

7

Real property law

THE STUDY OF LAW

Lead-in

Property law governs the **right of use**, control and **disposition** which a person may have over personal property and real property.

- 1 a What is the difference between personal property and real property?
- b Which of these is considered real property?
 - a an apartment building **R.**
 - b a CD **P**
 - c railway tracks **R.**
 - d a large outdoor sculpture **R/S.**
 - e a factory **R**
 - f farmland **R.**
 - g a forest **R.**
 - h a business plan **P**
 - i a car **P**

Reading 1: Real property law *to grant = to attribute*

2 Read the text below and decide whether these statements are true (T) or false (F).

- 1 A fee simple is an estate of indefinite duration. **T** *L1/L2. P1*
- 2 A life estate can be passed on to the grantee's heirs. **F** *(héritier) L314 P2*
- 3 A lease grants exclusive possession of real property for a limited term, but does not confer title interest in the property.
- 4 An oral contract for the purchase of real property is usually valid. **F.**

Real property can be divided into **freehold estates**¹ and **leaseholds**.

Freehold estates are those in which an individual has ownership of land for an indefinite period of time. It is important to note that in property law, the term *land* refers to **real estate** (and everything that grows on that real estate), any improvements to the real estate (e.g. buildings) and the right to the minerals underneath the land and the airspace above it. There are generally three types of freehold estate in English-speaking jurisdictions: the **fee simple**², the **life estate** and the **estate pur autre vie**. A fourth type of freehold estate, the **fee tail**, is now largely obsolete. The transfer of title in land from one person to another is known as the **conveyance**.

The most complete, unlimited form of freehold estate is the fee simple, which is **inheritable** and lasts as long as the owner (or any subsequent **heirs**) wants to keep it. A life estate is one in which the individual retains possession of the land for the duration of his or her life. Although the ownership of a life estate is technically temporary because it ends when the owner dies, it is

¹ The term *estate* refers to a person's interest in real property. It also refers to a deceased person's real and personal property.

² also fee simple absolute

treated as complete ownership (fee simple) for the duration of the person's life. The estate pur autre vie is similar to the life estate, but differs in that it is measured by the life of someone other than the **grantee** (to whom an interest in the real property is conveyed by a **grantor**). An example of an estate pur autre vie would be a landowner who wishes to leave property to a charity in her will, but to enjoy tax savings during her life. She could formally donate the property but retain possession during her own life (a life estate) and specify that she wants someone, e.g. her husband, to be able to remain in the property should he outlive her (estate pur autre vie).

In common-law jurisdictions, leasehold interests in land are sometimes classified as **personal property**, along with tangible property such as goods and **chattels**. Leaseholds are **property interests** of limited duration and are generally created through a **lease** – a contract for **exclusive possession** in return for which the **tenant** pays the **landlord or landlady** a specified **rent** or **compensation**. A **licence**¹ is like a lease, but is generally for a shorter period of time, usually less than 12 months. Furthermore, if there is no exclusive possession of the property (as in a hotel room), then a licence is created, not a lease. A **licensee** is not granted any **title interest** in the land, merely permission to enter it for a specific purpose that would otherwise constitute a trespass.

The **Statute of Frauds** is generally applicable to interests in land, requiring that **instruments** such as **deeds**, real-estate sales contracts and certain leases be in writing to be legally enforceable.

must.

¹ (US) license

Key terms 1: Instruments and people in real property law

3 Match the sentence halves to complete these definitions.

Instruments

- | | |
|---|--|
| 1 A lease is an instrument which grants <i>b</i> | a title to a property from one owner to another. |
| 2 A licence is an instrument which gives <i>e</i> | b temporary possession of a property without conferring ownership. |
| 3 A deed is an instrument which <i>a.</i> transfers | c the right to use property for a certain purpose without conferring either possession or ownership. |

People

- | | |
|--|---|
| 4 A tenant is someone who leases or rents <i>B. F</i> | d part or all of a deceased person's estate. |
| 5 A landlord is someone who owns <i>R.</i> | e an interest in real property to another. |
| 6 An heir is someone who is entitled to inherit <i>D</i> | f property from a landlord. |
| 7 A grantor is someone who conveys <i>L</i> | g permission to enter another person's property temporarily. |
| 8 A grantee is someone who acquires <i>i.</i> | h property, and rents it out or leases it to others for money. |
| 9 A licensee is someone who receives <i>G</i> | i an interest in property from another by deed or other written instrument. |

4 With a partner, take turns making sentences that combine the people and the instruments.

EXAMPLE: A tenant signs a lease when he/she rents property from a landlord.

