discuss later).

The second change concerns the creation of new types of servitudes. Servitudes formerly had to be of a particular type laid down in a traditional list of servitudes, but now new types of servitudes can be created if done so expressly. For example, the right to park a car on the burdened land could be created as an express servitude right.

Figure 3.2 illustrates the concept of a servitude.

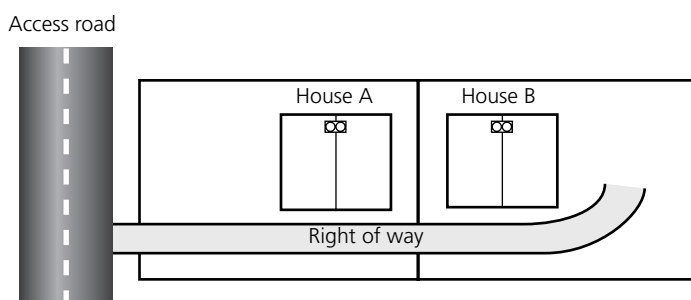


fig 3.2

House B benefits from a servitude. This is a right of way from the access road across the land of house A.

**SELF CHECK QUESTION 5**

Study figure 3.3. Which section of the drain needs a servitude? Explain why.

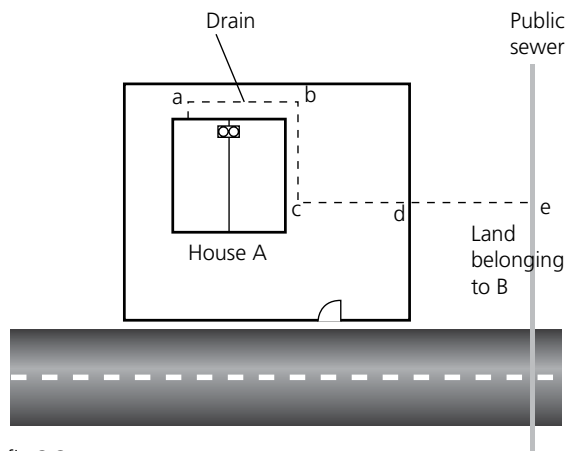


fig 3.3

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

Servitudes are real rights attaching to the land, so they are passed from one owner to the other. The existence of the servitude may affect the valuation of the land burdened by the servitude. 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 which is burdened by the right of way, but the value of the property which enjoys the benefit of the right of way may well be enhanced.

Express servitudes will be recorded or registered in the property registers, which are public documents. This means that anyone, particularly potential buyers, can discover the existence of the servitude. **Implied servitudes** and those created by prescription (ie continuous use for 20 years) will not be registered and will not necessarily be obvious to potential buyers.



Real Burdens

Real burdens (sometimes known as real conditions) are conditions that are placed on the use of land. These real burdens apply to the land regardless of who owns it. As with servitudes, for real burdens there is a distinction between

- the burdened land, to which the conditions of use apply
- the benefited land, the owner of which benefits from the conditions of use placed on the burdened land



SELF CHECK QUESTION 6

Can you think of a common real burden that could apply to residential property?

Compare your answer with the following text.

Real burdens may be positive or negative.

A **positive burden** requires something to be done. It commits the owner of land to actually do something, for example to fence and keep in repair boundaries, or contribute to the costs of maintaining boundaries.

A **negative burden** involves an obligation not to do something, for example a common real burden in residential property is a restriction not allowing business use of the property. Another would be not to build on the land but to keep it open and use only as, say, a garden.

Real burdens can only be created expressly in a registered deed and they pass from one owner to the next in the same way as servitudes.

Real burdens may have a bearing 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 3.4.

