

# LAND LAW AND CONVEYANCING



## Outline of Land Law

Conveyancing is the legal side of transferring the ownership in real property from one person to another. In order to understand conveyancing (which is a procedural skill), however, it is necessary to understand something about the law behind it, i.e. land law. This is sometimes more widely called “the law of property” or, more specifically, “the law of real property” – with the word *real* in ancient law denoting “land”.

This syllabus covers the law in outline to give you a basic understanding of land law. It is one of the most fascinating of substantive laws and yet it is one of the most difficult. Land law in England and Wales is complex. This is primarily because it has changed only slightly since the Norman Conquest in 1066, when William the Conqueror set up the feudal system. This system meant that all the land in the country was owned by the King, who gave it out to others in return for services rendered, who in turn gave smaller tracts to others, again in return for services, and so on. All land was, therefore, held from someone else – a landlord – in return for services. Our land law is, therefore, very much based on the Common Law, although this Common Law has been codified by many Statutes, primarily those introduced in 1925, e.g. The Law of Property Act, The Land Registration Act, The Land Charges Act, The Administration of Estates Act, etc.

It must be mentioned that other countries, including Scotland and the Republic of Ireland, have completely different laws and procedures when it comes to land law.

Conveyancing procedure, however, is not so complex and consists of a set routine – specific steps – to which you will soon become accustomed (in the second part of this unit). The specific steps of a conveyance transaction have been formulated because of the law relating to land, however, and so an outline of this law is important for you to understand for two reasons: First, mistakes can be costly. A house or flat or whatever home one chooses to buy is most likely the most expensive purchase that person will make in their lifetime, and a negligent mistake or error in connection with their acquisition

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of that home, or in connection with their use of it, can result in an expensive claim for damages. And second, an understanding of why you are doing what you are doing leads not only to increased job satisfaction but also (if you happen to like this area of law and practice) to the path of becoming a specialised Property Lawyer, called a Licenced Conveyancer.

So, to understand the nature of the law relating to land, we must first of all look at what the law means by “land”. This definition is found primarily in s.205 (1) of the Law of Property Act 1925 but has been elaborated upon by case law, and it goes much further than its usual grammatical meaning. In law, the expression *land* is deemed to include other things, such as the buildings erected upon it.

## Land includes:

- The soil itself.
- Certain mines and minerals below the surface (coal, natural gas, oil and gold are excepted, as they belong to the Crown).
- Trees, crops, flowers, bushes and anything else growing on the land.
- Buildings and other structures of a permanent nature built on the land. Thus a garage or other outbuilding or an extension to a building will form part of the land, whereas a garden shed or a caravan placed in the garden won't.
- Rights relating to the air above the piece of land. Aeroplanes have a statutory right to fly over, and won't be guilty of trespass if they do, but your neighbour's tree branches that hang over your boundary do constitute a trespass. (Therefore you can cut them off as long as you dump them back over the fence – after all, they do belong to your neighbour!)

According to s.132(1) of the Land Registration Act 2002, “land” also includes land covered with water.

It is said of the legal position, then, that (subject to statutory restrictions relating to minerals under the earth and the necessity of aeroplanes flying overhead) the owner of real property owns the land down to the centre of the earth and the air overhead up to the heavens above.



## Introduction to the Conveyancing Transaction

The Law Society has created the Conveyancing Quality Scheme (CQS) which provides a recognised quality standard for residential conveyancing practices. Firms can become members, and membership achievement establishes a level of credibility for member firms with stakeholders such as regulators, lenders, insurers and consumers. In fact, some firms not accredited to this scheme are finding it difficult to act for buyers who require a mortgage to fund their purchase.

Part of CQS membership is to show that the firm adheres to good practice management standards and prudent, efficient conveyancing procedures through the scheme protocol. The Law Society Conveyancing Protocol sets out the general obligations and preferred practices of the buyers and sellers.

A conveyancing transaction is split up into three stages:

- **Stage 1: Pre-contract**

This is the stage between the start of the transaction and the exchange of contracts, so the parties are not yet contractually bound to complete the contract process. During this stage either party can withdraw at any time for any reason without incurring any penalty. At this stage, so far as the buyer is concerned, he must satisfy himself (through his Solicitors) that there is nothing onerous that will affect the property or his enjoyment of it. Searches and enquiries will be made in this regard until the buyer is satisfied that the title of the property is OK, and that the terms and conditions of the sale are agreeable to him.

Insofar as finances are concerned, the buyer has to be sure that he will have the money to

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purchase the property, and so he will need to obtain and accept a firm mortgage offer from a building society or other lender. He must also ensure that, if his sale or purchase is dependent upon another sale or purchase, the other seller or buyer will also be in a position to exchange contracts in respect of that transaction.

This stage of the transaction is very much a fact-finding and information-gathering stage.

- **Stage 2: Post-contract**

This is the stage where certain final searches are made to ensure that things have not changed since the start of the transaction. The mortgage advance is applied for and received. The financial circumstances are finalised. The deed that will vest the legal estate in the buyer is prepared, engrossed and executed. Arrangements are finalised in preparation for the completion of the sale and purchase. Finally, on the day of completion, the Title Deeds are handed over to the buyer, the purchase price is handed over to the seller, and the property finally belongs to the buyer, who is able to move in.

- **Stage 3: Post-completion**

This is the tidying up stage, when the Solicitor accounts to the seller for any surplus proceeds of sale, stamp duty is paid, the purchase and new mortgage (if any) are registered at the Land Registry, and the Title Deeds are eventually sent to the buyer (if there is no mortgage) or the Mortgagee (lender) if there is one.

After waiting a few more weeks just to make sure that there are no queries from the client or anyone else, the file is put away in the storeroom. Each firm of Solicitors has its own procedure for this.

## The Pre-contract Stage

In the description of this process outlined below, the letter **(S)** or **(B)** after a step indicates whether the step is taken by the seller's Solicitors **(S)** or the buyer's Solicitors **(B)**. If there is no designation, then the step is taken by both.

### Step 1

Receive instructions. There are many ways that a client will approach a conveyancer to act for them. They may be a repeat client who has used their services before, or they may have located their details from an advertisement or a website. Conveyancers also pay referral fees to estate agents to recommend them. These referral fees come out of the conveyancer's profit costs and are not additional fees to the client.

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## Coursework Sample

### Assessment 1

#### Type a Draft Contract from the Instructions

You are working for the seller's Solicitors. Please prepare the draft Contract which must be submitted to the buyer's Solicitors.

The particulars should be completed using the information provided in the assessment criteria.

The document does not need to be dated at this stage as that should be done on exchange.

Please include the sellers' and buyers' full names and addresses.

In the Property section type 'All that freehold property known as' and then the property address.

For Specified Incumbrances, type 'The property is sold subject to any matters contained or referred to in the official copy of register entries'.

At this stage we do not know the completion date, so this can be left blank.

For Contract Rate, type 'The Contract interest rate is 5% above the base rate of Barclays Bank plc'.

The purchaser will be providing a 10% deposit, but this doesn't need to be included on the form at this stage. It is usually done on exchange.

For the balance, put 'As per completion statement' as the figure this is also not included at this stage.

Include the Conveyancers' details on the last page but do not include email addresses as they do not accept service by email.

**This subject includes fifteen practical assessments in total, which help learners to develop essential Legal Secretary skills. Learners are provided with full instructions on how to complete each assessment, and information is included within the assessment criteria to support successful completion.**

**A multiple-choice achievement test is also included to assess overall knowledge and understanding.**