

Contents

<i>Preface</i>	xi
<i>Table of cases</i>	xiii
<i>Table of legislation</i>	xxi
<i>Resources</i>	xxv
<i>References</i>	xxvi

Part I Introduction 1

1	Introduction to land law	3
1.1	How to study land law	3
1.2	Land law rules	4
1.3	The legal and social landscape	6
1.4	Human rights	10
	Summary	12
	Further Reading	12
2	Key concepts of land law	15
2.1	The case of the wooden arcadia	15
2.2	'Land'	15
2.3	Estates and interests in land	18
2.4	Trusts	21
2.5	Types of 'Land'	22
2.6	Bringing it together: <i>Elitestone Ltd v Morris</i>	24
	Summary	25
	Exercises	25
	Further Reading	26
3	Licences	29
3.1	The case of the resident daughter-in-law	29
3.2	Types of licence	30
3.3	Bare licences	30
3.4	Licences coupled with an interest in land	30
3.5	Contractual licences	31
3.6	Licences by estoppel	33
3.7	The status of licences	34
	Summary	35
	Exercises	36
	Further Reading	36

Part II The estates and interests 37

4	Freehold land	39
4.1	Who owns the land?	39
4.2	Definition of the freehold estate	39

4.3	Legal and equitable freeholds	40
4.4	The rights of the freeholder	40
4.5	Conclusion	41
	Summary	41
	Exercise	42
	Further Reading	42
5	The leasehold estate	45
5.1	The cases of the dilapidated flats	45
5.2	Leaseholds in context	46
5.3	The vocabulary of leases	48
5.4	The essentials of a lease	49
5.5	The creation of leases	54
5.6	The determination of leases	56
5.7	Some odd kinds of lease	57
	Summary	59
	Exercises	59
	Further Reading	60
6	Leasehold covenants	63
6.1	Introduction	63
6.2	Commonly found covenants	63
6.3	The transfer of rights and duties: pre-1996 leases	69
6.4	The transfer of rights and duties: new tenancies	73
6.5	Remedies for breach of covenant	76
6.6	Commonhold	81
	Summary	82
	Exercises	83
	Further Reading	83
7	Mortgages	85
7.1	The case of the borrower's last chance	85
7.2	Introducing mortgages	86
7.3	Creating and ending mortgages	88
7.4	The position of the borrower	89
7.5	The position of the legal lender	95
7.6	The position of the equitable lender	102
7.7	Priority of mortgages	103
7.8	Conclusion	104
	Summary	105
	Exercises	105
	Further Reading	106
8	Easements and profits	109
8.1	The case of the middle cottage	109
8.2	The status and vocabulary of easements and profits	111
8.3	Types of easement	112
8.4	The nature of easements	113
8.5	Acquisition of legal easements	120
8.6	Remedies for infringement of easements	127
8.7	The ending of easements	128
8.8	Profits	129

8.9	Reform of the law of easements and profits	130
8.10	Rights over another's land other than easements and profits	131
	Summary	133
	Exercises	133
	Further Reading	134
9	Covenants in freehold land	137
9.1	The case of the disputed roof	137
9.2	A brief history of freehold covenants	138
9.3	The running of covenants: the basic rules	140
9.4	The running of covenants at law	140
9.5	The running of covenants in equity	142
9.6	Indirect methods of enforcing positive covenants	149
9.7	Section 56 LPA 1925 and the Contracts (Rights of Third Parties) Act 1999	150
9.8	Remedies for breach of covenant	151
9.9	Discharge and modification	152
9.10	Proposals for reform	154
	Summary	155
	Exercises	156
	Further Reading	156

Part III Sharing interests in land **157**

10	Concurrent co-ownership	159
10.1	Co-ownership of land	159
10.2	The trust as the basis of co-ownership	160
10.3	Joint tenancy and tenancy in common	160
10.4	Creating a joint tenancy or tenancy in common	162
10.5	Severing a joint tenancy	163
10.6	Is co-ownership 'fit for purpose'?	167
	Summary	168
	Exercises	168
	Further Reading	169
11	Trusts of land	171
11.1	A brief history of trusts of land	171
11.2	Creating a trust of land	173
11.3	The powers and duties of trustees	173
11.4	The rights of beneficiaries	174
11.5	Disputes concerning co-owned land	176
11.6	Protection for buyers of trust land	182
11.7	Conclusion	184
	Summary	185
	Exercises	185
	Further Reading	186

Part IV Acquiring interests in land **187**

12	The formal acquisition of interests in land	189
12.1	A typical domestic sale	189

12.2	Buying and selling interests in land	191
12.3	Contracts and the transfer of the equitable interest	193
12.4	Creating a valid contract	194
12.5	Transfer of the legal interest	204
12.6	Conclusion	207
	Summary	208
	Exercises	208
	Further Reading	209
13	Adverse possession	211
13.1	Town and country	211
13.2	The underlying issues	212
13.3	When is possession adverse possession?	213
13.4	Establishing title to unregistered land	217
13.5	Establishing title to registered land	219
13.6	Leases and adverse possession	221
13.7	Adverse possession and human rights	222
13.8	Adverse possession in the twenty-first century	222
	Summary	223
	Exercises	224
	Further Reading	224
14	Implied trusts and proprietary estoppel	227
14.1	A cautionary tale	227
14.2	Resulting trusts	228
14.3	Common intention constructive trusts	229
14.4	Proprietary estoppel	235
14.5	Constructive trusts and proprietary estoppel compared	241
14.6	Alternative approaches to family property	242
	Summary	244
	Exercises	244
	Further Reading	245

