

Part One - Ownership of Land

General

Why is the study of land law important?

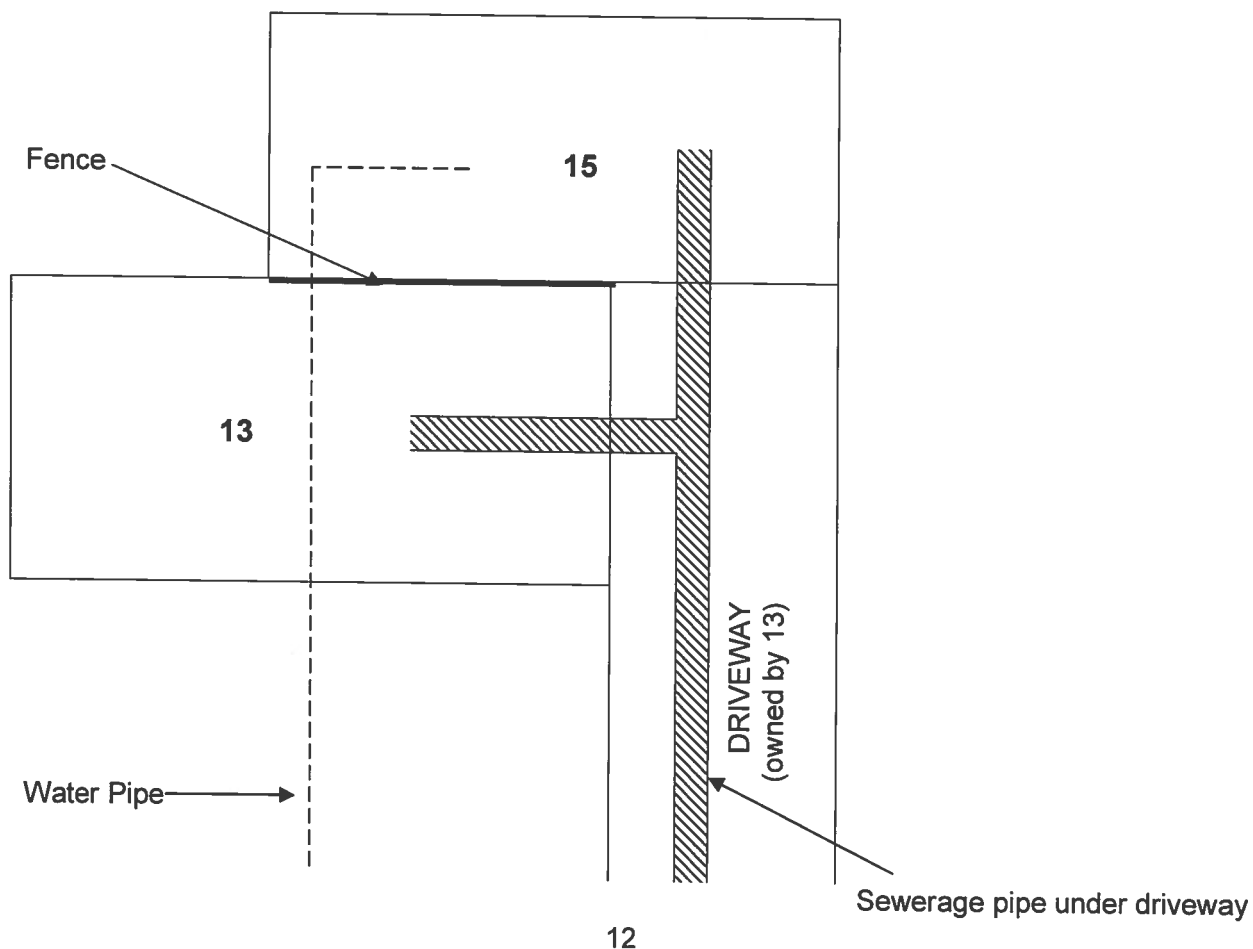
Why do you think the study of land is important?

The meaning of Property

"Since land provides the physical base for all human activity, there is no moment of any day in which we lie beyond the pervasive reach of land law. The law of land has something to say to us, whether we are relaxing in our homes or sitting in a lecture theatre, cooking a meal in a bed-sit or engaging in a spot of DIY, simply walking in the countryside or rushing along a footpath to catch a bus for the shopping expedition to the local mall. Our presence in each of these locations has a distinct significance for the land lawyer, for land law constantly describes our jural status in relation to land and its other uses".

Gray and Gray: *Land Law Core Text*, 3rd edition.

Examples? - when and how is property important? When is real property important?



Real Property and Personal Property

There is a difference between real and personal property.

Historically, if someone stole your freehold property, you could bring an action "in rem" to get the property back. If someone took your personal property, the only action which was possible was one "in personam" for damages, E.g., monetary compensation, without the return of the property.

This distinction, in some respects, no longer applies, but it serves to illustrate the different ways personal and real property were treated. Also, some cases you will read will refer to real property and personal property.

Real property

As the law relating to land has developed, several fundamental principles have emerged; we will come back to these frequently throughout the course. As well as the outright ownership of land, people can have rights over land. A right over land differs from a purely personal right in that, 1) it is transferable to others, and 2) it is enforceable against third parties. So when we think of "land" we need to think both of the physical entity and of the various relationships between land owners and land users.

Personal property

This includes "choses in possession" (meaning tangible objects other than land which can be possessed, E.g. cars) and "choses in action" (meaning intangible objects, other than those relating to land, which you cannot take physical possession of and which depend for their existence on enforcement by the courts, E.g. copyrights and patents).

Two very important interests in land, rights of beneficiaries under a trust and leases, can be used to show how the law has developed in this area. Prior to the abolition of the Doctrine of Conversion (which we will consider later in the course) beneficiaries' interests under a trust were seen as interests in personalty. Now the interests of beneficiaries under trust of land are interests in land.

When first used in this country, leases were seen as commercial contracts which created rights in personam between the landlord and tenant. A lease is technically a "chattel" (derived from the French for cattle). Historically, if the tenant was dispossessed by their landlord, they did not have a real action. Later the courts began to enable tenants to recover their land (so giving tenants a right in rem, a real action) but by that time it was too late to reclassify leases so they became a hybrid interest (a chattel real). However, technically they are still personal as opposed to real property and this distinction can be important.

The meaning of Land

Defined in the *Law of Property Act 1925*; s205(1)(ix) - also refer to *LPA 1925*; s62 and case-law.

S205 - land includes:

- land of any tenure (see later);
- mines and minerals, whether or not held apart from the surface (but note that coal and petrol, are both excluded by statute (*Coal Industry Act 1994* and *Petroleum Act 1998*), and gold and silver belongs to the Crown);
- buildings or parts of buildings (whether divided horizontally or vertically or in any other way);
- other corporeal hereditaments (tangible things, substantial and permanent objects), E.g.:
 - the earth itself;
 - airspace (but only to a reasonable height, suggested 150 - 200 metres - ***Bernstein v Skyviews*** [1977] 3 WLR 136 (a landowner was unsuccessful in a claim for damages for trespass when an aeroplane flew over his land to take aerial photos). Also see ***Kelsen v Imperial Tobacco Co (of Great Britain and Ireland) Ltd*** [1957] 2 Q.B. 334 where an injunction was granted to force the removal of an advertising hoarding which was encroaching into the airspace above a shop, and *Civil Aviation Act 1982*; s76;
 - natural permanent features - E.g., ponds, minerals.
- Land can also include "incorporeal hereditaments". We will be considering some of these in detail later. One common example is the easement. An easement is a right enjoyed by one piece of land (and therefore the landowner who owns that piece of land from time to time) over another piece of land belonging to someone else. Such rights are considered part of the land and so automatically transfer if the land is sold - so, for example, if Farmer Giles' land enjoys a legally recognised right to walk from his land, Home Farm, over the land of his neighbour, Farmer Brown (Manor Farm), and he then sells Home Farm to Farmer Smith, Farmer Smith will be entitled to walk over Manor Farm.

