

 CILEX

 CPQ

A3 – Property and Conveyancing

Advanced Stage

2021

A3: Property and Conveyancing

The aim of this module is to give you the essential knowledge and understanding of the underlying law relating to conveyancing and how the law relates to practice. There is a focus on the creation of third-party rights in registered and unregistered land and how these issues might affect a buyer of land. The module also covers the grant and assignment of a long residential lease and the conveyancing procedures involved in those transactions.

The module covers:

1. Underpinning land law
2. Underpinning law of trusts
3. Unregistered Title
4. Registration of title at HMLR
5. Third party interests in registered land
6. Third party rights in land – easements
7. Third party rights in land – covenants
8. Third party rights in land – mortgages
9. Adverse possession
10. Co-ownership – overreaching; severance; registering restriction at HMLR; Co-owner disagreements
11. Underpinning landlord and tenant law
12. Leases – common provisions
13. Leases and HMLR
14. Overview of the conveyancing transaction – residential leasehold
15. Grant, sale and purchase of a long residential lease
16. Particular issues with long residential leases
17. Enfranchisement / tenant protection
18. Remedies – notice to complete
19. Remedies – failure to complete
20. Short term residential tenancies

Learning Outcomes

By the end of this module you will be able to:

1. Identify the main third-party rights encountered in conveyancing and how they are created and enforced
2. Identify the procedures required to carry out a conveyancing transaction involving the sale/purchase of unregistered land, and the steps required to procure registration of the title at HM Land Registry

3. Identify the issues arising on, and the procedures required to carry out, a transfer of part of a registered title
4. Describe the underpinning law relevant to landlord and tenant matters and the common provisions found in a lease
5. Identify the procedures required to carry out a residential leasehold conveyancing transaction on the grant and assignment of a lease
6. Identify situations that potentially give rise to conflicts of interest, issues of professional ethics or other issues under the applicable Codes of Conduct

Linked online assessment: A3

Prerequisite knowledge – Subjects covered by the Foundation Stage Introduction to Property and Private Client module

<p>1. Underpinning land law</p>	<p>Developing a further understanding of the key land law concepts, to support those covered at Foundation Stage of the CPQ, is a vital starting point for a trainee in the property department. Therefore, you will need to know the following:</p> <ol style="list-style-type: none"> a) Formalities required for the express creation of legal interests <ul style="list-style-type: none"> • Mortgages • Easements • Rentcharges; estate rentcharges • Profits à prendre (in outline): profits a prendre in gross; profits appurtenant • Rights of entry: contained in leases and rentcharges b) Formalities required for the express creation of equitable interests <ul style="list-style-type: none"> • Equitable mortgages • Restrictive covenants • Positive covenants • Estate contracts c) Statutory requirements for a deed and the exceptions to the requirements for a deed <ul style="list-style-type: none"> • Assent of land • Disclaimer of a lease under Insolvency Act 1986 • Surrender of a lease • Leases and tenancies not required to be made in writing Law of Property Act (LPA 1925)
--	--

<p>2. Underpinning law of trusts</p>	<p>An understanding of the law of trusts as it relates to property transactions is vital to giving appropriate co-ownership advice and to understanding the remedies that might be available in the event of default. Therefore, you will need to know the following:</p> <ul style="list-style-type: none"> a) Types of trust <ul style="list-style-type: none"> • Implied trusts - resulting and constructive trusts • Relevant case law • Purpose trusts b) Formalities for the creation of an express trust of land c) Rights of trustees and beneficiaries under Trusts of Land and Appointment of Trustees Act 1996 (TLATA 1996) <ul style="list-style-type: none"> • Right to occupy • Right to be consulted • Resolution of disputes
<p>3. Unregistered Title</p>	<p>Conveyancers will encounter fewer unregistered titles, but an understanding of the principles of unregistered land and how the seller will deduce title is important for trainees. Therefore, you will need to know the following:</p> <ul style="list-style-type: none"> a) Key unregistered title documents <ul style="list-style-type: none"> • Conveyance • Mortgage deed • Deed of gift • Assent • Full land charges searches b) The root of title <ul style="list-style-type: none"> • Requirements of a good root • Risks of accepting a short root c) Title deeds and epitome of title <ul style="list-style-type: none"> • Form and content • Obtaining original documents on completion • Sales of part: endorsement of memoranda, retention of original deeds d) Title passes on completion e) Protection of third party interests - Land charges <ul style="list-style-type: none"> • Main classes of land charges • The doctrine of notice f) Enforcement of third-party interests