Part V Priorities

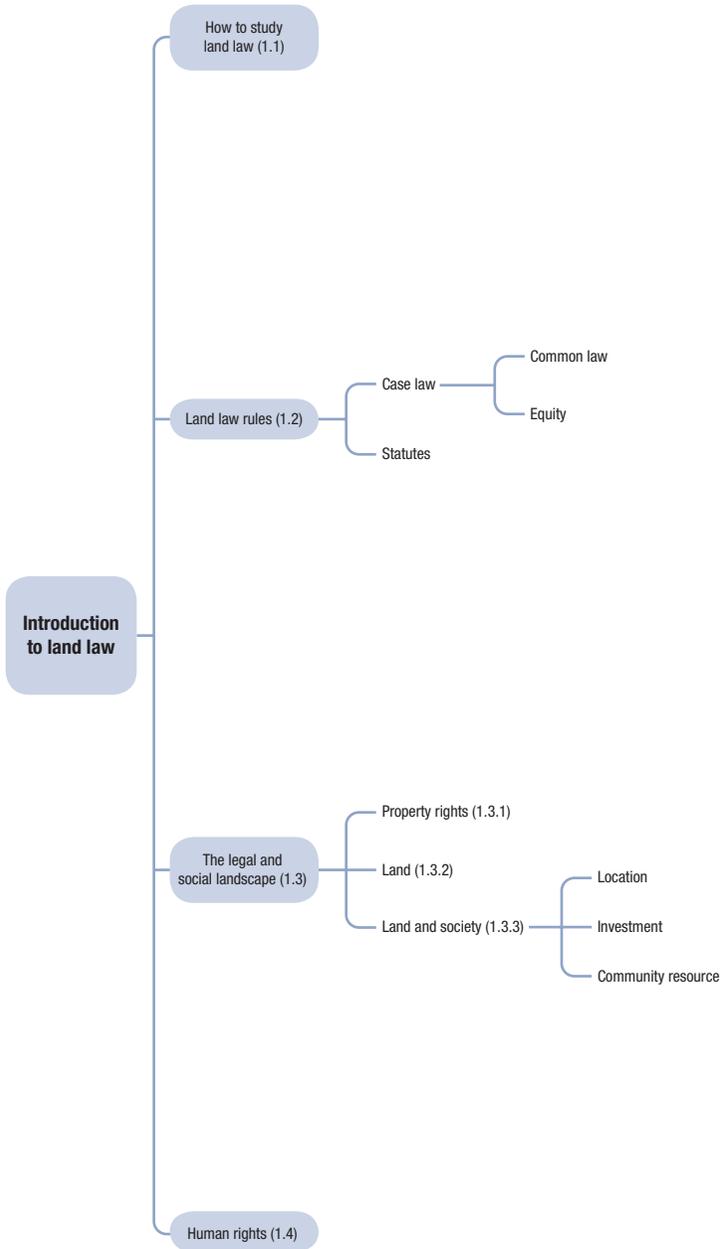
247

15	Registered title	249
15.1	The case of the roundabout rights	249
15.2	Disputes, priorities and registered title	249
15.3	The mechanics of registered land	252
15.4	The Register	255
15.5	Interests in registered land	256
15.6	Registrable estates	256
15.7	Entering an interest on the Register	257
15.8	Interests capable of overriding the Register	259
15.9	Alteration of the Register and indemnity	267
15.10	Returning to Matlock	269
15.11	Looking back and looking ahead	269
	Summary	271
	Exercises	272
	Further Reading	272

16	Unregistered land	275
16.1	The case of the disappearing husband	275
16.2	Unregistered land: the general framework	276
16.3	The Land Charges Register	278
16.4	Overreaching	285
16.5	The doctrine of notice	285
16.6	Unregistered land – a retrospective	286
	Summary	287
	Exercises	288
	Further Reading	288
	<i>Index</i>	289

Part I

Introduction



Chapter 1

Introduction to land law

1.1 How to study land law

Land law is an interesting and challenging subject, involving profound questions about the way we choose to live our lives, for land is vital to human life. In any society – even our technological, high-speed one – the use of land is of the utmost importance. Where the supply of land is limited, as in England and Wales, the problems can be acute. The dry and legalistic façade created by the artificial language and technical concepts of land law tends to conceal the fundamental issue: land law is really just about the sharing out of our limited island.

Land law has been developing ever since people got ideas about having rights over certain places, probably beginning with the cultivation of crops. Through the long process of development, there have been periods of gradual change, and also more dramatic times, such as the Norman conquest of 1066, the property legislation of 1925 and, most recently, the Land Registration Act 2002. By and large, lawyers have continued to use and adapt the words and ideas of their predecessors. Although land law has kept its feudal roots and language, it is a thoroughly contemporary subject concerned with realities of daily life and existence. However, the law and its terminology can seem obscure (sometimes as though cloaked in the fog, rather than the mists, of time), so it is perhaps best at the start to treat it like a foreign language. The vocabulary soon becomes natural, especially through reading the reports of cases. Reading about the same topic in different books will also help. When encountering a technical term, especially for the first time, the most important thing that a law student can do is to pause and be sure that she knows what it means in context. Only then is it safe to continue. There is a searchable glossary available on the companion website to help with this task [↗](#).

As explained further below, land lawyers tend to be principally, but not exclusively, concerned with various rights to land, called ‘interests in land’. They might talk about someone ‘owning land’ or ‘owning property’, but really they mean someone owning *an interest in the land*, or, more technically, *having property in the land*. These interests (the ‘property’) are not the land itself (the earth and the buildings), but abstract concepts, such as the freehold and the lease. When ownership of a building is transferred from one person to another:

The building has not moved. What is transferred by a transfer of property is the bundle of rights and obligations relating to that building (*R (on the application of the Lord Chancellor) v Chief Land Registrar* [2006] QB 795 (QB) per Stanley Burnton J at [25]).

The different types of abstract interest in land recognized by English law are introduced in Chapter 2, and the most important are considered in more detail in Part II of this book.

The first thing to do when studying any aspect of land law is to grasp the definition thoroughly. That means asking:

- ▶ what does it mean; and
- ▶ how do I recognize it?

This helps to avoid two of the most depressing things that can happen to land law students. The first is staring at a problem without having any idea of what it is about. The second (possibly worse) is recognizing what the problem is about, but feeling incapable of writing anything down. If in doubt, start by identifying the interests in the land.

Some authors compare land law to playing chess: there are various 'pieces' (which correspond to interests in land), and they can be moved about according to strict rules. Others liken the rules which constitute land law to a complicated machine: moving one lever, or adjusting one valve, will have a significant affect on the end product. The owner of an interest in land has limited freedom of action, and one small change in her position can affect the relative value of other interests in the land. In practical terms, the complicated connections within the machine mean that one part of the subject cannot be fully grasped until all the others have been understood. There is no single starting place: it is necessary to watch the machine, piece by piece, until the connections become clear. It is useful, from the beginning, to ask, 'What would happen if...?'; if one lever is moved, what interests will be affected, and why?

As a consequence of the complex definitions and the interdependent rules, land law may only make sense when the course is nearly complete. However, in the meantime, it is necessary to make mistakes in order to grasp the way the rules relate to one another. It *will* eventually come together, with hard work and faith and hope; the charity, with any luck, will be provided by the teacher.

The language used by land lawyers expresses the way in which they think they see the world. This is a world in which people's relationships to land can only occur within the legal structure of interests in land, so lawyers squeeze the facts of ordinary life into the pre-existing moulds of 'the interests'. A land law student's job is to learn the shapes of the moulds and imitate the squeeze; then she will be able to operate the whole machine. Finally, armed with this knowledge and skill, she may begin to question whether land law really does operate like this in practice.

1.2 Land law rules

Land law is made up of rules in statutes and cases; case law rules are further divided into legal and equitable rules. That is, the rules were created:

- ▶ by an Act of Parliament; or
- ▶ by either
 - a court of 'common law'; or
 - a court of 'equity'.

The development of these two sets of rules is well described by others (for example, Part II of Cheshire, 2011, and Simpson, 1986). It is merely outlined here.

The customs which became known as the 'common law' were enforced with extraordinary rigidity by judges who followed the strict letter of the law. Aggrieved citizens (in the absence of crusading television journalists and Internet-based campaigns) wrote begging letters to the King. These received replies from his 'secretary', the Chancellor, who employed the King's power to override the decisions of the King's judges. Appealing to the Chancellor's conscience (or to 'equity') grew in popularity, and from about 1535 the Chancellor's court (Chancery) was regularly making decisions overriding the law in the King's court.