Language use 1: Forming adjectives with negative prefixes

5 Find two adjectives in Reading 1 with negative prefixes (e.g. *un-*, *in-*).

There is no single rule for forming adjectives with negative prefixes. The most common negative prefixes are *un-* and *in-*, but there are several others as well. For this reason, you should make a note of the negative prefix used with a word when you come across it; consult a dictionary if you are not sure.

6 Choose the correct prefixes (*il-*, *in-*, *im-*, *ir-* or *un-*) to complete these sentences. Use your dictionary if necessary.

- 1 Under the il legal lease doctrine, a lease of unsafe and unsanitary premises that violate the local housing code is deemed an il legal, and thus un enforceable, contract, allowing the tenant to withhold rent but remain in possession. location (locux).
= to take back.
- 2 If the tenant is unable to pay rent when due, but on or before such due date he/she gives the landlord written notice that it is impossible for him/her to pay said rent on time and the reasons, the landlord shall attempt to work out a procedure for paying such rent.
- 3 Freehold usually permits the owner to use the land for a particular purpose, allowed by government and planning laws, for an indefinite or illimited period.
- 4 The term *estate at will* refers to an estate in which a person holds or occupies property with the permission of the owner, for a term of unspecified or uncertain duration; i.e. there is no fixed term to the tenancy.

Reading 2: Real property investment law

Mychajlo is a graduate student of law enrolled in a Master's degree programme in European Law. In a seminar on Eastern European Real Property Law, he has to give a presentation on the real property law of a specific jurisdiction. He has found an English text explaining the real property investment law of his own country, Ukraine, and is considering using it as a source of information. However, since Mychajlo's native language is not English, he has difficulty understanding the text.

- 7 Read through the extract from the text on page 75 carefully and match the headings (a–e) with the appropriate sections (1–3). You will not need two of the headings.
- a Lease right to land
 - b Improvements
 - c Grounds for termination available to the landlord
 - d Grounds for termination available to the tenant
 - e Termination
- 8 Quickly read the extract again. What features do you think might make it difficult to understand?

1)

Lease agreements for an indefinite term may be terminated at any time by either party on three calendar months' notice. Lease agreements for a definite term may be terminated only in case of mutual agreement of the parties, or by a court of law.

2)

The landlord shall have the right to terminate the lease agreement if:

- the tenant uses the real property in violation of the agreement or the real property's designation;
- the tenant transfers the use of the real property to another person without the landlord's prior consent;
- the tenant, due to his/her negligence, creates a threat of possible damage to the real property;
- the tenant has not commenced any major repairs of the real property where an obligation to do so was imposed on the tenant.

The landlord shall have the right to terminate a lease agreement and claim the return of real property if the tenant does not make lease payments for the use of the real property during three consecutive months. In the event the landlord terminates a lease agreement, the lease agreement shall be deemed terminated from the moment the tenant is notified by the landlord of termination.

3)

Pursuant to the Civil Code of Ukraine, the tenant shall have the right to demand termination of the lease agreement if:

- the landlord transferred the leased real property, and the quality of the leased property contravenes the terms and conditions stipulated by the lease agreement or the designation of the real property;
- the landlord fails to comply with the obligation to make capital repairs of the real property.

