SQE1 LAND LAW IN PRACTICE

COMPREHENSIVE STUDY NOTES

Freehold Conveyancing • Leasehold Transactions • Commercial Property

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CHAPTER 1 | Key Elements and Structure of a Freehold Property Transaction

This chapter provides a comprehensive overview of the conveyancing process in England and Wales, covering procedural milestones, professional ethics, finance, taxation, and planning law.

1.1 Introduction to Conveyancing

Conveyancing is the legal process by which ownership of real property is transferred from one person to another. While properties and clients vary greatly — from individuals buying homes to corporations investing in industrial sites — recognised legal procedures must be followed for every transaction. The process is governed by strict professional obligations and statutory requirements.

1.2 Key Elements and Structure of a Freehold Property Transaction

A conveyancing transaction is structured around two major milestones:

- **Exchange of Contracts:** This is the moment the transaction becomes legally binding. It fixes the completion date and commits both parties to the agreed terms. Prior to exchange, either party may withdraw without penalty.
- **Completion:** The stage at which the purchase money is paid and the transfer deed is executed to move legal title to the buyer. The process operates under the principle of caveat emptor ("let the buyer beware"), meaning the buyer is responsible for discovering defects before committing to the purchase.

1.2.1 The Pre-Contract Stage

This stage begins with the solicitor taking initial instructions from the client. The seller's solicitor prepares and sends a "pre-contract package" to the buyer's solicitor, comprising a draft contract and evidence of title. The buyer's solicitor then conducts thorough due diligence — including statutory searches, enquiries of the seller, and recommending a physical survey — to ensure the title is sound and the property is suitable for the client's needs.

1.2.2 The Pre-Completion Stage

Following exchange of contracts, both sets of solicitors work to ensure that all documentation and funds are in place for the agreed completion date. The transfer deed (Form TR1 for registered land) is prepared and executed. The buyer's solicitor carries out priority searches to confirm the title remains unencumbered before registration.

1.2.3 The Post-Completion Stage

After completion, solicitors attend to administrative formalities. The seller's solicitor discharges any existing mortgage over the property. The buyer's solicitor must pay Stamp Duty Land Tax (SDLT) in England or Land Transaction Tax (LTT) in Wales, and must register the new ownership and any mortgage at HM Land Registry within the applicable priority period.

1.2.4 The Law Society Conveyancing Protocol

The Law Society Conveyancing Protocol applies to residential transactions and standardises the process through specific instructions and "TransAction" standard documents, including the TA06 Property Information Form, the TA10 Fittings and Contents Form, and the TA13 Completion Information Form. Compliance with the Protocol is mandatory for firms holding the Conveyancing Quality Scheme (CQS) accreditation, which is increasingly required by mortgage lenders as a condition of their panel membership.

1.3 Professional Conduct Issues in a Property Transaction

Solicitors must adhere to the SRA Code of Conduct at all times, with particular regard to the duties of integrity, independence, and acting in each client's best interests.

1.3.1 Acting for Both Seller and Buyer

Representing both parties in the same transaction carries a high risk of conflict of interest, particularly where the transaction involves a transfer for value or where the parties have unequal bargaining power. The SRA Code contains limited exceptions for situations of "substantially common interest," but the Law Society has clarified that these exceptions do not apply to property purchase transactions because the parties' interests are fundamentally opposed.

1.3.2 Acting for Joint Buyers

Acting for co-purchasers is generally acceptable. However, solicitors must advise unmarried couples and civil partners separately on the different legal consequences of holding the equitable interest as joint tenants (survivorship applies on death) versus tenants in common (shares pass via will or intestacy). This advice is particularly important given the potential financial implications.

1.3.3 Acting for Both Borrower and Lender

In residential transactions, it is common and generally acceptable for the same solicitor to act for both the buyer and the mortgage lender, provided the mortgage is on standard terms and an approved certificate of title form is used. In large commercial property transactions, lenders typically instruct separate solicitors to protect their independent interests.

1.3.4 Acting for Joint Borrowers — Etridge Guidelines

Where one party is mortgaging a property for the benefit of another (for example, a spouse mortgaging the matrimonial home to secure a business loan), the risk of undue influence must be carefully managed. Solicitors must follow the Etridge guidelines, which require a private face-to-face meeting with the potentially influenced party to explain the nature and risks of the transaction independently, ensuring fully informed consent.

1.3.5 Contract Races

A contract race arises when a seller simultaneously negotiates with more than one prospective buyer. The seller's solicitor must immediately disclose the existence of the contract race to all parties' solicitors. If the seller refuses to permit disclosure, the solicitor must cease acting to avoid breaching the duty not to mislead other parties.

1.3.6 Undertakings in Conveyancing

An undertaking is a personal promise made by a solicitor, enforceable as a matter of professional conduct. Undertakings are given frequently in conveyancing — for example, to discharge a mortgage on completion, or to forward executed documents. Failure to fulfil an undertaking within the agreed timescale constitutes professional misconduct and may result in SRA disciplinary action.

1.4 Sources of Finance for a Property Transaction

Solicitors have a professional obligation to provide clients with the best possible information about the overall costs of a property transaction, including legal fees, search fees, stamp duty, and disbursements. The most common source of finance is a mortgage from a bank or building society. Other sources include employer concessionary loans, family loans, or government schemes such as Help to Buy. Solicitors advising on financial products must be aware of the restrictions imposed by the Financial Services and Markets Act 2000 (FSMA 2000) and may rely on the s 327 exemption for activities that are incidental to their professional legal services.

1.5 Types of Mortgage

Type of Mortgage	Key Characteristics
Repayment Mortgage	Monthly payments reduce both the capital balance and the interest. The loan is fully repaid by the end of the term.
Interest-Only Mortgage	Monthly payments cover only the interest. The full capital sum remains outstanding and must be repaid at the end of the term, usually via a separate investment vehicle or product.
Sharia-Compliant Finance	Avoids conventional interest payments. The bank typically buys the property and resells it to the client at a profit, or uses a co-ownership model.

1.6 Property Taxation

1.6.1 Stamp Duty Land Tax (SDLT) and Land Transaction Tax (LTT)

SDLT applies to land transactions in England; LTT applies in Wales. Both taxes are payable by the buyer and are calculated on the purchase price. Rates vary depending on whether the property is residential or commercial and the total purchase price. Key points include:

- **First-Time Buyers (England):** May claim relief on residential purchases up to £500,000, reducing or eliminating the SDLT liability on the first £300,000.
- **Payment Deadlines:** SDLT must be paid within 14 days of the effective date of the transaction (usually completion). LTT must be paid within 30 days.
- **Additional Dwellings Surcharge:** A 3% surcharge applies to purchases of additional residential properties.

1.6.2 Capital Gains Tax (CGT) and Principal Private Residence Relief

Capital Gains Tax is charged on profits arising from the disposal of a chargeable asset, including land. For residential sellers, the most important relief is Principal Private Residence Relief (PPRR), which exempts gains made on the disposal of a property that has been the seller's only or main residence throughout the entire period of ownership. Where the property has only been a private residence for part of the ownership period, partial relief applies, with the final nine months always treated as a period of residence.

1.6.3 Value Added Tax (VAT) in Property Transactions

Property Type	VAT Treatment
Residential sale (private individual)	Generally exempt from VAT — no VAT charged
New commercial building (under 3 years old)	Standard-rated — VAT compulsory at 20%
Old commercial building (over 3 years old)	Exempt by default — seller may exercise "option to tax" to recover input VAT on refurbishment costs

1.7 Core Principles of Planning Law

1.7.1 Statutory Definition of "Development"

Under the Town and Country Planning Act 1990, planning permission is required for any "development," which is defined as: (a) operational development — building, engineering, mining, or other operations in, on, over or under land; and (b) a material change of use of any buildings or other land. The question of whether a change of use is "material" is one of fact and degree in each case.

1.7.2 Matters That Do Not Constitute Development

Certain activities are expressly excluded from the definition of development, including: internal works that do not materially affect the external appearance; maintenance or improvement works affecting only the interior; and changes of use within the same Use Class (for example, a shop changing to a restaurant both within Use Class E under the latest Use Classes Order).

1.7.3 Effect of Planning Permission

Once planning permission has been lawfully implemented, it generally runs with the land in perpetuity and benefits all subsequent owners. However, where development is not begun within the time limit specified in the permission (typically three years), the permission lapses.

1.7.4 Permitted Development Rights (GPDO)

The Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO) automatically grants planning permission for minor works that fall within specified classes, without the need for a formal planning application. Examples include small house extensions and outbuildings within set limits. Local authorities may restrict or remove permitted development rights by issuing an Article 4 Direction.

1.7.5 Planning Enforcement

Local planning authorities have statutory powers to take enforcement action against breaches of planning control. The enforcement tools include:

- **Enforcement Notices:** Require the cessation of the breach and restoration of the land to its previous condition.
- **Stop Notices:** Require immediate cessation of a specified activity pending service of an enforcement notice.
- **Injunctions:** Obtained from the court to restrain an actual or apprehended breach.
- **Time Limits:** 4 years for operational development or change of use to a dwelling; 10 years for all other breaches of planning control or conditions.

1.7.6 Building Regulation Control

Building regulations are separate from planning permission and focus on health, safety, structural integrity, and energy efficiency. Failure to obtain building regulations approval may result in a local authority seeking prosecution (generally within 2 years) or serving an alteration notice (within 12 months). A lack of building regulations approval creates uncertainty as to the safety of the works and can affect a buyer's ability to obtain a mortgage.

1.7.7 Listed Buildings

Buildings of special architectural or historic interest are listed under the Planning (Listed Buildings and Conservation Areas) Act 1990. In addition to any planning permission required, listed building consent must be obtained before carrying out any works of alteration, extension, or demolition that would affect the character of the building as a listed building. Carrying out unauthorised works to a listed building is a criminal offence.

1.7.8 Conservation Areas

Conservation areas are designated by local planning authorities as areas of special architectural or historic interest, the character and appearance of which it is desirable to preserve or enhance. Within a conservation area, permitted development rights are more restricted, and prior notification or consent is required even for minor works such as tree work or the demolition of certain structures.