However, this new system of justice did not set out to replace the rules of law, but merely to intervene when conscience required it: *Equity therefore does not destroy the law,*

nor create it, but assist it (*Dudley and Ward v Dudley* [1705] Pr Ch 241, 24 ER 118 at 244, 120). The courts of common law and the Court of Chancery existed separately, each with distinct procedures and remedies, to the great profit of the legal profession. Eventually, things became intolerably inefficient (see, for example, the seemingly perpetual case of *Jarndyce v Jarndyce* in Charles Dickens' *Bleak House*), and the two courts were merged by the Judicature Acts 1873 and 1875. Despite this merger, lawyers continued to keep the legal and equitable rules and remedies separate. (There is an account of legal and equitable interests today in Section 2.3.2 below.)

The year 1925 is an emotive date for land lawyers because it saw a major revision of the rules of property law in England and Wales. The law was actually changed by a very large Law of Property Act in 1922, but that Act was not brought into force; instead it was divided into a number of shorter statutes all dated 1925.

The 1925 statutes contained many radical reforms. They also contained 'word-saving' provisions, some of which had appeared in earlier statutes. At one time, lawyers were 'paid by the yard', so the more words they used, the better for their bank balances. In the 1925 Acts, Parliament ensured that many common promises in land transactions no longer needed to be spelt out in full because they would be implied by statute. In effect, the customs of conveyancers (lawyers who manage the transfer of land) became enshrined in statute. Significant examples of such provisions that will be encountered when studying land law are set out in Table 1.1.

Table 1.1 Significant examples of 'word-saving' in the Law of Property Act 1925

	Provision	Referred to in this book
Section 62	Buildings, fixtures (see Section 2.2.1 below) and other interests automatically included in a conveyance of land	Section 8.5.2(c) (easements and profits) and 12.5.1(d) (the effect of a deed of transfer)
Sections 78 and 79	The benefit and burden of covenants (promises about the use of the land) automatically run with the land	Sections 9.4.2(b), 9.5.1(c) and 9.5.2(a) (freehold covenants)
Sections 101 and 103	The power of a mortgagee (the lender) to sell the mortgaged land under certain circumstances	Section 7.5.2 (mortgages)

One of the aims of the 1925 legislation was to make conveyancing (the buying, selling, mortgaging and other transfers of land) simpler in order to revive the depressed market in land and to make it easier to deal with commercially. It is impossible to say whether it had this effect. Certainly, the reasons for the great increase in home ownership in the twentieth century were not connected to the reforms, some of which were inappropriate to the modern world of owner-occupation. More recent statutes have introduced further reforms to better reflect modern attitudes to land ownership and to equip land law for the electronic age (including, for example, the Trusts of Land and Appointment of Trustees Act 1996 and the Land Registration Act 2002, respectively).

Most of the statutory rules used by today's land lawyers are found in the following statutes:

- **Law of Property Act 1925** (usually abbreviated to 'LPA 1925') expressly referred to in all but one chapter of this book;

- ▶ **Land Registration Act 2002** (usually ‘LRA 2002’) which replaced the LRA 1925: see, especially, Chapter 15;
- ▶ **Trusts of Land and Appointment of Trustees Act 1996** (‘TOLATA’ in this book) which replaced the Settled Land Act 1925 and amended the LPA 1925: see, especially, Chapter 11;
- ▶ **Land Charges Act 1972** (usually ‘LCA 1972’) which replaced the LCA 1925: see Section 16.3 below.

Care should be taken when citing or referring to a particular statute, as there are often Acts of Parliament with similar (or even identical) names from different years.

1.3 The legal and social landscape

Land law is one branch of the wider discipline of property law. Traditionally, property law was divided into the rules that applied to land (the law of ‘real property’) and the rules that applied to every other type of property (the law of ‘personal property’). Over time, further branches have been added, including the law of ‘intellectual property’, which is concerned with the ownership of ideas (including patents, trade marks and copyright).

Before studying the rules of land law, it is important to take time to consider the following questions:

- ▶ What do we mean by ‘property’?
- ▶ Why are there special rules for land?
- ▶ What is land law about, or, to put in another way, what are all these rules for?

1.3.1 Property rights

English law recognizes a distinction between rights that are ‘personal’ and rights that are ‘property’ rights. Most other legal systems recognize a similar distinction, although the terminology differs. Personal rights are rights that regulate a particular relationship between a limited group of people, usually because they have each entered the relationship voluntarily (the law of contract) or because one person has acted in breach of her legal obligations to the others (the law of torts). Property rights are much more powerful: they are rights that are capable of binding third parties. When the law recognizes a person as having ‘property’ in an object, it is recognizing that she has a significant degree of control over that object – a degree of control that necessarily limits the rights exercisable by others in respect of the same object.

This description of property rights is all very well, but it only takes us so far. It enables us to identify which interests are given proprietary character by English law, but it does not provide us with a tool for deciding when and whether new rights should be added to the list – or, indeed, whether some rights should be removed. Not all the interests now recognized as proprietary have always been so. Both leases and freehold covenants are relatively late additions, and the twentieth century saw a determined effort by some judges to raise certain types of licence to proprietary status (see Chapter 3).

Few concepts are quite so fragile, so elusive and so frequently missed as the notion of property... Our daily references to property therefore tend to comprise a mutual conspiracy of unsophisticated semantic allusions and confusions which we tolerate – frequently, indeed, do not notice (Gray and Gray, 2009, para 1.5.1).

In the case of *National Provincial Bank Ltd v Ainsworth* [1965] AC 1175 (HL), Mr Ainsworth left his wife, who continued to live in the former matrimonial home. The matrimonial home was originally owned by Mr Ainsworth, but when he incorporated his business he transferred the house to his new company and used the house to secure the company's debts. When the company failed to repay its debts, the bank sought possession of the house from Mrs Ainsworth. The House of Lords had to decide whether Mrs Ainsworth's occupation of the house amounted to a property interest in it; in other words, was her right to occupy the house as Mr Ainsworth's wife binding on the bank? This kind of problem, where a transaction between buyer and seller (or a borrower and a lender) involves a third person's interest in land, appears in various forms throughout this book. It is a kind of eternal triangle, as in Figure 1.1. In this case, Mr Ainsworth is the seller (granting a mortgage is equivalent to a sale for these purposes), and the bank is the buyer.

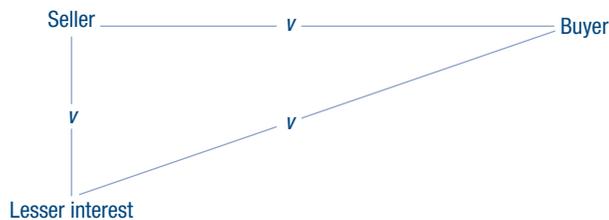


Figure 1.1 The eternal triangle

Although their Lordships were sympathetic to Mrs Ainsworth's plight, they felt unable to give her interest proprietary status. Lord Wilberforce said:

Before a right or an interest can be admitted into the category of property, or of a right affecting property, it must be definable, identifiable by third parties, capable in its nature of assumption by third parties, and have some degree of permanence or stability (at 1247–48).