	<ul style="list-style-type: none"> • Legal interests; binding on third parties • Equitable interests <p>g) Land charges</p> <ul style="list-style-type: none"> • Classes of land charge • Registration of land charges; importance of registering against the correct name • Registration constitutes notice <p>h) The doctrine of notice</p> <ul style="list-style-type: none"> • Actual • Constructive • Imputed <p>i) Unregistered interests which override on first registration; LRA 2002 Sch 1</p>
<p>4. Registration of title at HMLR</p>	<p>A detailed understanding of the nature of registered title, the triggers for registration and the format of the register is essential. Therefore, you will need to know the following:</p> <p>a) Land Registration Act 2002 – (in outline)</p> <ul style="list-style-type: none"> • Purpose • Main provisions • Land Registration Rules <p>b) The main triggers for first registration and voluntary registration</p> <ul style="list-style-type: none"> • Deeds of gift • Assents • Conveyance on sale • Creation of a leasehold interest of more than 7 years in duration • Assignment of a lease which has more than 7 years to run • Creation of a first legal charge over unregistered land • Voluntary first registration <p>c) Estates that can be substantively registered</p> <ul style="list-style-type: none"> • Estates in land • Rent charges • Franchises (in outline) • Profits à prendre in gross (in outline) <p>d) The contents of the registers of title</p> <ul style="list-style-type: none"> • Property register • Proprietorship register • Charges register • Title plan

	<ul style="list-style-type: none"> • How rights are shown on the title • How mortgages are shown on the title • Class of title • The different classes of title • Upgrading the class of title • What HMLR forms are needed to upgrade title <p>e) Cautions against first registration</p> <ul style="list-style-type: none"> • Purpose • HMLR PG3 • Who can apply • How the application is made • Form CT1 • Cancellation <p>f) Dealings with registered land</p> <ul style="list-style-type: none"> • Dispositions which must be registered transfers of whole and transfers of part of a registered title, charges over a registered title, grant of a lease for a term of more than 7 years out of a registered title, creation of other legal interests (easements, etc) • Relation to practice –registration application which must be made following completion <p>g) Third party interests that override registration; LRA 2002 Sch 3</p>
<p>5. Third party interests in registered land</p>	<p>A detailed understanding of how third-party rights are protected in registered land is essential. Therefore, you will need to know the following</p> <p>a) Third party interests</p> <ul style="list-style-type: none"> • How they are protected • Legal mortgages • Legal easements <p>b) Notices</p> <ul style="list-style-type: none"> • Purpose • Agreed notice; form AN1 • Unilateral notice; form UN1 • Cancellation or removal • HMLR PG19 <p>c) Restrictions</p> <ul style="list-style-type: none"> • Purpose • Registration – HMLR forms: TR1, TP1, AS1, RX1, CH1 • Removal – withdrawal or cancellation • HMLR PG19 • Relation to practice –purpose and wording of the Form A restriction

<p>6. Third party rights in land – easements</p>	<p>It is necessary to recognise whether an easement is required or has been created because rights are fundamental to the use and enjoyment of land. Therefore, you will need to know the following:</p> <ul style="list-style-type: none"> a) Characteristics of an easement <ul style="list-style-type: none"> • The rule in <i>Re Ellenborough Park [1956]</i> • Relevant case law b) How easements are created <ul style="list-style-type: none"> • Express grant and reservation by deed • Implied grant and reservation by necessity • Common intention • Implied grant by: <ul style="list-style-type: none"> ○ The rule in <i>Wheeldon v Burrows [1879]</i> ○ s.62 LPA 1925 • Grant by prescription • Easements as an overriding interest in registered land • Profits and acquisition of profits • Relation to practice –rights of access, to use services to the use, enjoyment, and value of a property; grant by prescription – link to statutory declaration / statement of truth and indemnity insurance c) The difference between express grant and reservation <ul style="list-style-type: none"> • Relation to practice – the wording for a TP1 to ensure that the benefit and burden of easements granted or reserved run with the land transferred or the land retained • The risks from enlargement d) Protection of easements: registered land; unregistered land <ul style="list-style-type: none"> • Relation to practice – how the benefit and burden of easements are shown on a registered title; how rights might be contained in a conveyance or deed of easement in an unregistered title e) How easements are discharged <ul style="list-style-type: none"> • How easements can be determined or extinguished: unity of seisin; intensification; estoppel; abandonment
<p>7. Third party rights in land – covenants</p>	<p>An effective conveyancer must be able to recognise whether a covenant affects land, whether it might be enforceable and the nature of the covenant. Therefore, you will need to know the following:</p> <ul style="list-style-type: none"> a) Classification of covenants <ul style="list-style-type: none"> • Restrictive; Positive; Personal b) Formalities required for the creation of freehold covenants