Note also the possibility of horizontal "slices" of land - flying freeholds (where someone owns a freehold building, part of which juts over someone else's land).

Also - "land covered with water" - *Channel Tunnel Act 1987; s10(1)*.

LPA 1925; s62(1) - "A conveyance of land shall be deemed to include and shall by virtue of this Act operate to convey, with the land, all buildings, erections, fixtures, commons, hedges, ditches, fences, ways, waters, watercourses, liberties, privileges, easements, rights, and advantages whatsoever, appertaining or reputed to appertain to the land, or any part thereof, or, at the time of the conveyance, demised, occupied, or enjoyed with, or reputed or known as part or parcel of or appurtenant to the land or any part thereof ...".

But note *LPA 1925; s62(4)* - "This section applies only if and as far as a contrary intention is not expressed in the conveyance, and has effect subject to the terms of the conveyance and to the provisions therein contained."

What does this mean in practice?

Defining Land - Fixtures

As we saw above, land comprises many things - the obvious things like the land itself, fences, hedges, etc.; and intangible things like easements (which we will come back to later). In addition, anything which becomes a fixture becomes part of the land. This is of great practical importance - can you think when?

Time for some terminology!

"Fixtures" is a term often used by estate agents and in property transfers. In basic terms, fixtures are physical objects which are firmly attached to and become part of the land. "Chattels" are, by contrast, physical objects which are not fixed or do not become part of the land. Where an item is affixed to land, even slightly, there is a rebuttable presumption of law that it is a fixture.

Think of some examples of fixtures and chattels.

How do we define "fixtures"?

Per Blackburn J. in *Holland v Hodgson* [1872] LR7CP 328:

"When the article in question is no further attached to the land than by its own weight, it is generally regarded to be a mere chattel ... But even in such a case, if the intention is apparent to make the articles part of the land, they do become part of the land ... On the other hand, an article may be very firmly fixed to the land and yet circumstances may be such as to show that it was never intended to be part of the land, and then it does not become part of the land."

In this case, the items in question were spinning looms, which were bolted to the floor. These were held to be fixtures because of what is known as "the degree of annexation".

So there are two tests defining a fixture:

- a) degree of annexation; and
- b) purpose of annexation.

"The same object may be chattel or land according to the circumstances ... For instance, let us say I own a statue of Venus which I have always taken with me when I have moved house. It is a massive statue for outdoor use. In the house which I presently own, the terrace is very uneven so that I have had to screw the base to the ground for security. Prima facie, the statue is a fixture, but this presumption is clearly rebutted once the second test is applied. Conversely, if in planning my new garden I place a statue of Venus as part of the landscape on a balustrade, and find that it stands quite securely there by its own weight, then, although on the first test it is prima facie a chattel, this is reversed on applying the second, for the intention was to enhance the land as such".

Dalton, "*Land Law*", Pitmans (now out of print)

The following are cases where the distinction of fixtures and chattels was considered:

Buckland v Butterfield [1820] 2 Brod & B 54 - a conservatory attached to a house by 8 cantilevers, each 9 inches long formed part of the land;

Berkley v Poulet [1976] 242 EG 39 - a large marble statue weighing ½ ton was not a fixture because it not fixed in any way to the land. The plinth that the statue rested on was a fixture as it was cemented to the ground;

D' Eyncourt v Gregory [1866] LR 3 Exq 382 - stone statues (including heavy marble statues of lions), seats and garden vases were held to be fixtures even though they were free-standing, as were certain tapestries and pictures hanging on the wall inside the property in question. The court said these items formed an integral part of the architectural design of the property even though there was no real annexation;

Leigh v Taylor [1902] AC 157 - a tapestry attached to strips of wood which themselves were attached to the wall was a chattel rather than being part of the land. The degree of annexation was merely that necessary to display the tapestry (the same approach was taken for display cases of stuffed birds (***Viscount Hill v Bullock*** [1987]));

Re Whaley [1908] 1 Ch 615 - the owner of a house had created a "complete specimen of an Elizabethan dwelling-house". As part of the design the owner had attached

tapestries to the dining room wall. The owner left realty to A and chattels to B. The reason for attaching the tapestries to the property was that they should form part of the Elizabethan design and so they formed part of the realty (were fixtures);

Hulme v Brigham [1943] KB 152 - printing machines weighing 9 and 12 tons were viewed as not being fixtures even though they were attached to motors that were fixed to the floor. Here the degree of annexation was slight and necessary to render the motors stable;

Jordan v May [1947] 1 All ER 231 - a generating plant set in concrete was a fixture but the battery running it was not;

La Salle Recreations v Canadien Camdex Investments [1969] 4 DLR (3d) 549 - here a carpet was a fixture as it was designed to fit a particular room. That said, carpets are usually "chattels" (as per **Botham v TSB Bank plc** [1996]);

H. E. Dibble v Moore [1970] 2 QB 181 - this case decided that something that has just sunk by its own weight in to the ground is not a fixture in terms of satisfying the "degree" test. This case related to a greenhouse;

Hemp v Bygrave [1982] 266 EG 720 - in this case, the seller removed items from the garden including stone statues and other stone ornaments after contracts had been exchanged. The court decided that the items were fixtures despite the fact that they just rested on their own weight because they formed part and parcel of the garden and had been installed primarily to improve the land;

Deen v Andrews [1986] 1 EGLR 262 - here it was decided that a greenhouse was a chattel;

Aircool Installations v British Telecommunications [1995] CLY 821 - air conditioning units cut in to, bolted on to or ducted into walls of buildings are fixtures;

Botham v TSB Bank plc [1996] 73 P and CR D1 - an object such as a towel rail if attached to a wall could be deemed to be a fixture. Also in this case the court said that the type of person who installs an item may be important. Items installed by a builder will tend to be fixtures whereas those supplied by carpet contractor/curtain supplier may not be. Also the fact that kitchen units are carefully surrounded by tiling may suggest an intention to annex units permanently;

Elitestone Ltd v Morris [1997] 2 All ER 513 - see below;

Peel Land & Property (Ports No. 3) Ltd v TS Sheerness Steel Ltd [2014] EWCA Civ 100 - see below;

Spielplatz Ltd v Pearson [2015] EWCA Civ 804 - see below.

Of the cases listed above, it is worth reading the decisions in *Botham v TSB Bank plc* and *Elitestone Ltd v Morris*. In *Elitestone Ltd v Morris*, the House of Lords developed and more clearly articulated the tests for determining whether objects that are brought onto land, including buildings and other structures, remain as chattels or become fixtures or are “part and parcel of the land itself”.

In the recent case of *Peel Land & Property (Ports No. 3) Ltd v TS Sheerness Steel Ltd* [2014] EWCA Civ 100, TS’s predecessor entered into a 125 year lease of a site. In the lease the predecessor had agreed to build a fully equipped steel making plant capable of producing at least 50,000 tons of steel a year which it did. In 2012, the steel works ceased trading, the business was sold & the lease was assigned to TS.

The issue which arose was whether TS could remove & sell the very valuable plant & equipment on the site. The experts estimated that some of the larger items of plant would take up to 12 to 18 months in total to remove from the site at a likely cost of £3 to £4m!

The court had to decide if the items were chattels or fixtures and, if they were fixtures, were they tenant’s removable fixtures.

Held: The High Court found in favour of TS. The court viewed some of the items as chattels and most of the others as tenant’s removable fixtures. The fact that the items were heavy and bulky and removal would be complicated did not mean that the items could not, in law, be removable tenant’s fixtures.

The court indicated that it was necessary to consider the physical extent of each item and whether it was installed for the tenant’s trade and could be removed without substantial difficulty and without serious damage to the item or the premises. If an item could be satisfactorily removed, even if it was extremely complex and/or bulky, so it was reusable elsewhere, then it was a tenant’s fixture. Accordingly, even a pre-fabricated building assembled on site could be a tenant’s fixture.

The court also decided that the terms of the lease did not override TS’s entitlement to remove tenant’s fixtures.