There is, as Kevin and Susan Gray, in particular, have observed, a certain circularity in this approach. What rights bind third parties? Proprietary ones. What rights are proprietary? Those capable of binding third parties. In fact, the question 'What rights should be recognized as having the power of property?' is one that must be answered by the society of which the law is part. Different societies will answer the question in different ways, and the same society may answer the question differently at different times. These issues are explored in more detail in chapter 1.5 of Gray and Gray (2009).

1.3.2 Land

Almost all legal systems have special rules about the ownership of land that do not apply to other types of property. This reflects the significance of land to human beings and its distinctive characteristics when compared with other types of resources.

At the most basic level, human beings are land animals; they need somewhere to put their bodies, a piece of land on which to 'be'. On the emotional plane, humans must have contact with land, their roots in the earth. Physically, they need air to breathe and space in which to move about, eat and shelter. All these are provided by land.

As a resource, land has other special characteristics. Except in the rare cases of land falling into, or being thrown up from, the sea, it is geographically fixed and immovable;

it is also ultimately indestructible. Its nature means that the boundaries between one piece of land and another are normally touching, so neighbouring owners are aware of one another's business. Further, to its occupant one piece is never exactly the same as another: each is unique. Even in apparently uniform tower blocks, each floor, each flat, has its own particular characteristics.

The permanence and durability of land are matched by its flexibility. It has an infinite number of layers, and is really 'three-dimensional space'. A plot of land can be used by a number of people in different ways simultaneously: one person can invest her money in it, while two or more live there, a fourth tunnels beneath to extract minerals and half a dozen more use a path over it as a short-cut, or graze their cattle on a part of it.

Land can be shared consecutively as well as simultaneously; that is to say, people can enjoy the land one after another. The great landowning families traditionally created complicated 'settlements' of their estates, whereby the land would pass through the succeeding generations as the first owner desired. Each 'owner' only had it for a lifetime and could not leave it by will because, at death, it had to pass according to the directions in the settlement. In this way, the aristocratic dynasties preserved their land, and consequently their wealth and their political power.

These characteristics of land mean that the law has developed special rules relating to property in land. It is important, therefore, to know whether a particular object or resource is real property (land) or personal property. The rules for determining this are considered in Section 2.1 below.

By now, it should be clear that in English law, the word 'personal' is used to describe both a type of right and a type of property. It is possible to have personal rights over land (for example, many of the licences discussed in Chapter 3) and property rights (ownership) over personal property.

1.3.3 Land and society

It has already been observed that each society develops its own cultural attitudes to its land. These attitudes are coloured by the kind of land (for example, desert or jungle), because this determines the uses to which it can be put. The view taken of land is also influenced by its scarcity or otherwise, and by the economic system. In places where land was plentiful, it was not normally 'owned'. When European colonists arrived in America, the indigenous people believed that:

the earth was created by the assistance of the sun, and it should be left as it was... The country was made without lines of demarcation, and it is no man's business to divide it... The earth and myself are of one mind. The measure of the land and the measure of our bodies are the same... Do not misunderstand me, but understand me fully with reference to my affection for the land. I never said the land was mine to do with as I chose. The one who has the right to dispose of it is the one who created it (McLuhan, *Touch the Earth* (Abacus 1972) 54).

Similarly, native Australians regarded the land with special awe. As concluded in one of the cases about Aboriginal land claims, it was not so much that they owned the land, but that the land owned them (*Milirrpum v Nabalco Pty Ltd* (1971) 17 FLR 141). Native title was recognized as part of Australian land law in the landmark case of *Mabo v Queensland (No 2)* [1992] HCA 23; (1992) 175 CLR 1. A traditional African view was that the land was not capable of being owned by one person but belonged to the whole tribe:

land belongs to a vast family of which many are dead, a few are living and countless numbers still unborn (West African Lands Committee Cd 1048, 183).

In early English land law, the fundamental concept was 'seisin'. The person who was seised of land was entitled to recover it in the courts if she was disseised. Originally, 'the person seised of land was simply the person in obvious occupation, the person "sitting" on the land' (Simpson, 1986, 40). Seisin thus described the close relationship between a person and the land she worked and lived on. This simplicity was refined and developed over centuries, and the concepts of ownership and possession took over. Nevertheless, actual possession can still be of great importance in land law, for example, in claims of adverse possession (see Chapter 13).

Over the past three or four hundred years, the land law of England and Wales has been developing alongside the growth of capitalism and city living. There has been a huge population increase. In 1603, there were about four million people in Britain; by 2001, there were some 59 million on the same area, about 235,000 square kilometres (that is, about 4,000 square metres of surface area per person, although, of course, most people are confined to a comparatively tiny urban space). During the second part of the twentieth century, there was also an enormous increase in the number of ordinary people who owned land. The percentage of households living in owner-occupied accommodation (a house or a flat) more than doubled between 1971 and 2001 to nearly 70 per cent (Census 2001). However, this trend reversed in the early years of the twenty-first century as more and more people were unable or unwilling to take on the responsibilities of owner occupation. By the time of the 2011 Census, the percentage of households living in owner-occupied accommodation had fallen to 64 per cent, with a corresponding increase in the percentage of households renting accommodation from private and social sector landlords.

For the majority of owner-occupiers, the land they own is subject to a huge debt in the form of a mortgage. Despite this, the land will probably be regarded as both a home and an investment. It is an expression of the landowners' personality and a retreat from the world; at the same time, it represents a status symbol and, they hope, an inflation-proofed savings bank and something to leave to their children (or to be used to finance health care at the end of their lives). For other people (for example, those who rent their home on a weekly tenancy), home ownership, with its apparent psychological and financial advantages, may be only a hope for the future. In the meantime, their relationship with their land may be less secure, subject to the authority of a landlord. However, in a lawyer's view, tenants are also 'landowners', albeit for a limited period of time and subject to certain restrictions (see Section 2.3.1 below and Chapters 5 and 6).

It can be seen from this brief survey of land use in England and Wales that the same piece of land may be subject to a number of levels of ownership (for example, by a landlord and by a tenant, both of whom may have also granted mortgages to financial institutions). What is more, there are different motivations for owning land. Different people will have different expectations of their property, and one of the tasks of the land lawyer is to try to reconcile these various demands when they come into conflict. The main three motives for owning land are set out in Table 1.2, with examples of how they influence land law. (For more detail, see Gray and Gray, 2009, paras 1.5.40–57.)

In order to maximize the value of land, ownership must be capable of being freely and safely traded, while people who have lesser interests in the land must also feel secure. The market certainly seems to have an influence on the development of the law. When there was a slump at the end of the nineteenth century, judges tried to ensure that liabilities attached to land (that is, the lesser, third-party interests) were minimized so that the land would be attractive to buyers. Conversely, periods of booming prices, such as the 1970s, 1980s and the early 2000s, tend to stimulate a greater interest in the security

of such lesser, third-party interests. A falling market, such as that of the early 1990s and that of the end of the first decade of the twenty-first century, produces its own response, significantly influenced by the interests of lenders, such as building societies and banks (see Chapter 7).