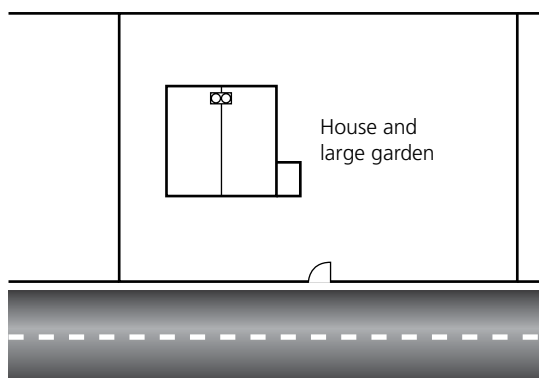


fig 3.4

You might think it is possible to develop the side garden by building another property. This is likely to increase the value of the property. However, if there is a real burden 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 real burdens are positive and which are negative?

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

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

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

- d) *A burden not to build more than 10 houses on a development site.*

- e) *A burden to build a boundary wall and then maintain it.*

- f) *A burden 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

- the law of property is concerned with legal rights in property
- property can be classified as either heritable or moveable
- land which includes buildings and anything in, on or over the land is heritable property
- legal rights are either real or personal
- the most important real right is ownership
- persons other than the owner may have a real right in the land
- leases can create real rights enforceable against successive owners of the land
- a servitude is a real right, such as a right of way or right of support, which is passed on when land/property is sold
- a real burden is a real right which stops someone from doing something to land or property, such as building more than one residential property, or requires a positive thing to be done, such as to build and maintain a boundary wall. These burdens are passed on when land/property is sold
- servitudes and real burdens 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 3.5, 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 C. The greenhouse has been there for around 60 years.

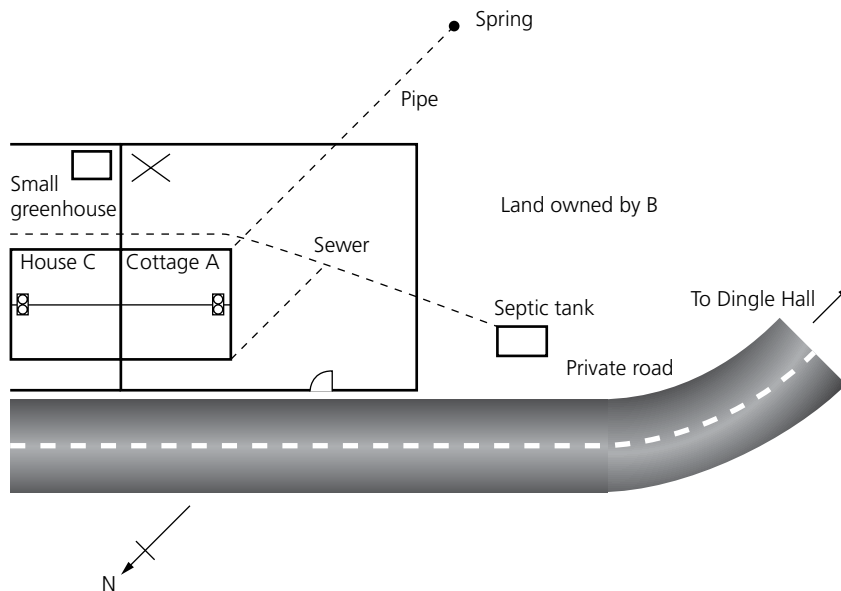


fig 3.5

- 1 Mark on figure 3.5 all the servitudes likely to be enjoyed by cottage A.
- 2 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 built on the land. Both of these are correct, but in law 'land' is even more than this.

QUESTION 2

You should have said real rights and personal rights.

QUESTION 3

Parliament has restricted an owner'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 lease lengths are

- weekly (for example, council tenants)
- monthly (for example, residential tenants of private landlords or housing associations)
- six months (for example, the typical minimum length for a short assured tenancy of privately rented residential accommodation)
- one year (for example, many agricultural tenancies)
- 10, 15, 20 or 25 years (for example, many leases on commercial premises such as your own offices)
- 99+ years (common on commercial and industrial premises or ground leases)

QUESTION 5

House A will need a servitude 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

The situations in a, c, d and f are negative real burdens preventing the owners of land or property from doing something.

The situations in b and e are positive real burdens requiring the owner of land or property to do something.