P appealed regarding the High Court’s finding that clause 2(6) did not override TS’s right to remove tenant’s fixtures. Clause 2(6) read:

“Not at any time during the said term to make any ... alterations or improvements nor to make or suffer to be made any change or addition whatsoever in or to the said premises save in connection with the use of the premises for the purpose of steel making steel rolling and operations ancillary thereto.”

Held: The Court of Appeal allowed P’s appeal and the Supreme Court refused leave to appeal.

As a matter of construction, “the premises” in clause 2(6) meant the new building and landlord’s and tenant’s fixtures that from time to time formed part of the premises. Clause 2(6) overrode the TS’s right to remove tenant’s fixtures. Therefore, during the term, TS was not allowed to remove any tenant’s fixtures (except as permitted by the proviso to clause 2(6)) - the proviso only triggered if the intended removal was in connection with the use of the premises for steel making which it was not).

In 2015, the Court of Appeal also had to apply the distinction of fixtures and chattels in a residential context in the case of ***Spielplatz Ltd v Pearson*** [2015] EWCA Civ 804. In that case, S owned the freehold interest of a woodland naturist resort in St Albans and granted leases of plots (so the lease was of a “plot or clearing” rather than any structures on the land) to tenants who erected their own chalets on the land.

Ps had built a single-storey wooden chalet which they occupied pursuant to an annual tenancy on a permanent basis. S served a six-month notice to quit on Ps. Ps argued they had an assured tenancy of the plot and the chalet (because the chalet was part of the land, as opposed to a chattel, as it could not be removed without being dismantled) so S was required to terminate the tenancy via the *Housing Act 1988* (E.g. getting a court order for possession on certain statutory grounds).

Held CC: The County Court decided that the chalet was not a chattel because it was intended to be part of the land. Therefore, it was owned by S, meaning it must have been let as a dwelling so let as an assured tenancy. It was irrelevant that both the parties believed that the chalet belonged to Ps.

Held CA: The Court of Appeal dismissed S’s appeal

So, with regard to fixtures, both tests (degree and purpose) are important, but in recent years the purpose test has been given a good deal of consideration by the courts. This was confirmed in ***Hemp v Bygrave***. The tests were discussed in ***Elitestone Ltd v Morris*** mentioned earlier. That case related to a bungalow which was resting on, but not fixed to, concrete foundations. The House of Lords held that it was clear that the structure concerned could only be enjoyed in situ, and could not be removed without its destruction. They took the view that the degree and purpose tests were overlapping, but by applying common sense they decided the bungalow was a fixture, it being part and parcel of the land itself.

Importance in practice

- a) Death – difference between devise of realty and of personalty.
- b) Sale – see “Fittings and contents form”.

- c) Mortgage – if the mortgagee repossesses the property, he takes it with all fixtures.
- d) Lease – the general rule is that anything fixed by the tenant becomes a fixture and the landlord keeps it when the lease ends unless a contrary indication appears in the lease. However, this doesn't apply to trade, ornamental and domestic, or agricultural fixtures; ***Spyer v Phillipson*** [1931] 2 Ch (panelling and fireplaces could be removed by the tenant). See also ***Wessex Reserve Forces and Cadets Association v Whittle and others*** [2005] EWHC 983 (QB) and ***Peel Land & Property (Ports No. 3) Ltd v TS Sheerness Steel Ltd*** mentioned above.
- e) Protection for tenants could depend on definition of fixture or chattel – see ***Elitestone*** (above) - the occupiers of the bungalow wanted to claim statutory protection under the *Rent Act 1977* whilst the owners claimed that, because the bungalow was not a fixture and therefore only a chattel, no such statutory protection could apply. See also ***Spielplatz Ltd v Pearson*** (above).

NOTE TO STUDENTS: The sections of this Handbook which follow entitled “Ownership of Land” and “Concepts of Law and Equity” have been included to provide you with an overview of relevant legal theory and historical background. This will hopefully enable you to understand why property law in this country has developed in the way that it has.

Ownership of Land

What is “ownership of land”?

Historically two doctrines:

- i) the doctrine of tenures;
- ii) the doctrine of estates.

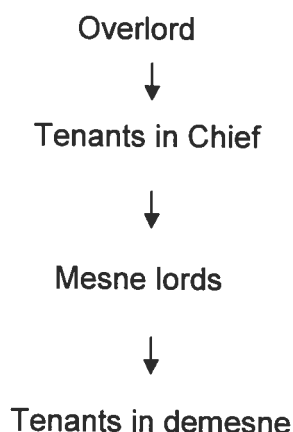
A. The Doctrine of Tenures

Since the Norman Conquest in 1066, all land is owned by the Crown. Later land held “of” the Crown in some form of “tenure” (from the Latin “tenere” - to hold).

Tenure = services.

Types of service varied from provision of men and arms, spiritual services, and “common socage”, which was the provision of agricultural services. If the service specified was not provided, the lord (or king) could retake the land. So, all land holders were, effectively, tenants.

Feudal pyramid evolved:



E.g. "subinfeudation" - one could obtain the right to use land by doing a service for an overlord, who was in turn doing service for his own lord and so on. This made land ownership very complicated. Gradually long chains of services developed until:

- *Statute Quia Emptores 1290* - all land held directly of Crown as tenants in chief - abolition of "subinfeudation", but still many different types of tenure (E.g., different services);
- Gradually, money paid (quit rents) instead of services - concept of tenure became more difficult because of the problem of "collecting" services (or money in lieu) and types of services required;
- *Tenures Abolition Act 1660* - abolished almost all forms of tenure except "free and common socage" (better known as "freehold") and "copyhold";
- *LPA 1925* - copyhold abolished - now only freehold - which is as good as absolute ownership.

Tenures are now largely irrelevant in the modern law of property. However, it is still true that all land is held directly of the Crown.

What practical effect does this have?

B. The Doctrine of Estates

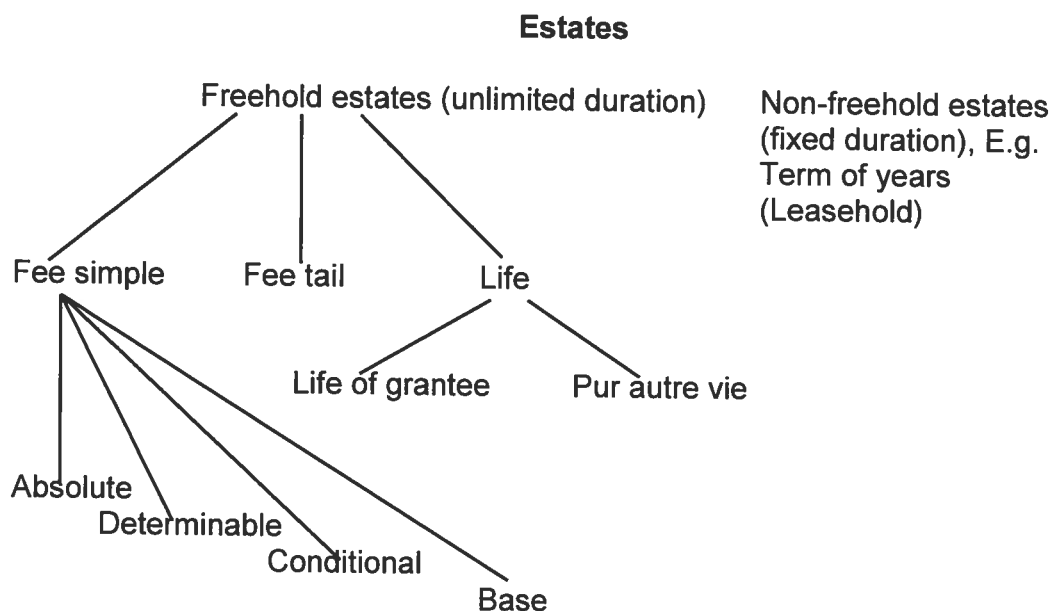
An “estate” simply means “ownership”. If we say X has an estate in land, it means he has ownership.