	<ul style="list-style-type: none"> • Relation to practice – how the burden of a covenant is shown on a registered title; the requirement for registration as a D(ii) land charge if burdened land is unregistered; the importance of the full land charges search on a purchase of unregistered land <p>c) Rules for determining if freehold covenant at law or in equity</p> <ul style="list-style-type: none"> • Original contracting parties • Successors in title - restrictive covenants – the benefit and burden • Positive covenants – how to enforce: <i>Halsall v Brizell [1957]</i>; chain of indemnity covenants; grant a lease (or commonhold scheme – in outline); right of entry coupled with a rentcharge • Relation to practice – recognising restrictive, positive and personal covenants in a registered title; link to pre contract enquiries and whether there is any evidence of breach of covenant; the wording of a TP1 imposing a restrictive covenant on the land transferred and/or the land retained; link to indemnity insurance <p>d) How a freehold covenant can be extinguished or modified</p> <ul style="list-style-type: none"> • Discharge by deed • Common ownership • s84 LPA 1925
<p>8. Third party rights in land – mortgages</p>	<p>An effective conveyancer must be able to recognise whether a buyer needs to secure borrowing by way of mortgage and how that security should be protected, the position in the event of default by the borrower and the priority of mortgages. Therefore, you will need to know the following:</p> <p>a) Formalities for the creation of legal and equitable mortgages; equity of redemption</p> <ul style="list-style-type: none"> • Equitable mortgages • Charge by way of legal mortgage <p>b) Protection of mortgages</p> <ul style="list-style-type: none"> • Registered land • Unregistered land • Relation to practice – recognise a mortgage on a charges register and the lender’s restriction; the mortgage deed if the title is unregistered and the requirement for a second or subsequent mortgage to be registered as a C(i) land charge; the importance of the full land charges search <p>c) Methods of enforcement of a mortgage by a mortgage lender</p>

	<ul style="list-style-type: none"> • Possession • Order for sale • Appointment of receiver • Action in debt • Foreclosure <p>d) Priority of mortgages</p> <ul style="list-style-type: none"> • Relation to practice –how priority of mortgages affects sale by a mortgagee and what documents must be produced to perfect the title <p>e) Mortgages by companies</p> <ul style="list-style-type: none"> • Fixed charge • Floating charge • Registration at Companies House;
<p>9. Adverse possession</p>	<p>An effective conveyancer must recognise when a party does not have documentary evidence of title to land and how an adverse possession claim will differ depending on whether the title is registered or unregistered. Therefore, you will need to know the following:</p> <p>a) Adverse possession in unregistered land</p> <ul style="list-style-type: none"> • Limitation Act 1980 • Period of adverse possession • Procedure for application to HMLR • Class of title normally granted on an adverse possession application <p>b) Adverse possession in registered land</p> <ul style="list-style-type: none"> • LRA 2002 • post 12.10.03 procedure • Limitation Act 1980 • Period of adverse possession • Procedure for application to HMLR • Class of title available for adverse possession application • Relation to practice –a seller may have occupied land to which they do not have title which might result in an adverse possession application; use of statutory declaration / statement of truth; link to the need for indemnity insurance <p>c) Impact of human rights on development of law of adverse possession (in outline)</p>
<p>10. Co-ownership – overreaching;</p>	<p>Recognising the behind-the-scenes beneficial interest and knowing how to deal with this on behalf of a buyer is essential for a conveyancer. Therefore, you will need to know the following:</p>