1.8 Taking Initial Instructions

When taking initial instructions, the solicitor must establish the client's objectives and verify the key terms of the transaction, including the agreed price, what fixtures and fittings are included, the desired completion date, and the tenure of the property. The solicitor must also verify that an Energy Performance Certificate (EPC) has been or will be obtained — its provision is a legal requirement prior to marketing. A comprehensive initial instructions checklist ensures no critical details are overlooked and provides a clear record of the client's instructions.

Chapter 1 Summary — Key Points

✔ A typical conveyancing transaction has two milestones — exchange of contracts and completion — broken into three stages: pre-contract, pre-completion and post-completion.

✔ The Law Society Conveyancing Protocol standardises the residential conveyancing procedure for adopting firms.

✔ A solicitor generally cannot act for both buyer and seller where there is a conflict of interest or significant risk of conflict.

✔ Acting for buyer and seller in the same transaction carries a high risk of conflict of interest.

✔ Acting for both buyer and lender in a residential transaction is permissible where the mortgage is on standard terms.

✔ Undertakings are binding personal promises; failure to perform within the agreed time constitutes professional misconduct.

✔ SDLT (England) and LTT (Wales) are charged at graduated rates and are payable by the buyer.

✔ Principal Private Residence Relief exempts gains from CGT on disposal of a seller's main home.

✔ Residential sales by private individuals are generally exempt from VAT; new commercial buildings are standard-rated.

✔ Planning permission is required for "development" — including operational works (BEMO) and material changes of use.

✔ The GPDO grants automatic permitted development rights for minor works; Article 4 Directions can remove these.

✔ Enforcement time limits: 4 years for building works/change of use to dwelling; 10 years for other breaches.

Chapter 1 — Practice Questions

PRACTICE QUESTION 1

A solicitor acts for a client who has been ready to exchange contracts on the purchase of her new house for several weeks. The client has phoned to say that the buyer of her flat has demanded a price reduction of £5,500. Which of the following best describes the client's position?

A The client must agree to the price reduction on the flat and proceed with the purchase of the house.

B The client cannot recover any wasted conveyancing costs if the sale of the flat and the purchase of the house do not proceed.

C The client is not obliged to agree to the price reduction and can recover wasted costs from the buyer of the flat.

D The client will have to agree to the price reduction because she should have told the buyer the flat needed rewiring.

E The client was not obliged to tell the buyer about the rewiring, but must reimburse his wasted conveyancing costs.

ANSWER & EXPLANATION

Option B is correct. Prior to exchange of contracts, neither party has any legally binding obligations to the other. The principle of caveat emptor applies — the buyer is responsible for discovering defects. The seller is not obliged to disclose the condition of the wiring, nor can she be forced to accept the price reduction. Equally, she cannot recover her own wasted costs. Options A and D are wrong because the client is not obliged to accept the reduction. Option C is wrong because wasted costs are not recoverable pre-exchange. Option E is wrong because there is no duty to reimburse pre-exchange.

PRACTICE QUESTION 2

A solicitor is acting for the buyer of a new-build flat. The estate agent has told the buyer's solicitor that the seller's solicitor has been instructed to send a pre-contract package to another interested person. Which of the following best describes the position of the seller's solicitor?

A The seller's solicitor does not need to say anything — it was the estate agent who arranged the viewing.

B The seller's solicitor has already breached the Code of Conduct by not informing the buyer's solicitor about the viewing.

C The seller's solicitor will probably breach the Code if, having obtained the seller's consent, they fail to inform the buyer's solicitor of the contract race.

D The seller's solicitor must disclose the contract race even without the seller's consent.

E The seller's solicitor must immediately cease to act for the seller.

ANSWER & EXPLANATION

Option C is correct. Once the seller's solicitor receives instructions to send a pre-contract package to a second buyer, the duty not to mislead (Code para 1.4) becomes relevant. However, the duty of confidentiality to the seller (para 6.3) means the solicitor cannot disclose the race without the seller's consent. Option D is wrong — consent is required. Option B is wrong — a viewing may not lead to an offer. Option E is premature — the solicitor must only cease acting if the seller refuses to consent to disclosure.

CHAPTER 2 | Investigation of Title

This chapter details the critical process of verifying property ownership and identifying any rights or restrictions that may affect the land's use and enjoyment.

2.1 Introduction to Investigation of Title

Investigation of title is the process by which a solicitor establishes who owns the property, whether the seller has the right to sell, and whether any third-party rights burden the land. The buyer's solicitor undertakes this investigation to protect the buyer from undesirable incumbrances. The lender's solicitor investigates title to ensure the property provides adequate security for the loan. The seller's solicitor also investigates title at the outset to anticipate problems and draft the contract accurately.

2.2 Registered and Unregistered Land — The Key Distinction

Feature	Registered Land | Unregistered Land
How ownership is proved	Official copies of the register (from Land Registry) | Title deeds and epitome of title
Central register?	Yes — Land Registry maintains electronic records | No — title proved by chain of deeds
Compulsory since?	1 December 1990 (England and Wales) | Still common where land unchanged for many years
Current coverage	Approximately 85% of land in England and Wales | Approximately 15% — often Crown, Church or old family estates

2.3 Investigation of Freehold Registered Title

2.3.1 Deduction of Title in Registered Land

The seller proves title by providing the buyer with official copies of the register of title from HM Land Registry, dated no more than six months before the date of supply. This is usually done before exchange of contracts.

2.3.2 Structure of the Official Copies — Three Registers

Register	Contents
A — Property Register	Describes the land and the estate held (freehold or leasehold); identifies easements that benefit the land; lists any excluded rights such as rights of light and air.
B — Proprietorship Register	Identifies the registered proprietors and their addresses; states the class of title (absolute, possessory or qualified); records restrictions on the ability to sell; shows the price paid (if purchased after 2000).
C — Charges Register	Identifies incumbrances that burden the land: mortgages, restrictive covenants, positive covenants, easements burdening the land, leases, and third-party notices.

Classes of Title:

- **Absolute Title:** The best class — the State guarantees the title. This is the class of title granted in the vast majority of cases.
- **Possessory Title:** Granted where deeds have been lost or where title is claimed by adverse possession. Not State-guaranteed.

- **Qualified Title:** Granted where there is a specific identified defect. Very rare.
- **Good Leasehold Title:** Granted for leasehold titles where the Land Registry has not been able to verify the superior freehold or headlease title.

2.4 Investigation of Freehold Unregistered Title

2.4.1 Deduction of Title in Unregistered Land

Ownership is proved by examining physical title deeds, including conveyances, mortgages, and assents. The seller's solicitor must identify a good root of title and prepare an epitome of title — a chronological schedule of all relevant deeds from the root of title to the present day, accompanied by copies of each document.

2.4.2 Requirements for a Good Root of Title

Under s 44 of the Law of Property Act 1925, a good root of title must:

- Be at least 15 years old
- Identify the whole of the legal and equitable interest being sold
- Contain a recognisable description of the land
- Not cast doubt on the seller's title

A conveyance on sale is the most acceptable root of title because it offers a "double guarantee" — the existence of the document implies that a purchaser previously investigated the title and was satisfied.

2.4.3 Checking Each Title Deed in the Epitome

When reviewing the epitome of title, the buyer's solicitor checks for:

- **Chain of Ownership:** An unbroken link from the root of title to the current seller, including probate documents where an owner has died.
- **Consistent Descriptions:** The land description must be consistent across all documents and plans.
- **Stamp Duty:** Embossed stamps or "Particulars Delivered" (PD) stamps should be present on older documents.
- **Proper Execution:** All deeds must have been properly signed, witnessed, and delivered.
- **Land Charges Searches:** A search on Form K15 against every estate owner since 1926 reveals registered incumbrances.

2.5 Issues Revealed by Investigation of Title — Further Action Required

2.5.1 Easements

Rights of way, drainage rights, and other easements may benefit or burden the property. The solicitor must check that any easements benefiting the property are adequate for the buyer's intended use, and that any easements burdening the property will not unduly restrict that use. Under the rule in Halsall v Brizell, a party who takes the benefit of an easement may be obliged to contribute to its maintenance costs.

2.5.2 Mines and Minerals Reservations

Previous transfers may have reserved the right to work minerals beneath the property. This creates a risk of subsidence. A mining search (e.g., CON29M coal mining search) should be obtained, and the buyer should be advised to instruct their surveyor to check for signs of existing subsidence.

2.5.3 Co-Ownership

Legal title can only be held as a joint tenancy (maximum four co-owners). The equitable interest may be held as joint tenants (survivorship applies) or tenants in common (shares pass by will or intestacy). A Form A restriction in the Proprietorship Register indicates that the equitable interest is held as tenants in common. Where a co-owner has died, a second trustee must be appointed before completion to overreach the beneficial interest.

2.5.4 Restrictive Covenants

Restrictive covenants prevent the landowner from using the property in certain ways. Where a restrictive covenant would adversely affect the buyer's intended use, the options include: (a) approaching the beneficiary for a release or modification; (b) applying to the Upper Tribunal (Lands Chamber) for discharge under s 84 LPA 1925; or (c) obtaining restrictive covenant indemnity insurance (the most common and practical solution).

2.5.5 Positive Covenants

Positive covenants (obligations to spend money, such as maintaining a shared driveway) do not automatically run with freehold land on a transfer. They are typically enforced through a chain of indemnity covenants — each successive owner covenants to observe the obligation and to indemnify the previous owner against any future breach.

2.5.6 Mortgages

Any existing mortgage over the seller's property must be discharged on completion. The seller's solicitor must provide an undertaking to the buyer's solicitor to repay the outstanding mortgage balance from the completion monies and to obtain and provide evidence of discharge (Form DS1 or electronic notification).

2.5.7 Home Rights (Family Law Act 1996)

A non-owning spouse or civil partner has statutory home rights under the Family Law Act 1996 — the right to occupy the matrimonial home. This is registered by notice in the Charges Register of a registered title. If such a notice is registered, the buyer must require the seller to obtain a formal release of the home rights before or on completion.