According to Ukrainian law, an agreement on lease of the land shall be terminated in certain cases provided by the law, namely:

- compulsory purchase¹ of the land for public needs and forced alienation of land on the grounds of public necessity under the procedure set by Ukrainian law

¹ (US) (upon) exercise of the power of eminent domain

Language use 2: Formal/informal style: synonyms

One reason why the text might be difficult to understand is the fact that it contains several words which are typical of a more formal style of language and are not common in everyday speech. This style is often found in written legal texts, and sometimes in spoken language as well. In general, more formal English words are often of Latin origin, while less formal words are often of Anglo-Saxon origin (e.g. *show* (informal) vs. *demonstrate* (formal)). One example of formal language use can be found in Reading 1:

*A life estate is one in which the individual **retains possession of the land** for the duration of his or her life.*

The phrase *to retain possession of the land* is formal in style, while *to keep the land* would be more informal. The text in Reading 2 contains the following example:

*Lease agreements for an indefinite term may be **terminated** at any time by either party on three calendar months' notice.*

To terminate is a formal way of saying 'to bring to an end' or 'to end' something.

- 9 Find more formal words and phrases (highlighted in Reading 2 on page 75) which correspond to these words.

- | | | |
|--------------------|-----------------------|---|
| 1 agreement before | 5 following in order | 8 in agreement with |
| 2 begun | 6 do what is required | 9 legal description |
| 3 common | 7 goes against | 10 state purchase of privately owned property |
| 4 ended | | |

- 10 Discuss these questions in small groups.

- 1 When is it appropriate to use a formal language style in legal matters? What factors does it depend on?
- 2 In which of the following situations do you think it would be appropriate to use formal language?
 - When giving a presentation on a legal topic in a seminar
 - When writing a seminar paper
 - When speaking to a client
 - When writing a letter or email summarising the law to a client

Listening 1: Property-law presentation

You are going to hear an excerpt from Mychajlo's seminar presentation [see Reading 2].

- 11 \blacktriangleleft 7.1 Under what circumstances are foreigners permitted to buy real property in your jurisdiction? Listen to the excerpt. How does the law in Ukraine compare to the law in your jurisdiction?

- 12 \blacktriangleleft 7.1 Listen again and decide whether these sentences are true (T) or false (F).

- 1 Foreigners are not permitted to buy agricultural land in Ukraine under any circumstances.
- 2 If a foreigner inherits farmland, he/she is allowed to retain it for the purpose of conducting business there.
- 3 Foreign business entities may not acquire buildings or structures on non-agricultural land.
- 4 Foreigners can acquire land in Ukraine by founding a company.

Speaking 1: Giving emphasis to important points

Listeners can better understand and remember information given in a presentation if the speaker indicates its importance and gives it sufficient emphasis.

13 In his presentation, Mychajlo makes use of several of these techniques for emphasising important ideas. Which techniques does he use? Read through the audio transcript of his talk (page 132) and underline the examples of each technique.

- 1 Repetition
- 2 Rephrasing an idea in different words
- 3 Using the voice to stress an idea
- 4 Using sentence openers that point to an important idea
- 5 Using intensifying adverbs or adjectives

14 Prepare a short presentation about the real property law in a jurisdiction you are interested in. Discuss the circumstances under which foreigners can buy and lease real property. Observe the guidelines for giving presentations given in Unit 1, making use of various ways of giving emphasis to important points.

LAW IN PRACTICE

Lead-in

Buy-to-let, the practice of buying a property to rent out to tenants as a source of income, is an attractive form of investment for many people. In recent years, EU enlargement and the availability of cheap flights from budget airlines have resulted in a growth in so-called fly-to-let – that is, buying to let in other countries.

15 Discuss these questions in small groups.

- 1 Would you consider investing in property in a foreign country?
- 2 What are the uncertainties involved in dealing with foreign markets?
- 3 What advice would you give someone considering such an investment?

Key terms 2: Buying real property

16 Choose the correct word to complete each of these five definitions of terms often used when discussing the purchase of property.

- 1 A *deposit* / *lien* / *conveyance* is the initial payment you make when buying a house.
- 2 The *tenancy agreement* / *property transfer tax* / *rental income* is the money received from let properties (the money paid by a tenant to a landlord).
- 3 A(n) *mortgage* / *escrow* / *easement* is an agreement which allows you to borrow money, especially in order to buy a house or apartment, or the amount of money itself.
- 4 The *cadastral register* / *chain of title* / *capital appreciation* is the increase in the value of an asset.
- 5 The *stamp duty* / *purchase price* / *notarial deed* is the amount you must pay for an asset.