The type of estate determines the length of ownership.

There are since 1925 (*LPA 1925; s1(1)*) two types of estate:

- (1) freehold - the duration of the ownership is not known/determined at the start of the estate;
- (2) leasehold (more properly called a “term of years absolute”) - the duration of the ownership is known/determinable at the start of the estate.

Freehold estates can then be further subdivided - see diagram below.



So, what is an estate?

It is a measure of how long you can hold the land for - each landholder owns a slice of time in the land, not the land itself. “...in English law, rights of property in land are four-dimensional. They are defined not only by reference to the physical boundaries of the property but also by reference to the time for which the interest will endure.” ***Newton Housing Trust v Alsulaimen*** [1999] 1 AC 313, per Lord Hoffman.

A leasehold interest can only be created out of a superior title, E.g., if A owns the freehold interest in land, he can grant B a leasehold interest, and then B can grant C a sub-leasehold interest and so on.

Freehold Estates

There are three types

- i) Fee simple;
- ii) Fee tail;
- iii) Life estate.

Fee simple

"He who has a fee simple in land has a time in the land without end, or the land for a time without end." ***Walsingham's Case*** [1573] 2 Plow. 547.

Concept of land which is freely inheritable and freely saleable:

"the unrestricted transferability of land is a vital pre-condition to a healthy and vibrant economy" - Gray.

Further subdivision of fees simple into:

- a) Fee simple absolute;
- b) Determinable fee;
- c) Conditional fee;
- d) Base fee.

All of these (apart from the fee simple absolute) are now largely irrelevant. They are of historical significance and interest, and were useful devices when land was held only by the wealthy, but most are not needed in modern society.

"It is a truth universally acknowledged that a single man in possession of a good fortune is in want of a wife".

Imagine it is the eighteenth century. No-one owns real property apart from wealthy landowners, who inherited the land from their fathers. Of course, all land is owned by the male head of the family - women are not considered sensible enough to own land.

The landowner will have a large “estate” of many hundreds or thousands of acres. Some of this he will farm himself, but most he will lease to tenant farmers.

Mr Bennett has a problem. He is middle aged, married, with five daughters. His estate is “entailed”, which means that when he dies it must pass to his nearest male relative. Effectively, this will leave his wife and daughters homeless. Four of his daughters are quite attractive and, despite the fact that he cannot afford a large dowry, he hopes they will marry well. However, he needs to find a way to provide for his wife, and his other daughter who is probably too plain to find a suitor. He also wants to provide in case any of his daughters do not marry.

Fee tail

Land passed to direct heirs, usually male - useful device for ensuring land did not leave the family, but designed in the era of “grand estates” and of little relevance today - NB “barring the entail”.

Following the enactment of the *Trusts of Land and Appointment of Trustees Act 1996*, since 1 January 1997 it has not been possible to create any new fees tail.

Life estates

Again, designed to “keep it in the family” - dower houses, etc. This is also of little relevance today - NB reversion to grantor. Since *TOLATA 1996*, it has not been possible to create any new life estate - any attempt to do so will only take effect as the creation of a trust of land.

Leasehold Estates (to be covered in detail later)

As mentioned earlier, originally these were purely contractual, E.g., personal right, not a right in land, therefore not an estate.

Gradually, these rights became recognised as more than just contractual - they became estates in land (See *LPA 1925; s1(1)*).

Always granted out of freeholds - always a lesser estate.

In possession, in remainder, in reversion?

Estates may be any of the above:

In possession - A has a current right to current enjoyment - “the man on the spot”.

In remainder - B has a current right to future enjoyment - he is not now the “owner” but will be later.

In reversion - C has a current right to future enjoyment, where he is the owner of the fee simple absolute and has granted an estate less than fee simple absolute to another - E.g., he will get the property back; the property will **revert** to him.

Concepts of Law and Equity

Interests/estates in land may be:

- i) Legal; or
- ii) Equitable.

When we are looking at estates and interests in land, it will be **FUNDAMENTAL** to decide at the outset whether any estate/interest is **LEGAL** or **EQUITABLE**.

Legal estates or interests normally bind the world, whilst (generally speaking) equitable interests bind everyone but "equity's darling" - the bona fide purchaser for value without notice of those rights (see later).

Historic Difference between Law and Equity

After the Norman Conquest, law was decided by the King. Gradually some of this power was devolved to local lords.

In the Middle Ages, land law was originally based on local law and custom; generally disputes were decided by the local lord. This was unsatisfactory as the same facts could produce very different decisions in different parts of the country.

A new system was developed; circuit judges were appointed by the King, and it was their job to travel around the country settling disputes. Gradually the details of cases came to be written down and were then used as precedent for other situations with similar facts. The circuit judges helped to produce a uniform law (**Common Law**).

Disputes in law had to be presented to court in the form of a writ and the procedure was very formal. There were several criticisms:

- a) Courts tended to look at the form, not the substance of the dispute;
- b) The types of writ which could be presented were limited - if your problem did not fit an established writ, you would not be able to bring your case, unless you could persuade the King to establish a new writ;
- c) Small errors rendered a writ useless, as the court would not hear the case;
- d) There was arguably a certain degree of corruption of officials;
- e) Writs were expensive;

- f) The remedies available under a writ were limited (largely damages only);
- g) There was no recognition of the law of trusts.

This last point was a major problem - if you wanted to pass your property to your wife for her life and then to your children, you could do so by formally transferring the land to a friend or business partner, and asking him to make sure your wishes were carried out. If he failed to do so, the law would not recognise that the wife and children had any claim.

If someone could not, for any of the above reasons, bring a case before court, they would try to petition the King in Council, who would sometimes hear their case and grant their petition on the basis of his view of the justice of the situation. Gradually this responsibility was passed to the Chancellor and the new court became known as the court of Chancery, where decisions were made based on **equity**.

“Equity” was not so hide-bound as law, and could respond more sensitively.

The division between law and equity was underlined historically by the use of separate courts. Both courts merged under the *Judicature Act 1873*, but the difference between law and equity is still vital, especially to land law.

Principles of Equity

The decisions of the court of equity were based on the various principles, including:

- Based on conscience and fair dealing;
- Substance not letter;
- Not bound by rules; and
- Not bound by the limited array of common law remedies.

Anyone seeking to rely on equitable rules had to bear in mind that equity provides discretionary remedies so there was not necessarily a guarantee that they would be successful.

They would have to follow certain rules, too, such as:

- (1) coming to equity with clean hands;
- (2) no unnecessary delay in bringing the case;

- (3) equity will not assist a volunteer; and
- (4) equity is equality.

BUT - in conflict, who prevails?

Earl of Oxford's Case [1615] - in a conflict between law and equity, equity prevails.

Later upheld by *Judicature Act 1873*; s25(1), now *Supreme Court Act 1981*; s49(1). If statute is involved, this prevails over law and equity.

Where does this leave modern land law?

Because of the historical background, modern land law now consists of a mixture of legal and equitable estates and interests.

Legal estates and interests normally require a degree of formality for their creation and transfer, whilst equitable interests are often created more informally.

Legal estates and interests generally need no specific protection to be binding on third parties, whereas equitable interests often need to be protected by some form of registration in order to be binding.

However, there are exceptions to these rules as we will see later.

The 1925 Legislation and the basis of modern land law

To recap:

1. 1066 - all land held of the King;
2. Lords (tenants) provided services - doctrine of tenures;
3. Gradually, services were replaced by money - people started "buying" land;
4. Doctrine of estates determined how long you held land for - nowadays there are only two estates in land (freehold and leasehold);
5. Land law originally only recognised by courts of law - this created anomalies, E.g., no recognition of trusts;
6. Law of equity was developed to resolve these anomalies;
7. Legal - binds the world without notice and equitable - binds everyone except the bona fide purchaser of the land for value without notice.

Land law was originally common law, E.g., based on decided cases. In 1925, a range of statutes were passed to codify and expand on existing case law.

The 1925 Acts (which are listed in the list of statutes above) came into force on 1st January 1926. Substantial changes to the system of registration of title have since been made by the *Land Registration Act 2002* (see later).

