

Unit 17



<b>Title</b>	<b>Conveyancing</b>
<b>Level</b>	<b>6</b>
<b>Credit Value</b>	<b>15</b>

<b>Learning outcomes</b>	<b>Assessment criteria</b>	<b>Knowledge, understanding and skills</b>
<b>The learner will</b>	<b>The learner can</b>	
<b>1 Understand conveyancing practice in relation to interests in land and the transfer of legal estates</b>	<b>1.1</b> Explain the practice of land registration in relation to residential conveyancing transactions	<b>1.1</b> Compulsory first registration: transfer or mortgage of unregistered freehold; a lease for more than seven years; situations where a shorter lease may trigger a first registration (eg, not continuous); other triggers contained in Land Registration Act 2002; applying for first registration: apply on Form FR1 accompanied by: completed Form DL (document list); disclosable overriding interests (Form D1); original title documentation (including conveyancing searches); fee; interest can be protected by notice or restriction on a registered title; by unilateral or agreed notice (procedures); standard or non-standard restriction (Form RX1); cautions against dealings (on older titles); the difference between overriding and registerable interests: an overriding interest binds successors in title even if not registered, eg, rights of person in actual occupation or prescriptive easement in actual use; an interest which is not overriding (or which ceases to be overriding) will not bind a successor in title unless registered; some

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	<p><b>1.2</b> Describe the classes of title and how these can be upgraded</p> <p><b>1.3</b> Explain registration of Interests against unregistered land</p> <p><b>1.4</b> Explain the differences between types of title</p> <p><b>1.5</b> Explain the difference between a joint tenancy and a tenancy in common</p> <p><b>1.6</b> Explain the system of commonhold as an alternative to traditional freehold/leasehold titles</p> <p><b>1.7</b> Explain how a property can be transferred or charged when a paper-</p>	<p>interests can be protected by registration even though technically overriding, eg, a lease of between three and seven years may be protected by registration against a landlord's title; similarly, prescriptive easements; there is also an obligation to disclose such interests on first registration</p> <p><b>1.2</b> Absolute; possessory; good leasehold; process of upgrading</p> <p><b>1.3</b> Land charge; registration against name; process of registration; examples: C(i) (puisne mortgage), C(iv) (estate contract), D(ii) (restrictive covenant), D(iii) (easement) pending action, writs and order, caution against first registration)</p> <p><b>1.4</b> Freehold, leasehold, commonhold titles</p> <p><b>1.5</b> Right of survivorship; undivided shares; severance; trust documents; <i>Stack v Dowden (2007)</i> and other relevant case law</p> <p><b>1.6</b> In outline only: Part 1 Commonhold and Leasehold Reform Act 2002; Land Registry process; documentation required; key differences between commonhold and long leasehold; advantages/disadvantages; note that candidates will not be required to draft commonhold documentation neither will candidates be tested on their ability to act in a commonhold transaction</p> <p><b>1.7</b> When a registered proprietor has: died: survivorship, death certificate, probate/letters</p>
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	<p>owner has died, lost capacity or is otherwise absent</p> <p><b>1.8</b> Analyse a given legal situation on the principles and practice relating to transfer of legal estates and interests in land in order to offer practical advice and assistance</p>	<p>of administration; overreaching/appointment of second trustee; has lost mental capacity: Mental Capacity Act 2005, Lasting Power of Attorney, Enduring Power of Attorney, mental illness, loss of mental capacity; is bankrupt or subject to a winding up order: powers of bankruptcy trustee/liquidation/administrator; is absent: General Power of Attorney, Powers of Attorney Act 1971</p> <p><b>1.8</b> Analysis of a complex scenario to offer advice and assistance</p>
<p><b>2 Understand how to take conveyancing instructions</b></p>	<p><b>2.1</b> Explain how to use conveyancing precedents in the drafting of standard documentation</p> <p><b>2.2</b> Describe the process of negotiating non-standard conveyancing documentation with another party's lawyer</p> <p><b>2.3</b> Explain how to take conveyancing instructions for a range of transactions</p>	<p><b>2.1</b> Published and on-line precedents, eg, the encyclopaedia of forms and precedents</p> <p><b>2.2</b> Draft document prepared and submitted for approval; proposed amendments; travelling draft; negotiations on terms/wording; clean draft prepared incorporating agreed amendments</p> <p><b>2.3</b> Sale or purchase of a residential freehold, eg, finance, parties, deadlines, dependent transactions, special instructions; sale or purchase of an existing residential leasehold; as above, and also landlord/managing agents/service charges; a grant (or purchase) of a new residential lease; as for existing leases, plus main lease terms, heads of terms, extent of demise (by reference to plan), proposed maintenance/service charges; the sale (or purchase) of land comprising part of a wider title; as for purchase of whole, as well as</p>