- 17 Complete this advertisement using the words from Exercise 16. You will not need to use all of them.

Buy-to-let in Prague

Why Prague? It is estimated that 50,000 new homes need to be finished annually until 2010 to meet the current housing shortage in the Czech Republic. The majority of housing is required in Prague itself, as EU investment continues to create new jobs.

Typical example of a Prague buy-to-let*:

1)	€50,000	
2) (15%)	€7,500	
3) (85%)	€42,500	
Monthly mortgage payment	€246 pcm	3.49% 20-yr repayment
4)	€291 pcm	@ 7% pa (conservative estimate)
Rent as a % of mortgage	118%	

* The above figures are illustrations of what might be achieved. The actual figures could be higher, or lower. With any property investment, there are risks: interest rates could rise, property values and rents could fall. It is important to consider the risks as well as the potential rewards.

- 18 Does buy-to-let in Prague look like a good investment? What could you do to check that the figures quoted above are realistic?

Listening 2: Telephone enquiry: buy-to-let

Marta Cervera is a Spanish woman who is thinking of investing in a buy-to-let property in Prague. She calls Jana Fialová, a Czech lawyer, to ask about the legal issues involved in such a purchase.

- 19 ▶ 7.2 Listen to the first part of the conversation and answer these questions.

- How did Marta Cervera first hear about Jana Fialová?
- Does Ms Cervera need to form a company to buy a property in the Czech Republic?

- 20 ▶ 7.2 Listen to the first part of the conversation again and choose the correct answers to these questions.

- What made Ms Cervera consider investing in a buy-to-let in Prague?
 - She has inherited some money.
 - She needs to lose some money for tax purposes.
 - She has received some money from an earlier investment.
- How does Ms Fialová describe the process of buying property in Prague?
 - Simple
 - Complicated
 - Quick

- 3 Who normally pays the stamp duty¹ in the Czech Republic?
- The seller
 - The buyer
 - There is no stamp duty.
- 4 How long can incorporation take in the Czech Republic?
- Six to eight days
 - Six to eight weeks
 - Six to eight months

21 ◀ 7.3 Listen to the second part of the conversation and tick the terms that Jana Fialová mentions.

- | | | | | | |
|----------------------|--------------------------|-------------------------|--------------------------|----------------------|--------------------------|
| 1 notarised | <input type="checkbox"/> | 6 liens | <input type="checkbox"/> | 11 completion | <input type="checkbox"/> |
| 2 purchase agreement | <input type="checkbox"/> | 7 foreclosure | <input type="checkbox"/> | 12 easements | <input type="checkbox"/> |
| 3 gazump | <input type="checkbox"/> | 8 encumbrances | <input type="checkbox"/> | 13 survey | <input type="checkbox"/> |
| 4 escrow | <input type="checkbox"/> | 9 restrictive covenants | <input type="checkbox"/> | 14 tenancy agreement | <input type="checkbox"/> |
| 5 title | <input type="checkbox"/> | 10 planning permission | <input type="checkbox"/> | 15 boundaries | <input type="checkbox"/> |

22 ◀ 7.3 Listen again and decide whether these sentences are true (T) or false (F).

- Czech banks generally require a deposit of between 10% and 30% of the purchase price before they will grant a mortgage.
- Ms Fialová suggests that some of the purchase price should be kept in a separate account to be released once all of the conditions of purchase have been met.
- Czech property developers often incur large debts that they are unable to pay.
- Buyers of Czech property are not liable for charges against property incurred by previous owners.
- Restrictive covenants typically give a third party the right to use another person's land.
- Ms Fialová has the details of Ms Cervera's future tenants.

