

There was then an in depth look at each Official Copy with a particular focus on certain ones – each one had similar issues and differing issues such as:

- Restrictive covenants qualified by needing consent
- Not putting anything in the river that is injurious
- Contributing to maintenance/installation of pipes
- Restricting use of property
- Maintaining a pylon
- Mines and minerals – if this info has been excepted then it is safe to get insurance
- Leases – to who? Terms? Rent review? Compliancy with covenants? Need vacant possession
- Access to land via rights of way – does this right exist? In what capacity e.g. vehicles/footpath

Based off this information from the title – besides pre-contract searches, what other information is required from a practical point of view?

Example:

Restricted use - Were any consents provided? Was it insured against?

Putting something injurious in the river – was anything put in?

Maintaining the pylon/pipes – has this been done? Is it linked to the property we are buying i.e. are we responsible?

Leases – vacant possession will be needed

Importantly – think laterally – will this impact development?

What will be done **between exchange and completion** regarding **Estate Management?**

The idea of this part of a transaction is to mainly protect the buyer in certain events.

SCPC 6.1 to 6.1.8: Rent Review

If a rent review period is upcoming between exchange and completion – this part of the SCPC will need to be incorporated so that the buyer is involved throughout the process i.e. rent review needs consent from the buyer and the seller.

SCPC 6.2: Lease Renewals

The seller will carry these negotiations with the tenants until completion and then the buyer takes over this process. BUT, during this buyer and seller must be working together just like under the rent review section specifically the conditions under 6.1.4 SCPC.

SCPC 8: Risk and Insurance

The sale contract should deal with the issue of what happens if the property which is being sold is destroyed between exchange and completion. It should address the following issues:

- which party should bear the risk until completion (i.e. should the buyer be obliged to complete if the property is destroyed or damaged significantly between exchange and completion or can it rescind); and
- whether or not the seller should insure the property until completion.

The Buyer would usually insure on exchange but if there are existing tenants (which will be the case in the exam), then the seller will be obliged to insure against the leases paid for by the tenants via service charge/insurance premiums.

Pay particular attention to SCPC 8.2.2 and 8.2.3

Miscellaneous issues

These are points that are key to the transaction:

Deposit and initial 'scratch the surface' tax issues

Agent – VAT payable on deposit at exchange – can go immediately to the seller on exchange and this is a risk if seller goes bankrupt and thus becomes unrecoverable

Stakeholder – Deposit only released to seller on completion

If held as agent, it is taxable for VAT purposes at exchange. It's the same as stakeholder but you just have to pay sooner – cashflow issues for buyer.

Important to get a VAT receipt on completion (will see this point again later)

SDLT – VAT has a significant impact on this.

Pay SDLT slice rates on top of price and VAT together – tax on a tax.

and which do not provide additional space underground.

NB mezzanine floors need PP

Examples of 'operations':

- Building new office building – need PP
- Creating new windows in a building – maybe need PP
- Marquee in garden – No PP needed
- Marquee erected for 6 months – PP probably needed

2. MATERIAL CHANGE OF USE

This is not defined by the TCPA 1990. However, case law has held that what is a material change of use is a question of fact and degree in every case.

Change of use constituting development – S.55 (3) & (5)

- Conversion of a dwelling house into block of flats
- Using it now as a waste deposit
- Adding displays on the outside for advertising

Change of use NOT constituting development – S.55(2)

- Changing use class of property to another of the same class

The Town and Country Planning (Use Classes) Order 1987 (as amended) (UCO) (included in the Source Materials)

This provides that any change within one of the use classes specified in the UCO does not constitute development.