Chapter 2 Summary — Key Points

✔ Investigation of title is undertaken by the solicitors for the seller, buyer, and lender for different purposes.

✔ In registered land, title is deduced by providing official copies of the Land Registry register of title.

✔ Official copies are divided into three registers: Property, Proprietorship, and Charges.

✔ In unregistered land, the seller provides an epitome of title starting with a good root of title at least 15 years old.

✔ A conveyance on sale is the best root of title as it provides a "double guarantee."

✔ All incumbrances revealed on investigation must be carefully analysed and solutions proposed.

✔ The most common solution to a problematic restrictive covenant is indemnity insurance.

✔ A Form A restriction indicates tenants in common — a second trustee is required to overreach on sale.

✔ Existing mortgages must be discharged on completion via undertaking from the seller's solicitor.

Chapter 2 — Practice Questions

PRACTICE QUESTION 1

A solicitor is acting for the seller on the sale of a freehold property with unregistered title. Which of the following documents is the best candidate for a good root of title?

A A Conveyance dated 10 August 1982.

B A Mortgage dated 10 August 1982.

C A Deed of Gift dated 25 December 1990.

D A Grant of Probate dated 30 July 2019.

E An Assent dated 8 August 2019.

ANSWER & EXPLANATION

Option A is correct. Under s 44 LPA 1925, a good root of title must be at least 15 years old. Options D and E are too recent. Option C (Deed of Gift) is old enough but offers no "double guarantee" as it was not a transaction between third parties for value. Option B (Mortgage) is also a possible root but a Conveyance is preferred because it typically contains a more detailed description of the land and deals expressly with both legal and equitable interests.

PRACTICE QUESTION 2

A husband and wife are registered proprietors. The husband died six months ago. The Proprietorship Register contains a restriction requiring that no disposition by a sole proprietor under which capital money arises is to be registered except under a court order. Can the wife sell on her own?

A Yes — she holds legal title alone as joint tenant.

B Yes — she holds both legal and equitable title as joint tenant.

C No — she needs to appoint another person as legal owner alongside her.

D No — she must wait for probate and an assent.

E Safe to buy from her alone with a certified death certificate.

ANSWER & EXPLANATION

Option C is correct. Legal title in co-ownership is always held as joint tenants, so the wife now holds legal title alone by survivorship. However, the Form A restriction indicates that the equitable interest was held as tenants in common. The wife cannot give a good receipt for capital money as sole trustee. She must appoint a second trustee (there is no need to wait for probate — option D is wrong) to overreach the deceased husband's equitable interest on completion.

PRACTICE QUESTION 3

The charges register reveals a covenant not to use the property for any commercial purpose, created in 2015 for the benefit of land now owned by the district council. The buyer wants to use the property as a cake shop. What is the best advice?

A Withdraw from the purchase immediately.

B Proceed — the council is unlikely to take action.

C Wait for a successful Upper Tribunal application before exchanging.

D	Obtain restrictive covenant insurance.
E	Ask the seller to approach the district council to release or consent to the use.

ANSWER & EXPLANATION

Option E is correct. The covenant is recent (2015) and imposed by a statutory body, suggesting ongoing legitimate purpose. Option B is very high risk. Option C will take time and may fail given the covenant's recent imposition. Option A is premature. Option D (insurance) may not be obtainable at reasonable cost given the high enforcement risk. Approaching the council directly to seek release or consent is the most sensible first step in these circumstances.

CHAPTER 3 | Pre-Contract Searches and Enquiries

This chapter details the due diligence process that a buyer's solicitor must undertake before committing to a property purchase, driven by the fundamental principle of caveat emptor.

3.1 Introduction — Why Searches and Enquiries Are Essential

The principle of caveat emptor places the burden of investigation firmly on the buyer. Sellers are under a very limited duty of disclosure — they are not required to volunteer information about physical defects, boundary disputes, or the absence of planning permission for existing works. The buyer's solicitor must therefore conduct comprehensive searches and enquiries to ensure the client enters the transaction with full knowledge of all relevant liabilities and restrictions.

3.2 Who Makes the Searches and Raises the Enquiries

The buyer's solicitor is responsible for this process and must exercise professional judgment to identify and carry out all searches and enquiries appropriate to the specific property and transaction. Failure to carry out an appropriate search may give rise to a professional negligence claim. In residential transactions where the buyer's solicitor also acts for the lender, the searches are made for the benefit of both parties.

3.3 Range and Type of Searches and Enquiries Available

3.3.1 Searches Relevant to Every Property

Search / Enquiry	Purpose and Key Information Revealed
Survey / Physical Inspection	Professional survey (Homebuyers' or Full Structural) recommended to identify physical defects not apparent from the title.
Local Search (LLC1 + CON29)	LLC1: local land charges including planning consents, tree preservation orders, financial charges. CON29: planning history, road repair liability, proposed road schemes.
Water and Drainage Search (CON29DW)	Whether property is connected to public sewer and water supply; responsibility for drain maintenance.
Pre-Contract Enquiries of Seller	Standard questions on disputes, occupiers, planning compliance, boundaries, VAT position (commercial).
Environmental Search	Identifies contaminated land and associated clean-up costs — liability may pass to the new owner under the Environmental Protection Act 1990.
Flood Search	Identifies surface water, river, and coastal flood risk; essential as it can affect insurance availability and cost.

3.3.2 Searches Required for Particular Properties and Transactions

Search	When Required
Chancel Repair Search	Properties in parishes with ancient chancel repair liability — now only enforced if noted on register (post-2013).
Coal Mining Search (CON29M)	Properties in designated coalfields — reveals past and potential mining activity and subsidence risk.
Canal and River Trust	Properties adjoining waterways — reveals bank maintenance

Search	obligations and flooding history.
Commons Search	Properties near common land or village greens.
Index Map Search (SIM)	Unregistered land — confirms no existing or pending Land Registry registration.
Land Charges Search (K15)	Unregistered land — reveals registered incumbrances against previous estate owners.
Bankruptcy Search (K16)	Buyer is an individual taking a mortgage — lender requires solvency check immediately before completion.
Company Search	Seller is a company — confirms solvency, corporate capacity, and identifies any registered charges.

3.4 Deciding Which Searches Are Appropriate

The solicitor must balance the cost of searches against the risk of not carrying them out. Professional judgment is required to identify searches appropriate to the particular property, its location, its age and construction type, and the client's intended use. For example: a Victorian terraced house near a river in a former coal mining area would require structural survey, flood search, canal and river trust search, and CON29M; a dentist's surgery conversion would require thorough planning and building regulations history.

3.5 Common Results from Searches and Enquiries

Result	Action Required
Conditional Planning Permission	Verify all conditions have been complied with — failure to comply is a breach of planning control (10-year limitation period for conditions).
Road not yet adopted	Buyer may be liable to contribute to future adoption costs — negotiate special condition for seller contribution.
Tree Preservation Order (TPO)	Inform buyer — criminal offence to fell or lop without consent. Survey recommended.
Conservation area designation	Advise buyer of stricter planning controls on external alterations and tree work.
Occupiers revealed	Obtain signed release of any occupiers' rights and agreement to vacate by completion.

Chapter 3 Summary — Key Points

✔ Searches and enquiries are essential because of the principle of caveat emptor — the seller need not volunteer information about defects.

✔ The buyer's solicitor must identify and carry out all searches and enquiries appropriate to the specific property and transaction.

✔ Standard searches for nearly all properties include the local search (LLC1 + CON29), water and drainage, environmental, and flood searches.

✔ Additional searches must be considered based on the property type, location, age, and the client's intended use.

✔ Results of searches must be carefully analysed and reported to the client before exchange of contracts.

Chapter 3 — Practice Questions

PRACTICE QUESTION 1

A client intends to purchase a property whose boundary adjoins a river. The client wants to know who is responsible for maintaining the riverbank. Which searches and enquiries should the solicitor carry out to address this specific issue?

A Water and drainage search and pre-contract enquiries of the seller.

B Desktop environmental search and a flood search.

C Local land charges search (LLC1) and enquiries with the Canal & River Trust.

D Enquiries with the Canal & River Trust and pre-contract enquiries of the seller.

E Enquiries with the Canal & River Trust and a flood search.

ANSWER & EXPLANATION

Option D is correct. The Canal & River Trust holds information about responsibility for riverbank maintenance and past maintenance regimes. Pre-contract enquiries of the seller (who has owned the property for over 20 years) will reveal the maintenance history and financial contributions made. The environmental search covers contamination, not maintenance liability (option B wrong). The water and drainage search relates to sewers and water supply, not rivers (option A wrong). The LLC1 covers local land charges imposed by public authorities — not riverbank maintenance obligations (option C wrong).

PRACTICE QUESTION 2

The property register reveals a mining reservation from 1919. Which actions should the solicitor take in response?

A Advise the surveyor to check for subsidence signs.

B Carry out an Index Map search (SIM) and advise the surveyor.

C Carry out a CON29M coal mining search, an Index Map search (SIM), and advise the surveyor.

D Carry out a CON29M and advise the surveyor.

E No SIM needed — this is registered land.

ANSWER & EXPLANATION

Option C is correct. The mining reservation indicates the mines and minerals are separate from the surface title. The solicitor should: (1) carry out a CON29M coal mining search to identify past/future mining activity, underground workings, and any subsidence claims; (2) carry out an Index Map search to verify the mines and minerals are not separately registered under their own title number; and (3) instruct the surveyor to check for signs of existing subsidence. All three steps are necessary — options A, B and D are each incomplete.

CHAPTER 4 | Preparation for and Exchange of Contracts

This chapter explains the pivotal stage at which a property transaction becomes legally binding, the standard conditions that govern the agreement, and the procedural steps required for a valid exchange.

4.1 Introduction — The Significance of Exchange

While legal title only passes at completion, the exchange of contracts is frequently the most significant moment for clients. Prior to exchange, either party may withdraw without legal liability or penalty. Exchange commits both parties to an agreed price and completion date — it is the "point of no return." A binding contract for the sale of land must satisfy s 2 of the Law of Property (Miscellaneous Provisions) Act 1989: it must be in writing, incorporate all expressly agreed terms, and be signed by or on behalf of each party.