The distinction between legal and equitable rights

Law of Property Act 1925; s1 draws a fairly sharp distinction between certain rights which are "capable of subsisting or of being conveyed or created at law" and those rights which are capable of existence only in equity.

"1. (1) *The only estates in land which are capable of subsisting or of being conveyed or created at law are -*

(a) an estate in fee simple absolute in possession;

(b) a term of years absolute.

(2) *The only interests or charges in or over land which are capable of subsisting or of being conveyed or created at law are -*

- (a) *an easement, right, or privilege in or over land for an interest equivalent to an estate in fee simple absolute in possession or a term of years absolute;*
 - (b) *a rent charge in possession issuing out of or charged on land, being either perpetual or for a term of years absolute;*
 - (c) *a charge by way of legal mortgage;*
 - (d) *... and any other similar charge on land which is not created by an instrument;*
 - (e) *rights of entry exercisable over or in respect of a legal term of years absolute, or annexed, for any purpose, to a legal rentcharge.*
- (3) *All other estates, interests, and charges in or over land take effect as equitable interests."*

Section 1 therefore provides for:

- (a) two legal estates, namely freehold and leasehold (s1(1)) and five legal interests or charges (s1(2)); and
- (b) therefore, all other rights in land must necessarily be equitable only (s1(3)).

As we will see shortly, equitable interests can also arise where someone has attempted to create a legal interest, but has not succeeded due to a lack of appropriate formalities.

Thus *LPA 1925* had the effect, in some cases, of turning what were formerly legal rights into equitable rights, E.g., what were formerly rights "in land" into rights "in money" - to reflect a change in society's view of land and the rights in it.

The two legal estates

1. Fee simple absolute in possession

This is commonly referred to simply as "freehold".

- "Fee simple" - the greatest estate a person can own - effectively, they have a grant of the land for ever.
- "Absolute" - simply means no conditions attached; it is not a conditional or determinable fee.
- "In possession" - E.g., not in remainder or reversion - the owner has the right to the property NOW, not when someone else dies, etc.

LPA 1925; s205(1)(xix) states that a person will be “in possession” if they are in receipt of rents and profits from the property; they do not have to be in physical possession. So, if an owner grants someone else a lease, they will still be “in possession” for land law purposes.

2. Term of years absolute

This is commonly referred to as the “leasehold”.

The important difference between the two estates is that the fee simple is of unlimited duration, whereas the term of years is by definition of a fixed maximum duration.

The phrase “term of years” is misleading - a lease can be for any period - a month, three months, a year or whatever.

It can also be a periodic tenancy, where the tenant is allowed to stay in the property until given notice to quit - of which more later (*S205(1)(xxvii)*).

It is also important to note that (with one or two limited exceptions) any legal estate or interest in land must be created or transferred by deed (*LPA 1925; s52*, and see later).

The five legal interests

Of the five legal interests in the *LPA 1925*, the two most important are easements (rights over other people’s land, such as rights of way, rights of support and so on) and mortgages. We will be examining these later in the course, and looking at how they may be created and transferred.

We have now seen that the basis for modern land law is contained in *LPA 1925; s1*. If an estate or interest is not listed in this section, it must be equitable. We must now go on to look at how these estates and interests are protected.

One of the aims of the 1925 legislation was to create a new system of registration of title to land. The main reason for this was to speed up and streamline conveyancing procedures.

Prior to the 1925 legislation, the only way of proving that you “had title” to or owned an estate in land was by producing the deeds relating to previous transfers of the land for a considerable period of years (originally 40 years).

This was unwieldy, and the aim of the registration system was to do away with this system, so that title would be proved simply by production of a certificate of title, much like the system that exists for vehicle registration.

The intention was that system would be in place through the whole country within 25 years. Provisions were put in place to deal with the land which was still unregistered (E.g., for unregistered titles) whilst the system was being implemented. Unfortunately for various reasons, the registration system is not yet comprehensive throughout the country. Thus we have to look at protection of interests in land under both systems.

When an interest in land is created, there is no problem of enforceability between the original parties - they will have made some sort of formal contract.

The difficulty comes with deciding whether a third party - a subsequent purchaser of the land for instance - is bound by the interest. If the owner of the interest has protected it in the prescribed way, the third party will usually be bound.

Suppose we have a situation like this:

Jessica bought 5 Green Close from Simon. She did not have enough money to buy the house outright, so she did what most people do and borrowed money from her bank, secured by a mortgage.

Before she bought the house, her solicitor checked the title deeds and found that the neighbouring property, owned by George, benefits from a right to walk through her garden as a short cut to an allotment. She also found that there are covenants (promises) affecting the house, for example, she is not permitted to carry on any business at the house.

After she moves in she finds that Ann, another neighbour, has for several years used part of the garden to grow vegetables, under a form of lease.

Each morning the postman delivers mail to her new home.

There are all sorts of estates and interests involved here.

Can you identify who might have a land law claim and what type of claim it might be?

It is the job of land law to sort these out and decide:

- (i) what each person claiming a right must do to make it enforceable, and
- (ii) who takes precedence in any dispute.

Formalities

Land is a valuable commodity - over time complicated formalities for the transfer of ownership of land have arisen.

The transfer of land is usually in two stages - contract and conveyance.

Contracts

As well as the normal requirements for the creation of a contract, any contract for the sale of land or of an interest in land must (*LP(MP)A 1989*; s2 (in force 27 September 1989)):

- be in writing;
- be signed by or on behalf of both parties; and
- incorporate all the agreed terms.

If these requirements are not satisfied, the contract is not just unenforceable but is void from the outset, E.g., it is as if it had never existed.

Exceptions exist for contracts to create short leases (less than three years, which can be made orally) (*LP(MP)A 1989*; s2(5)(a)), resulting and constructive trusts, and auction contracts.

There is also an argument by some writers that land law rights may be created by proprietary estoppel. This can occur where someone (not the landowner) does something involving detriment to himself in a mistaken belief as to his actual or expected rights, in which the landowner acquiesces.

For example, if A orally promises to sell B the house which A owns, and on the strength of this B (with A's consent) goes into the house and starts doing substantial work to it, equity might well prevent A trying to defeat B's rights and might order that there is a contract for sale even though this is, obviously, not in writing. However, you should note that the law in this area is very much "under development".

Also, recent case law suggests that the constructive trust may be imaginatively used to provide a remedy where no formal contract has been created but where "equity" demands it (See *Yaxley v Gotts and another* [2000] 1 All ER 711 and *Herbert v Doyle and another* [2010] EWCA Civ 1095).

Problems arising from LP(MP)A 1989; s2

Spiro v Glencrown Properties [1991] 2 WLR 931. This case concerned an option to purchase. Options are normally in two parts - first an agreement that the grantee can exercise the option later, and then the actual exercise of the option.

The court held that the agreement had to satisfy LP(MP)A 1989; s2 but the exercise of the right could be done unilaterally by the grantee.

Record v Bell [1991] 4 All ER 471. Here there was a contract to sell a house, but a separate agreement to sell chattels. The purchaser tried to refuse to complete, claiming that the contract was in fact in two parts and, therefore, void, as there was no one document incorporating all the agreed terms as required by the LP(MP)A 1989.

The court held that the contract for the chattels was in fact a collateral contract and not part of the contract for the sale of the land, and thus each contract stood alone and was valid in its own right.

Firstpost Homes Ltd v Johnson and Others [1995] 1 WLR 1567. A letter setting out the terms of the contract was signed by the seller. The plan was signed by the seller and purchaser's agent.

The court held that there were two separate documents and therefore LP(MP)A 1989; s2 was not satisfied.

Commission for the New Towns v Cooper [1995] Ch 259. An exchange of correspondence did not constitute a contract, as the respective letters were not identical.

Variations to an existing, enforceable contract must comply with s2 - ***McCausland v Duncan Lawrie*** [1997] 1 WLR 38.

