

Title:	(Unit 9) Land Law
Level:	6
Credit Value:	15

LEARNING OUTCOMES	ASSESSMENT CRITERIA	KNOWLEDGE, UNDERSTANDING AND SKILLS
THE LEARNER WILL:	THE LEARNER CAN:	
1. Understand the legal concepts of real property and personal property	1.1 Explain how the law categorises real and personal property	1.1 With reference to relevant authority, an explanation of the concepts of real property, personal property (including the distinction between chattels and chose in action), rights in <i>rem</i> and rights in <i>personam</i> .
	1.2 Explain the concept of relativity of title and the relevance of possession	1.2 With reference to relevant authority distinguish the concepts of ownership and possession and apply the law to determine relative rights to property.
	1.3 Explain what constitutes land and the extent of that land	1.3 With reference to relevant case law and statutory authority (including s205 Law of Property Act 1925 (LPA)) an explanation of corporeal and incorporeal hereditaments; <ul style="list-style-type: none"> <li>• how the courts apply the law to determine the distinction between fixtures and fittings;</li> <li>• the truth of the maxim <i>ad coelum et ad inferos</i> including an understanding of relevant authority.</li> </ul>

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	1.4	Explain the nature of a freehold estate in land and the rights conferred on its owner	1.4	The nature and definition of a legal freehold (including the legal fees existing prior to the LPA); <ul style="list-style-type: none"> <li>the <i>prima facie</i> rights of the legal owner, including rights to alienate and to possession.</li> </ul>
	1.5	Apply understanding of the conceptualisation of property and land to a given situation	1.5	Application of understanding to a complex scenario.
	1.6	Critically evaluate a given issue or situation to predict probable legal implications	1.6	A reasoned opinion of likely legal implications, including remedies and defences, where appropriate.
2. Understand the significance of legal and equitable property interests	2.1	Explain the estates and interests in land which are recognised by law and equity	2.1	The definition in section 1 LPA of those estates and interests in land which can exist in law and/or equity.
	2.2	Explain the remedies <i>prima facie</i> available to a legal owner of property rights and to an equitable owner of property rights	2.2	With reference to relevant case law, damages at common law and the range of equitable remedies including actions against trustees.
	2.3	Analyse the relationship between legal and equitable interests	2.3	Analysis of the relative advantages and disadvantages of legal and equitable interests including the range of remedies available and binding status of the same on third party purchasers using relevant case law.
	2.5	Critically evaluate a given issue or situation to predict probable legal implications	2.5	A reasoned opinion of likely legal implications, including remedies and defences, where appropriate.

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<p><b>3.</b> Understand the principal ways in which interests in land can be created expressly or by proprietary estoppel</p>	<p><b>3.1</b> Explain the formalities required for the express creation of legal interests</p>	<p><b>3.1</b> With reference to relevant authority the requirement for legal interests to be created by deed;</p> <ul style="list-style-type: none"> <li>the statutory requirements for a deed; limited exceptions to the same (for instance short leases).</li> </ul>
	<p><b>3.2</b> Explain the formalities required for the express creation of equitable interests and the exceptions there to</p>	<p><b>3.2</b> Explanation of the requirement for expressly created or transferred equitable interests to comply with s2 Law of Property (Miscellaneous Provisions) act 1989 (LP(MP)A);</p> <ul style="list-style-type: none"> <li>the exceptions therein (collateral contracts, merger, the saving in the act for short leases and for implied trusts);</li> </ul> <p>The key differences between s2 LP(MP)A and s40 LPA;</p> <ul style="list-style-type: none"> <li>explanation of the requirements for express trusts to comply with s53 lpa including an understanding of relevant authority.</li> </ul>
	<p><b>3.3</b> Explain the circumstances in which an interest in land might arise by proprietary estoppel</p>	<p><b>3.3</b> Explanation of the requirement for a successful claim of proprietary estoppel in respect of an estate or interest in land with reference to the development of the doctrine through judicial authority;</p> <ul style="list-style-type: none"> <li>bars to the claim (principally equitable concepts of laches, “clean hands”, etc);</li> <li>remedies including relevant judicial authority relating to proportionality and the “minimum equity required to satisfy” the estoppel.</li> </ul>

