

6

Real property law

■ Lead-in

Discuss this question with a partner.

What does *real property* mean?

Reading 1

Property law is the general term used to describe law relating to the different forms of ownership in real property such as land, as distinct from personal property or moveable property, within the common-law legal system. In the civil-law system, there is a division between movable and immovable property. Movable property equates to personal property, while immovable property is roughly the same as real estate or real property and the associated rights and obligations attaching to the land. The main distinction in common-law systems is between real property (land and what is sited on land) and personal property (chattels).

1 Read the extract on the left to check your answer to the Lead-in. What is *real property* called in your country?

2 Match the words in the box to the definitions below.

easement estate freehold heir landlord leasehold
licence rent tenant

- 1 A type of interest in real property with different degrees of ownership recognized in law
- 2 An estate that is for a fixed period of time
- 3 The fullest form of right in land
- 4 A person who inherits property on another person's death
- 5 A person who leases land belonging to another person
- 6 The money paid by a lessee
- 7 A right enjoyed by someone over another's property; for example, a right of way
- 8 A power or authority passing no interest in the land but merely giving permission to use the land for a particular purpose
- 9 The owner of an estate or interest in property which has been leased to another party

3 a Discuss or research the meanings of the following expressions. Write a short definition for each in your own words.

- | | | |
|--------------|------------------------|-------------|
| 1 fee simple | 3 life estate | 5 reversion |
| 2 fee tail | 4 estate per autre vie | 6 remainder |

b Work in pairs. Read your definitions for your partner to guess what you are describing.

Reading 2

1 Discuss these questions with a partner.

- 1 What legal problems related to real property do you think commercial lawyers have to deal with most often? Why?
- 2 What information would you expect to find on the website of a legal firm that specializes in real property? What would make one website more attractive than another? Why?

2 Read the webpage below which advertises a lawyer's services. Complete the gaps using these sentences.

- a If you are evicting a tenant for the first time and the tenant is fighting the eviction with a lawyer, think twice.
- b They can even be useful at the initial stage in advising you on choosing tenants and how to avoid such claims further down the road.
- c Therefore the burden of proof is very high on landlords.
- d They want to make their business profitable, while at the same time avoiding liability.
- e If you are taken to court or if you have to settle, your liability can be much higher without legal representation.

If you are a property owner, then you can benefit from a lawyer's help.

Learn when you should consult a lawyer

When should a landlord hire a lawyer? Landlords are more or less the same as other types of business owner. (1)_____ In certain situations, it's a smart move to get in touch with a lawyer who will guide you on this. The following are some common scenarios that will benefit from a professional review or professional input.

Removing a tenant from your property

An eviction lawsuit can be quick and take less time than other civil-law actions. Landlords must follow detailed rules, from notifying the tenant of the lawsuit to filing the right papers and forms. Because it's the tenant's home, many judges might look more favourably on the tenant's submissions. (2)_____ Still, many landlords try to evict a tenant themselves, sometimes successfully and sometimes unsuccessfully. There are many occasions when you need to stop and think. (3)_____ If the tenant is an employee that you are firing, think twice. If you must comply with rent control or housing programme eviction rules, think twice. If the tenant is filing for bankruptcy, think twice.

If you are being investigated or sued for illegal discrimination then you can benefit from a lawyer's help

Landlords who do everything by the book and carefully comply with fair housing laws can still face accusations. You won't need a lawyer every time you are faced with these claims, but if a tenant is taking proceedings against you or a housing agency agrees to look into a claim, then you should definitely consult a lawyer. (4)_____ Another point to consider is that if you are involved in such a process and it becomes public, then it may well harm your business reputation. A lawyer can help you resolve the dispute, end the investigation or deal with the lawsuit as soon as possible. (5)_____

Language work

3 Match the verbs (1–8) with the phrases (a–h) to complete the collocations from the webpage.

- | | |
|-----------|-----------------------|
| 1 file | a liability |
| 2 take | b more favourably on |
| 3 look | c the right papers |
| 4 consult | d proceedings against |
| 5 resolve | e a lawyer |
| 6 notify | f into a claim |
| 7 avoid | g the dispute |
| 8 look | h the tenant |

4 Discuss these questions with a partner.

- 1 Why do you think some landlords might choose *not* to use a lawyer? Are there any advantages to this?
- 2 In your country, what is the procedure for evicting a tenant? Is the law generally more favourable to the tenant or the landlord?

