

Table of Selected Property Rights

Property Right	What is it?	Requirements	How to create- at law	Effects- at law	How to create- in equity	Effects- in equity	Trusts
Freehold estate	Estate in land of unlimited duration. Considered the "highest" form of ownership in English law, save for that of the Crown.	A valid title or grant from the Crown Adverse possession creates a possessory title which is a new freehold title.	To transfer you need: 1. a written contract that complies with section 2 LP(MP)A 1989 (written, signed, and incorporates all the terms of the agreement in a single document); 2. a deed which complies with section 1 LP(MP)A 1989 (signed, witnessed, delivered, says deed on its face); 3. to register the transfer of the freehold estate, section 4, 6 & 27 LRA 2002 Alternatively, you need a vesting order under s.1017 Companies Act 2006 or s.181 Insolvency Act 1986. A freehold estate may also be created by: 1. a grant from the Crown; 2. a vesting order pursuant to s.181 LPA 1925.	It confers on the freehold owner all rights to use the land as are permitted by the general law (cannot commit tort of nuisance etc) and which he (or his predecessor in title) has not voluntarily given up through the creation of property rights that benefit others.	You cannot create in equity- an "equitable freehold estate" is an interest under a trust.	Trust	There are four circumstances that will give rise to a trust interest in a freehold estate: 1. attempted transfer of the freehold estate that is not completed with the appropriate formalities (e.g. no registration- section 6 LRA 2002, or no deed, section 52 LPA 1925) – disponent holds on trust for donee; 2. an express trust which arises as a result of a declaration of trust under section 53 LPA 1925 or under a will; 3. implied trust – resulting or constructive trust (see eg the rules in <i>Stack & Kernott</i>); or 4. statutory trust that arises on co-ownership of the legal title, section 39 LPA 1925.
Leasehold estate	Estate in land of limited duration.	Exclusive possession for a defined or definable term- see <i>Street v Mountford</i> , <i>Mexfield v Berrisford</i> , <i>Ashburn Anstalt v Arnold</i> .	To create at law: 1. Leases of 3 years or less- can be made without any formalities. This includes periodic tenancies where the period is less than 3 years. 2. Leases of more than three years but less than or equal to seven years- (a) contract which complies with section 2 LP(MP)A 1989; (b) a deed which complies with section 1 LP(MP)A 1989. Can be the subject of a notice on the register, but does not need to be. 3. Leases of more than 7 years: (a) contract which complies with section 2 LP(MP)A 1989; (b) a deed which complies with section 1 LP(MP)A 1989; (c) registration of the estate, section 4, 6, & 27 LRA 2002.	Effects at law- confers on the estate holder a right to exclusive possession as long as she complies with the terms of the lease and does not voluntarily grant rights to others. Can be assigned depending on the terms of the lease. Legal leases of seven years or less are automatically binding on a purchaser as they operate as overriding interests under sch 1(1) and sch 3(1) LRA 2002.	Equitable leases arise in three circumstances: 1. Failure to comply with the formalities requirements needed to create a legal lease as long as you have a specifically enforceable contract that complies with section 2 LP(MP)A 1989, <i>Walsh v Lonsdale</i> ; 2. The lessor (person who is creating the lease) does not have a legal estate in the land so that he cannot give more than he has; or 3. Deliberate grant of an equitable lease.	As far as the landlord and tenant are concerned it will make little difference if there is a legal or an equitable lease. Third parties- equitable leases will be binding on a purchaser under section 29 LRA 2002 if (a) they are the subject of a notice on the register; or (b) they are protected by actual occupation under sch 1(2) and sch 3(2) LRA 2002.	A trust of a leasehold estate will arise in four circumstances: 1. an express trust which arises as a result of a declaration of trust under section 53 LPA 1925 or under a will; 2. implied trust – resulting or constructive trust (see the rules in <i>Stack & Kernott</i>) 3. statutory trust that arises on co-ownership of the legal lease, section 39 LPA 1925 4. the attempted transfer of a leasehold estate that is not completed by the appropriate formalities (e.g. no registration- section 6 LRA 2002, or no deed, section 52 LPA 1925).

