

Property Law and Practice

Part 1 Revision Notes

Registered title

There are five stages in a property transaction:

- 1) Pre contract stage – taking instructions. Drafting contract. Approving the contract. Deducting title (what is the title). Investigating title. Due diligence on the property – pre contract searches and inquiries. Mortgages. Report to client after investigating.
- 2) Exchange the contracts – this is when the agreement becomes binding.
- 3) Pre completion – need to have a deed. Draft it. Needs to be approved. Execute the deed (s). Deed can cover transfer/lease/mortgage. Need to complete pre completion searches – finding out if anything has changed to the title e.g new covenants/easements/mortgages
- 4) Completion – sale and purchase legally takes place.
- 5) Post completion – stamp duty. Have to pay in order to have the stamp on the documents to make it legally binding. Also, register the new proprietor (new buyer) because of change of ownership. Needs to be done at land registry. Need to have previous mortgage(s) discharged.

Pre-contract stage:

First, a bit of regulation: ensure you undertake the correct due diligence before starting a business relationship:

- 1) General CDD= identifying and verifying the customers identity via reliable data, identifying any beneficial owners, assessing the nature of the business relationship or occasional transaction
- 2) Simplified CDD= low risk = still comply with General CDD requirements but adjust extent or timing of the process
- 3) Enhanced CDD = high risk = terrorist financing/money laundering/political exposed persons = must take measures to examine the background and purpose of the transaction and increase monitoring of the business relationship

Deducting title:

This shows that the seller owns the property and can transfer/sell it

SCS 4.1.1 and SCPC 7.1.1- the seller is obliged, at its own expense, to provide proof of title and of its ability to transfer it.

As per SCS 4.1.2 and SCPC 7.1.2, the buyer's solicitor will receive **official copies of the registered title and title plan** and **official copies of any documents referred to in the register** and kept by the registrar (unless the document is to be discharged or overridden at or before completion).

If there are any difficulties with the title, the buyer's solicitor should raise these as requisitions. SCS 4.2.1 and SCPC 7.2.1 prevent the buyer, after contracts have been exchanged, from raising requisitions on the title deduced to the buyer before exchange of contracts.

Some guidance on looking at documents:

The official copies of registered title- OS1 SEARCH look carefully at the official copies from the land registry.

- Is the title number correct?

Part A (Property Register) describes the estate:

- Is it freehold or leasehold?
- What is the address? Does it match the property wanted by your client? (make sure you also check the plan provided)
- What covenants/ easements does the property benefit from? Benefit of both positive and restrictive covenants can pass

Part B (Proprietorship Register) identifies the owner, the class of title and entries which affect the right of disposal:

- What is the class of title? (absolute, leasehold etc)

9) Environmental searches surveys (including contaminated land and flood risk) can use various companies

In every property transaction (freehold and leasehold; commercial and residential), a practitioner should consider whether contamination and/or flooding are relevant issues. In addition, environmental searches and/or surveys should be made where appropriate, taking into account the property's location and other features.

In every property transaction (freehold and leasehold; commercial and residential), a practitioner should consider whether contamination and/or flooding are relevant issues.

In addition, environmental searches and/or surveys should be made where appropriate, taking into account the property's location and other features.

10) Company search (no specific form-usually using agents) DO THIS BEFORE EXCHANGE AND AFTER!

Against selling company (when acting for the buyer):

If unregistered title:

- ✚ To check if company exists:
- ✚ To check company is not subject to winding up proceedings/ appointment of administration/ liquidation
- ✚ to check that there are no fixed or floating charges which affect the property (fixed charges should also be revealed in the epitome of title).

Registered title:

- ✚ To check if company exists:
- ✚ To check company is not subject to winding up proceedings/ appointment of administration/ liquidation
- ✚ To check that there are no floating charges which affect the property (NB post Land Registration Act 2002 this strictly may not be necessary but is good practice).

Against a buying company (when acting for the seller/lender)

- ✚ to check that the company is not subject to winding up proceedings, appointment of administrator/liquidator/receiver or has been struck off the register at Companies House; and
- ✚ to check that the company's constitution permits it to buy, mortgage, sell and otherwise deal with the property.

* Most practitioners also undertake a search at the High Court to check for insolvency. This is called a Winding-up Petition search. The information from this search is up to date and therefore may be more reliable than a standard company search.