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	<p><b>2.4</b> Analyse a given legal situation on how to take conveyancing instructions in order to offer practical advice and assistance</p>	<p>heads of terms, accurate scale plan identifying land to be purchased, new easements to be created or reserved, new covenants</p> <p><b>2.4</b> Analysis of a complex scenario to offer advice and assistance, eg, drafting common conveyancing documentation (using the learner's own words), ie, contracts; transfers; lease clauses (but not whole leases)</p>
<p><b>3 Understand how to prepare a contract for sale</b></p>	<p><b>3.1</b> Describe the legal requirements for creating a binding contract for the sale of land</p> <p><b>3.2</b> Explain the significance of full and limited title guarantee</p> <p><b>3.3</b> Explain the key features of a contract for sale for any residential freehold or leasehold transaction</p> <p><b>3.4</b> Interpret and identify necessary amendments in a draft contract prepared by another lawyer</p> <p><b>3.5</b> Explain payment (or receipt) of a deposit on exchange of contracts</p> <p><b>3.6</b> Explain how to exchange contracts in any given situation</p>	<p><b>3.1</b> Section 2 of Law of Property (Miscellaneous) Provisions Act 1989</p> <p><b>3.2</b> The difference between full title guarantee; limited title guarantee and the absence of any title guarantee; Law of Property (Miscellaneous Provisions) Act 1994; define full/limited guarantee; situations where full/limited guarantee presumed</p> <p><b>3.3</b> Standard Conditions of Sale; front page and special conditions; transfer/lease</p> <p><b>3.4</b> Check terms of draft contract against client instructions and amend as appropriate</p> <p><b>3.5</b> Conventional 10% deposit as security; how deposit is paid on exchange; utilisation of deposit; stakeholder/agent; utilisation of deposit when buying "off-plan"; reduced deposits</p> <p><b>3.6</b> Law Society formulae A, B and C; achieving simultaneous exchange</p>

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	<p><b>3.7</b> Explain how to give a party an option to purchase land</p> <p><b>3.8</b> Describe documentation to be sent out with a draft contract (contract package)</p> <p><b>3.9</b> Analyse a given legal situation on preparing a contract for sale in order to offer practical advice and assistance</p>	<p><b>3.7</b> Perpetuities and Accumulations Act 1964; Section 2 Law of Property (Miscellaneous Provisions) Act 1989; Protection by registration</p> <p><b>3.8</b> Title information; Property Information Form; Fixture/Fittings questionnaire</p> <p><b>3.9</b> Analysis of a complex scenario to offer advice and assistance; eg, using Standard Conditions of Sale, but otherwise in the learner's own words, drafting a contract for sale for any residential freehold or leasehold transaction (ie drafting front page and special conditions; attached draft transfer/lease as required); interpreting and amending a draft contract prepared by another lawyer (ie checking terms of draft contract against client instructions and amending as appropriate); using learner's own words, drafting provisions giving a party an option to purchase land and exercising an existing option</p>
<p><b>4 Understand title and its investigation</b></p>	<p><b>4.1</b> Deduce title</p> <p><b>4.2</b> Explain how to raise pre-contract enquiries and title requisitions</p> <p><b>4.3</b> Describe the relevant pre-contract searches</p>	<p><b>4.1</b> Official Land Registry copies; title plan; official copies of documents referred to in register of title; existing lease/underlease; unregistered roots of title; following a chain of title; answering pre-contract enquiries and title requisitions; explanation of the purpose of an Energy Performance Certificate (EPC) and what it contains</p> <p><b>4.2</b> Reviewing title documentation supplied and identifying where clarity required; drafting standard title requisitions and pre-contract enquiries</p> <p><b>4.3</b> For example: Local Searches; LA enquiries; utility; environmental search, chancel-check;</p>