Where a contract omits agreed terms, there is always the possibility of rectification of the contract (see ***Wright v Robert Leonard Developments Ltd*** [1994] EGCS 69).

The decision in ***The Representative Body of the Church in Wales v Newton*** [2005] All ER (D) 163 is perhaps not surprising. Here, there was an agreement for the sale of a business which included the assignment of a lease. The contract was void because it was not in writing.

In ***Kinane v Mackie-Conteh*** [2005] All ER (D) 229, an agreement to grant a charge was not valid because it was not in writing, but the court found there was a constructive trust and so upheld the agreement.

Note also that anyone purporting to enter into a contract must have sufficient capacity to do so. In ***Wychavon District Council v EM*** [2012] UKUT 12 (AAC) C was profoundly

physically/mentally disabled. C's parents did their best to provide care including having their home specially constructed for her. This severely stretched their financial resources. On 26 February 2009 a Tenancy Agreement was purportedly entered into between C (as tenant) and C's father (as landlord). The Agreement was signed by C's father (as landlord), but in the space for C to sign it stated that C "is profoundly disabled and cannot communicate at all".

The court held that even if there appears to be a contract, it is void if one contracting party knew the other party lacked sufficient mental capacity to reach an agreement, because the first party would have been aware that the second party was not consenting to it. Here the absence of any agreement was obvious as C could not and did not communicate any agreement to the tenancy and she could never have been asked to agree to it.

Conveyances

Any formal document transferring land (conveyance, most leases, mortgages) must normally be in the form of a deed:

"All conveyances of land or of any interest therein are void for the purpose of conveying or creating a legal estate unless made by deed" - LPA 1925; s52(1).

But note *LPA 1925; s52(2)* - exceptions to the above rule:

- Assents by PR's (though often done by deed);
- Disclaimers not required to be evidenced in writing;
- Surrenders by operation of law; and
- Some leases are not required to be in writing.

The most important of above exceptions is the latter; *LPA 1925; s54(2)* provides that a lease for three or fewer years at the best rent does not have to be in writing, so does not need to be by deed. By implication, of course, a contract for such a lease does not need to be in writing.

LP(MP)A 1989; s1 to be a deed, the instrument concerned must:

- make it plain on its face that it is a deed;
- be signed by or at the direction of the parties to it;
- have each signature witnessed (two witnesses needed if not personally signed by party); and

- is delivered as a deed.

In addition, some legal interests in land can be created without any formalities - for example, easements created by prescription (see later).

From a practical point of view note ***R (on application of Mercury Tax Group Ltd and another) v HMRC*** [2008] EWHC 2721 (Admin). In this case, X's had executed early versions of certain Deeds and the signature pages were then transferred to the final versions, which were different from the versions executed.

The court held that it is a statutory requirement for the execution of a deed by an individual that the signature and the attestation by a witness (or witnesses) must form part of the same physical document which includes the other clauses of the deed - therefore these deeds were formally invalid. The Law Society and the City of London Law Society have now issued Guidance following the case in relation to what are commonly known as "virtual signings".

See also ***Silver Queen Maritime Ltd v Persia Petroleum Services PLC*** [2010] EWHC 2867. Here the parties were in dispute about payment under a contract. The dispute was settled and a settlement deed was drawn up. P signed the deed and P's solicitors sent it to S's solicitors in July 2009 for signature by S. The following morning, P tried to withdraw from the settlement. Later that day, the completed deed was returned to P's solicitors but P maintained it was not effective because P had decided to withdraw before the deed was signed, dated and returned. P argued that whilst the deed had been signed and sealed, it had not been delivered.

The court held that P bound by the deed. It had been delivered irrevocably subject only to the condition that it be signed and returned. If P had wished to preserve its ability to withdraw, its solicitors should have delivered the deed on that basis

Estates and interests in land - unregistered titles

It is now quite rare to find any land in England and Wales which is not registered at the Land Registry. However, there is still a very small amount of unregistered land left so you will need to know about the protection offered to this sort of land.

Most legal estates and interests in land are binding on third parties without the need for protection by registration or otherwise, and whether or not the person affected knows about them (E.g., has notice).

Other interests in land (E.g., those not specifically mentioned in *LPA 1925*; s1(1) and s1(2)) must be equitable (s1(3)), and require protection.

This protection falls into three types:

- i) protection by registration as a Land Charge on the Central Land Charges Register;
- ii) protection by the doctrine of overreaching; or
- iii) protection by the doctrine of notice (relatively few interests E.g., pre-1926 restrictive covenants).

Which sort of protection is relevant?

You may find an informal categorisation of interests, adopted by some writers, as “commercial” (registration) or “domestic” (overreaching). Some fit neither category - these depend on notice.

So, type of protection depends on the type of interest.

Broadly:

- “family” interests = E.g., capable of being overreached;
- “commercial” interests = registration;
- everything else = notice.

Generally speaking those interests not protected as Land Charges are subject to the overreaching doctrine - only a limited number of interests are subject to notice.

The Land Charges Register

This is a register of six classes of charge or obligation affecting land. The classes are A - F.

The most important are classes C, D and F.

Class C

There are four third party rights falling within this group:

Class C(i) A Puisne Mortgage - a legal mortgage not protected by deposit of title deeds. This will apply to most second and subsequent mortgages - with first mortgages, the lender will usually have taken the title deeds as security. This is therefore, an exception to the rule that legal rights in unregistered land are good against the whole world;

Class C(ii) A Limited Owner's Charge - rare in practice;

Class C(iii) A General Equitable Charge - the important right in this group is an equitable mortgage of the legal estate not protected by deposit of title deeds. Also rare in practice, as we will see when we look in detail at mortgages; and

Class C(iv) An Estate Contract - a contract to convey or create a legal estate, E.g., contracts to sell the fee simple (freehold) or agreements for a lease. Also included are options to purchase, and rights of pre-emption.

Class D

There are three class D land charges:

Class D(i) - An Inland Revenue Charge for inheritance tax;

Class D(ii) - A Restrictive Covenant - other than those made before 1st January 1926 and those made between landlord and tenant (neither of these are registrable and are, therefore, protected by notice); and

Class D(iii) - "An easement, right, privilege over or affecting land created or arising on or after 1st January 1926 and being merely an equitable interest." Rare.

Class F - A Spouse's Right of Occupation - this arises under the *Family Law Act 1996*; ss30 - 31, (originally the *Matrimonial Homes Act 1967*, then *MHA 1983*) and gives a spouse who has no legal interest in the matrimonial home (E.g., is not a legal owner of the freehold / leasehold) the right not to be evicted or excluded from the home by the owning spouse, if he or she is living there, and, if not living there, the right to enter and

occupy the house. This right is available equally to both husband and wife and civil partners - and it is unique as a land charge in that it is **NOT AN INTEREST IN LAND**.

"The right is in essence a personal and non-assignable statutory right not to be evicted from the matrimonial home in question during marriage or until the court otherwise orders; and this right constitutes a charge on the estate or interest of the owning spouse which requires protection against third parties by registration ... [the MHA 1967] has put into the hands of all spouses with statutory rights of occupation a weapon of great power and flexibility. Registration is a relatively simple, speedy process ... As this case illustrates, Parliament has made it possible for the protected spouse to go far towards having his or her way as to not moving from the matrimonial home, at the expense of the other spouse and innocent purchasers. No doubt, too, the protected spouse may, by registering the statutory charge, and particularly by registering it at an inconvenient moment, requiring the owning spouse to buy off the charge. In some cases this may be very proper; in others it may be less so; but the power to do it is a unilateral power, free from any restraints".

Megarry J in **Wroth v Tyler** [1974].

This right was introduced following the decision by the House of Lords in **National Provincial Bank Ltd v Ainsworth** [1965] AC 1175 that a spouse who was not a legal owner had no common law right of occupation binding on purchasers and lenders.

However, it is of much less significance these days. **Why?**

Effect of non-registration of land charges

All land charges are void for non-registration - if you have an interest which can be protected by registration and you do not register it, your right will not prevail against an innocent purchaser of the land.