The classes can be summarised:

Class A1	Shops
Class A2	Professional and financial services
Class A3	Restaurants and cafes
Class A4	Drinking establishments
Class A5	Hot food takeaways
Class AA	Drinking establishments with expanded food provision
Class B1	Business
Class B2	General Industrial
Class B8	Storage or distribution
Class C1	Hotels
Class C2	Residential Institutions
Class C3	Dwelling houses
Class C4	Houses in Multiple Occupation
Class D1	Non-residential institutions
Class D2	Assembly and leisure

NB theatres and laundrettes exist in their own classes as 'sui generis' uses

Examples of material/no material change of use:

- Change within the use class (e.g. clothes shop to newsagents – within A1) = not a material change of use
- Change of use between classes (e.g. B1 office to D1 Law school) is a material change of use
- Dental surgery to training centre – No change of use (D1 -> D1)
- Bank to architects' practice – probably would be a change of use (A2 -> B1)
- Warehouse to offices – Yes, change of use (B8 -> B1)

IMPORTANT FACTORS TO CONSIDER REGARDING CHANGE OF USE

What is the planning unit?

- In other words, is the actual property proposed to be changed part of a whole (teaching room in Law school) or is it completely separate (shop within the Victoria Centre).

Part 6 Revision Notes

This revision document will answer the following questions:

- When a business tenant enjoys security of tenure
 - The ways to terminate under the 1954 act
 - Applying the statutory definition of 'competent landlord'
 - The grounds upon which to object to the renewal of the lease
 - Whether any compensation will be paid
 - The potential traps under the 1954 act
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When a business tenant enjoys security of tenure

Section 23(1) states that business tenants get protection of the act: for their **tenancy** which is **occupied by them** for the **purposes of carrying on business**.

- **Tenancy:** is straightforward and comes from Street v Mountford and essentially boils down to having exclusive possession. Therefore this includes unlawful tenancies.
 - **Occupation:** is straightforward and should be taken literally but if they have sub-let then they cannot occupy that sub-let part.
 - **Business purposes:** Section 23(2) defines this widely. Just take the common sense approach
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Ways of terminating under the 1954 act and applying the definition of 'competent landlord'

Section 25 Notice:

Remember that the **lease cannot be brought to an end before the contractual termination date but can be brought to an end at any time afterwards**. It is best practice to always state that you aim to bring the tenancy to an end a few days after the contractual termination date to comply with the notice period.

If there are more than two or more tenants to give notice to (tenant and subtenant) then it is best to serve the s.25 notice on the same date rather than separate ones because tenant who can stay that little bit longer may get holding over rights.

The notice must be given by the **competent landlord** – this is someone who has a reversionary interest (either the freehold interest or has a superior lease) AND that interest will not be coming to an end within 14 months (as per S.44). This means that original tenants who gave an AGA cannot be a landlord.

You can find out who the **competent landlord** is by serving a Section 40 notice.

There must be **sufficient notice**. The landlord must give the tenant at least six months' notice and not more than 12 months' notice – as per S.25.

Grounds upon which to object to the renewal of the lease

The landlord, as part of the S.25 notice for terminating the tenancy and non-renewal, will state that if the tenant tries to appeal this the landlord will oppose that renewal on numerous grounds outlined in Section 30 (1) LTA 1954.

- S.30(1)(a) – tenant failing to comply with repair and maintenance obligations
 - S.30(1)(b) – persistent delay in paying rent which has become due
 - S.30(1)(c) – substantial breaches of the tenancy
 - S.30(1)(d) – provision of alternative accommodation that are suitable for the tenant's requirements in terms of facilities and goodwill
 - S.30(1)(e) – not relevant for this case study/exam
 - S.30(1)(f) – landlord intends to demolish or reconstruct the premises and so it needs possession
 - S.30(1)(g) – landlord intends to occupy the holding for itself
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Likelihood and calculation of compensation

This is dealt with in section 37. It is available if:

- the landlord successfully opposes a tenant's court application for a new tenancy under grounds (e), (f) or (g) and upon no other ground;
- the landlord relies solely on grounds (e), (f) or (g) in its s.25 notice, or in its counter-notice to a tenant's s.26 request, and the tenant does not apply to the court for a new tenancy; or
- the landlord serves a s.25 notice, or a counter-notice to the tenant's s.26 request, specifying one or more of the grounds (e), (f) or (g) and others and the tenant applies to court but is refused a new tenancy solely on (e), (f) or (g).