Key terms 3: Conveyancing

23 Match the conveyancing terms (1–10) with the correct definitions (a–j).

- | | |
|-----------------------------------|---|
| 1 stamp duty | a A liability or charge on real property |
| 2 notarise | b A third party interest in real property reserved for specific purposes |
| 3 purchase agreement | c A tax on the conveyance of real property |
| 4 escrow | d To authenticate a written document |
| 5 chain of title | e A promise to do or not to do something with or on real property |
| 6 encumbrance | f A legally binding document containing details about rental terms |
| 7 lien | g A contract between a buyer and a seller |
| 8 covenant | h Money kept by a third party as security until a particular condition is completed |
| 9 easement | i The successive ownerships or transfers of real property |
| 10 tenancy agreement ² | j A restriction on the use of real property |

¹ also property transfer tax

² also rental agreement

Writing: Follow-up email

24 Write a follow-up email from Jana Fialová to Marta Cervera. Include these points:

- a suitable greeting
- confirmation that you would be pleased to act for Ms Cervera
- a summary of the main points discussed
- details of the next stages
- a suitable ending

Reading 3: Draft tenancy agreement

Marta Cervera finds a flat that she would like to buy and makes a successful offer. Jana Fialová's brother then prepares a draft tenancy agreement for Ms Cervera's approval.

25 Quickly read the first page of the draft agreement and answer these questions.

- 1** What happens at the end of the tenancy period if a further rental agreement has not been signed?
- 2** What must the landlord do if he/she wishes to evict the tenants following a breach of the agreement during the fixed term?

Shorthold tenancy agreement

LANDLORD(S):

MARTA CERVERA AND ROBIN MCLEVY

TENANT(S):

DWELLING¹ HOUSE:

LAUBOVA **1)** PRAHA 3

The DWELLING HOUSE will be let for a FIXED TERM of **2)** months from: **3)** (commencement date)

For a RENT of CZK **4)** per week/ month (delete as applicable) payable in advance on **5)** of each week/ month (delete as applicable)

The LANDLORD agrees to let the DWELLING HOUSE to the TENANT(S) at the RENT payable as set out above for the duration of the FIXED TERM.

The DEPOSIT is CZK **6)** and will be protected by a government-authorised tenancy deposit protection scheme.

The LANDLORD will provide details of which scheme is being used to the TENANT within 14 days of the commencement of the tenancy, or as required by law.

This agreement creates a SHORTHOLD TENANCY. The LANDLORD has an absolute right to recover possession of the property at the expiry of the FIXED TERM, and at any point thereafter, by following the procedures as specified by law. If the FIXED TERM ends, and no new tenancy agreement has been signed, a statutory periodic tenancy² is automatically created.

If the LANDLORD believes that the TENANT has breached any part of this agreement, and wishes to recover possession of the DWELLING HOUSE prior to the end of the FIXED TERM, the TENANT must first be served with notice in accordance with statute.

¹ a formal legal term used to describe a place where the occupier lives and treats as his/her home

² This means that the tenancy is governed by law to run for the length of each rental payment period, usually monthly. In the UK, if a tenancy is in the statutory periodic tenancy, then the landlord must give two months' notice to quit if he wishes the tenants to leave. The tenants must give one month's notice (to the end of the next rental period).

Listening 3: Telephone enquiry: tenancy agreement

Jana Fialová calls Marta Cervera to clarify some of the details of the tenancy agreement.

- 26** ≤ 7.4 Listen and complete the agreement on page 80 according to what is decided. Use no more than three words for each space.

Text analysis: Telephone enquiries

- 27 a** Look at these types of functional language used in telephone enquiries. Tick the ones that are used in Listeners 2 and 3. Look at the audio transcripts on pages 132–134 if necessary.

- | | | | |
|---|--------------------------|--|--------------------------|
| 1 answering the phone | <input type="checkbox"/> | 11 asking the caller to call back later | <input type="checkbox"/> |
| 2 offering help | <input type="checkbox"/> | 12 explaining that the person is unavailable | <input type="checkbox"/> |
| 3 asking to speak to someone | <input type="checkbox"/> | 13 leaving a message | <input type="checkbox"/> |
| 4 asking who's calling | <input type="checkbox"/> | 14 taking a message | <input type="checkbox"/> |
| 5 saying who's calling | <input type="checkbox"/> | 15 showing interest / showing that you're listening | <input type="checkbox"/> |
| 6 connecting the caller | <input type="checkbox"/> | 16 asking for repetition and/or clarification | <input type="checkbox"/> |
| 7 giving a reason for calling | <input type="checkbox"/> | 17 clarifying | <input type="checkbox"/> |
| 8 greeting | <input type="checkbox"/> | 18 apologising | <input type="checkbox"/> |
| 9 asking the caller to wait | <input type="checkbox"/> | 19 ending the call | <input type="checkbox"/> |
| 10 checking that the person who answers has time to talk | <input type="checkbox"/> | 20 referring to future contact | <input type="checkbox"/> |

- b** What language is used by the speakers to express each of the functions you have ticked? Underline the expressions in the audio transcripts.