4.2 The Purpose of a Contract for the Sale of Land

A contract to sell land does not itself transfer the legal estate (a deed is required for that). Its purposes are to:

- **Provide certainty:** Fix the price, deposit, completion date, and all financial obligations.
- **Allow a gap for preparation:** Give time for removals, financial arrangements, and final formalities.
- **Make collateral obligations enforceable:** For example, the seller's agreement to carry out repairs before completion.

4.3 Standard Conditions — SC and SCPC

Standard Conditions of Sale (SC)	Standard Commercial Property Conditions (SCPC)
Used for residential and simpler commercial transactions	Used for high-value commercial property transactions
Widely adopted; 5th Edition (2018 Revisions) currently in use	Includes detailed provisions for transactions involving occupational leases
Stakeholder position for deposit by default	More complex deposit and VAT provisions
Time not of the essence unless Notice to Complete served	Similar position on time — notice procedure applies

4.4 Key Conditions in the SC and SCPC

4.4.1 Specified Incumbrances

The seller must list all third-party rights that will bind the property after completion. If not specified, the seller may be in breach of the contractual promise to convey the property "free from incumbrances." The seller's own mortgage should NOT be listed as a specified incumbrance — it must be discharged on completion.

4.4.2 Title Guarantee

- **Full Title Guarantee:** Given when the seller owns the entire legal and equitable interest. Implies covenants that the seller has the right to sell, and will discharge all incumbrances.
- **Limited Title Guarantee:** Given where the seller has limited knowledge of the property (e.g., an executor selling an estate). The implied covenants are less extensive.

4.4.3 Contract Rate

The rate of interest charged if either party completes late. Under the Standard Conditions it is currently 4% above Barclays Bank base rate. It applies to the balance of the purchase price for the period of delay.

4.4.4 Deposit — Stakeholder vs Agent

Position	Effect on Deposit
Stakeholder (Default under SC)	Seller's solicitor holds the deposit and cannot release it to the seller until completion. Protects the buyer if the seller defaults or becomes insolvent before completion.
Agent	Money can be released to the seller immediately on exchange. Risk: if the seller defaults or becomes insolvent, the buyer may not recover the deposit.
SC 2.2.5 exception	In a residential chain, a seller can use the deposit to fund their own related house purchase — effectively the deposit passes up the chain.

4.5 Purpose and Content of Special Conditions

Special conditions tailor the standard contract to the particular transaction. Common special conditions include:

- Dealing with specific fixtures and fittings to be included or excluded
- Appointing a second trustee to overreach equitable interests of co-owners
- Providing for restrictive covenant indemnity insurance
- Including indemnity covenants by the buyer to protect the seller from ongoing liability for positive covenants
- Dealing with the seller's existing mortgage — confirming it will be discharged from completion proceeds

4.6 Insurance and Risk on Exchange

Under Standard Condition 5, the risk of damage to or destruction of the property passes to the buyer on exchange of contracts. The buyer must complete even if the property is destroyed before completion. The buyer must therefore arrange buildings insurance to commence at the moment of exchange.

4.7 VAT Provisions in a Property Contract

VAT Position	Description
Exclusive of VAT	VAT is added on top of the stated price — appropriate for standard-rated supplies (new buildings) or where seller has opted to tax.
Inclusive of VAT	No additional VAT is chargeable — appropriate for VAT-sensitive buyers who cannot recover input tax (e.g., insurers, banks, residential buyer).
Conditional	Seller agrees not to opt to tax; reserves right to add VAT if the law

	changes between exchange and completion.

4.8 Requirements of a Mortgage Lender

Lenders protect their security by imposing conditions in the mortgage offer, including requirements for specific repairs, retentions from the loan until works are completed, and standard valuation requirements. The buyer's solicitor must explain the terms of the mortgage deed to the client, including the lender's power of sale upon default.

4.9 Acting for Both Buyer and Lender

In residential transactions, one solicitor commonly acts for both the buyer and the mortgage lender where the loan is on standard terms (e.g., using the UK Finance Lenders' Handbook). In complex commercial transactions, the lender typically instructs its own separate solicitors.

4.10 Certificate of Title to the Lender

Immediately before completion, the buyer's solicitor provides a certificate of title to the lender confirming: the property has a good and marketable title; identifying the borrower; and confirming the date on which completion funds are required. This certificate triggers the release of mortgage funds.

4.11 Pre-Contract Report to the Client

Before exchange, the buyer's solicitor must send a comprehensive pre-contract report to the client summarising: the results of the investigation of title; the results of all searches and enquiries; the key terms of the contract; the terms of the mortgage offer; and the financial requirements on completion. The client must sign the contract only after receiving and understanding this report.

4.12 Preparation Checklist Before Exchange

- **Funds:** Deposit cleared in client account and ready to release.
- **Mortgage:** Offer received and all conditions satisfied.
- **Insurance:** Buildings insurance arranged to commence at moment of exchange.
- **Signature:** Client's signed contract obtained.
- **Searches:** All results received, reported on, and satisfactory.
- **Enquiries:** All replies to enquiries received and satisfactory.

4.13 Methods and Authority to Exchange Contracts

The solicitor must obtain express authority from the client before exchanging contracts. The three methods are:

Method	Key Points
In Person	Solicitors meet physically and hand over signed contracts and deposit simultaneously.
By Post (rarely used)	Signed contracts posted to each other — least secure; acceptance takes effect when posted.
By Telephone (most common)	Law Society Formula A, B, or C — mutual undertakings to hold signed contracts as agent for the other side and to post contracts and deposit that day.

4.14 Consequences of Exchange

On exchange, a legally binding contract comes into existence. The buyer becomes the beneficial owner of the property and bears the risk of any damage. The seller retains legal title until completion and remains responsible for outgoings (council tax, business rates). Neither party can withdraw without being in breach and potentially being liable in damages.

Chapter 4 Summary — Key Points

✔ Exchange creates a binding contract — prior to that point, either party can withdraw without penalty.

✔ A contract for the sale of land must be in writing, incorporate all agreed terms, and be signed by both parties (s 2 LP(MP)A 1989).

✔ The Standard Conditions of Sale (5th Edition) or Standard Commercial Property Conditions (2nd Edition) are incorporated.

✔ Under SC 5, risk passes to the buyer on exchange — buildings insurance must be in place from that moment.

✔ The deposit is typically 10% of the purchase price and usually held by the seller's solicitor as stakeholder.

✔ VAT provisions in commercial contracts must clearly state whether the price is exclusive or inclusive of VAT.

✔ A certificate of title to the lender triggers the release of mortgage funds immediately before completion.

✔ Telephone exchange using Law Society Formulae A, B, or C is the most common method.

Chapter 4 — Practice Questions

PRACTICE QUESTION 1

Contracts were exchanged last week using the Standard Conditions (5th Edition) with no relevant special conditions. Completion is tomorrow. The seller's solicitor has reported a fire at the property. What is the best advice?

A Buyer must complete; seller must repair and pay damages for delay.

B Seller responsible for damage it causes, not if caused by others.

C Buyer may rescind and claim back the deposit.

D Risk passes to buyer on exchange under SC 5; buyer must complete and claim on their own insurance.

E Completion delayed until seller receives insurance proceeds and reinstates the property.

ANSWER & EXPLANATION

Option D is correct. Under SC 5, risk passes to the buyer on exchange. The buyer must complete the purchase even if the property is damaged or destroyed between exchange and completion. The buyer should have taken out buildings insurance at exchange and can claim on their own policy. Option C is wrong — the buyer cannot rescind. Option E is wrong — SC 5 places no obligation on the seller to insure a freehold property. Option A is wrong — the seller has no obligation to repair under SC 5 in the absence of a relevant special condition.

CHAPTER 5 | Completion

This chapter describes the final stages of a freehold property transaction — the transfer of legal title, pre-completion searches, methods of completing, post-completion administration, and remedies available when completion is delayed.

5.1 Introduction to the Completion Stage

Although the majority of conveyancing work is completed before exchange of contracts, critical procedural steps must be taken in the period between exchange and completion and immediately after the transaction is concluded. The objective of completion is to transfer the legal estate in the land from the seller to the buyer.

5.2 Pre-Completion Steps

After exchange of contracts, both sets of solicitors must notify their clients, confirm the exchange to the estate agent, and comply with any undertakings given on telephone exchange. A two-week gap between exchange and completion is now common, though exchange and completion can occur simultaneously in some transactions.

5.3 Form of Transfer Deed and Formalities for Execution

The legal estate in land can only be transferred by deed (s 52 LPA 1925). A valid deed must be in writing, make clear on its face that it is a deed, be signed by the parties in the presence of a witness, and be delivered. For registered freehold land, HM Land Registry Form TR1 is used.

Party Executing	Method of Execution
Individual	Sign in the presence of an independent witness who also signs and provides their full name and address.
Company (two officers)	Signed by two authorised signatories — two directors or a director and company secretary.
Company (one director + witness)	Signed by one director in the presence of a witness who also signs.
Company (company seal)	Affixed in the manner provided for in the articles of association.

5.4 Pre-Completion Searches

5.4.1 Search Against the Title — Obtaining Priority

Land Type	Search Form	Priority Period
Registered	OS1 (whole title) or OS2 (part of title)	30 working days from the date of the search
Unregistered	K15 Land Charges search against seller's name	15 working days from the date of the search

The priority period protects the buyer and lender by ensuring that no adverse entries made after the search date will take priority over their applications for registration submitted within the period.

5.4.2 Solvency Check on Behalf of the Lender

- **Individual buyer:** K16 Bankruptcy search immediately before completion.

- **Company buyer:** Full company search to confirm solvency and check for new charges.
- **Company seller:** Company search to confirm the seller is still in existence and solvent. No priority period — must be done as close to completion as possible.

5.5 Practical Arrangements for Completion

The buyer's solicitor sends the seller's solicitor a Completion Information Form (e.g., TA13 for residential transactions) to confirm the practical arrangements for completion, including the method of completion (in person or by post), key handover arrangements, and to obtain an undertaking from the seller's solicitor to discharge the seller's mortgage on receipt of the completion money.