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	3.4	Analyse the law on the application of these rules	3.4	identifying and explaining the relevant law, using relevant case law, considering: <ul style="list-style-type: none"> <li>• judicial approaches to, particularly, S2LP(MP)A;</li> <li>• the relationship between exceptions thereto, PE and implied trusts;</li> <li>• a clear understanding of relevant judicial authority relating to the relationship between the doctrines.</li> </ul>
	3.5	Apply the law on the creation of interests in land to a given situation	3.5	Application of the law to a complex scenario.
	3.6	Critically evaluate a given issue or situation to predict probable legal implications	3.6	A reasoned opinion of likely legal implications, including remedies and defences, where appropriate
4. Understand the ways in which third party rights in both registered and unregistered land can be protected	4.1	Explain the law determining whether a purchaser of an unregistered estate will take free of third party legal or equitable interests (including those interests subject to the Land Charges regime)	4.1	Definition of equity's darling (including doctrine of notice); <ul style="list-style-type: none"> <li>• recognition that, <i>prima facie</i>, legal interests bind the world, but equity's darling takes free of equitable interests;</li> <li>• the impact of the land charges Act 1972 (LCA);</li> <li>• requirements for protection by LCA; consequences of want of protection;</li> <li>• overreaching.</li> </ul>
	4.2	Explain the circumstances under which compulsory or voluntary registration of an unregistered estate arises	4.2	Explanation of the relevant provisions of the Land Registration Act 2002 (LRA02); <ul style="list-style-type: none"> <li>• triggers for compulsory registration; circumstances under which an estate might voluntarily be registered;</li> <li>• consequences of non-registration <i>per se</i> and by reference to a third party purchaser of the same estate or of a later interest in that estate;</li> <li>• consequences of a failure to register.</li> </ul>

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<p><b>4.3</b> Explain how third-party rights affecting a registered estate can be protected</p>	<p><b>4.3</b> Explanation of the relevant provisions of the LRA02 and relevant case law in respect of those provisions and the provisions of s70(1) of the LRA25:</p> <ul style="list-style-type: none"> <li>• the nature and effect of substantive registration and the interest subject thereto;</li> <li>• noting on the register and the interests subject thereto;</li> <li>• the categories of overriding interests;</li> <li>• the rules for the overreaching of beneficial interests in the estate;</li> <li>• consequences of want of protection of third-party rights in terms of enforceability against third parties who come to own the legal estate;</li> <li>• the nature and significance of a “registered disposition”.</li> </ul>
<p><b>4.4</b> Analyse the doctrinal and policy considerations in relation to the registered and unregistered systems</p>	<p><b>4.4</b> Consideration of the mirror, curtain and Indemnity principles;</p> <ul style="list-style-type: none"> <li>• whether the registration system complies with the principles;</li> <li>• the conflict between the interests of, and perceived need to protect “innocent” third parties and “unknowing” purchasers;</li> <li>• the relevance of the perceived distinction between commercial and family interests.</li> </ul>
<p><b>4.5</b> Apply the law on registered and unregistered land to a given situation</p>	<p><b>4.5</b> Application of the law to a complex scenario.</p>

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	4.6	Critically evaluate a given issue or situation to predict probable legal implications	4.6	A reasoned opinion of likely legal implications, including remedies and defences, where appropriate; <ul style="list-style-type: none"> <li>including: issues of notice, balancing rights of third parties and purchasers;</li> <li>ignorance of rights or the need to protect; fiscal policy;</li> <li>ownership by registration versus possession of deeds or of land.</li> </ul>
5. Understand the law relating to trusts of land	5.1	Explain the formalities for the creation of an express trust of land	5.1	Explanation with reference to relevant authority the formality requirements for the creation of an express trust of land, including s53LPA.
	5.2	Explain how a resulting or a constructive trust can arise	5.2	Explanation of the equitable rules for the determination of the existence, and the quantification, of a constructive or a resulting trust with reference to relevant case law and the modern evolution of the doctrines.
	5.3	Explain the concepts of joint tenancy and tenancy in common in relation to a legal or equitable estate	5.3	The unities and the doctrine of survivorship; <ul style="list-style-type: none"> <li>the ownership of the legal estate as joint tenants by a maximum of four trustees;</li> <li>the equitable presumptions as to the way in which the equitable estate is held;</li> <li>the ways in which an equitable joint tenancy can be severed and the consequences of such severance including an understanding of relevant statute and case law.</li> </ul>