- 28** Match these examples of common telephone language with the appropriate function (1–20) from Exercise 27a. Some functions are represented several times, others not at all.

- | | |
|--|--|
| a I wonder if I could call you again next week? | j Would you mind saying that again? |
| b Let me just get a pen. | k He can't get to the phone right now. |
| c When can I expect to hear from you? | l I'm calling in connection with ... |
| d Sorry, I didn't catch that. | m So that's <i>i</i> , as in <i>igloo</i> ? |
| e Is this a good time? | n What can I do for you? |
| f I see. | o It's about ... |
| g Can you ask her to call me back? | p I'd better read that back to you. |
| h Nice to hear from you again! | q Would you mind calling back in an hour? |
| i Really? | |

Speaking 2: Using English on the phone

- 29** When did you last use English on the telephone? Do you ever talk to people over the Internet? How confident do you feel speaking English on the telephone?

- 30** Do you have any useful tips for speaking English on the telephone? Discuss your ideas with a partner, then compare your list with the one in the answer key (page 149).

- 31** Work with a partner. Before you begin your phone call, sit back to back so that you cannot see each other. If possible, use a mobile phone and stand at the other side of the room.

Student A: Turn to page 115.

Student B: Turn to page 117.

Language Focus

1 Word formation Complete this table.

verb	positive adjective	negative adjective	abstract noun
limit	limited	unlimited	limitation
define	definite	<i>indefinite</i>	<i>definition</i>
<i>Specify</i>	<i>Specified</i>	unspecified	specification
inherit	<i>inheritable / ed</i>	uninheritable	<i>inheritance</i>
enforce	<i>enforceable</i>	<i>unenforceable</i>	enforcement
<i>apply</i>	applicable	<i>unapplicable</i>	application
<i>complete</i>	complete	<i>incomplete</i>	completion

2 Collocations Decide which of the nouns in the box collocate with the adjectives listed below. Some of the nouns go with more than one adjective.

agreement consent estate possession property

- real estate, *possession, property*
- prior *agreement, consent*
- mutual *agreement, property*
- exclusive *property, possession*

3 Formal/informal synonyms Match the verbs (1-7) with their more formal synonyms (a-g).

- | | |
|-----------------------|--------------|
| 1 go against <i>e</i> | a terminate |
| 2 start <i>b</i> | b commence |
| 3 keep <i>g</i> | c consent |
| 4 agr ee <i>c</i> | d redeem |
| 5 end <i>a</i> | e contravene |
| 6 buy back <i>d</i> | f renounce |
| 7 give up <i>f</i> | g retain |

4 Telephoning language Match the two halves of the sentences to form examples of common telephoning language.

- | | |
|---|--|
| 1 Good afternoon, <i>i</i> | a I'm calling about the Milligan case. |
| 2 Hello, can you put me through <i>j</i> | b later on this afternoon? |
| 3 Certainly. Who shall I <i>e</i> | c as soon as I have any news. Goodbye. |
| 4 I'm sorry, Ms Moore is busy right now. <i>g</i> | d I'm expecting a call any time now. |
| 5 Ms Moore will be just a few moments. <i>h</i> | e say is calling? |
| 6 I'm very sorry, but I'll have to stop you there. <i>f</i> | f for your help. |
| 7 Can I call you back <i>d</i> | g Can I ask her to call you back? |
| 8 Hello? Ms Moore? <i>a</i> | h Can you hold? |
| 9 Thanks very much <i>b</i> | i Wintermint and Rainey. |
| 10 Not at all, I'll speak to you again <i>c</i> | j to Mr Crisp, please? |