Mortgage interest	Security for a debt.	A mortgage cannot be anything but a secured debt – see the doctrine of clogs and fetters	To create a legal mortgage (for registered land)- must be charge by way of deed: 1. Contract which complies with section 2 LP(MP)A 1989; 2. Deed which complies with section 1 LP(MP)A 1989; 3. Registration of the charge, section 27 LRA 2002.	A legal mortgage gives the mortgagee: 1. Power of sale once the mortgage money has become due; 2. Immediate right to possession; 3. Right to appoint a receiver once the mortgage money has become due; 4. Right of foreclosure.	To create an equitable mortgage: 1. Failure to comply with the required formalities for the creation of a legal charge but where there has been a contract which complies with section 2 LP(MP)A 1989. 2. The mortgagor only has an equitable estate to mortgage. 3. Deliberate creation of an equitable mortgage.	An equitable mortgage takes place by a conveyance of the equitable estate in the land. As a result, the mortgagee will become an equitable owner of an interest in the land (i.e. a beneficiary under a trust). An equitable mortgagee has no right to possess or to sell. Instead he will have to rely on his equitable interest under section 14 & 15 TLATA.	A trust of a mortgage estate will arise in four circumstances (although rarely): 1. an express trust which arises as a result of a declaration of trust under section 53 LPA 1925 or under a will; 2. implied trust – resulting or constructive trust 3. statutory trust that arises on co-ownership of the legal mortgage, section 39 LPA 1925 4. the attempted transfer of a mortgage estate that is not completed by the appropriate formalities (e.g. no registration- section 6 LRA 2002, or no deed, section 52 LPA 1925).
Easements	An easement in an interest in the land of another. For example, a right of way, right to light, right to pass water through a defined channel etc.	For an interest to be capable of being an easement: (a) there must be a dominant and servient tenement; (b) the dominant and servient tenements must be in separate ownership; (c) the easement must benefit the dominant tenement; and (d) it must be capable of being the subject matter of a grant.	To create at law (express): 1. Contract which complies with section 2 LP(MP)A 1989; 2. Deed which complies with section 1 LP(MP)A 1989; 3. Registration of the easement as the subject of a notice on the register, section 27(2)(d) LRA 2002. To create at law (implied into a deed): 1. Easement of necessity 2. Easement of common intention 3. The rule in <i>Wheeldon v Burrows</i> 4. The operation of section 62 LPA 1925. Easements can also arise by prescription.	An express legal easement will be binding on a purchaser since in order to be legal it must be entered as a notice on the register. An implied legal easement can be an overriding interest under sch 1(3) and sch 3(3) LRA 2002 if the conditions for the operation of those schedules are met.	To create an express equitable easement: 1. Failure to comply with the required formalities for the creation of a legal easement but where there has been a contract which complies with section 2 LP(MP)A 1989. 2. The grantor of the easement, or the owner of the servient tenement, only has an equitable interest. 3. Deliberate creation of an equitable easement. To create an implied equitable easement: the easement is implied into a contract which complies with s2 LP(MP)A 1989 but not into a deed.	An equitable easement will not be binding on a purchaser unless it is protected by actual occupation (sch 1(2) and sch 3(2) LRA 2002).	A trust of an easement will be rare, but could arise expressly, impliedly, or by operation of law.
Freehold restrictive covenant	A covenant which limits the use to which servient land can be put, and which does not require the covenantor to expend money.	The right must be negative, and touch and concern the land. There must be benefitted and burdened land.	Cannot be created at law.		In order to create a freehold covenant in equity, a section 1 LP(MP)A 1989 compliant deed should be used.	It will be binding on a purchaser if either it is entered as a subject of a notice on the register, or if it is protected by the actual occupation of the right-holder in accordance with sch 1(2) and sch 3(2) LRA 2002.	A trust of a covenant will be rare, but could arise expressly, impliedly, or by operation of law.
Option to purchase	Gives the right holder an ability to force a sale.	The right must be exercisable within a specified time period and the price specified or calculable.	Cannot be created at law.		In order to create an option to purchase in equity, a section 2 LP(MP)A 1989 compliant contract must be used.	It will be binding on a purchaser if either it is entered as a subject of a notice on the register, or if it is protected by the actual occupation of the right-holder in accordance with sch 1(2) and sch 3(2) LRA 2002.	A trust of an option to purchase will be rare, but could arise expressly, impliedly, or by operation of law.

Right of pre-emption. These are only automatically interests in land if created after Oct 13 2003.	Covers two rights- right of pre-emption (grantee has a right to purchaser at a fixed price before the grantor can sell to anyone else) and right of first refusal where the grantor is able to set the price himself at the time at which he decides to sell the land.		Cannot be created at law.		In order to create a right of pre-emption in equity, a section 2 LP(MP)A 1980 compliant contract must be used.	It will be binding on a purchaser if either it is entered as a subject of a notice on the register, or if it is protected by the actual occupation of the right-holder in accordance with sch 1(2) and sch 3(2) LRA 2002.	A trust of a right of pre-emption will be rare, but could arise expressly, impliedly, or by operation of law.
Right to set aside a transaction.	Allows the right-holder to "go back in time" and set aside a transaction – gift, sale, mortgage etc, and is itself a property right such that it may be binding on third parties.	The main reasons for this would be undue influence, fraud, <i>non est factum</i> , and mistake.	Cannot be created at law.		The requirements of each has to be met, in which case the equitable jurisdiction of the court to set aside the transaction will be exercised.	It will be binding on a purchaser if either it is entered as a subject of a notice on the register (very unlikely!), or if it is protected by the actual occupation of the right-holder in accordance with sch 1(2) and sch 3(2) LRA 2002.	
Right to rectify the register	Will allow the register to be altered retro and prospectively. This <i>may</i> be proprietary.	The conditions for the ability to rectify the register are laid out in sch 4, LRA 2002. The main one is rectification on the basis of a mistake.	Cannot be created at law.		Arises on the existence of a reason for the rectification of the register, but it ought to be remembered that the court has some discretion in relation to rectification.	It will be binding on a purchaser if either it is entered as a subject of a notice on the register (very unlikely!), or if it is protected by the actual occupation of the right-holder in accordance with sch 3(2) LRA 2002.	
Proprietary estoppel	A flexible jurisdiction which allows the court to act to give effect to promises which would not otherwise be binding.	It depends upon promise + detriment + reliance + unconscionability.	Cannot be created at law.		The equitable right that is the estoppel itself arises once the conditions for proprietary estoppel exist. The court will then later crystallise the estoppel and remedy it in the way in which it sees fit, in order to do the minimum to satisfy the equity. Until the court has done so however the estoppel itself is a property right.	It will be binding on a purchaser if either it is entered as a subject of a notice on the register (very unlikely!), or if it is protected by the actual occupation of the right-holder in accordance with sch 1(2) and sch 3(2) LRA 2002. See also s.116 LRA 2002?	