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	<p><b>5.4</b> Explain the rights of trustee and beneficiary of a trust of land conferred by the Trusts of Land and Appointment of Trustees Act 1996 (TLA96)</p>	<p><b>5.4</b> Explanation of the relevant sections of TLA96;</p> <ul style="list-style-type: none"> <li>• rights to occupy;</li> <li>• to be consulted;</li> <li>• relevant provisions for the resolution of disputes;</li> <li>• including relevant case law interpreting the same.</li> </ul>
	<p><b>5.5</b> Analyse the approach of the judiciary to the determination of disputes over the beneficial ownership of land</p>	<p><b>5.5</b> Consideration of relevant case law impacting this area, including approaches of the judiciary over time to the use of implied trusts in determining property ownership on breakdown of relationship;</p> <ul style="list-style-type: none"> <li>• the perceived inappropriateness of resulting trusts for this purpose and recent judicial authority relating to that point;</li> <li>• the constructive trust as a remedial device;</li> <li>• and the relationship between implied trusts, s2LP(MP)A and proprietary estoppel.</li> </ul>
	<p><b>5.6</b> Apply the law relating to trusts of land to a given situation</p>	<p><b>5.6</b> Application of the law to a complex scenario.</p>
	<p><b>5.7</b> Critically evaluate a given issue or situation to predict probable legal implications</p>	<p><b>5.7</b> A reasoned opinion of likely legal implications, including remedies and defences, where appropriate.</p>

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6. Understand the nature of easements and profits	6.1 Explain the nature of easements and profits	6.1 Using relevant case law, an explanation of the criteria used to determine whether a right claimed can amount to an easement or profit; <ul style="list-style-type: none"> <li>the distinction between them and permissive rights.</li> </ul>
	6.2 Explain the methods by which easements can be created expressly and impliedly	6.2 Explanation of the rules for express creation as above with reference to relevant case law and statutory authority. <ul style="list-style-type: none"> <li>creation by necessity, common intention, rule in <u>Wheeldon-v-Burrows</u> (1879), s62 LPA;</li> <li>recognition of the availability of such methods by grant or by reservation including an understanding of relevant case law.</li> </ul>
	6.4 Analyse the prescription regime against a background of doctrinal and policy considerations	6.4 Explanation of the rules for establishing an easement by long user: <ul style="list-style-type: none"> <li>basic requirements of <i>nec per vi, nec per clam, nec precario</i>;</li> <li>pleas under common law, lost modern grant and the Prescription Act.;</li> <li>understanding of the policy considerations supporting and conflicting with the doctrine, including criticisms of the complexity of the law, and of the “fiction” foundation of the common law and lost modern grant doctrines including an understanding of relevant statute and case law.</li> </ul>
	6.5 Apply the law on easements to a given situation	6.5 Application of the law to a complex scenario.
	6.6 Critically evaluate a given issue or situation to predict probable legal implications	6.6 A reasoned opinion of likely legal implications, including remedies and defences, where appropriate.

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7. Understand the nature of covenants affecting a freehold estate	7.1	Explain the distinction between restrictive, positive and personal covenants	7.1	Based on relevant case law, an explanation of how the courts classify covenants created in transfers of freehold estates or independently as restrictive, positive or personal.
	7.2	Explain the formalities required for the creation of covenants affecting freehold land	7.2	Recognition of the application of formality requirement to the creation of freehold covenants.
	7.3	Explain the rules determining whether a third-party purchaser is bound by, or benefits from, such a covenant	7.3	An explanation of the rules governing the running of the benefit and burden of freehold covenants in both law and equity, and the exceptions thereto; <ul style="list-style-type: none"> <li>eg, <u>Halsall-v-Brizell</u> (1957), indemnity covenants etc including an understanding of relevant case law.</li> </ul>
	7.4	Explain how a covenant affecting freehold land may be extinguished or modified	7.4	Agreement between the dominant and servient tenement owners (recognising the difficulty of identifying the same) <ul style="list-style-type: none"> <li>unity of seisin,</li> <li>estoppel</li> <li>abandonment,</li> <li>the application of s84 LPA and, with reference to relevant case law, judicial approaches to that section.</li> </ul>
	7.5	Analyse the use of covenants against a background of doctrinal and policy considerations	7.5	Consideration of: <ul style="list-style-type: none"> <li>issues of private planning control, value and user, competing concerns of above versus economic utility and sterility of land and costs of compliance;</li> <li>issues of obsolescence and effect on market value;</li> <li>the relevance of s84 in mitigating the perceived problem.</li> </ul>
	7.6	Apply the law on covenants to a given situation	7.6	Application of the law to a complex scenario.
	7.7	Critically evaluate a given issue or situation to predict probable legal implications	7.7	A reasoned opinion of likely legal implications, including remedies and defences, where appropriate.