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	<p><b>4.4</b> Explain what options are available to overcome title difficulties</p> <p><b>4.5</b> Analyse a given legal situation on title investigation in order to offer practical advice and assistance</p>	<p>coal mining enquiries</p> <p><b>4.4</b> Identifying title difficulties; title indemnity insurance; deed of release; confirmatory documentation; Lands Tribunal</p> <p><b>4.5</b> Analysis of a complex scenario to offer advice and assistance; eg, in a given situation, drafting a detailed report on title to enable a client to make an informed decision on whether to proceed with a purchase (ie, general description of title, plans, access, service easements, title restrictions, enforceability, regulatory matters, quality of title, options); drafting standard title requisitions and pre-contract enquiries</p>
<p><b>5 Understand issues relating specifically to leasehold property transactions</b></p>	<p><b>5.1</b> Explain the structure of a residential lease</p> <p><b>5.2</b> Explain how to apply for a ground landlord's consent (where such consent is required in any situation)</p>	<p><b>5.1</b> Distinguishing between a lease and an underlease; a lease derives directly out of the freehold; an underlease derives out of a superior lease; apparent from the Property Register of the Register of Title whether the lease derives out of a freehold or superior lease; typical structure of a long residential ground lease of a flat: Land Registry standard clauses; parties; premium paid; extent of demise (referring to schedule); terms; ground rent; service charges; tenant's covenants; landlord's covenant for quiet enjoyment; landlord's covenants as regards providing maintenance/ insurance/communal areas; forfeiture clause (and associated declarations); schedule; attestation; note modern practice for lease "Particulars" to be in one place (usually towards the first few pages of the lease)</p> <p><b>5.2</b> Identify whether a landlord's consent is required; most (though not all) residential leases are freely assignable; in exceptional</p>

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	<p><b>5.3</b> Explain what due diligence enquiries should be made to alert a lease-buyer to outstanding liabilities</p> <p><b>5.4</b> Explain the rights conferred on residential leaseholders of flats to enfranchise collectively the freehold of their block</p> <p><b>5.5</b> Explain a residential leaseholder's (or the prospective buyer of an existing lease's) right to extend individually a lease</p> <p><b>5.6</b> Outline in each case the process to be undertaken in exercise of the right to enfranchise or extend</p>	<p>cases landlord's consent may be required before an assignment or underletting can be completed; Section 19 Landlord and Tenant Act 1927 and Landlord and Tenant Act 1988 is then applicable; landlord's consent is routinely required for alterations/change of use; again Section 19 Landlord and Tenant Act 1927 is applicable; written application (with references) for assignment/underletting; apply with detailed plans and specifications for alterations; landlord's consent must be formally documented; undertaking for landlord's costs</p> <p><b>5.3</b> Three years service charge accounts; enquiry as to programmed maintenance and/or improvements as well as work already carried out but not yet charged; service charge regime contained in Landlord and Tenant Act 1985 (as amended by Commonhold and Leasehold Reform Act 2002)</p> <p><b>5.4</b> Leasehold Reform Housing and Urban Development Act 1993 (as Amended by Commonhold and Leasehold Reform Act 2002); qualifying criteria; intermediate interests; price payable</p> <p><b>5.5</b> Leasehold Reform Housing and Urban Development Act 1993 (amended as above); qualifying criteria; price payable; permitted extensions possible; length of extension</p> <p><b>5.6</b> An outline of enfranchisement: RTE Company, participation notice, initial notice, counter notice, valuation, other terms and conditions, conveyancing process, role of court/Leasehold Valuation Tribunal; an outline of lease</p>
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	<p><b>5.7</b> Analyse a given legal situation on leasehold issues in order to offer practical advice and assistance</p>	<p>extension: notice/counter notice procedure, valuation, intermediate interest, extended lease by way of substitution of existing lease, role of court/LVT, conveyancing process</p> <p>Note that candidates will not be asked to draft documentation under the 1993 Act; neither will candidates be tested on their ability to carry out a conveyancing transaction involving statutory enfranchisement/lease extension</p> <p><b>5.7</b> Analysis of a complex scenario to offer advice and assistance</p>
<p><b>6 Understand what easements or management arrangements need to be put in place when transferring or leasing part of a wider title</b></p>	<p><b>6.1</b> Explain the process of registering a purchase of land forming part of a wider registered title</p> <p><b>6.2</b> Identify what access and/or service easements should be granted or reserved</p> <p><b>6.3</b> Explain how issues of future maintenance of a building or of an access or other service facility should be addressed</p> <p><b>6.4</b> Analyse a given legal situation on</p>	<p><b>6.1</b> As for a registration of transfer of whole, save that the property will be transferred using Land Registry Form TP1 to which must be attached an accurate scale plan of the property transferred which conforms to Land Registry requirements; priority search must be made using Form [OS2 ] attaching same scale plan</p> <p><b>6.2</b> Identify mains services and whether property directly fronts adopted public highways; identify what rights of access and service easements (eg, electricity, gas, water, surface and water drainage) need to be granted or reserved</p> <p><b>6.3</b> Practical ways to ensure that a building or private service road or utility is properly maintained at the shared expense of the occupants or users; making use of the facility conditional on contributions towards future maintenance may overcome difficulty in enforcing positive covenants</p> <p><b>6.4</b> Analysis of a complex scenario to offer advice</p>