5.6 Ensuring Finances Are in Order for Completion

The buyer's solicitor sends a Financial Statement to the client showing the balance of the purchase price required after deducting the deposit already paid. For the lender to release mortgage funds, the solicitor must first send the certificate of title and evidence of the solvency search results, and confirm that the mortgage deed has been executed by the client.

5.7 Methods and Effect of Completion

5.7.1 Completion in Person

One solicitor (usually the buyer's) attends the other's office, pays the completion money by electronic bank transfer, and receives in return: the executed TR1; the title deeds (if unregistered); the discharge of the seller's mortgage; the keys and access codes.

5.7.2 Completion by Post

Parties follow the Law Society's Code for Completion by Post. The seller's solicitor acts as the buyer's solicitor's agent, completing on receipt of the funds and then dispatching the title documents by first-class post or document exchange.

5.7.3 Effect of Completion

- **Unregistered land:** Legal title passes immediately on completion.
- **Registered land:** Legal title does not pass until the buyer is registered as proprietor at the Land Registry. The gap between completion and registration is known as the "registration gap" — during this period the buyer holds the equitable interest only.

5.8 Post-Completion Steps

Step	Deadline and Details
Discharge of seller's mortgage	Seller's solicitor uses completion monies to discharge mortgage and obtains DS1 or electronic notification for buyer.
SDLT return and payment (England)	Within 14 days of completion — HMRC SDLT5 certificate needed for Land Registry application.
LTT return and payment (Wales)	Within 30 days of completion.
Register mortgage at Companies House	Where buyer is a company — within 21 days of creation or charge becomes void against other creditors.
Land Registry application (registered land)	Form AP1 — must be submitted within the 30 working day OS1 priority period.
First registration (unregistered land)	Form FR1 — must be submitted within 2 months of completion or legal estate becomes void.

5.9 Remedies for Delayed Completion

5.9.1 Contractual Compensation

Under the Standard Conditions, either party can be liable for contractual compensation for late completion. Under the Standard Commercial Property Conditions, only the buyer pays compensation. Compensation is calculated at the Contract Rate on the balance of the purchase price for each day of delay.

5.9.2 Notice to Complete

Where a party is in default of the completion date, the other party (if ready, willing and able to complete) may serve a Notice to Complete, making time of the essence. Under both sets of standard conditions, this gives the defaulting party 10 working days to complete.

5.9.3 Rescission

If the notice to complete is not complied with within 10 working days, the innocent party may rescind (cancel) the contract. If the buyer defaults: the seller rescinding retains the deposit as compensation. If the seller defaults: the buyer rescinding recovers the deposit and may claim damages.

5.9.4 Common Law Damages

In addition to contractual compensation, the innocent party may claim common law damages for losses naturally flowing from the breach, including storage costs, hotel expenses, and bridging loan interest. Any contractual compensation already paid is deducted from the damages award.

Chapter 5 Summary — Key Points

✔ The transfer of a legal estate in land must be effected by a properly executed deed — Form TR1 for registered land.

✔ Pre-completion searches (OS1/OS2 and K15) provide a priority period protecting the buyer and lender from adverse entries.

✔ SDLT must be paid within 14 days of completion (England); LTT within 30 days (Wales).

✔ Land Registry applications must be made within the OS1 priority period (30 working days) to protect the buyer's title.

✔ First registration of unregistered land must occur within 2 months of the triggering event.

✔ Company buyers must register charges at Companies House within 21 days.

✔ Risk passes to the buyer on exchange — under SC 5, the buyer must complete even if the property is damaged.

✔ A Notice to Complete makes time of the essence and gives the defaulting party 10 working days to complete.

✔ If the defaulting buyer fails to comply with the Notice, the seller may forfeit the deposit and rescind.

Chapter 5 — Practice Question

PRACTICE QUESTION 1

A solicitor is acting for the buyer on the purchase of a residential freehold with registered title. Contracts have been exchanged. Is the solicitor required to carry out a search at the Land Registry prior to completion?

A Yes — it is part of the investigation of title.

B Yes — to reveal any changes to the register since the official copies were issued before exchange.

C Yes — to check that the seller is the registered proprietor.

D No — the buyer is protected by the priority period created when official copies were issued.

E No — new entries cannot be made without the seller's consent.

ANSWER & EXPLANATION

Option B is correct. Investigation of title (checking the seller is the registered proprietor — options A and C) was completed before exchange. The pre-completion search (OS1) serves a different purpose: to check for any adverse entries made between the date of the official copies and completion, and to obtain a 30-working-day priority period within which to register the buyer and lender. Option D is wrong — the priority period comes from the OS1 search result, not from the official copies. Option E is wrong — unilateral notices can be registered without the proprietor's consent.

CHAPTER 6 | Structure and Content of a Lease

This chapter details the legal and commercial components of a leasehold interest in commercial property, covering the structure of a lease, key covenants, insurance, repairs, alienation, and rent review.

6.1 Introduction — The Nature of Leasehold Interests

Leasehold property is widely used in the commercial sector. Unlike a freehold, a lease is a depreciating asset that reduces in value as the term progresses. A solicitor acting in commercial property matters must have a sound working knowledge of the standard provisions in a commercial lease in order to identify issues affecting the client's interests and to negotiate appropriate changes.

6.2 Advantages and Disadvantages of Leasehold Ownership

Stakeholder	Advantages / Disadvantages
Landlord — advantages	Retains freehold capital value; steady income stream; management control to preserve investment quality.
Landlord — disadvantages	Dependent on tenant's reliability; investment at risk if building neglected; rental income subject to market fluctuations.
Tenant — advantages	Flexibility (break clauses); no large capital outlay to acquire property; ability to relocate as business grows.
Tenant — disadvantages	No capital appreciation; subject to landlord's controls; potentially onerous repairing obligations.

6.3 Structure of a Typical Commercial Lease

- **Prescribed Clauses:** Mandatory for registered leases granted since 19 June 2006 — provide a standardised summary for Land Registry purposes.
- **Grant, Ancillary Rights, and Reservations:** The operative part — the landlord grants the term, the tenant obtains ancillary rights (e.g., parking, signage), and the landlord reserves rights (e.g., entry to inspect, rights of way over parts of the property).
- **Annual Rent and Rent Review:** Sets out the rent, payment dates, and the mechanism for periodic reassessment.
- **Tenant's and Landlord's Covenants:** The obligations of each party governing repair, insurance, use, alterations, and alienation.
- **Forfeiture Clause:** The landlord's right to re-enter and terminate the lease on the tenant's breach.

6.4 Options for the Term of a Lease

Type of Term	Key Characteristics
Fixed Term	Ends automatically by effluxion of time on the contractual expiry date. Most common type for commercial leases.
Fixed Term with Break Clause	Either party (or just one party) may terminate early on giving the requisite notice — typically 6 months' notice at specified break dates.
Periodic Tenancy	Continues from period to period indefinitely until terminated by a valid notice to quit. Rarely used for new commercial lettings.

Tenancy at Will	Either party may terminate at any time by any act inconsistent with continuation. Used as a precursor to a formal lease.

6.5 Types of Leasehold Covenant

Type	Effect
Absolute Covenant	Prohibits the action entirely. Breach entitles the landlord to forfeit. No implied right to ask for consent.
Qualified Covenant	Permits action only with the landlord's prior consent. Landlord may withhold consent at complete discretion.
Fully Qualified Covenant	Requires landlord's consent, but consent cannot be unreasonably withheld or delayed. The most tenant-friendly form.

Statute intervenes to improve qualified covenants in certain cases: s 19(1)(a) LTA 1927 converts qualified covenants on assignment into fully qualified covenants.

6.6 The Full Repairing and Insuring (FRI) Lease

Most commercial leases in England and Wales are FRI leases.

The TENANT is responsible for ALL costs of repairs, maintenance, and insurance of the whole building.

The LANDLORD receives a "clear" net rental income with no deductions for building costs.

FRI leases are "investment quality" — attractive to institutional investors and pension funds.

6.7 The Repair Covenant

A covenant "to repair" requires actual physical deterioration from a previous better state before the covenant is breached. A covenant to "keep" the property in repair implies an obligation to "put" it into repair if it was in disrepair at the commencement of the lease. Key points:

- The standard of repair required is proportionate to the age, character, and locality of the property.
- In an FRI lease, the tenant is typically responsible for the whole building — internal and external — and may need to reinstate the property at the end of the term.
- The tenant is usually relieved from repairing damage caused by "Insured Risks" unless the tenant has voided the insurance policy.

6.8 Insurance Provisions in a Commercial Lease

Provision	Description
Insured Risks	Defined list of risks (fire, flood, storm, etc.) against which the landlord insures the building.
Insurance Rent	The landlord insures and recovers the premium from the tenant as additional rent.
Reinstatement Obligation	The landlord covenants to use insurance proceeds to reinstate the property in the event of damage.
Rent Suspension	If the property is unusable due to an Insured Risk, the tenant's obligation to pay rent is suspended (typically for up to 3 years).

Termination Right	If reinstatement is not complete within the rent suspension period, either party may terminate the lease.

6.9 Alterations Covenant

Landlords restrict alterations to protect the building's structure and future lettability. Statutory protection for tenants includes:

- **Section 3 LTA 1927:** A business tenant may carry out qualifying "improvements" to the property notwithstanding an absolute covenant against alterations, subject to certain conditions.
- **Section 19(2) LTA 1927:** In a qualified covenant to improve, the landlord's consent cannot be unreasonably withheld. The landlord can, however, require payment of compensation at the end of the lease.

6.10 User and Planning Covenant

User clauses restrict the business activities that can be carried out at the property, enabling the landlord to control the "tenant mix" — particularly important in retail centres. Under s 19(3) LTA 1927, a landlord cannot charge a fine or premium as a condition of consenting to a change of use (though reasonable legal and professional costs may be recovered). A fully qualified user covenant is most favourable to tenants.