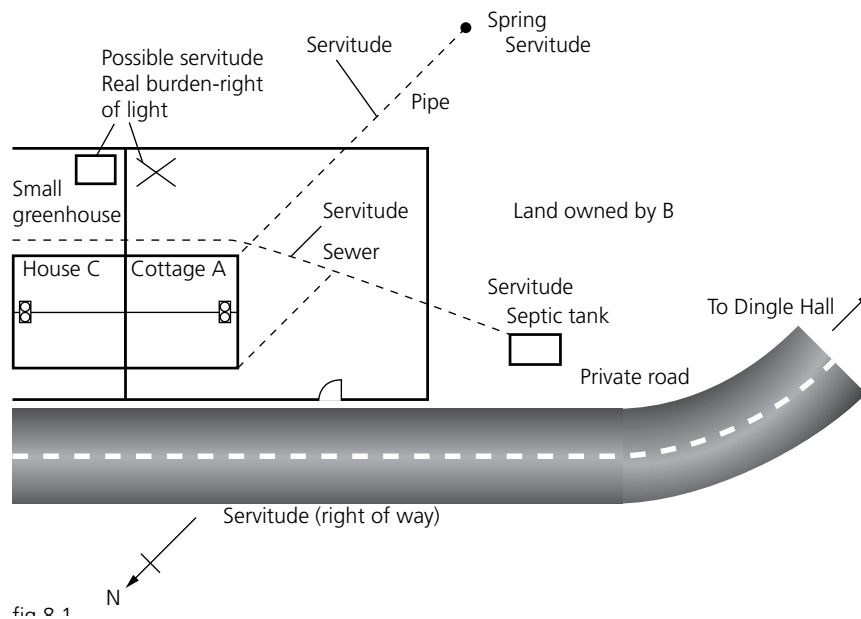
Suggested Answer



TO REVIEW EXERCISE

SECTION 3

- 1 You should have marked the easements attached to the pipeline, spring, drain, septic tank and access road, as shown in figure 8.1.



- 2 C could object. They would most likely claim an easement, a right of light for the greenhouse. The garage would be on the south side of the greenhouse and block the sunlight.

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

condition

a promise or obligation, usually contained in a contract, made by one party to another.

consideration

the legal term for payment. 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, usually called the **missives**, containing the agreed terms by which both the seller and the buyer are committed to proceed to settlement

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

delict

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

direct discrimination

treating someone less favourably than another because of a protected characteristic

DSE

display screen equipment

equitable

a matter derived from equity

equity

means fairness, reasonableness and natural justice. The courts may exercise an equitable discretion to soften the strict rules of law, and have developed the equitable remedies of **specific implement** and **interdict** as well as **damages**



expression of a willingness to negotiate

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

HASAWA

the Health and Safety at Work etc Act 1974

indirect discrimination

where conditions are applied which put people with a particular protected characteristic at a disadvantage, compared with others who do not share that characteristic

interdict

an equitable remedy where the court orders a party **not** to do a certain act

ish

the date on which a lease ends, presumed to be one year if not specified

judicial precedent

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

lease

where a tenant is granted exclusive possession of land by the owner for a fixed period. It creates a real right which the tenant can enforce against any future owners of the land

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, 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)

missives

the exchange of letters of offer and acceptance containing the terms of the parties' contract for the sale of land/property, usually exchanged between the parties' solicitors

negative real burden

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

negligence

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

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. Also check that the material is relevant to Scotland, where the law may be different from that in England and Wales.

If you are working in estate agency or new homes sales, 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

RICS UK Residential Property Standards (Blue Book), RICS Coventry 2011

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

equalityhumanrights.com – Equality and Human Rights Commission

gov.scot – Scottish government website

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/scotland – Scottish Health and Safety Executive

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

jmlsg.org.uk – Joint Money Laundering Steering Group

legislation.gov.uk – UK government legislation

legislation.gov.uk/browse/scotland – legislation exclusive to Scotland

naea.co.uk – National Association of Estate Agents

nationalcrimeagency.gov.uk – National Crime Agency

rics.org – Royal Institution of Chartered Surveyors





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