Writing

- 1 Work in pairs. Write a short paragraph for your firm's website. Say why clients should choose to consult you about their real property problems. Use some of the expressions in the Useful language box.

USEFUL LANGUAGE

Here at ... , we ...
For many years, we ...
As a result, our experience enables us to ...
Our speciality is ...
You just have to look at our results!
Not only do we ... , but ...
We can cater for ...
Here are excerpts from testimonials from some of our clients: ...

- 2 Read your classmates' paragraphs. Which would you consult, and why?

Listening

- 1 Work in pairs. A woman, Mrs Grant, and her son want to lease a commercial premises to operate two businesses from. What will the lawyer have to consider when drawing up the commercial lease?

- 2  21 6.1 Listen to a phone conversation between Mrs Grant and her lawyer, Mr Hockney. Complete these notes.

- ★ Mrs Grant wants Mr Hockney to give her (1) _____ and to negotiate commercial leases.
- ★ After the conversation, she will send him the (2) _____.
- ★ Mrs Grant must decide the amount she wishes to give as a (3) _____.
- ★ Utilities can be paid for in two ways: (4) _____ or included (5) _____.
- ★ In the lease, there must be:
 - provision for ending (6) _____ if their businesses expand;
 - provision for (7) _____ if they have financial problems;
 - correct (8) _____ to allow one to sublet to the other if necessary.
- ★ Mr Hockney is going to:
 - (9) _____ a letter to send to the agent;
 - write to Mrs Grant (10) _____ what has been discussed.


- 3  21 6.1 Listen to the recording again or read the audio transcript (page 100) and find informal equivalents for these words and expressions in the conversation.

- | | |
|----------------------------|----------------------|
| 1 starting my own business | 8 conduct |
| 2 complement each other | 9 are unsuccessful |
| 3 contact me again | 10 written |
| 4 calculate | 11 explain again |
| 5 a portion of | 12 cease trading |
| 6 apportioned | 13 start the process |
| 7 equip | 14 get in touch |

- 4 Write the letter from Mr Hockney to Mrs Grant confirming the points covered in the conversation. Will you use the formal or informal equivalents? Why?

- Read the audio transcript (page 100) and make relevant notes.
- Group the points into paragraphs.
- Explain in the first paragraph why you are writing.
- Expand your notes in the main paragraphs.
- Conclude by clarifying what you both need to do next.
- Check your letter for content/organization/accuracy.

Language work

- 5  21 6.1 Work in pairs. Cover the Useful language box below. Mr Hockney used a sequence of phrases to introduce different points in his conversation. How many can you remember? Listen again or read the audio transcript (page 100) and write them down.

USEFUL LANGUAGE

Firstly, ...
We also need to consider ...
Also, ...
Another factor we need to consider ...
And, of course, ...
There's something else, too: ...
And – oh yes! – ...
We mustn't forget ...
And one more thing: ...
That's about it for the moment.

Speaking

Using some of the phrases in the Useful language box, prepare to talk for two minutes about what steps a person needs to take when buying a property in your country.

Reading 3

1 Work in pairs. What do these terms mean? Check your answers in a dictionary.

- 1 title insurance
- 2 risk management
- 3 financial backing
- 4 professional negligence
- 5 lending institution
- 6 single premium
- 7 standard tool

2 Read this messaging exchange between two lawyers and decide whether the statements below are true (T) or false (F).

George Burns says:

Hans, I remembered that you're an expert in title insurance. I've got a client who wants to buy an apartment complex in the Baltics – Latvia, to be precise. I remember you talking about title insurance, and from what I recall, you're a real expert at this – or at least much better informed than I am! Have you got a moment to help me out?

Hans Brecht says:

Sure, although I wouldn't say I was an expert! But I do have a fair amount of experience in that area. In Germany, we don't have any real need for it, as registration of the title is presumed to be a valid title. But in the Baltics, it's used quite a lot – in fact, I always recommend it to clients who are investing in any of the Baltic states. It's a risk-management product which means that buyers and lenders benefit from a clean ownership title. It's good, too, from a lawyer's perspective in that it means that we don't have to worry about professional negligence claims.