<p>severance; registering restriction at HMLR; Co-owner Disagreements</p>	<ul style="list-style-type: none"> a) Overreaching <ul style="list-style-type: none"> • Identifying the behind-the-scenes beneficial interest • The position of the sole trustee of the legal estate • How to effect overreaching • The impact on the contract for sale • Considerations for the buyer’s conveyancer: identification of second trustee; making the HMLR application • Drafting the provision for the transfer b) Severance <ul style="list-style-type: none"> • Methods - written notice; treatment of share; disposal; agreement; course of dealings; forfeiture; bankruptcy • Drafting the notice of severance • Effective service of the notice; <i>Kinch v Bullard [1998]</i> c) Registering the Form A restriction at HMLR <ul style="list-style-type: none"> • Form SEV • Form RX1 d) Co-ownership advice <ul style="list-style-type: none"> • Common situations where co-ownership advice must be given • Risks of conflict • Development of case law • Inequality of contribution to purchase – tenancy in common advice • Drafting a straightforward declaration of trust e) Co-owners failing to agree on a sale – in outline <ul style="list-style-type: none"> • s14 TLATA 1996; applying to court • s15 TLATA 1996; factors court will take into account in considering an order under s14
<p>11. Underpinning landlord and tenant law</p>	<p>A detailed understanding of the characteristics of a lease and the different types of lease and the privity of contract rules are essential for any conveyancer. An outline understanding of the remedies for breach and how a lease is terminated is also important. Therefore, you will need to know the following:</p> <ul style="list-style-type: none"> a) Characteristics of a lease <ul style="list-style-type: none"> • Lease vs licence distinction • <i>Street v Mountford [1985]</i> b) Formalities for the creation of a lease (recap from section 2) <ul style="list-style-type: none"> • Requirement of a deed • Equitable leases c) Common types of lease

	<ul style="list-style-type: none"> • Fixed term tenancies • Periodic tenancies • Reversionary leases (in outline) • Tenancies at will (in outline) <p>d) Remedies for breach of leasehold covenant</p> <ul style="list-style-type: none"> • Commercial Rent Arrears Recovery • Forfeiture • Waiver • Self help <p>e) Termination of leases</p> <ul style="list-style-type: none"> • Expiry • Notice • Surrender and merger • Forfeiture • Frustration <p>f) Landlord and Tenant (Covenants) Act 1995</p> <ul style="list-style-type: none"> • Privity of contract rule for pre and post 01.01.1996 leases (in outline)
<p>12. Leases – common provisions</p>	<p>An understanding of the key terms relating to leases is essential whether acting for a landlord or a tenant and whether it is a residential or commercial property. Therefore, you will need to know the following:</p> <p>a) Key lease clauses</p> <ul style="list-style-type: none"> • Rent • Term • Tenant covenants (in outline) • Landlord covenants (in outline) • Mutual rights Landlord to enforce covenants in other leases • Forfeiture <p>b) Statutory protection</p> <ul style="list-style-type: none"> • Covenants against assignment: absolute; qualified, Landlord and Tenant Act 1927 s19(1) (a) (LTA 1927) • User; absolute; qualified; s19(3) LTA 1927 • Alterations: absolute; qualified; s19(2) LTA 1927 • Service charge / management company; service charge regime Landlord and Tenant Act 1985
<p>13. Leases and HMLR</p>	<p>An effective conveyancer must understand when a lease is registrable at HMLR and the land registration requirements. Therefore, you will need to know the following:</p>

	<p>a) HMLR</p> <ul style="list-style-type: none"> • The importance of the lease plan; HMLR PG 40 • HMLR's change of approach to the creation of leasehold title plans
<p>14. Overview of the conveyancing transaction – residential leasehold</p>	<p>Knowing how a leasehold transaction progresses from instructions to registration on behalf of a landlord or a tenant is essential. Therefore, you will need to know the following:</p> <p>Link the grant of a new lease and the assignment of an existing lease to the basic conveyancing overview:</p> <ul style="list-style-type: none"> a) Key stages (pre contract, exchange, pre completion, completion, post completion) b) Key steps to take on behalf of seller and buyer (flowchart) c) The use of checklists d) How the Law Society Conveyancing Protocol (the Protocol) applies to leasehold residential transactions
<p>15. The sale and purchase of a long residential lease</p>	<p>An effective conveyancer must know the process for the grant of a new lease and the assignment of an existing residential lease. Therefore, you will need to know the following:</p> <ul style="list-style-type: none"> a) Grant of a new lease <ul style="list-style-type: none"> • The provisions of the protocol • Taking instructions from the landlord on key lease content • HMLR compliant plan • Pre-contract searches and enquires (specific issues relating to long leasehold flats and houses) • Drafting the contract with lease annexed; Standard Condition 8.2 • Documents to include in the contract pack • Approving the draft lease • Lender requirements • Exchange and preparing for completion: preparation of original and counterpart • Pre-completion tasks – priority search (OS1 or OS2) and other specific issues • Completion – documents received by tenant's conveyancer • SDLT: payable on premium and net present value