Table 1.2 Three underlying motives for land ownership

Motive	Consequence	Examples
Land as the location of human existence (for example, shelter and work)	The law must reflect the reality of land use and give value to the interests of those in actual occupation. Parliament may need to intervene to protect the vulnerable from the unscrupulous. However, land must also be freely and conveniently transferable to enable its enjoyment.	Seisin (see Section 1.3.3 above). Protecting the interest of people in occupation: paragraph 2 of schedule 3 to the LRA 2002 (see Section 15.8.2 below). Parliamentary protection for residential tenants and residential mortgagees (see Chapters 5, 6 and 7).
Land as an investment	Interests in land are treated as investment assets: they need to be freely marketable and realizable, free from the risk of undisclosed interests. It is more convenient to think of interests in land as abstract concepts than as physical land.	<i>National Provincial Bank Ltd v Ainsworth</i> [1965] AC 1175 (HL) (see Section 1.3.1 above). The doctrine of overreaching (which transfers beneficial interests from the land to the proceeds of sale of the land; see Section 11.6.1 below).
Land as a community resource	Land needs to be managed and protected for the wider good of society rather than the profit of the individual owner.	Private rights, such as covenants (see Chapter 9). State intervention, such as planning regulations (planning law lies beyond the scope of this book). The conservation of nature and natural resources (see Rodgers, 2009).

1.4 Human rights

The Human Rights Act 1998, which came into force on 2 October 2000, means that the rules and practices of land law are now open to challenge if they offend against rights contained in the European Convention on Human Rights. The Act requires the courts to interpret legislation ‘in a way which is compatible with the Convention rights’ (s 3). It is directly applicable against public authorities (s 6), which include courts and tribunals, central and local government and any body exercising functions of a public nature. In *R (on the application of Weaver) v London & Quadrant Housing Trust* [2010] 1 WLR 363 (CA) the Court of Appeal had to decide whether evicting a social tenant for non-payment of rent was a public act or a private act within section 6(5). The majority concluded that the housing association was acting publicly: the status of an act depends upon the context in which it occurs (in this case, the provision of social housing) not the nature of the right being exercised (in this case, contractual).

The extent to which the Act is applicable in a dispute between two private individuals (what is known as its ‘horizontal’ effect) is uncertain. It may be that it has wider

horizontal effect than originally intended, since the section 3 requirement applies even if the parties are private individuals, and section 6 prevents the courts (as public bodies) from interpreting common law as well as statute in a way which is incompatible with Convention rights. This does not mean that the Convention rights must be referred to explicitly in every judgment; what matters is that the rules that the court is applying are themselves Convention compliant. For example, giving due consideration to the factors set out in section 15 of TOLATA 1996 (see Section 11.5.2 below) will ordinarily be sufficient to discharge the duty to balance the Convention rights of the parties without further reference to the Human Rights Act (*National Westminster Bank plc v Rushmer* [2010] 2 FLR 362 (Ch)).

In the context of land law, the most important Convention rights are:

- Article 1, Protocol 1 – the right to peaceful enjoyment and protection of possessions;
- Article 8 – the right to respect for a person’s private and family life and home;
- Article 6 – the right to a fair and public hearing; and
- Article 14 – the right to enjoy Convention rights without discrimination.

Article 1, Protocol 1 guarantees a person’s right to enjoy her property free from interference from the state except where such interference is in the public interest and in accordance with the law. This might well allow the compulsory purchase of a person’s land by a local authority, for example. It certainly permits long leaseholders to buy the freehold of their land under the Leasehold Reform Act 1967 because it is in the interests of social justice that they should be able to do so (see *James v UK* (1986) 8 EHRR 123 and Section 5.6 below).

Under Article 8, no public authority may interfere with the exercise of the right to respect for a person’s private and family life and home, except in accordance with the law and to the extent that it is necessary in a democratic society. In *Harrow LBC v Qazi* [2004] 1 AC 983, the House of Lords held that the Article concerned rights of privacy rather than property. Consequently, it could not be used to defeat contractual and proprietary rights to possession, including the powers of a local authority to recover possession from a former tenant. However, in *Connors v UK* (66746/01) (2005) 40 EHRR 9, the European Court of Human Rights at Strasbourg decided that there were circumstances in which the exercise by a public authority of an unqualified proprietary right under domestic law to repossess its land would constitute an interference with the occupier’s right to respect for his home. For repossession in these circumstances to be lawful, it must be shown that the authority had sufficient procedural safeguards in place to ensure that so serious an interference with the occupier’s rights was justified and proportionate in the circumstances of the case.

For a number of years after *Connors*, the House of Lords continued to hold that the relevant question in Article 8 cases was not whether repossession was a proportionate remedy in the particular case, but whether the statutory scheme under which possession was being sought was Article 8 compliant (see, for example, *Kay v Lambeth BC* [2006] 2 AC 465 (HL) and *Doherty v Birmingham City Council* [2009] 1 AC 367 (HL)). However, in *Manchester City Council v Pinnock* [2011] 2 AC 104 (SC) the Supreme Court accepted that English courts must consider the question of the proportionality of a local authority’s action within the circumstances of the individual case, provided that the issue was raised by the claimant (see, also, *Hounslow LBC v Powell* [2011] 2 AC 186 (SC)). This is unlikely to give rise to a flood of successful challenges to eviction. First, the reasoning in *Pinnock* is expressly confined to cases

concerning local authorities (at [50]): it does not apply to private landlords. Second, the proportionality of a local authority's action is only one of a number of factors that the court must take into account. In most cases, it is likely to be outweighed by others, including the local authority's proprietary interest in the land and its duty to properly manage and allocate its housing stock.

The effect of the Human Rights Act and the Convention rights it incorporates will be further discussed where relevant during the course of this book.

Summary

- 1.1 In your approach to land law, it is essential to grasp the language and definitions of interests in land as well as the rules about them.
- 1.2 The rules of land law are based on those found in case law. However, many of the rules have been significantly modified by Parliament, and land law is increasingly concerned with statutory interpretation. The most important statutes are:
 - ▶ Law of Property Act (LPA) 1925;
 - ▶ Land Registration Act (LRA) 2002;
 - ▶ Trusts of Land and Appointment of Trustees Act (TOLATA) 1996; and
 - ▶ Land Charges Act (LCA) 1972.
- 1.3 Land law is primarily concerned with rights of property (ownership) in land. The status of particular rights in land will depend upon the values and priorities of individual societies. There are a number of different reasons why a person might wish to enjoy 'ownership' of land. Where land is shared, these different motivations can give rise to conflict, which the law must resolve.
- 1.4 The provisions of the Human Rights Act 1998 must be considered when considering land law issues.