George Burns says:

That's great, Hans. What exactly does title insurance do?

Hans Brecht says:

OK. For a single premium, typically the insurance covers any loss that might arise from title flaws and other problems relating to real estate – you know, things like local authority regulations and land-use permits. Actually, when it was first introduced, or rather became available, the insurance only covered 'unknown defects', namely defects or problems in the title that would have been unknown to the buyer. This was a bit of a problem for the lending institutions, so now the insurance covers known and unknown defects. Now it's a standard tool used worldwide to insure title risks in real estate and it's widely used by lenders – so your client will find it much easier to get financial backing from a financial institution if he has it in place. Is that what you need?

George Burns says:

That's excellent – thanks, Hans! Any time I can return the favour, just let me know!

- 1 George's client has purchased property in Latvia.
- 2 Hans often uses his expertise in title insurance in Germany.
- 3 The people who profit most from title insurance are the sellers of property.
- 4 There has been a change to what is covered by title insurance.
- 5 Having title insurance has no effect on funding for property projects.

3 Complete these sentences using words from the messages. Try not to look back at the messages.

- 1 It's good, too, from a lawyer's _____.
- 2 It's easier to get financial backing if a client has this in _____.
- 3 From what I _____, you're a real expert!
- 4 Just let me know if I can _____ the favour.
- 5 Have you got a _____ to help me out?
- 6 I've got a _____ amount of experience.

Writing

1 Using the information from the messages on the opposite page and the notes below, write a letter to your client summarizing the benefits of getting title insurance. Use some of the phrases from the Useful language box.

USEFUL LANGUAGE

Not only can you ..., but ...

There's an added advantage in that ...

An important benefit is that ...

Another reason to seriously consider taking out title insurance is that ...

You won't lose out because ...

I should also inform you that ...

- Users of title insurance include investors, property developers, foreign banks, property sellers
- One-off premium, which can be adjusted in the event of an increase of the value of the property
- Cover for risks in respect of title issues
- Any litigation covered
- Indemnifies against a judgement up to the amount covered by the insurance
- Owner always guaranteed never to lose the amount insured because of any problems with the title
- Cost of insurance depends on size of the property deal and level of complication (usually between about 0.2% and 0.5% of the total value of the transaction)

Research

- 2 Work with a partner.** Research another topic related to real property you can advise your partner on, then role-play another message exchange between George Burns and Hans Brecht. George is returning the favour by giving Hans some information he needs. Exchange written messages. You are not allowed to talk!



'Hello, I'd like to apply for some property insurance.'

Reading: Part 6

Read this article from an online magazine about buying property in Spain and the questions. For each question, choose the best answer: A, B, C or D.

What are the pitfalls of buying property in Spain?

If you're thinking of buying property in Spain, be aware that the whole process can be fraught with pitfalls ... but that's only if you fail to take a few sensible precautions. All too often, foreign buyers plunge headlong into signing on the dotted line without giving enough consideration to the fine print and a host of factors that need to be taken into account when purchasing property in a country where the language, customs and bureaucracy are all unfamiliar.

Bizarrely, many foreigners are still buying Spanish properties without the benefit of legal advice – even though they would probably never consider being so foolhardy in their own country. The lure of all that sunshine, cheap wine and easy living just seems to go to the heads of otherwise fairly level-headed individuals.

Couples will quite happily sign an initial purchase agreement after a weekend inspection visit financed, or part-funded, by a developer or estate agent. It's only later that they realize they were subjected to unacceptably high-pressure (even aggressive) sales pitches, that the property they've committed themselves to is wholly inappropriate and that the location is entirely unsuitable for their needs.

Agents aren't normally the kind of people to warn you about the floods, fires and earthquake damage that your chosen area is particularly prone to. You think we're being unnecessarily alarmist? No, these are all problems that can and do occur on a

regular basis in certain parts of Spain, and to be forewarned is to be forearmed.

Fools can rush into a minefield of legal problems in Spain. Many foreigners have bought properties, only to find the vendor is not the true owner, the property comes with hefty debts on it or an apartment block is about to be constructed nearby totally blocking out your much-prized sea view. These things can and *do* happen on a regular basis.