A landlord who successfully opposes the grant of a new tenancy on grounds (a), (b), (c) or (d) does not have to pay compensation to the tenant.

INSURANCE PROVISIONS

This part will look at the insurance/risk part of the lease and what negotiating points will be raised.

What insurance clauses are typically found in a commercial lease?

- There will be a comprehensive list of 'Insured Risks' which means there is little scope for the landlord to avoid.
- Landlord will covenant to insure against these risks.
- Tenant will covenant to reimburse the landlord via insurance premiums payable 'as rent'
- Landlord will covenant to reinstate if there is any damage done by the insured risks
- Provision that the tenants repairing obligations do not include insured risks
- Provision that rent will be suspended if the property is damaged/destroyed by insured risks – landlord should have own insurance in place for rental loss
- An option for either party to terminate the lease if property is damaged/destroyed by any of the insured risks.

Issues for tenant when negotiating with the landlord?

Whose name should the policy be taken out?

- Landlord? Tenant? Jointly? Tenant mentioned?
- The landlord will want it in his name alone because this is a capital investment in which they stand to lose most if the property is uninsured
- Ideal world = insurance is jointly held but impractical in multi-let sites.
- Compromise = the tenants interest is noted on the policy. This means that the insurance company will notify the tenant when a claim is made/there is an event occurring invalidating the policy e.g. not paying premiums. NB having the name on it does not give you a right of action i.e. it has no legal effect.

Can the tenant have any control over premiums that are too expensive/over who the insurance is taken out with?

- Tenant will not want to pay the highest premiums.
- Lease Code 2007 states that the landlord should pick on a fair basis regarding costs but they do not have to pick the cheapest deal.
- Tenant may want the landlord to pick insurance out from a company of repute but this will be an issue for the landlord because if there is a lender involved with the landlord they themselves may want to pick out the insurance

Should service charge suspended as well as the basic rent? What if the property is unusable but not damaged?

- Suspension of 'ALL RENT' is fine and expected even when property is undamaged but unusable.
- The landlord will argue that the lack of service charge will impact other parts of the site BUT the landlords insurance must cover the rent AS WELL AS service charge.

Is the definition of insured risks wide enough? Is it too wide? What happens if the property is damaged/destroyed by an uninsured risk?

- There should firstly be a comprehensive list.
- Landlord will be wary of this list because if certain risks become unavailable to insure against then the landlord will be in breach of the lease.
- Importantly, certain properties in certain locations cannot get insurance for things such as terrorism/flooding.
- So, the landlord will not want to have to insure against this due to increased costs and potential legal liability. Moreover, this may actually benefit the tenant as premiums will therefore be cheaper.
- However, the tenants will also dislike this because the uninsured risk = onus is on them to repair under usual obligations. The tenant will want uninsured risks to be excluded from its repair obligations -> landlord to have to deal with this -> suspension of rent for uninsured risk damage.
- The landlord will rightly oppose such a situation.

COMPROMISE?

- Tenant and landlord are essentially given a choice – terminate when 'serious damage' occurs so that the tenant is released from having to repair and doesn't have to hang around.
- The landlord can just cut its losses reinstate in its own time and possible agree with tenant to come back at a later date while they find alternative accommodation on their own.

USER/ALTERATIONS

- A fifth way would be to remove the need for the proposed assignee to comply with the covenants from the date of assignment
 - This is fine to remove because S.3 LTA 1995 protects the landlord anyway
 - A sixth way would be to propose guarantors as an alternative to AGAs
 - The landlord will not allow this either or situation – they will always want the AGA
 - Regarding a situation where an underlease has been granted
 - The wording of that underletting section will be reworded which is fine
 - The tenant will want to charge only market level not highest possible due to difficulty of finding a subtenant who will pay above market level.
 - The landlord would be okay with this.
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