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8. Understand the nature of a mortgage	8.1	Define a mortgage	8.1	Explanation of definition in <u>Santley-v-Wilde</u> (1899).
	8.2	Explain the formalities for the creation of legal and equitable mortgages	8.2	Explanation of the application of formality requirements to this area of law; <ul style="list-style-type: none"> <li>the possibility of creation by estoppel;</li> <li>constructive trusts.</li> </ul>
	8.3	Explain the protection afforded to a mortgagor by equity and by the law	8.3	With reference to relevant case law and statutory authority, the legal and equitable interventions including undue influence; <ul style="list-style-type: none"> <li>Consumer Credit Act;</li> <li>collateral advantages;</li> <li>fetters on the right to redeem.</li> </ul>
	8.4	Explain the circumstances under which a mortgagee may enforce the mortgage	8.4	With reference to relevant case law and statutory authority, the right to sue on the debt; <ul style="list-style-type: none"> <li>right to possession;</li> <li>orders for sale;</li> <li>foreclosure;</li> <li>the discretion of the mortgagee to pursue or not pursue a given remedy;</li> <li>common law and statutory limitations, including those for mortgagors of dwelling houses.</li> </ul>
	8.5	Explain the rules determining the priority of multiple mortgages affecting the same registered or unregistered estate	8.5	With reference to relevant case law and statutory rules (in particular the LRA02 and the ICA72), an explanation of the rules for determining the priority of competing interests in both registered and unregistered land.
	8.6	Analyse the rules for protection of mortgagors and for the enforcement of mortgages against a background of doctrinal and policy considerations	8.6	Consideration of the role and intervention of common law, statute and equity; <ul style="list-style-type: none"> <li>the need to balance competing economic and social policy considerations;</li> <li>changes in patterns of acquisition of residential land over history.</li> </ul>

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	8.7	Apply the law on mortgages to a given situation	8.7	Application of the law to a complex scenario.
	8.8	Critically evaluate a given issue or situation to predict probable legal implications	8.8	A reasoned opinion of likely legal implications, including remedies and defences, where appropriate.
9. Understand the nature of a leasehold estate	9.1	Define the nature of a leasehold estate	9.1	With reference to relevant case law and statutory authority, an explanation of the certainties for lease (term, rent and exclusive possession); <ul style="list-style-type: none"> <li>• exceptions to the rule, eg, service occupier;</li> <li>• the distinction between lease and license to occupy in terms of both substance and the rights of the parties.</li> </ul>
	9.2	Explain the formality requirement for the creation of both legal and equitable leases	9.2	An explanation of the application of general formality requirements as above: <ul style="list-style-type: none"> <li>• the types of leases;</li> <li>• periodic tenancies;</li> <li>• tenancies at will and at sufferance;</li> <li>• exceptions to formality requirements for short leases, periodic tenancies etc.</li> </ul>

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	<p><b>9.3</b> Explain the circumstances under which the benefit or burden of leasehold covenants might pass to the purchaser of the reversion or of the leasehold estate</p>	<p><b>9.3</b> With reference to relevant case law and statute (particularly the Landlord and Tenant (Covenants) Act 1995 (LTCA95)), an explanation of the rules for the running of benefit and burden of leasehold covenants contained in both 'old' and 'new' leases;</p> <ul style="list-style-type: none"> <li>• an explanation of the relevance of original parties' privity of contract in both old and new leases;</li> <li>• the form and relevance of authorised guarantee agreements;</li> <li>• an explanation of methods of indirect enforcement by way of indemnities and the rule in <u>Moule-v-Garrett</u> (1871).</li> </ul>
	<p><b>9.4</b> Explain the circumstances in which leasehold covenants can be enforced against third parties</p>	<p><b>9.4</b> An explanation of the circumstances under which a third party, eg, subtenant or licensee of the tenant, is subject to covenants contained in an 'old' or a 'new';</p> <ul style="list-style-type: none"> <li>• lease by reference to relevant case law as to old leases and to the LTCA95 in respect of new leases.</li> </ul>
	<p><b>9.5</b> Explain, in outline only, the nature of a commonhold estate</p>	<p><b>9.5</b> An explanation, in outline only, of the nature, form and formality requirements for the creation of a commonhold estate;</p> <ul style="list-style-type: none"> <li>• a recognition of the differences between commonhold, leasehold and freehold estates;</li> <li>• an explanation of the advantages and disadvantages of each type of estate.</li> </ul>