Further Reading

- Burn and Cartwright, *Cheshire and Burn's Modern Law of Real Property* (18th edn, Oxford University Press 2011) ch 1
- Gray and Gray, *Elements of Land Law* (5th edn, Oxford University Press 2009) ch 1.5
- Rodgers, 'Nature's Place? Property Rights, Property Rules and Environmental Stewardship' (2009) 68 CLJ 550
- Simpson, *History of the Land Law* (2nd edn, Clarendon Press 1986)
- Thompson, 'Possession Actions and Human Rights' (2011) 75 Conv 421

Index

- abatement, 127
 absolute title, 253, 257
 actual occupation, 10
 registered land, 34, 242, 259, 259, 260, 261, 261–5
 unregistered land, 284
 adverse possession, 9, 19, 117, 120, 192, 205, 211–23, 254, 256, 259, 262, 267–8, 283
 adverse, 216–17
 animus possidendi, 215
 dispossession, 217–18
 factual possession, 214–15
 fraud by the squatter, 218–19, 220–1
 historical context, 212–13
 human rights and, 222
 implied licence, 216–17
 intention to possess, 215
 leases and, 221
 licences and, 216–17
 limitation of actions, 212–13
 policy issues, 212–13, 222–3, 250
 registered land, 219–21, 250, 254, 259, 262, 267–8
 underlying issues, 212–13
 unregistered land, 217–19, 283
 air, rights of, 112, 113
animus possidendi, 215
 assignment *see* leases
 authorised guarantee agreements, 74

 bankruptcy
 beneficial interest, 175–6, 177, 180–2, 184
 disclaimer, 205
 mortgagors, 102
 severance, 164
 bare licences, 30
 beneficial interest, meaning of, 19–21
 see also trusts of land
 beneficiaries, 20–2, 160
 rights of, 174–6
 see also trusts of land
bona fide purchaser *see* good faith
 see also notice, doctrine of
 building schemes, 147–9; *see also* freehold covenants

 Chancery, court of, 4–5
 charges *see* mortgages
 Charges Register, 255, 258
 chattels, 16–17, 16
 Civil Partnership, 176–7, 227, 243
 right of occupation, 279, 281
 collateral contracts *see* composite contracts
 Commercial Rent Arrears Recovery (CRAR), 77
 commonhold, 81–2, 150
 common intention constructive trusts, 229–35
 detrimental reliance, 231
 express intention, 230–1
 inferred intention, 230, 231–3
 invalid contracts and, 203–4
 overriding interests and, 261–3
 proprietary estoppel, compared to, 241–2
 quantification of beneficial interest, 233–5
 resulting trusts and, 228, 232, 233, 234
 common law and equity, 4–5
 composite contracts, 199–200
 see also contracts for dispositions of land
 conditional fees, 40
 consolidation *see* mortgages
 constructive notice *see* notice, doctrine of
 constructive trusts, 228, 229, 242–3
 common intention constructive trusts *see*
 common intention constructive trusts
 remedial constructive trusts, 242–3
 resulting trusts and, 228, 232, 233, 234
 see also trusts of land
 contracts for dispositions of land, 189–204
 composite contracts, 199–200
 exchange, 189–90, 190
 formalities, 194–201
 leases, 193
 remedies for breach, 201–2
 signature, 198
 variation, 198
 writing not required, 197
 see also estate contracts
 contractual licences, 31–3, 110
 conversion, doctrine of, 171, 172, 172, 174
 conveyancing, meaning of, 5

- co-ownership
 - concurrent, 159–67, 171–3
 - consecutive, 171–2
 - four unities, 161
 - history and development, 171–3
 - objectives, 159–60, 171–3
 - statutory trust, 173
 - see also* trusts of land
- covenants
 - freehold *see* freehold covenants
 - leasehold *see* leasehold covenants
 - restrictive *see* freehold covenants
- customary rights, 132, 266
- date of redemption *see* mortgages
- deeds, 19, 63, 88–9, 204–6
 - easements, 111, 116, 120–4, 126, 128
 - effect, 206
 - leases, 49–50, 54–5, 63, 72
 - lost modern grant, doctrine of, 126
 - meaning, 204
 - mortgages, 88, 89, 95–6, 98, 103
 - root of title, 213, 282
 - when required, 19, 54–5, 88, 120–1, 128, 190, 205
- demesne land, 270
- demise, meaning of, 48
- determinable fees, 40
- discrimination
 - beneficial interest, claim to, 243
 - European Convention on Human Rights, 11
 - leases, 56, 67
- disposition, meaning of, 191, 196
- distress, 76–7
- easements, 18, 19, 24, 109–29
 - abandonment, 128–9
 - acquisition, 120–6
 - equitable, 111–12, 125, 259, 279, 280–1
 - express grant and reservation, 121
 - formalities, 111–12, 258
 - grant, meaning of, 111
 - implied grant and reservation, 121, 121–4, 125
 - common intention, 122
 - necessity, 122
 - section 62 LPA 1925, 122–3, 125
 - Wheeldon v Burrows*, the rule in, 123–4, 125
 - ingredients, 113–20
 - licences, compared with, 114
 - negative easements, 112–13, 119
 - prescription, 19, 120, 121, 124–6, 192, 205, 259
 - quasi-easements, 116, 123–4, 125
 - reform, 130–1
 - registered land, 111, 129, 255, 256, 258, 259, 259, 260, 265–6
 - remedies for infringement, 127
 - reservation, meaning of, 111
 - restrictive covenants and, 137
 - seisin*, 9, 10, 116, 128
 - termination, 128–9
 - touch and concern, 115–16
 - types, 112–13
 - unregistered land, 279, 280–1, 285
- electronic conveyancing, 19, 89, 191–2, 192, 195, 207, 251, 253, 254, 270–1
- entail *see* fee tail
- equitable charges *see* mortgages
- equitable interests, 19–22, 23, 23–4
 - in registered land, 23, 251–2, 254–5, 256
 - in unregistered land, 23, 23–4, 276–81, 285–6
 - see also* beneficial interest; co-ownership; trusts of land
- equitable mortgages *see* mortgages
- equitable remedies, 20, 32, 55, 140, 151, 200–1
 - see also* injunctions; part performance; rectification; specific performance
- equity, history of, 4–5, 19–20
- equity of redemption *see* mortgages
- equity's darling, meaning of, 277
- estate contracts, 193
 - registered land, 249, 253, 262, 269
 - unregistered land, 279–80, 284
 - see also* contracts for dispositions of land
- estates in land, 18, 19
 - registrable estates, 252–3, 256–7
 - see also* fee simple; leases
- estoppel
 - tenancies by, 58–9
 - see also* proprietary estoppel
- exclusive possession *see* leases
- extortionate credit bargains, 92–3
- family co-owned land, 227–8, 242–3
 - alternative approaches to, 242–3
 - bankruptcy, 180–2
 - constructive trusts, 229–35
 - resolving disputes, 176–80
 - see also* common intention constructive trusts; proprietary estoppel; resulting trusts
- 'family interests', 278, 285