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	easements and management arrangements in order to offer practical advice and assistance	and assistance; eg, (using learner's own words) drafting an easement or reservation for access and/or services; or covenant, ie, easements conferring vehicular and/or pedestrian access; common service easements (for gas, water, electricity, drainage etc); restrictive/positive covenants
<b>7 Understand the legal responsibilities in relation to funding property transactions</b>	<p><b>7.1</b> Explain to a prospective buyer the ways in which property transactions may be financed</p> <p><b>7.2</b> Explain the separate duties owed to a mortgage lender</p> <p><b>7.3</b> Explain how to act for a mortgage lender</p> <p><b>7.4</b> Analyse a given legal situation on the funding of property transactions in order to offer practical advice and assistance</p>	<p><b>7.1</b> In respect of: types of mortgage finance available, need for independent survey, bridging finance</p> <p><b>7.2</b> Separate client; Code of Conduct; CML Lenders Handbook contains standard instructions</p> <p><b>7.3</b> Different situations: in the case of a first mortgage of a registered freeholder or leasehold title: CML Lenders Handbook, ie, standard instructions, need to ensure good and marketable title and that the loan will be properly secured; second mortgage: subject prior mortgage, notification to first mortgagee; bridging finance: undertaking to be given; remortgage: redeem existing mortgage with grant of new mortgage; redemption of existing mortgage: undertaking for title deeds, redemption out of sale proceeds, form of discharge/ENDS/e-DS1; circumstances when a prospective co-mortgagor must be separately advised (<i>Royal Bank of Scotland v Etridge (No. 2) (2001)</i>)</p> <p><b>7.4</b> Analysis of a complex scenario to offer advice and assistance</p>
<b>8 Understand other pre-exchange issues in relation to planning/building regulations</b>	<b>8.1</b> Explain the need to ensure compliance with both planning and building	<b>8.1</b> Awareness that planning permission may be an issue; Town and Country Planning Act 1990

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<p><b>and newly built residential properties</b></p>	<p>regulations approval</p> <p><b>8.2</b> Explain the options available when there is existing regulatory non-compliance with planning and building regulations approval</p> <p><b>8.3</b> Explain the Buildmark scheme in relation to newly built residential properties</p> <p><b>8.4</b> Explain what remedies become available under Buildmark when defects become apparent</p> <p><b>8.5</b> Explain how to act for a client purchasing an uncompleted property “off plan”</p> <p><b>8.6</b> Analyse a given legal situation on planning/building regulations and newly built residential properties in order to offer practical advice and assistance</p>	<p>(as amended); most structural building work is subject to building regulations (even when planning permission not required); evidence of building regulation approval</p> <p><b>8.2</b> Identifying the non-compliance; assessing the risk; advising on solution; the possibility of indemnity insurance</p> <p><b>8.3</b> Items guaranteed for two years; items guaranteed for 10 years; documentation required</p> <p><b>8.4</b> Against builder; against NHBC</p> <p><b>8.5</b> Check planning permissions; building regulation approval; vendor’s title; check transfer; plan of unit; payment of deposit; Section 38 (road making agreement); check service easements; new estate covenants</p> <p><b>8.6</b> Analysis of a complex scenario to offer advice and assistance</p>
<p><b>9 Understand how to complete a conveyancing transaction</b></p>	<p><b>9.1</b> Prepare priority searches</p>	<p><b>9.1</b> Where whole of land in a title is being purchased: OS1, correct date of search period, priority period (significance of); part of land comprised in a wider title is being purchased: OS2 (with scale plan); a new lease (or underlease is being purchased): OS2 (with scale plan); other searches: bankruptcy search (K16) against mortgage borrower, K15 (unregistered)</p>