6.11 Alienation — Assignment and Underletting

6.11.1 Assignment

Assignment is the transfer of the tenant's entire interest in the lease to a third party (the assignee). Under s 19(1)(a) LTA 1927, any qualified covenant against assignment is deemed to include a proviso that consent cannot be unreasonably withheld. For "new" leases (granted on or after 1 January 1996), s 19(1A) LTA 1927 allows landlords to specify in the lease the circumstances in which they may withhold consent and the conditions subject to which consent will be given — including a requirement for an Authorised Guarantee Agreement (AGA).

6.11.2 Underletting

Underletting creates a new, shorter lease (the underlease) beneath the existing lease (the headlease). The headlease must have at least one day more remaining than the term of the underlease. Landlords often require the underlease to mirror the headlease terms and may require the undertenant to enter into a direct covenant with the headlandlord.

6.12 Rent and Rent Review

Commercial rent is typically paid quarterly in advance on the usual quarter days (25 March, 24 June, 29 September, and 25 December). For longer leases, rent review clauses are essential to reflect market changes. The most common form is the upwards-only open market rent review — the rent can increase or remain the same but cannot decrease. The reviewed rent is determined by reference to a "hypothetical lease" — valuing the property as if let on certain agreed assumptions and disregarding certain factors (such as the tenant's goodwill and voluntary improvements).

6.13 RICS Code for Leasing Business Premises

The RICS Code for Leasing Business Premises (effective September 2020) is a mandatory professional statement for RICS members. It requires that: lease negotiations are conducted constructively and collaboratively; the agreed terms are recorded in comprehensive heads of terms; repairing obligations are proportionate to the lease length; and controls on alterations are not unduly restrictive. It aims to ensure a fair and transparent negotiation process.

Chapter 6 Summary — Key Points

✔ Commercial leases balance the landlord's investment objectives against the tenant's operational flexibility requirements.

✔ Registered leases granted since 19 June 2006 must contain mandatory prescribed clauses.

✔ Covenants may be absolute, qualified, or fully qualified — tenants negotiate for fully qualified covenants.

✔ Most commercial leases are FRI — the tenant bears all repair, maintenance, and insurance costs.

✔ Risk passes on an insured event — rent suspension is typically limited to 3 years before either party can terminate.

✔ Section 19(1)(a) LTA 1927 converts any qualified covenant on assignment into a fully qualified covenant.

✔ For new leases (post-1996), s 19(1A) allows landlords to pre-agree conditions for assignment consent (including AGAs).

✔ Open market upward-only rent reviews are the most common form of rent review in commercial leases.

✔ RICS members must comply with the RICS Code for Leasing Business Premises (2020).

Chapter 6 — Practice Question

PRACTICE QUESTION 1

A tenant holds a lease granted in 2015 containing a qualified covenant not to assign without the landlord's consent. The tenant wishes to assign to a financially weaker retailer. Can the landlord refuse consent?

A The landlord cannot prevent the tenant from assigning as it wishes.

B Provided a written application is made, the landlord must give consent unless it is reasonable not to do so.

C Statute allows the landlord to insist on an AGA as a condition of consent.

D Statute implies a proviso that consent will not be unreasonably withheld — so the landlord cannot refuse.

E If consent is refused, the tenant should enter a licence with the other retailer instead.

ANSWER & EXPLANATION

Option B is correct. The qualified covenant in the 2015 (new) lease is converted by s 19(1)(a) LTA 1927 into a fully qualified covenant — landlord's consent cannot be unreasonably withheld. Under s 1 LTA 1988, the landlord must give consent within a reasonable time unless it is reasonable not to do so. It would be reasonable to refuse consent to a financially inadequate assignee. Option C is wrong — s 19(1A) conditions (including AGA requirements) must be specified in the lease at the outset; none are mentioned here. Option D overstates — the landlord can still refuse where reasonable. Option E is wrong — the lease contains an absolute covenant against sharing occupation.

CHAPTER 7 | Procedural Steps for the Grant of a Lease or Underlease

This chapter details the conveyancing procedure for creating new leasehold interests in commercial property and identifies the key differences from a standard freehold transaction.

7.1 Introduction — Grant of a New Leasehold Interest

The procedure for granting a new lease is broadly similar to buying a freehold, but with important distinctions. The tenant's "strength of covenant" — their financial reliability and ability to meet the obligations of the lease — is a primary consideration for the landlord. Before proceeding, a landlord may require references, personal or corporate guarantors, or a rent deposit (cash held by the landlord as security for the tenant's obligations). For underleases, the landlord must ensure the proposed term is at least one day shorter than the headlease.

7.2 Drafting the Lease

The landlord's solicitor drafts the lease or underlease. The process involves:

- **Negotiation:** A careful balancing of the landlord's need for management control against the tenant's need for business flexibility.
- **Underleases:** The scope for negotiation is often restricted — the headlease typically requires that the underlease mirrors its own terms, preventing the head-tenant from granting more generous terms than they themselves enjoy.

7.3 Purpose of an Agreement for Lease

Parties often proceed directly to the grant of the lease without a prior contract. However, an agreement for lease (a contract to grant a lease at a future date) is used where there is a gap between the agreement and the grant. Common reasons include:

- The property is under construction or undergoing refurbishment
- Consent from a lender or superior landlord is required
- The tenant needs to obtain planning permission as a condition of the agreement

The agreement must be drafted so that the form of lease agreed between the parties is attached to it, as the agreement for lease must incorporate all the agreed terms.

7.4 Deduction of Title

The landlord must prove they have the right to grant the lease:

- **Freehold title:** Tenants of leases for more than 7 years are entitled to require deduction of the freehold title.
- **Registered freehold:** Official copies of the freehold title will be provided.
- **Unregistered freehold:** An epitome of title is provided to the tenant.
- **Mortgage consent:** If the property is mortgaged, the landlord must obtain the lender's written consent to grant the lease. Some leases may require the lender's consent to protect the tenant's security of tenure.

7.5 Pre-Contract Enquiries and Searches

The tenant's solicitor carries out the same searches as a freehold buyer (local authority, environmental, drainage, and specialist searches depending on the property) with additional lease-specific enquiries:

- Details and terms of the landlord's buildings insurance policy

- Service charge accounts and any planned major works
- Compliance with planning conditions affecting the intended use

7.6 Licence to Underlet

7.6.1 Privity of Contract and the Direct Covenant

When a head-tenant grants an underlease, there is ordinarily no contractual relationship between the head-landlord and the undertenant. The licence to underlet remedies this by requiring the undertenant to give a direct covenant to the head-landlord to observe and perform the covenants of the headlease (usually excluding the obligation to pay the headlease rent).

7.6.2 Key Provisions in the Licence to Underlet

A standard licence to underlet will contain:

- The head-landlord's formal consent to the underletting
- The undertenant's direct covenant with the head-landlord
- An agreement by the head-tenant to pay the head-landlord's legal and professional costs

7.7 Pre-Completion Formalities

The lease is prepared in two identical parts: the lease (executed by the landlord and retained by the tenant) and the counterpart (executed by the tenant and retained by the landlord). At completion, the tenant pays a proportionate amount of rent to cover the period from the completion date to the next rent payment day under the lease.

7.8 Completion and Post-Completion Steps

7.8.1 Completion

At completion: the landlord receives the executed counterpart, any premium payable, and the first apportioned rent payment; the tenant receives the executed lease, copies of title deeds (if unregistered), evidence of any necessary lender or superior landlord consent, and the licence to underlet (if applicable).

7.8.2 SDLT and LTT on Grant of a Lease

Tax is calculated on: (a) any premium paid for the grant; and (b) the Net Present Value (NPV) of the rent payable over the term (the total rent discounted at 3.5% per annum to reflect today's value). Deadlines: SDLT (England) — 14 days; LTT (Wales) — 30 days.

7.8.3 Registration of the Lease

Lease Length	Registration Requirement
More than 7 years	Must be substantively registered at HMLR with its own title number. Application must be made promptly to protect the tenant's legal title.
7 years or less (but more than 3 years)	Not compulsorily registrable; may be voluntarily noted on the landlord's registered title.
3 years or less	Cannot be noted on the landlord's registered title; takes effect as an overriding interest in registered land.

Where the landlord's title is unregistered, the grant of a registrable lease also triggers first registration of that lease at the Land Registry.

Chapter 7 Summary — Key Points

✔ The grant of a lease is broadly similar to a freehold purchase but with important distinctions regarding the tenant's covenant strength.

✔ A landlord must check whether their mortgage permits the grant of the lease and, if not, obtain the lender's consent.

✔ Tenants of leases for more than 7 years may insist on deduction of the landlord's freehold title.

✔ A licence to underlet is required when a head-tenant grants an underlease under a qualified or absolute prohibition.

✔ The underlease is prepared as two identical parts — the lease (to tenant) and the counterpart (to landlord).

✔ SDLT/LTT is calculated on any premium and the NPV of the rent over the term.

✔ Leases of more than 7 years must be registered at HMLR with their own title number.

Chapter 7 — Practice Question

PRACTICE QUESTION 1

A solicitor is acting for a tenant taking a lease of a shop for exactly 7 years. The landlord's freehold is unregistered. Does the lease need to be registered with its own title?

A Yes — the landlord's freehold title is unregistered.

B Yes — the lease is for more than 3 years.

C Yes — the lease is for 7 years.

D No — a lease cannot be registered unless the freehold is already registered.

E No — a lease cannot be registered unless the term exceeds 7 years.

ANSWER & EXPLANATION

Option E is correct. A lease of exactly 7 years does not exceed 7 years and cannot be substantively registered at HMLR with its own title. Registration is only compulsory for leases of MORE than 7 years. Options A, B and C are all wrong. Option D is wrong — leases of over 7 years must be registered regardless of whether the freehold is registered; indeed, a lease of unregistered freehold land where the term exceeds 7 years triggers first registration of the leasehold title.

CHAPTER 8 | Procedural Steps for the Assignment of a Lease

This chapter explains the legal process and practical considerations when a tenant transfers an existing leasehold interest to a third party.