- fee simple, 18, 19, 39–41
- fee tail, 40
- fencing, rights of, 113
- fixtures, 5, 16–17, 18, 206
- foreclosure *see* mortgages
- forfeiture
 - non-payment of rent, 76, 77
 - other covenants, 76, 78–9
 - relief from, 75, 78–9
- formalities, 191–3, 192
- four unities *see* co-ownership
- fraud, 194
 - in adverse possession, 218–19, 220–1
 - in registered land, 267–8
- freehold *see* fee simple
- freehold covenants, 137–55
 - annexation, 144–7
 - benefit: running at law, 141–2
 - running in equity, 144–9
 - breach of, 151–2
 - burden: running at law, 140–1
 - running in equity, 142–4
 - discharge, 152–4
 - history, 138–9
 - modification, 152–4
 - positive, 149–50
 - reform, 154–5
 - registered land, 253, 254, 255, 256
 - remedies, 151–2
 - restrictive, meaning of, 143
 - schemes of development, 147–9
 - successors in title, binding on, 142–50
 - ‘touch and concern’, 141, 144, 148
 - unregistered land, 279, 280, 285
- good faith, 20, 100, 101, 182, 191, 276, 277
 - see also* notice, doctrine of
- good leasehold title, 257
- harassment, 65–6
- headlease, meaning of, 48–9
- hereditaments, 18
- human rights, 10–12, 56, 77, 97, 153, 178, 181–2, 212, 216–17, 222, 266
- implied periodic tenancy, 51, 57–8
- implied trusts, 173
 - see also* constructive trusts; common intention constructive trusts; resulting trusts
- injunctions, 32, 41, 56, 77, 80, 127, 151–2
- insolvency *see* bankruptcy
- intention to possess *see animus possidendi*
- interests capable of overriding *see* overriding interests
- interests in land, 3, 6–7, 18–22, 23
 - equitable and legal compared, 20, 23–4
 - registered land, 23, 254–5, 256
 - unregistered land, 23–4, 276
- ius accrescendi*, 161
- joint tenancy, 53, 160–1, 162–7
 - creation, 162
 - four unities, 161
 - ius accrescendi*, 161
 - reform, 167
 - severance, 163–7
- land, 7–10, 15–18, 22–4
 - characteristics, 7–8
 - meaning of, 15–18
 - significance, 7–10
 - types, 22–4
- land charges, 276, 278–85
 - classes, 278–81
 - effect of registration, 282–3
 - failure to register, 283–5
 - process of registration, 281–2
- land contracts *see* contracts for dispositions of land
- land law
 - history of, 3–4
 - study of *see* studying land law
- Land Registry *see* registered land
- Lands Tribunal, 128, 153–4
- leasehold covenants, 63–82
 - ‘authorised guarantee agreement’, 74
 - Commercial Rent Arrears Recovery (CRAR), 77
 - conditions, 76
 - distress, 76–7
 - forfeiture *see* forfeiture
 - habitation, fitness for, 66–7
 - harassment of tenants, 64–5
 - implied covenants, 63, 64, 66, 68, 72
 - irremediable breach, 78–9
 - liability of original parties, 70–2, 73–4
 - overriding lease, 71, 262
 - privity of contract, 69, 70–2
 - privity of estate, 69–70, 72
 - problem notice, 71
 - quiet enjoyment, 64–5, 68
 - remedies for breach, 76–80
 - rights of entry *see* forfeiture

- leasehold covenants – *continued*
 - set-off, 80
 - touch and concern, 70, 72, 73
 - transmission of: leases made after 31 December 1995, 73–6
 - leases made before 1 January 1996, 69–73
 - unlawful eviction, 66
 - user covenants, 74
 - ‘usual covenants’, 68
 - waiver, 76
- leasehold estate *see* leasehold covenants; leases
- leases, 45–59
 - adverse possession of, 221
 - assignment, 48, 67–8, 69–76
 - conditions, 76
 - contractual leases, 49–50, 58
 - covenants *see* leasehold covenants
 - creation, 54–6
 - determination, 56
 - equitable leases, 55, 72, 74, 193, 217, 280
 - estoppel, tenancies by, 58–9
 - exclusive possession, 52–4
 - for life, 51, 57
 - frustration, 56
 - licences, distinguished from, 49, 52–4
 - merger, 56
 - mortgage by, 88, 254
 - non-estate leases, 49–50, 58
 - periodic tenancies, 51, 57–8, 58, 66, 218
 - perpetually renewable leases, 57
 - registered land, 252, 253, 255, 256, 257, 258, 259, 260, 260, 264
 - rent, 47, 49, 51, 52, 53, 54, 57, 64, 68, 76–7
 - requirements, 49–54
 - reversion, lease of the, 58
 - reversionary leases, 58, 256
 - subleases, 48–9, 48, 70, 72, 74, 79, 88, 89
 - surrender, 56
 - tenancies at sufferance, 58
 - tenancies at will, 57–8
 - tenancies by estoppel, 58–9
 - term certain, 50–2
 - terminology, 48–9
 - see also* leasehold covenants
- legal interests, 18–19, 23, 192, 204–7, 252, 276, 279
- licences, 29–35
 - bare, 30
 - contractual, 31–3, 110
 - coupled with an interest, 30, 130
 - coupled with constructive trust, 33
 - easements and, 114, 122–3
 - implied licence *see* adverse possession
 - interests in land, 29–30, 34–5, 262
 - leases, distinguished from, 52–4
 - proprietary estoppel, 30, 33–4, 240
 - status, 29–30, 34–5, 262
- light, rights of, 112, 113, 126
- limitation of actions *see* adverse possession
- local land charges, 266, 278
- matrimonial right of occupation, 279, 281
- mesne* landlord, 48
- minor interests, 256
- minors, 49, 179
- mortgages, 85–104
 - bankruptcy and, 102
 - borrower’s rights, 89–95
 - charge, legal mortgage by, 9, 23, 88, 254
 - consolidation, 102
 - creation, 88, 254, 256, 258
 - date of redemption, 87, 89, 98, 101
 - discharge, 89
 - equitable mortgages and equitable charges, 88–9, 102–3, 279
 - equity of redemption, 89–92
 - extortionate credit bargains, 92–3
 - foreclosure, 101
 - lender’s rights, 95–103
 - misrepresentation, 93–5
 - mortgagee’s power of sale, 97–100
 - oppressive terms, 92–3
 - personal covenant, 101–2
 - possession, 96–7
 - priority, 103–4
 - puisne* mortgages, 276, 279, 282
 - receiver, appointment of, 100–1
 - reform, 104
 - registered land, 88, 89, 102, 254, 258
 - ‘repossession’, 96–7
 - right to redeem, 89–91
 - sale: court’s discretionary power of, 93, 101
 - lender’s power of, 97–100
 - tacking, 96, 103–4
 - undue influence, 93–5, 265
 - unfair agreements, 92–3
 - unregistered land, 88, 89, 276, 279, 282
- motivation for land ownership, 9–10, 10
- natural rights, 131
- neighbours’ rights, 132