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	<p><b>9.2</b> Explain procedures for engrossment, execution and dating of documentation</p> <p><b>9.3</b> Explain how to arrange a transfer of funds for completion</p> <p><b>9.4</b> Explain the function of a detailed completion checklist</p> <p><b>9.5</b> Analyse a given legal situation on the completion of a conveyancing transaction in order to offer practical advice and assistance</p>	<p><b>9.2</b> Agreed document “engrossed” on durable paper (often in several parts) for execution by parties; correct attestation clauses for individuals and/or companies; execution under power of attorney; dating of executed document (by way of completion)</p> <p><b>9.3</b> Draw down mortgage funds; arrangements for telegraphic transfer to vendor’s solicitor; money held to order pending formal completion</p> <p><b>9.4</b> List of documents to be handed over/received, eg, money to be paid over/received; check vacant possession/keys etc before formal completion; date documentation by way of completion; undertakings to be given</p> <p><b>9.5</b> Analysis of a complex scenario to offer advice and assistance, eg, completing a completion checklist</p>
<p><b>10 Understand how to deal with post-completion formalities</b></p>	<p><b>10.1</b> Explain the requirements of stamp duty land tax</p> <p><b>10.2</b> Explain an application to the Land Registry</p>	<p><b>10.1</b> Assessment of duty; completing SDLT 1 and paying duty on paper and on-line; additional SDLT forms required; receive SDLT 5 (confirming compliance); note: candidates will not be required to complete a SDLT form</p> <p><b>10.2</b> For: registration of a dealing with whole of existing registered title: AP1, DS1, transfer; SDLT 5, OS1, fee; registration of a dealing with part of an existing registered title: AP1, DS1, TP1, SDLT 5, charge, priority search OS2, fee; first registration of a long residential lease: FR1, DL, e-DS1, new lease, SDLT 5, charge, priority OS2</p>

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	<b>10.3</b> Analyse a given legal situation on post-completion formalities in order to offer practical advice and assistance	<b>10.3</b> Analysis of a complex scenario to offer advice and assistance; drafting of relevant post-completion documentation
<b>11 Understand how to deal with late completion and other default</b>	<p><b>11.1</b> Explain the significance of a contractual completion date</p> <p><b>11.2</b> Explain the financial consequences and liabilities arising out of late completion</p> <p><b>11.3</b> Explain the consequences of misdescription and/or misrepresentation</p> <p><b>11.4</b> Explain how time can be made “of the essence”</p> <p><b>11.5</b> Explain the circumstances under which a deposit can become forfeit</p> <p><b>11.6</b> Analyse a given legal situation on how to deal with late completion and other default in order to offer practical advice</p>	<p><b>11.1</b> Presumption that time not of the essence, but more than just a target date</p> <p><b>11.2</b> Automatic contractual interest; paid after deduction of tax (corporation/individual abroad); tax deduction certificates; circumstances when interest non-payable; equivalent allowance against purchase price (seller’s delay); seller must elect whether to take interest or rents and profits; possible claims for other financial losses (eg, hotel expenses)</p> <p><b>11.3</b> Contractual consequences; consequence of inaccurate or dishonest response to pre-contract enquiries</p> <p><b>11.4</b> A party ready and willing to complete can serve a Completion Notice in accordance with the standard conditions making time of the essence; failure to complete within the extended deadline gives the innocent party the right to rescind the contract (with forfeiture of deposit in the event of buyer’s default) or in either case the possibility of application for specific performance if the innocent party elects to affirm the contract</p> <p><b>11.5</b> Buyer fails to complete within Completion Notice deadline</p> <p><b>11.6</b> Analysis of a complex scenario to offer advice and assistance; eg, drafting (in the learner’s own words) a valid notice to complete</p>

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	and assistance	(ie, in learner's own words, but making express reference to the relevant General Condition and otherwise legally effective as a notice to complete)
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<b>Additional information about the unit</b>	
Unit aim(s)	To accredit a broad and detailed understanding of Conveyancing
Unit expiry date	31 March 2015
Details of the relationship between the unit and relevant national occupational standards (if appropriate)	This unit may provide relevant underpinning knowledge and understanding towards units of the Legal Advice standards
Details of the relationship between the unit and other standards or curricula (if appropriate)	Na
Assessment requirements specified by a sector or regulatory body (if appropriate)	Na
Endorsement of the unit by a sector or other appropriate body (if required)	Na
Location of the unit within the subject/sector classification	15.5 Law and Legal Services
Name of the organisation submitting the unit	ILEX (Institute of Legal Executives)
Availability for use	Available to all Awarding Bodies to award credit (shared)
Availability for delivery	1 September 2011

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