8.1 Introduction — What is an Assignment?

An assignment is the transfer of the whole of the tenant's existing leasehold interest (the assignor) to a new party (the assignee). Unlike granting a new lease, the assignee takes over the unexpired residue of an existing lease and cannot renegotiate its terms. The assignment procedure mirrors a freehold purchase in many respects but with important additional requirements, particularly the mandatory need for the landlord's consent.

8.2 Overview of the Assignment Procedure

Key procedural differences from a freehold purchase include:

- The assignee's solicitor must review and report on the existing lease terms — the assignee is bound by those terms.
- Landlord's consent must be obtained before completion.
- There may be no premium payable if the tenant is paying full market rent.

8.3 Obtaining Landlord's Consent to Assignment

Most commercial leases prohibit assignment without the landlord's formal written consent, documented in a licence to assign. The landlord will typically require:

- **References:** Bank references, landlord references, and (for substantial transactions) three years of audited accounts to assess the assignee's financial covenant strength.
- **Costs Undertaking:** The assignor's solicitor typically gives an undertaking to pay the landlord's reasonable legal and professional costs of the application.
- **Consent Timeline under Standard Conditions:** Under the SC, either party may rescind if consent is not given 3 working days before the contractual completion date. Under the SCPC, completion is postponed and the right to rescind only arises after 6 months.

8.4 The Licence to Assign

8.4.1 Purpose and Who Prepares the Licence

The licence to assign is a formal tripartite deed between the landlord, the assignor, and the assignee. It is drafted by the landlord's solicitor. Without it, the assignor remains exposed to continuing liability and the lease may be subject to forfeiture.

8.4.2 Key Provisions in the Licence to Assign

- Formal consent (often time-limited to 3 months from the date of the licence)
- The assignee's direct covenant or AGA provisions
- Agreement by the assignor to pay the landlord's costs

8.4.3 Privity of Contract — Old and New Leases

Lease Type	Privity and Ongoing Liability
Old lease (granted before 1 Jan 1996)	Original tenant remains liable for full term covenants even after assignment (privity of contract). Landlord requires direct covenant from

	assignee for remainder of term.
New lease (granted on or after 1 Jan 1996)	Assignor automatically released on assignment under LTCA 1995. Landlord may require assignor to enter an AGA guaranteeing the immediate assignee's obligations.

8.4.4 Authorised Guarantee Agreement (AGA)

In a new lease, the landlord may require the assignor to enter an AGA as a condition of consent. Under the AGA, the assignor guarantees the immediate assignee's performance of the tenant's covenants. This liability automatically terminates when the assignee in turn assigns the lease.

8.5 Deduction and Investigation of Leasehold Title

Title Class	Requirements on Investigation
Registered Absolute Leasehold Title	Assignee does not need to see the freehold title — absolute leasehold title is guaranteed.
Registered Good Leasehold Title	Assignee should insist on seeing the freehold title via special condition — without absolute title the lease may not be mortgageable.
Unregistered Leasehold Title	Assignee entitled to see the lease and all assignments for the last 15 years; should investigate freehold title via special condition.

8.6 Pre-Contract Enquiries and Searches

Standard searches are carried out as for a freehold purchase, plus:

- Review of the landlord's buildings insurance policy (in an FRI lease, the tenant pays the premium)
- Verification of the last rent receipt to ensure the assignor is not in arrears
- Review of any licences previously granted by the landlord for alterations, sublettings, etc.

8.7 Deed of Assignment and Covenants for Title

8.7.1 Modifying Implied Covenants for Title

The transfer deed must be expressly modified to ensure the assignor does not give implied covenants that the repair covenant has been performed and the property is in good repair. Without this modification, the assignor would be giving a warranty as to the state of repair of the property.

8.7.2 Indemnity Covenant

- **Old leases:** The assignee must give the assignor an express indemnity covenant against future breaches, because the assignor remains liable under privity of contract.
- **New leases:** An express indemnity is only needed if the assignor continues to be liable (for example, under an AGA).

8.8 — 8.10 Pre-Completion, Completion, and Post-Completion

Stage	Key Actions
Pre-completion searches	OS1 search (registered lease) or K15 (unregistered); company search if seller is a company.
Licence to assign	Exchange executed counterpart licences between landlord and assignor/assignee.

Apportionments	Assignee reimbursed assignor for rent paid in advance beyond completion date.
Completion	Assignor hands over: original lease, licence to assign, last rent receipts, and service charge accounts.
SDLT/LTT	Payable on purchase price (premium) only — no SDLT on rent, as this was accounted for on the original grant.
Registration	Change of registered proprietor (AP1); first registration if unregistered with more than 7 years unexpired.
Notice of assignment	Formal written notice to landlord with any fee prescribed by the lease — required by the lease covenant.

Chapter 8 Summary — Key Points

✔ An assignee takes over the existing lease — its terms cannot be renegotiated without the landlord's cooperation.

✔ The landlord's written consent is almost always required for the assignment of a commercial lease.

✔ Under the SC, either party may rescind if consent is not obtained 3 working days before the completion date.

✔ Old leases (pre-1996): original tenant remains liable for the full remaining term under privity of contract.

✔ New leases (post-1996): original tenant is released on assignment but may be required to give an AGA.

✔ SDLT/LTT is payable on any premium only — not on the rent, which was accounted for on the original grant.

✔ Notice of assignment must be served on the landlord promptly after completion.

Chapter 8 — Practice Question

PRACTICE QUESTION 1

A tenant (under a 2015 lease with a qualified covenant against assignment) exchanges contracts for an assignment using Standard Conditions. The completion date is in 5 working days. The landlord received the references yesterday and has not yet consented. What is the best advice?

A Contract automatically terminates if consent not obtained within 2 working days.

B Completion automatically postponed until 5 working days after notification of consent.

C The assignment should proceed — the landlord is being unreasonable.

D Assignor and assignee may agree to defer completion to a later date.

E Contract automatically terminates on the contractual completion date if consent not received.

ANSWER & EXPLANATION

Option D is correct. Under the SC, either party MAY rescind if the landlord's consent has not been given 3 working days before the scheduled completion date. However, rescission is not automatic — both parties may choose not to rescind and agree to defer completion. Option A (2 working days) is wrong. Option E (automatic termination on completion date) is wrong — rescission must be actively exercised. Option B describes the SCPC position (6 months). Option C is wrong — the landlord received references only yesterday and cannot yet be said to be acting unreasonably.

CHAPTER 9 | Remedies for Breach of Leasehold Covenants

This chapter outlines the remedies available to a landlord when a commercial tenant fails to comply with the obligations set out in a lease.

9.1 Introduction — Choosing the Appropriate Remedy

The appropriate remedy depends on the nature of the breach, the terms of the lease, the financial standing of the tenant, and whether former tenants or guarantors remain liable. Landlords must balance the cost and time of enforcement against the practical impact of each remedy on the investment.

9.2 Liability on Covenants — Old vs New Leases

Feature	Old Leases (Pre-1996)	New Leases (Post-1996)
Original tenant liability	Liable for full remaining term — privity of contract	Released on assignment under LTCA 1995
Assignee liability	Direct covenant for remainder of term	Liable only while they remain the tenant
Landlord's protection	Direct covenants from each assignee	AGA from outgoing tenant guaranteeing immediate assignee
s 17 Notice (fixed charges)	Landlord must serve s 17 notice within 6 months of debt arising to pursue former tenants	Same requirement — s 17 notice required within 6 months

9.3 Remedies for Breach of the Covenant to Pay Rent

Remedy	Key Details
Action in Debt	Sue tenant for arrears — 6-year limitation period for recovery of rent.
Commercial Rent Arrears Recovery (CRAR)	Enter premises to seize and sell the tenant's goods — 7 days' notice required before entry and before sale. Available for rent only (not service charge) — at least 7 days' rent outstanding.
Pursue Guarantors / Rent Deposit	Sue current tenant's guarantor directly; pursue former tenant/guarantor within 6 months of the fixed charge arising (s 17 LTCA 1995). Draw on rent deposit immediately without court action.
Forfeiture	Terminate the lease and regain possession — requires a forfeiture clause in the lease. Commercial leases typically allow forfeiture after 21 days' rent arrears without formal demand.

9.4 Remedies for Breach of the Covenant to Repair

Remedy	Key Details
Specific Performance	Court order compelling the tenant to repair — rarely granted, only

	where other remedies are inadequate.
Damages (s 18 LTA 1927)	Capped at the diminution in the value of the landlord's reversion caused by the disrepair — may be less than actual repair cost.
Leasehold Property (Repairs) Act 1938	Applies if lease has 3+ years remaining and 7+ years unexpired. Tenant may serve counter-notice requiring leave of court before action — must be mentioned in the s 146 notice.
Self-Help / Jervis v Harris Clause	Landlord enters, carries out repairs, recovers the full cost as a debt (not damages). Not subject to s 18 or LP(R)A 1938 limitations — most effective practical remedy.
Forfeiture (for disrepair)	Landlord must serve a s 146 LPA 1925 notice specifying the breach and allowing a reasonable time to remedy.

9.5 Remedies for Breach of Other Covenants (User, Alterations, Alienation)

- **Forfeiture:** Via s 146 LPA 1925 notice — most powerful remedy but the tenant can apply for relief from forfeiture.
- **Injunction:** Court order to stop the prohibited act (e.g., change of use, unlawful subletting). Interim injunctions available urgently.
- **Specific Performance:** Equitable remedy compelling compliance with a positive obligation.
- **Damages:** Compensation for losses suffered as a result of the breach.
- **Deduction from Rent Deposit:** If a cash deposit was paid, the landlord can draw on it immediately.

9.6 Surrender of the Lease

Surrender is a mutual agreement between landlord and tenant to bring the lease to an end before the expiry of the contractual term. It requires: (a) agreement between both parties; and (b) either a formal deed of surrender, or facts from which surrender by operation of law can be inferred. Surrender is often a quicker and cheaper solution than forfeiture where both parties agree the tenancy should end.

Chapter 9 Summary — Key Points

✔ Old leases (pre-1996): original tenant remains liable for full remaining term under privity of contract.

✔ New leases (post-1996): assignors are released but may remain liable via AGA for the immediate assignee's breaches.