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	<p><b>9.6</b> Analyse the law affecting leasehold estates against a background of doctrinal and policy considerations</p>	<p><b>9.6</b> Consideration of definition and identification of exclusive possession; the need for rent or premium;</p> <ul style="list-style-type: none"> <li>• changes in the regime for the running of covenants including the impact and effectiveness thereof in light of criticisms of the old regime;</li> <li>• the significance of lease/license distinction in terms of enforcement by the original parties and whether a third-party purchaser of the estate is bound (with particular reference to licence created by estoppel and licences coupled with an interest in the estate).</li> <li>• outline understanding of recent work of the law commission regarding leasehold and commonhold and potential reform in this area.</li> </ul>
	<p><b>9.7</b> Apply the law on leasehold estate to a given situation</p>	<p><b>9.7</b> Application of the law to a complex scenario.</p>
	<p><b>9.8</b> Critically evaluate a given issue or situation to predict probable legal implications</p>	<p><b>9.8</b> A reasoned opinion of likely legal implications, including remedies and defences, where appropriate</p>

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<p><b>10.</b> Understand how a trespasser may become entitled to an estate in land</p>	<p><b>10.1</b> Explain the basic requirements for a claim of adverse possession</p>	<p><b>10.1</b> Using relevant case law, an explanation of the requirements of factual possession and intention to possess;</p> <ul style="list-style-type: none"> <li>• want of permission;</li> <li>• acknowledgements of title;</li> <li>• relevance of owners future intended uses;</li> <li>• notion of adverse possession;</li> <li>• relevance and effect of Section 144 Legal Aid, Sentencing and Punishment of Offenders Act 2012.</li> </ul>
	<p><b>10.2</b> Explain the circumstances under which the right to remove a trespasser on unregistered land may become statute barred</p>	<p><b>10.2</b> An explanation of the relevant provisions of the Limitation Act, including exceptions to the usual period of 12 years;</p> <ul style="list-style-type: none"> <li>• extinguishment of paper owner's estate and new state for trespasser subject to certain third party rights;</li> <li>• recognition that possession is key.</li> </ul>
	<p><b>10.3</b> Explain the circumstances under which a trespasser on registered land may become entitled to be registered as proprietor</p>	<p><b>10.3</b> Knowledge that the IRA02 disapplies LA; an explanation of the requirement for squatter's application for registration after no less than 10 years;</p> <ul style="list-style-type: none"> <li>• explanation of the procedure applied to such a claim including recognition that, unless the paper owner fails to respond to notice, the application can only succeed on identified and limited grounds;</li> <li>• recognition that the squatter can make a further application two years later which is indefeasible subject to the exceptions contained in the IRA02.</li> </ul>

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	<b>10.4</b> Analyse the law affecting trespassers against a background of doctrinal and policy considerations	<b>10.4</b> Consideration of issues of underlying policy: <ul style="list-style-type: none"> <li>• economic sterility verses ‘theft of land’;</li> <li>• the impact of Human Rights Act on both regimes;</li> <li>• comparison of regimes;</li> <li>• possible impact of s144 IASPO 2012.</li> </ul>
	<b>10.5</b> Apply the law on trespass to a give situation	<b>10.5</b> Application of the law to a complex scenario.
	<b>10.6</b> Critically evaluate a given issue or situation to predict probable legal implications	<b>10.6</b> A reasoned opinion of likely legal implications, including remedies and defences, where appropriate.

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Additional information about the unit	
Unit aim(s)	To accredit a broad and detailed understanding of Land Law
Details of the relationship between the unit and relevant national occupational standards (if appropriate)	This unit may provide relevant underpinning knowledge and understanding towards units of the Legal Advice standards
Details of the relationship between the unit and other standards or curricula (if appropriate)	N/a
Assessment requirements specified by a sector or regulatory body (if appropriate)	N/a
Endorsement of the unit by a sector or other appropriate body (if required)	N/a
Location of the unit within the subject/sector classification	15.5 Law and Legal Services
Name of the organisation submitting the unit	CILEx (The Chartered Institute of Legal Executives)
Availability for delivery	1 September 2009

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