- non-derogation of grant, 64–5, 68, 80, 121, 122
- non-estate leases, 49–50, 58
- notice, doctrine of, 20, 23, 24, 33–4, 55, 139, 276–8, 285–6
- actual, constructive, and imputed, 277
- good faith (*bona fides*), 20, 276, 277
- land charges, effect of registration, 278, 283–5
- in registered land, 20, 259, 260, 266, 269–70
- notices on the title register, 257, 258
- notice to quit, 76
- option to purchase, 90, 196, 266, 280, 284
- mortgages and, 90
- overreaching
- beneficial interests, 10, 22, 182–3, 252, 255, 263, 276, 285
- mortgages, 98–9
- overriding interests, 23, 23, 254, 259–67, 259, 260, 261, 268
- actual occupation, 261–5, 261
- adverse possession, 259, 262
- easements, 265–6
- legal leases, 260
- local land charges, 266
- registration of, 258
- overriding lease, 71, 262
- part performance, 89, 194, 202
- party walls, 132
- periodic tenancies, 51, 57–8, 66, 68, 218
- possession
- adverse *see* adverse possession
- exclusive *see* leases
- interest in, 40
- meaning in the LPA 1925, 40
- right of beneficiaries to *see* trusts of land
- right of mortgagees to *see* mortgages
- unity of *see* joint tenancy; tenancy in common
- possessory title, 257
- pre-emption, 196, 279, 280
- prescription *see* easements
- priorities, 249–71, 275–87
- of interests, 249–50, 254, 276
- of mortgages, 103–4
- privity of contract *see* leasehold covenants
- privity of estate *see* leasehold covenants
- profits à prendre*, 5, 24, 30, 110, 111–12, 129–30
- licences coupled with, 30
- registered land, 265–6
- Property Register, 255
- proprietary estoppel, 33–4, 192, 202–4, 235–42
- assurance, 237–9
- constructive trusts compared, 241–2
- detrimental reliance, 239
- expectation, 237–9
- licences, 30, 33–4, 35
- principles, 203, 235–6
- registered land, 262
- relief (satisfying the equity), 240–1
- representation, 237–9
- unregistered land, 279, 280–1, 285
- void land contracts, 192, 202–4
- Proprietorship Register, 255, 257
- public rights, 110, 131, 266
- puisne* mortgages, 276, 279, 282
- qualified title, 257
- quasi-easements, 116, 123–4, 125
- quiet enjoyment, 64–5, 68
- rectification, equitable remedy of, 200–1
- rectification of the title register, 267–8
- redemption *see* mortgages
- registered land (title), 22–3, 23, 206–7, 249–71
- adverse possession, 219–21, 250, 254, 259, 262, 267–8
- alteration, 267–8
- beneficial interests, 254–5, 261–5
- caution, 257
- Charges Register, 255, 258
- classes of title, 256–7
- dealings, 206–7, 253–4
- easements, 111, 129, 255, 256, 258, 259, 259, 260, 265–6
- first registration, 206, 252–3
- general principles, 251–2
- indemnity, 268
- inhibition, 257
- interests completed by registration, 256, 258
- Land Registry website, 22, 207
- legal charges, 88, 89, 102, 254, 254, 258
- mechanics of registration, 252–5
- minor interests, 256
- mortgages, 88, 89, 102, 254, 254, 258
- notice, doctrine of, 20, 260, 266, 269–70
- notices, entered on the register, 257, 258
- overriding interests *see* overriding interests
- priority of interests, 249–50, 254
- profits à prendre*, 265–6
- Property Register, 255

- registered land (title) – *continued*
 Proprietorship Register, 255
 rectification, 267–8
 Register, the, 255
 registrable estates, 252–3, 256–7
 restrictions, 255, 257
 title, classes of, 256–7
 unregistered land, compared with, 22–4, 23
- registrable estates, 252–3, 256–7
- remainder, interest in, 40
- rent, 47, 49, 51, 52, 53, 54, 57, 64, 68, 76–7
- rentcharge, 19, 150
- repossession
 in leases *see* forfeiture
 in mortgages *see* mortgages
- restrictive covenants *see* freehold covenants
- resulting trusts, 192, 197, 228–9
- reversion
 interest in, 40
 lease of, 58
- reversionary leases, 58, 256
- rights of air, 112, 113
- rights of entry, 19, 150
see also forfeiture
- rights of fencing, 113
- rights of light, 112, 113, 126
- rights of pre-emption, 196, 279, 280
- rights of support, 112–13
- rights of survivorship *see ius accrescendi*
- rights of water, 112, 113
- rights of way, 112
- root of title, 213, 282
- schemes of development, 147–9; *see also*
 freehold covenants
- seisin, 9, 10
 unity of, 116, 128
- set-off *see* leasehold covenants
- settled land *see* strict settlements
- severance *see* joint tenancy
- specific performance, 32, 55, 80, 164, 193,
 201, 202, 220, 281
- spouse's right of occupation, 279, 281
- squatters' rights, *see* adverse possession
- strict settlements, 171–2, 172
- studying land law, 3–4
 basic questions, 20–4, 25
 using diagrams, 48–9, 70, 72–3, 75–6, 138,
 163, 166–7
- subject to contract, 189, 195, 203, 237
- subleases, 48–9, 48, 70, 72, 79, 88, 89
see also leases
- sub-tenancies *see* subleases
- support, rights of, 112–13
- surrender
 adverse possession and, 221
 meaning of, 56
- survivorship *see ius accrescendi*
- tacking, 96, 103–4
- tenancies *see* leases
- tenancies at sufferance, 58
- tenancies at will, 57–8
- tenancies by estoppel, 58–9
- tenancy in common, 160, 161–3, 167
- term of years absolute, 18–19, 48, 49, 50–2,
 57, 116
see also leasehold covenants; leases
- title absolute, 257
- title deeds, 23, 89, 96, 102, 104, 183, 190,
 250–1, 271, 276, 279
- Torrens scheme, 250–1
- touch and concern
 easements *see* easements
 freehold covenants *see* freehold covenants
 leasehold covenants *see* leasehold
 covenants
- town greens, 132
- trespassers, 30, 213–17
- trust, meaning of, 21–2, 160
- trustee in bankruptcy, 102, 164, 175–6, 177,
 177, 180–2
- trustees, 21, 160
 powers and duties of, 173–4, 175–6
see also trusts of land
- trusts for sale, 171–2, 174, 178
- trusts of land, 171–84
 bankruptcy, 177, 177, 180–2
 beneficiaries, rights of, 174–6
 buyers' protection from, 182–4
 consent, 184
 creation, 173
 disputes, 176–82
 general principles, 21–2, 160
 history of, 171–2
 overreaching, 182–3
 statutory trust, 173
 trustees, powers and duties of, 173–4,
 175–6
see also common intention constructive
 trusts; co-ownership; resulting trusts
- under-leases *see* subleases
- undue influence *see* mortgages

- unfair agreements *see* mortgages
- unities, the four *see* co-ownership
- unregistered land (title), 23–4, 275–87
 - adverse possession, 217–19, 283
 - easements, 279, 280–1, 285
 - equitable interests, 23, 24, 276–81, 285–6
 - freehold covenants, 279, 280, 285
 - land charges *see* land charges
 - legal interests, 276, 279
 - mortgages, 88–9, 276, 279, 282
 - notice *see* notice, doctrine of
 - overreaching, 276, 285
 - registered land compared with, 22–4, 23
- Upper Tribunal, Lands Chamber of, 153–4
- usual covenants, 68
- village greens, 132
- waiver, 76
- water, rights of, 112, 113
- way, rights of, 112
- writing, requirements for, 19, 54–5, 192, 194–5, 197–201, 204