✔ s 17 LTCA 1995 notice must be served within 6 months of a fixed charge arising to pursue former tenants.

✔ Remedies for rent arrears include: action in debt (6-year limitation); CRAR; pursuit of guarantors; forfeiture.

✔ Self-help (Jervis v Harris) is the most effective repair remedy — cost recovered as debt, not damages.

✔ Damages for disrepair under s 18 LTA 1927 are capped at the diminution in the reversionary value.

✔ Forfeiture terminates the lease and is the only remedy that gives the landlord possession.

✔ A s 146 notice must be served before forfeiting for breach of any covenant other than nonpayment of rent.

✔ Surrender is a consensual termination by deed and is often the most efficient solution where both parties agree.

Chapter 9 — Practice Question

PRACTICE QUESTION 1

A landlord has exercised the self-help clause in a 15-year commercial lease (8 years remaining) to carry out repairs following the tenant's failure. Can the landlord recover all its repair costs from the tenant?

A No — only the diminution in the reversionary value is recoverable.

B No — no s 146 notice was served.

C No — the landlord did not seek court leave to proceed.

D Yes — the landlord should recover the full cost as a debt action.

E Yes — the landlord should recover the full cost as damages.

ANSWER & EXPLANATION

Option D is correct. Jervis v Harris confirmed that where a landlord exercises a self-help clause, the cost of repairs is recovered as a debt (liquidated sum), NOT as damages. Accordingly, the restrictions on damages claims — namely the s 18 LTA 1927 cap (option A) and the LP(R)A 1938 counter-notice procedure (options B and C) — do not apply. Option E is wrong because the claim is in debt, not damages.

CHAPTER 10 | Lease Termination and Security of Tenure under a Business Lease

This chapter explores how business leases are ended at common law and the significant impact of the Landlord and Tenant Act 1954 (Part II) in providing qualifying tenants with security of tenure.

10.1 Introduction — The Importance of Security of Tenure

Under common law, a lease terminates on its contractual expiry date. However, Part II of the Landlord and Tenant Act 1954 (LTA 1954) fundamentally alters this position for most business tenancies. A qualifying tenant is entitled to remain in occupation after the contractual term ends and to apply for a new lease on broadly similar terms, which can only be refused on specific statutory grounds. This protection is of considerable commercial importance to tenants who have developed goodwill at a particular location.

10.2 Termination of Leases at Common Law

Method	Description
Effluxion of Time	A fixed-term lease ends automatically on its contractual expiry date without any notice being required.
Notice to Quit	Required to end periodic tenancies. Yearly tenancies: at least 6 months' notice expiring at the end of a complete year of the tenancy. Other periodic tenancies: at least one full period's notice expiring at the end of a completed period.
Surrender	The tenant yields the lease back to the landlord by mutual agreement. Must be by deed to be legally effective unless by operation of law.
Merger	The tenant acquires the landlord's reversionary interest (or a third party acquires both), causing the lease to be extinguished by merger.

10.3 The Landlord and Tenant Act 1954 — Security of Tenure

10.3.1 Application of the 1954 Act

The Act applies to any tenancy where the tenant occupies premises for business purposes. "Business" is broadly defined to include trades, professions, and non-profit activities. A protected tenancy cannot be terminated by common law methods alone. Exclusions from protection include:

- Tenancies at will
- Fixed-term leases of 6 months or less (unless the tenant has been in occupation for more than 12 months in total)
- Agricultural holdings and farm business tenancies
- Contracted-out leases: where the parties follow the statutory notice and declaration procedure before the lease is granted, the 1954 Act protections do not apply

10.3.2 Effect of the 1954 Act — Protected Tenancies Continue

A protected tenancy does not end on the contractual expiry date. It continues on the same terms until terminated by one of the seven statutory methods under the Act (including s 25 notice, s 26 request, forfeiture, surrender, or s 27 notice).

10.3.3 Termination by the Landlord — Section 25 Notice

> A Section 25 notice is the landlord's mechanism to bring a protected tenancy to an end.
>
> The notice must be served between 6 and 12 months before the proposed termination date.
>
> The specified termination date cannot be earlier than the contractual expiry date of the original lease.
>
> The notice must state whether the landlord is willing to grant a new lease or intends to oppose renewal.

10.3.4 Application to Court Following Service of a Section 25 Notice

If the landlord opposes a new tenancy, the tenant must apply to court before the termination date specified in the s 25 notice — failure to do so will cause the tenant to lose their right to a new lease. If the landlord does not oppose renewal, the parties negotiate the new terms, but the tenant should still apply to court within the relevant time limit as a safeguard.

10.3.5 Renewal by the Tenant — Section 26 Request

A tenant may proactively serve a Section 26 request on the landlord to initiate the renewal process. The timing rules mirror those for the s 25 notice: 6 to 12 months' notice is required; the proposed commencement date cannot be earlier than the contractual expiry date.

10.3.6 Counter-Notice Following a Section 26 Request

A landlord wishing to oppose a s 26 request must serve a counter-notice within two months of receiving it, stating the grounds of opposition. If no counter-notice is served within two months, the landlord cannot subsequently oppose the grant of a new tenancy.

10.3.7 Landlord's Grounds of Opposition — Section 30

Ground	Nature and Effect
(a) Failure to repair	Discretionary fault ground — tenant's failure to meet repairing obligations.
(b) Persistent delay in paying rent	Discretionary fault ground.
(c) Other substantial breach	Discretionary fault ground — other covenants substantially breached.
(d) Suitable alternative accommodation	Mandatory ground where landlord offers comparable alternative premises.
(e) Underlettings of part	Discretionary ground — landlord requires the whole for beneficial occupation.
(f) Demolition or reconstruction	Mandatory ground — landlord intends to demolish/reconstruct and cannot reasonably do so without possession.
(g) Landlord's own occupation	Mandatory ground — landlord intends to occupy for own business or residence. Only available if landlord has owned the interest for at least 5 years before the termination date.

Compensation for non-fault grounds: where a new lease is refused solely on grounds (d), (e), (f), or (g), the tenant is entitled to statutory compensation. No compensation is payable where the ground is fault-based (a), (b), or (c).

10.3.8 Terms of the Renewed Lease

If the court orders a new lease, it will generally be in respect of the "holding" (the part currently occupied by the tenant). The maximum term the court can grant is 15 years. The rent will be the open market rent at the date of renewal, disregarding: the tenant's existing occupation; goodwill built up by the tenant; and any voluntary improvements carried out by the tenant during the existing term.

10.3.9 Compensation for Loss of Occupation

Occupancy Duration	Amount of Compensation
Less than 14 years at the holding	Rateable value of the holding × 1
14 years or more at the holding	Rateable value of the holding × 2

Any provision in a lease excluding or reducing this compensation right is void if the tenant has occupied the premises for a continuous period of 5 years or more.

Chapter 10 Summary — Key Points

✔ At common law, fixed-term leases end by effluxion of time; periodic leases end by notice to quit.

✔ The LTA 1954 (Part II) gives qualifying business tenants security of tenure — the right to remain and apply for a new lease.

✔ A protected tenancy cannot be terminated by a common law notice to quit — only the statutory methods apply.

✔ s 25 notice: landlord must serve between 6 and 12 months before the specified termination date.

✔ s 26 request: tenant must serve 6 to 12 months' notice; landlord must counter-notice within 2 months to oppose.

✔ Grounds (f) and (g) are mandatory but compensation is payable to the tenant where only fault-free grounds are established.

✔ The maximum term for a renewed lease ordered by the court is 15 years.

✔ Compensation = 1× rateable value (less than 14 years) or 2× rateable value (14+ years) — void if excluded when tenant has 5+ years' continuous occupation.

✔ Contracted-out leases exclude the Act's protection — parties must follow the statutory notice and declaration procedure before grant.

Chapter 10 — Practice Question

PRACTICE QUESTION 1

A solicitor acts for the landlord of a retail unit let for 10 years from 5 January 2015 (not contracted-out). It is now 1 May 2024. The landlord instructs the solicitor to serve a s 25 notice to terminate the lease on 5 January 2025. Can the solicitor comply?

A No — the landlord cannot terminate unless the tenant is in breach.

B No — it is too early to serve the s 25 notice.

C	No — it is too late to serve the s 25 notice.
D	Yes — the landlord can comply with the 1954 Act requirements if the notice is served today.
E	Yes — the 1954 Act allows a landlord to terminate in the last 6 months of the contractual term.

ANSWER & EXPLANATION

Option D is correct. The contractual expiry date is 4 January 2025. On 1 May 2024, the landlord is 8 months before the proposed termination date of 5 January 2025. The s 25 notice window is between 6 and 12 months before the termination date — 8 months is within this window. Options B and C are wrong. Option A is wrong — the 1954 Act allows termination regardless of breach; breach is relevant only to opposition under s 30(a), (b), or (c). Option E is wrong — the termination date cannot be earlier than the contractual expiry date under the common law.

QUICK REFERENCE — KEY DATES AND DEADLINES

Action	Deadline	Notes
SDLT payment (England)	**14 days**	*From effective date (usually completion)*
LTT payment (Wales)	**30 days**	*From effective date*
Land Registry application (registered land)	**30 working days**	*Within OS1 priority period*
First registration (unregistered land)	**2 months**	*From completion — legal estate voidable if missed*
Companies House charge registration	**21 days**	*From creation — void against creditors if missed*
Company search (seller)	**Day of completion**	*No priority period — must be current*
SDLT/LTT on lease grant (England/Wales)	**14/30 days**	*On premium AND NPV of rent*
s 25 Notice window	**6–12 months before termination date**	*Cannot predate contractual expiry*
s 26 Request window	**6–12 months before proposed start**	*Cannot predate contractual expiry*
Landlord counter-notice to s 26 request	**2 months**	*From receipt of s 26 request*
s 17 LTCA 1995 notice (fixed charges)	**6 months**	*From date debt arose — to pursue former tenants*
CRAR entry notice	**7 clear days**	*Before entry to seize goods*
CRAR sale notice	**7 clear days**	*Before sale of seized goods*