Class A, B, C(i), C(ii), C(iii) and F - are void against a purchaser for value of any interest in the land (E.g., even against a purchaser of an equitable interest); and

Class C(iv) and D - are void against a purchaser of a legal estate for money or money's worth.

What is a "purchaser"?

This has a specific legal definition (*LPA 1925; s205(1)(xxi)*) - "purchaser" means a purchaser in good faith for valuable consideration and includes a lessee or mortgagee. The consideration does not have to be full market value but must not be nominal.

All charges are valid against a volunteer - E.g., a donee or a squatter.

All charges will bind a purchaser who has been fraudulent – but fraud is more than notice - E.g., **Midland Bank v Green** (see later).

All charges can be binding against a purchaser who is estopped from pleading the fact of non-registration - where the purchaser has made a promise which has been relied upon.

Effect of Non-Registration - some examples

Hollington Bros Ltd v Rhodes [1951] 2 All ER 578.

D (lessees) entered into a contract to grant a sub-lease to P. The contract should have been registered as an estate contract (C(iv)) but P failed to register it. D assigned the lease to A, expressly subject to tenancies. A knew of P's rights. A gave P notice to quit unless P agreed to a higher rent. P took action against D for damages, etc. Did P's contract bind A?

Held: No as lack of registration made the contract void against third parties (Per Harman J).

Midland Bank Trust Co v Green [1981] AC 513.

A father granted his son an option to purchase land for £22,500. The son should have registered this option as a C(iv) Land Charge but he did not. A family argument took place and the father sold the land to the son's mother for £500 without telling the son. The mother then died. The son brought an action against his father and mother's estate. The son died during the action which was continued by the son's executor.

The son claimed that the option should be held binding on both the father and mother in view of the mother's knowledge, and the father and mother's deliberate attempt to deprive their son. An unregistered C(iv) is "void as against a purchaser for money or money's worth of a legal estate in the land charged with it". The son argued £500 was not enough to be "money or money's worth"; he also argued that the mother's lack of good faith should prevent her from succeeding.

Held: The option was void against the mother. Money, etc., did not mean full valuable consideration. There was considerably more sympathy for the son in the Court of Appeal, where Lord Denning laid down a requirement of adequate consideration, rather than the amount paid which was only about one eightieth of the actual value. Lord Denning also found that the mother had not purchased in good faith and so was not protected.

However, the House of Lords took an entirely less sympathetic and, some would say, amoral attitude. The court's view was that even a mere pittance was still "money or money's worth". This ruling left many commentators with the view aptly summarised by Gray and Gray in *Elements of Land Law* that:

“in its quest for long term certainty rather than short term justice, the law relating to land charges is largely indifferent to the relative moral claims of litigants”.

NB: The son may have had another, important, avenue of redress to explore! Can you think what that was?

Lloyds Bank v Carrick [1996] 4 All ER 630.

A bought a property from B, paid the price and moved in, but no legal transfer was executed. As a result of this A, therefore, had an estate contract which she should have registered as a C(iv) Land Charge, but which she failed to do. The court had to decide whether the contract could be enforced through a constructive trust or by the doctrine of proprietary estoppel.

If the court had found a trust, her rights would have succeeded against the bank which was trying to repossess the property because of B's mortgage arrears, subject to the bank having notice.

Held: The Court of Appeal held that there was no constructive trust, and she could not enforce rights in estoppel over the bank, which had made her no promises.

It is interesting that (as we shall see later) if this had been a case concerning registered land the opposite effect would have ensued - the fact of A's occupation, coupled with her property rights by virtue of the contract, would have given her an overriding interest.

Over the years the courts have refused to help those who (often in family arrangements as in ***Green*** or ***Carrick***) fail to register an interest, leaving the unjust situation where a purchaser can ignore the rights of a justified claimant even when they knew of those rights when they paid their money over.

Problems with the Land Charges system:

The system is not foolproof - the following could be problems:

- a) Spite registrations.
- b) Searching against the wrong name:

Diligent Finance v Alleyne [1972] 23 P & CR 346.

The deeds were in the name of Erskine Owen Alleyne. His wife registered a Class F Land Charge against the name “Erskine Alleyne”. A mortgagee searched against the name “Erskine Owen Alleyne” and the search result did not reveal the wife's interest.

Held: The wife's interest was void for non-registration.

Oak Co-operative Building Society v Blackburn [1968] 2 All ER 117.

Here the estate owner's name was Francis David Blackburn. A Class C(iv) Land Charge was registered against the name "Frank David Blackburn". Later, B entered into a mortgage with O. Prior to granting the mortgage, O made a search against the name "Francis Davis Blackburn" and received a clear search.

Held: The C(iv) was binding on O. Russell LJ held that it was binding because the C(iv) had been made against a version of the correct name, whereas O had searched against an incorrect name. The court intimated that had O searched against B's full name and received a clear search it would have taken free from the C(iv).

- c) Non - registration - see above.
- d) Pre-root charges - the root of title for unregistered conveyancing is 15 years. Thus a prospective purchaser could have no notice of the names of estate owners before the root, so could not search.

Protection is provided by *LPA 1969; s25(1)* whereby compensation is available for charges hidden behind the root if:

- transaction took place after 1 January 1970;
- the purchaser had no "actual knowledge" of the charge at the date of completion of his purchase; and
- the charge is registered against a name which is not revealed in any of the documents.

Overreaching

If an interest is NOT capable of registration as a Land Charge (E.g., not one of those specified in classes A to F), look to see whether it is an interest which is protected by being treated as an interest in money, not land; that is, is it overreachable?

OVERREACHABLE INTERESTS CANNOT BE REGISTERED AS LAND CHARGES.

The two systems of protection are mutually exclusive. One easy way of looking at this is that "family" interests (E.g., interests under a trust) are overreachable, but "commercial" interests (E.g., a contract for sale of land) are not.

The system grew out of two needs:

- 1) the need of a purchaser for certainty - if he follows the rules, he will get his property free from any beneficial interest, without having to enquire as to whether any such interests exist; and
- 2) the need of a beneficiary to have some protection of their interests - if the purchase money has to be paid to two trustees, there is more chance that the beneficiary will not be defrauded.

Overreaching is based on the Doctrine of Conversion - that is, that the beneficiary's interest in the property is converted into a sum of money rather than an interest in land.

"Overreachable" interests defined by *LPA 1925; s2(1)*, as amended by *TOLATA 1996*.

There are four main types:

- settled land interests E.g., interest of a tenant for life (now rare);
- interests under trusts of land or trusts for sale;
- sale by a mortgagee or personal representative; and
- sale by order of Court.

To overreach interests under a trust or strict settlement, the purchase monies must be paid to two trustees or a trust corporation - *LPA 1925; s27(1)* - provided this is done, the purchaser is not concerned with the beneficial interests, whether or not he had notice.

Caunce v Caunce [1969] 1 WLR 286.

He husband (H) was the sole owner of a property. His wife had a beneficial interest which was not overreached by payment to H (sole trustee). This case was memorable for its discussion of the Doctrine of Notice (see below).

Williams and Glynn's Bank v Boland [1981] AC 487.

Again, the husband (H) was the sole owner of land. He mortgaged the land to the bank, without disclosing his wife's (W) existence or interest in the land (interest under a trust). The bank paid the mortgage money to H who was the sole trustee.

Held: Again, the court held that the payment did not overreach W's interest, which survived against the bank.

But compare ***City of London Building Society v Flegg*** [1988] AC 54.

Here the property was owned by H and W with a contribution having been made by the parents of W (Ps). The property was re-mortgaged by H and W, who later defaulted. The question before the court was whether Ps had an interest.

Held: Their beneficial interest was overreached by payment of the mortgage monies to H and W, E.g., 2 trustees.

Both ***Boland*** and ***Flegg*** related to registered titles - but the principle of overreaching is still the same.

Also see ***State Bank of India v Sood*** [1997] 1 All ER 169.