	<ul style="list-style-type: none"> • Registration at HMLR • LTT in Wales • Notice of mortgage if required <p>b) Assignment of an existing lease</p> <ul style="list-style-type: none"> • The provisions of the Protocol • Is landlord’s consent required; Standard Condition 8.3 • Drafting the contract • Documents to include in the contract pack: in addition to standard documents: copy lease, Leasehold Information Form, management company information, form LPE1, service charge accounts, buildings insurance, ground rent and service charge receipt, copy freehold title, copy share certificate in freehold or management company if relevant • Approving the contract • Pre-contract searches and enquires (specific issues relating to long leasehold flats and houses) • Exchange and preparing for completion: Standard Condition 6.3 apportionments • Pre-completion tasks – priority search (OS1 or OS2) and other specific issues relating to long leasehold flats and houses • Completion – documents received by buyer’s conveyancer • SDLT; LTT • Registration at HMLR • Notice of assignment and mortgage (if required) • Transfer share in management company to buyer (if required)
<p>16. Current concerns with long residential leases</p>	<p>Long residential leases have become a complex topic in practice and represent a risk to conveyancers in terms of the advice to give to buyer and lender clients. Therefore, you will need to know the following:</p> <p>a) Residue and ground rent issues</p> <ul style="list-style-type: none"> • Insufficient remaining term of lease; what is an acceptable residue? • Ground rents – Housing Act 1988; risk of a lease with ground rent of over £250 (or £1000) in London falling within the ambit of the Housing Act 1988; the risk of termination under Ground 8 of Schedule 2 of the Housing Act 1988; In outline, what provisions can be included in a new lease or a deed of variation to mitigate the effect of this risk? • Ground rents – the problem with doubling every 10 years • View of the lenders

	<ul style="list-style-type: none"> • Possible solutions: deed of variation; enfranchisement (in outline only)
<p>17. Enfranchisement / tenant protection</p>	<p>A conveyancer must have an understanding in outline of the protections afforded to tenants of long leases of houses and flats. The conveyancer must appreciate that these are specialist areas of practice. The government has indicated its intention to reform these provisions, so an outline understanding of the proposed reforms is important. Therefore, you will need to know the following:</p> <p>a) Leasehold Reform Act 1967</p> <ul style="list-style-type: none"> • Protection of tenants who have a long lease of a house • Qualifying conditions • Procedure • Extend the term <p>b) Leasehold Reform, Housing and Urban Development Act 1993</p> <ul style="list-style-type: none"> • Protection of tenants who have a long lease of a flat • Qualifying conditions • Acquisition of freehold • Extension of lease • Possible Government reform
<p>18. Remedies – notice to complete</p>	<p>A conveyancer must understand the remedies available under the Standard Conditions of Sale in the event of late completion. Therefore, you will need to know the following:</p> <p>a) Distinguish between late completion and a failure to complete</p> <ul style="list-style-type: none"> • Time for completion in the contract • Late completion; interest due at the contract rate • Notice to complete procedure • Standard Condition 6.8 • Drafting a notice to complete • Recent case law
<p>19. Remedies – failure to complete</p>	<p>A conveyancer is unlikely to deal with litigation which might arise following a failure to complete a conveyancing transaction. But a conveyancer must have an outline understanding of the key remedies available in the event of non-completion. Therefore, you will need to know the following:</p> <p>a) Failure to complete</p> <ul style="list-style-type: none"> • Time of the essence • Damages

	<ul style="list-style-type: none"> • When the right to rescind arises • Standard Condition 7 • Equitable remedies in general; specific performance • Misrepresentation • Suing under the covenants for title
<p>20. Short term residential tenancies</p>	<p>A conveyancer must have an outline understanding of the key short-term residential tenancies. Therefore, you will need to know the following:</p> <p>a) Short term residential tenancies – statutory framework</p> <ul style="list-style-type: none"> • In outline only - Housing Act 1988: assured tenancy; assured shorthold tenancy; exclusions; security of tenure; recovering possession; proposed future changes • Outline of Tenancy deposit scheme • Outline of Tenant Fees Act 2019: permitted payments; prohibited payments. Also, the Renting Homes (Fees etc.) (Wales) Act 2019. • Outline of Housing (Wales) Act 2014: registration and licensing of landlords • Right to rent checks • Outline of Rent Act 1977 tenancies: protected tenancies; exclusions; rent control; recovery of possession • Outline of Renting Homes (Wales) Act 2016: secure contract; standard contract; exclusions; termination • Selling a property subject to a tenancy: contract drafting, key issues arising