Buyers who go for 'off-plan' properties (i.e. buying into a development before it has actually been built) have encountered all sorts of disasters. Sometimes developers go bust before the project is completed, sometimes the completion date is long overdue and the original specifications are not adhered to – you might even find the developer has already mortgaged the property before you even secured your option to buy!

There are a couple of simple steps you can take to guard against most problems that arise for foreign buyers. The most important thing is to hire a good, reputable lawyer who speaks your language and who specializes in the Spanish property market. He or she will protect you against all the potential legal problems that can arise. The second thing is to visit your chosen area several times, at different times of the year, before you commit to buying and, if at all possible, rent a property for at least a few weeks before you make your final decision.

TIP

Read the text first so that you understand the general idea. Then look at the questions. Sometimes you may have an idea of the answer before looking at the options.

- 1 The people who encounter problems buying property in Spain ...
 - A ... have often had similar experiences in their own countries.
 - B ... usually use the wrong lawyer.
 - C ... would not usually make bad decisions when buying property.
 - D ... don't consider the legal aspects.
- 2 Houses in Spain are often sold ...
 - A ... through high-powered selling techniques.
 - B ... without being inspected carefully enough.
 - C ... after buyers have paid a small deposit.
 - D ... to buyers who don't really want the commitment.
- 3 According to the article, ...
 - A ... some reports exaggerate the problems faced by new owners.
 - B ... estate agents and developers sometimes lie about the dangers.
 - C ... buyers are usually made aware of potential problems.
 - D ... it is better for buyers to have more information about possible dangers.
- 4 What sort of legal problems can buyers face?
 - A It is difficult to identify the real owner of the property.
 - B The buyer cannot sell the property on.
 - C A search doesn't reveal future developments.
 - D The buyer's level of debt can increase rapidly.
- 5 When buying uncompleted developments, ...
 - A ... buyers should check out the developers' records.
 - B ... buyers can change their minds regarding building specifications.
 - C ... buyers sometimes need to take out a second mortgage.
 - D ... there's a risk that the developers may not keep to the deal.
- 6 When buying property abroad, it's important to ...
 - A ... speak the language.
 - B ... hire a specialist lawyer.
 - C ... do a lot of research.
 - D ... consider renting instead of buying.

Speaking: Part 3

TIP


In this part of the test, you are expected to interact, not take turns to give your ideas. It's important to ask what your partner thinks and comment on his/her ideas.

A client has a problem with a residential tenant. He suspects that the tenant is subletting part of the property to a third party, who is operating a business. Advise your client about the situation.

Discussion points

- The difficulty of proving that this is happening
- The terms of the lease
- Advisability of settling the dispute outside court
- Possible legal steps to take

Listening: Part 2

 **22** 6.2 You are going to hear a conversation between Brigitte Trant, a helpline advisor, and Thomas Maine, who is planning to set up a business abroad. Choose the best answer: A, B or C.

- 1 Thomas needs advice on ...
 - A ... which aspects of the transaction he needs a lawyer for.
 - B ... finding a suitable lawyer to represent him.
 - C ... how to protect his interests once the business is operating.
- 2 According to the advisor, how many lawyers does he need?
 - A She doesn't give a definite answer.
 - B Several specialist lawyers
 - C One good lawyer with a range of experience
- 3 How can some societies help him?
 - A They can recommend the best lawyers.
 - B They can research the lawyers for him.
 - C They can give some information about suitable lawyers.
- 4 What should Thomas consider when choosing a lawyer?
 - A They look knowledgeable.
 - B They've been in the country for a long time.
 - C They communicate well with people.
- 5 The advisor says that he shouldn't use a lawyer ...
 - A ... who doesn't reveal his/her fees.
 - B ... who advertises in property sale magazines.
 - C ... recommended by someone involved in the transaction.

Writing: Part 2

TIP

Plan your memo first by making notes for the different paragraphs. Sometimes writing notes can bring ideas and clarify your thoughts.

You are a senior partner in a law firm that specializes in real property law. You want to extend the firm's website. Write a memo to colleagues asking them to submit articles on different aspects of real property law for inclusion on the website.

- Explain the purpose of the articles
- Outline topic areas for the articles
- Express preference for certain areas, with reasons
- Advise on length, style and schedule for submissions

Write your answer in 200–250 words.