Payment of money may, in some circumstances, not be necessary for overreaching. In this case, the mortgagees overreached the beneficiaries' interests where the owner had mortgaged the property against future borrowings so when the mortgage was completed n capital monies were received.

Kingsnorth Finance Co Ltd v Tizard [1986] 2 All ER 54.

Here H, again, was the sole owner. He charged the property but W's interest was not overreached. (See below for discussion in context of notice).

Consider the problems of overreaching - why is it not a perfect system?

Why did the Doctrine of Conversion come into existence and why was it abolished by the *Trusts of Land and Appointment of Trustees Act 1996*?

Some academics have argued that the introduction of the *Trusts of Land and Appointment of Trustees Act 1996*, in abolishing the Doctrine of Conversion also effectively reversed the decision in ***Flegg***. Subsequent case law suggests this is not the case.

In ***Birmingham Midshires Mortgage Services Ltd v Sabherwal*** [2000] P and CR 256, Robert Walker LJ stated:

"The [TOLATA] contains nothing to exclude the essential overreaching provision contained in s2(1)(ii) of the Law of Property Act 1925. On the contrary, that provision is amended so as to merit the new terminology of the [TOLATA] ... so is in effect confirmed ... by the [TOLATA]".

The Doctrine of Notice

So - "commercial" interests (as defined in the *Land Charges Act*) are covered by land charges, "family" interests (as defined in the *LPA 1925*) are covered by overreaching - what happens if an interest does not fit either of these? It is subject to the Doctrine of Notice. This somewhat goes against the aim of the 1925 legislation, which was to promote certainty.

Notice was much more important before the 1925 legislation, as any interest which was not "legal" was subject to notice. Since 1925 it has become less important, but it is still relevant in a few circumstances.

The following are subject to notice:

- Pre 1925 covenants/equitable easements;
- Sole trustee situations, as in ***Caunce v Caunce*** (above). Under the unregistered system, where a potentially overreachable interest is not overreached because the purchase money is not paid to two trustees, whether it binds the purchaser depends on notice. In ***Caunce***, the Court was asked to decide whether the fact of W's occupation gave constructive notice of her beneficial interest. It took a narrow view and held that her occupation was entirely consistent with the fact of her being married to H and did not give constructive notice of her beneficial interests.

Compare that decision with ***Kingsnorth v Tizard***. Here H arranged for the mortgagee's representative to visit when he knew W would be out. He described himself as "single" on the mortgage application form, and told the representative that W had left and lived elsewhere. Their children were present on the representative's visit.

Held: The mortgagee was fixed with constructive notice of her interest - the company should have made further enquiries;

- Equitable estoppel - ***Ives E.R Investment Ltd. v High*** [1967] 2 QB 379 - A had been permitted to use a right of way over B's land, in return for the fact that A did not make a fuss about B's building which encroached on A's land.

Held: This right amounted to an equitable easement. It was not registered as a land charge, but was held to bind purchasers as there was a proprietary estoppel. Thus, an interest coupled with an estoppel is subject to the Doctrine of Notice;

- Equitable rights of entry - ***Shiloh Spinners Ltd v Harding*** [1973] AC 691. Here a landlord (L) had granted an equitable lease - E.g., the lease did not satisfy the requirements necessary for it to be legal. The lease contained right of re-entry for L if the tenant did not pay the rent, etc.

Held: This must be an equitable right, not a legal one, as the lease itself was not legal. However, it could not be registered as a Land Charge because it did not fit any accepted category. Thus the right was subject to the Doctrine of Notice.

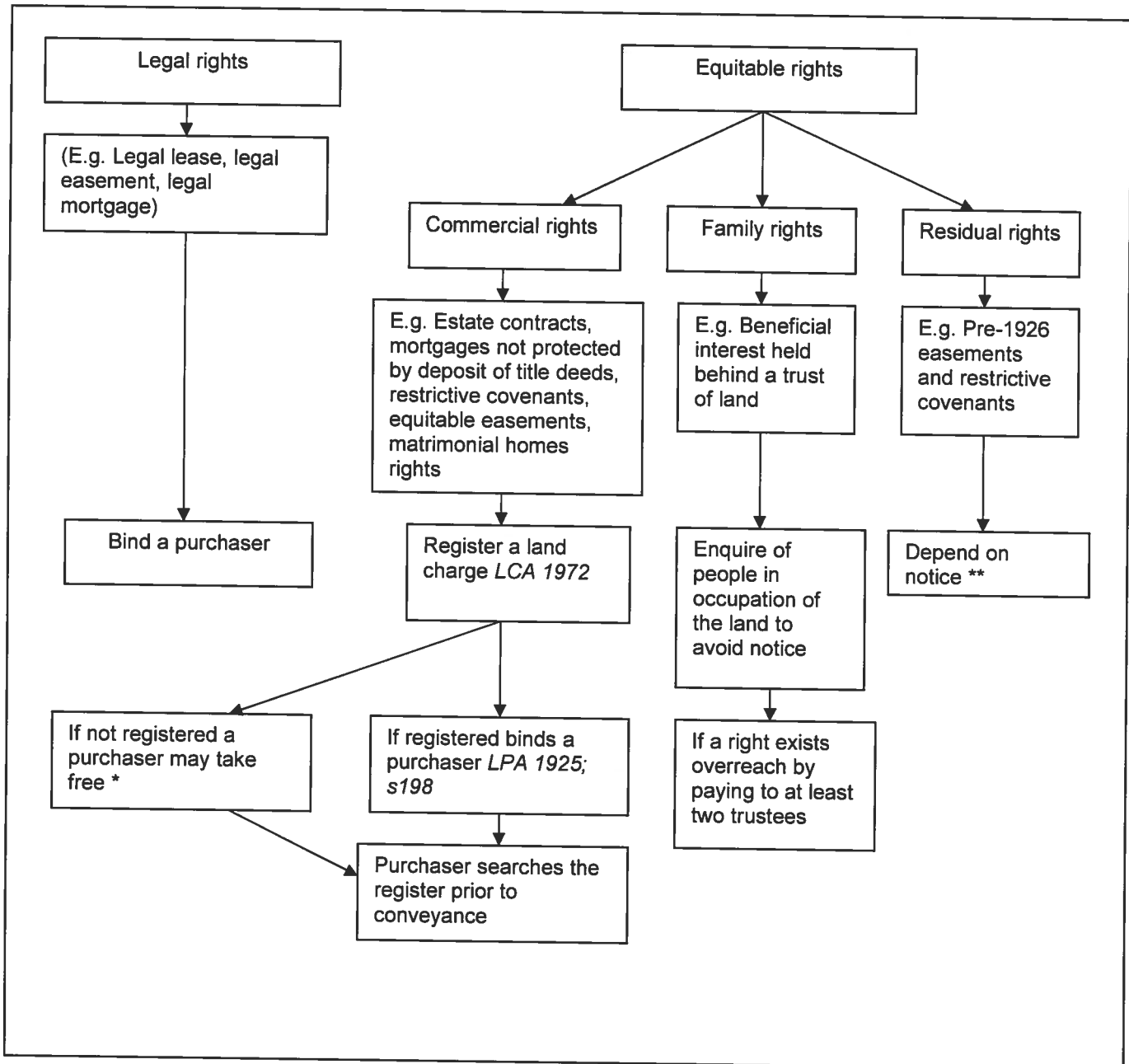
- Tenant's right to remove fixtures at the end of the lease.

Notice may be:

- actual, where the purchaser actually knew;
- constructive, where the purchaser is deemed to know because a reasonable person would have known or at least have been prompted to make further enquiries;
- imputed, where the purchaser's agent (E.g., solicitor) knew, so the purchaser himself is deemed to know.

Problems can arise when deciding whether or not someone has constructive notice – consider ***Caunce*** and ***Tizard*** (above).

Unregistered Land What sort of protection is required?



*Land charges A B C (i) (iii) and F void against purchaser for valuable consideration of any interest in land.

Land charges C(iv) D(i) (ii) (iii) void against purchaser for money or money's worth of legal estate in land.

** Notice - actual, imputed, constructive.