A few points on misrepresentation:

An **untrue** statement of **fact** made by one party on which the other **relies** and which **induces** it to enter into a contract. The remedies of rescission of the contract and/or damages for misrepresentation under the Misrepresentation Act 1967 apply to a contract for the sale of land.

The Standard Conditions purport to limit the general availability of the remedy. Under SCS 7.1.1/SCPC 10.1 (b) rescission is only possible if:

- there is fraud or recklessness; or
- a party would otherwise be obliged to transfer or accept property "differing substantially (in quantity, quality or tenure)" from what it had been led to expect.

SCS 7.1.1/SCPC 10.1(b) must be read subject to section 3 of the Misrepresentation Act 1967 (as amended by the Unfair Contract Terms Act 1977). Section 3 of the 1967 Act provides that any term which purports to exclude/restrict liability/remedies for misrepresentation is only valid insofar as it satisfies the reasonableness test laid down in section 11 of the 1977 Act. This states that a term must have been a fair and reasonable one to be included having regard to the circumstances which were, or ought reasonably to have been, known to (or in the contemplation of) the parties when the contract was made.

Effect of a disclaimer on replies to the preliminary enquiries?

ACTING for buyer

Three main tasks:

1. Transferring the legal estate from seller to buyer- Buyer solicitor drafts the transfer deed (use TR1 form). The seller's solicitor approves it and has it executed by seller
2. Checking the title (AGAIN)-The buyer requests completion information. The Seller's solicitor replies e.g. logistics such as where the keys will be on the day of completion but also information on discharging the seller's mortgage (see below). Buyer's solicitor should also do the required pre-completion searches:
 - Land registry check (OS1): search against Title Number & check from date shown in official copies. It gives the buyer (and any lender) a priority period of **30 working days** to complete the purchase AND to make a correct application to register the transaction at the appropriate Land Registry office.)A priority period means that the purchase (and any new mortgage) protected by that search has priority over all other dealings with that title that occur during the priority period.)
 - Reinspect the property-check for occupiers, fixtures & fittings, no changes to condition
 - Company search- ensure there's no liquidation, no floating charges (if there are, demand a certificate of non-crystallisation)
3. Finance- The buyer's solicitor will complete the buyer's new mortgage (if instructed by lender) and obtain the rest of the monies from the lender. The seller's solicitor will obtain the figures for the amount needed to redeem the seller's mortgage.

How is the seller's mortgage discharged?

What evidence will the buyers require? For registered: a Form DS1- traditional method on paper. Or ED (Electronic Discharge). For Unregistered, the Receipt is endorsed on mortgage deed and executed by the lender. Thing is, often they won't be able to discharge pre-completion as they need the sale proceeds to do that. So a way around that: The seller's solicitors give an undertaking to pay off the mortgage as soon as completion takes place (This is on 5.2 of form TA 13 'Completion information and undertakings') . They will forward the evidence of the discharge to the buyer's solicitors as soon as received.

What if also acting for a lender?

- Must act in best interest of both
- Just before completion the lender will require a search to be made against the buyer to ensure they are not in financial difficulty: search against company buyer to reveal any bankruptcy, or if for individual buyer check for insolvency (K16)

Completion:

- Remaining 90% of the purchase money given
- Vacant possession given
- Keys handed over
- Seller's solicitors hand over: purchase deed, any relevant planning permissions and any title deeds

Post-completion:

After completion has taken place there is still a significant amount of work to be done, particularly by the buyer's solicitor.

The **seller's solicitor** has to:

- discharge any mortgages in accordance with any undertaking given on completion; and
- account to the seller for any remaining monies.

The **buyer's solicitor** has to:

- pay stamp duty land tax;
- register the buyer's title at the land registry. If the buyer has created a mortgage on the property, that also has to be registered at the land registry; and

Part 3 Revision Notes

Introduction to Leases

Students will be able to:

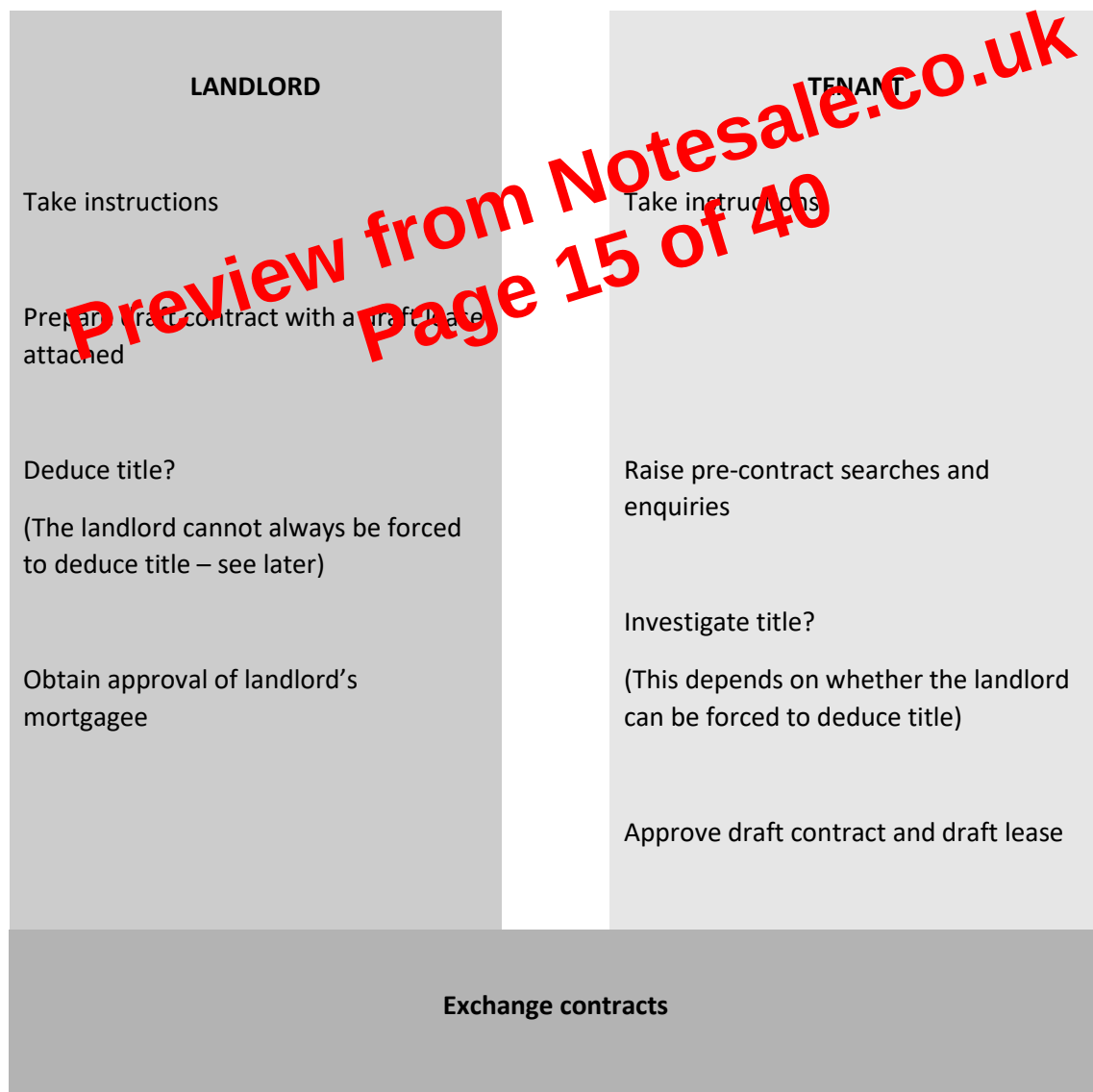
1. Explain the procedure and documentation concerning the grant of a lease when acting for a landlord or a tenant.
2. Explain the need to investigate a landlord's title.
3. Apply the concepts of privity of contract and privity of estate to a given set of facts.
4. Identify the difference between a new tenancy and an old tenancy and apply the Landlord and Tenant (Covenants) Act 1995.
5. Identify key clauses in a lease.

Tenant's alterations

Students will be able to:

1. provide advice on the effects of a covenant in a lease against alterations;

1. Explain the procedure and documentation concerning the grant of a lease when acting for a landlord or a tenant



3. analyse and provide advice on the practical effects of insurance and related clauses in a lease.
-

1. Analyse and provide on the practical effects of a service charge clause and a repairing clause

When looking at clauses in a lease to resolve a particular issue e.g. repair, service charge or insurance ALWAYS CONSIDER:

Which clause(s) should I be looking at?

Who is responsible for xyz duty according to the clause(s) I am looking at?

What is the extent of that obligation? i.e. how much should landlord/tenant do

A few examples to apply these principles:

- a) The roof has been leaking and the tenant says that this was a problem when it took the lease

Which clauses should I be looking at?

Since a part of the property is in disrepair here first DEFINE WHAT PROPERTY IS VIA CLAUSE IN THE LEASE

Since repair is the topic here CHECK THE REPAIR OBLIGATIONS VIA CLAUSE IN THE LEASE

Who is responsible for xyz duty according to the clause I am looking at?

This will be apparent from the wording of the clauses relating to repair and insurance etc

Since this disrepair is caused by something natural (rain/storm etc) CHECK WHETHER SOMETHING THE LANDLORD COULD/SHOULD HAVE INSURED AGAINST VIA A CLAUSE IN THE LEASE

Since this damage needs to be repaired CHECK REPAIR/INSURANCE/SERVICE CHARGE CLAUSES TO CHECK WHO SHOULD BEAR THE COST I.E. DOES TENANT HAVE TO REPAIR HIMSELF DOES LANDLORD REPAIR WITH CONTRIBUTION VIA SERVICE CHARGE/DOES INSURANCE MONEY COVER THE COST?

What is the extent of that obligation?

The tenant does not have to give something back to landlord than what he got initially.

However, if duty to repair falls on tenant – the case of Proudfoot v Hart states that you must *put* it in repair and not just do quick fixes i.e. paper over the cracks.

PRACTICALLY – this problem should have been spotted prior to lease commencement which would have allowed the tenants side to draft a ‘**Schedule of Condition**’ which states the landlord will repair to the level by the time you take the lease. This would need to be agreed on by the parties

- b) There is some damage to the walls in one of the offices caused by recent flooding

Which clauses should I be looking at?

Since a part of the property is damaged DEFINE WHAT PROPERTY IS VIA CLAUSE IN THE LEASE

Since repair is topic CHECK THE REPAIR CLAUSES TO FIND OBLIGATIONS OF EITHER PARTY

This disrepair was caused by some insurable risk CHECK LANDLORD DUTY TO INSURE AND USE OF INSURANCE MONEY

Who is responsible for xyz duty according to the clause I am looking at?

Navigate through the clauses methodically and find out who is responsible.

Part 5 Revision Notes

Rent Review and Alienation under a lease

Rent Review

Rent Review provisions are there to allow the landlord (through the surveyor) to reconsider what a hypothetical tenant would pay for a hypothetical lease of that property.

To do so, a surveyor would come in and look at the property and search for comparables (property that is similar to the one in question) and assess value. All about finding similar locality/use/quality.

An example: have a bare office and 5 years later tenant improves it by adding xyz to add value. Hypothetical tenant would come in and pay a much higher rent. This would be unfair on tenant as they paid for it.

Instruct surveyor to disregard the improvements made by the tenant – this is a hypothetical lease.

Another example: window fall into disrepair. Hypothetical tenant would see that and would not be prepared to pay a high rent.

It does not matter who's obligation it is to repair that window, either way – they can seek specific performance at any time to force other party to carry out the repair.

But rent is reviewed once every 5 years – if rent is reviewed based on windows that are in disrepair then hypothetical tenant would not pay much rent. But next day after rent is reviewed the window is repaired – it would be disproportionate.

Instruct surveyor to assume the windows were repaired which would balance it out and produce a fairer hypothetical lease.

Also – as the actual tenant. The lease is worth a lot in terms of business goodwill – don't want to move around – may be willing to pay a higher rent to keep the lease.

So when considering a rent review situation look at whether the market rent will increase or decrease depending on the facts and whether a hypothetical tenant would be attracted to that property (would they pay less or more for the lease).

What instructions would you give to the surveyor? Assumptions or disregards? It depends on the facts!

Before discussing the above in the exam and dealing with it, it is first important to understand a few preliminary points namely:

- When ('usual quarter days') and how rent is paid under the lease
- What the current rent is
- Interest payable on late payment of rent

On the basis of this knowledge you can then move on to consider rent review and the process of certain scenarios. A diagram (filled with certain scenarios) is below to show what to state/apply/consider.