



LPC BUDDY

Property Law & Practice
2023 / 24



THE DEFINITIVE,
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STUDY GUIDE FOR THE LPC

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Real Estate / Property Law & Practice

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Colour Coding Guide	<ul style="list-style-type: none"> ❖ Blue Text – Reference to statutes and case law. ❖ Green Text – Reference to textbook¹ paragraphs, workshop tasks² and other notes in LPC Buddy. ❖ Orange Text – Forms. ❖ Red Text – SCPC References. ❖ Purple Text – Reference to Professional Conduct Rules and Principles.
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¹ Textbook references are to the CLP Legal Practice Guides by CLP Publishing.

² References to Workshop tasks are to University of Law workshop tasks (which may be adopted by other LPC institutions). The content and structure of Workshops is subject to change at short notice and so task references should be treated as a general guide only.

1. Taking Instructions



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Property Law Basics

❖ *Property Law & Practice, Chapter 3*

Overview	<ul style="list-style-type: none"> ❖ Property Law & Practice on the LPC is concerned with the <i>practical</i> side of Property Law; principally students learn in this module how to convey Freehold and Leasehold property. ❖ Whilst not specifically examinable in its own right, students need to have a basic understanding of the fundamental academic concepts of Land Law, which will be required to fully understand topics on the Property Law & Practice module.
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Term	Explanation				
Freehold	❖ A right of absolute ownership of land , which is indefinite .				
Leasehold	<ul style="list-style-type: none"> ❖ A right to own land for a fixed period of time, e.g., 999 years. ❖ It is granted by way of a legal agreement with the freeholder. ❖ The property reverts to the freehold owner of the land after the lease period expires or otherwise terminates. ❖ Parts of the land may be retained by the freeholder; for example, common areas in blocks of flats, or structural elements of a building. 				
Registered Land vs Unregistered Land	<ul style="list-style-type: none"> ❖ Property rights in England and Wales are either: <ul style="list-style-type: none"> ➢ Registered: Meaning the land has been registered with HM Land Registry, and details of the Property will appear on the Land Register¹ and are available for public inspection. ➢ Unregistered: All other land that has not yet been registered with HM Land Registry will be “unregistered”. ❖ It has been compulsory to register land on the happening of certain “trigger events” (such as a sale of the land) since 1925. As a result, Registered Land is now thought to make up more than 88% of the land mass of England and Wales². ❖ For this reason, whilst encountering unregistered land in practice does happen, it is comparatively rare, and accordingly, the LPC does not normally focus on the procedure to convey unregistered land³. 				
Easements <i>Property Law & Practice, 3.5</i>	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="background-color: #e0e0e0;">What are they?</td> <td>❖ An easement is a right that one landowner has to do something, or prevent something from happening, on land belonging to somebody else.</td> </tr> <tr> <td style="background-color: #e0e0e0;">Examples</td> <td>❖ A right of way: this allows the person with the benefit of the easement to travel over another person’s land, which is burdened by the easement. The person with the burden of a right of way will</td> </tr> </table>	What are they?	❖ An easement is a right that one landowner has to do something, or prevent something from happening, on land belonging to somebody else .	Examples	❖ A right of way : this allows the person with the benefit of the easement to travel over another person’s land, which is burdened by the easement. The person with the burden of a right of way will
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¹ <https://www.gov.uk/search-property-information-land-registry>

² <https://www.gov.uk/government/organisations/land-registry/about>

³ This is the approach of the University of Law. Other institutions may take a slightly different approach.

		<p>be unable to cause a “substantial interference” with this right, for example, by building across it.</p> <ul style="list-style-type: none"> ❖ A right of light: This entitles the person with the benefit of the easement to receive light through defined apertures (doors and windows), across land which is burdened by the easement. ❖ It follows that the existence of an easement can limit what the person with the burden can do with their land. For example, a right of light may prevent them from building high structures if these block light into the apertures.
	<p>Benefit & Burden</p>	<ul style="list-style-type: none"> ❖ The land with the <i>benefit of the easement</i> (the land that is entitled to exercise the right), is known as the “dominant tenement”. ❖ The land with the <i>burden of the easement</i> (the land that is subject to the right), is known as the “servient tenement”.
	<p>How are they created?</p>	<ul style="list-style-type: none"> ❖ Easements can be created: <ul style="list-style-type: none"> ➢ Expressly (i.e., in writing, on the sale of land) ➢ Impliedly (e.g., by virtue of necessity), or ➢ By long user (prescription – requires 20 years uninterrupted use).
<p>Covenants</p> <p><i>Property Law & Practice, 3.6</i></p>	<p>What are they?</p>	<ul style="list-style-type: none"> ❖ A covenant is an enforceable promise. ❖ They can be promises to either <i>do something</i> (a positive covenant), or <i>avoid doing something</i> (a negative covenant). ❖ A positive covenant: requires a person to do something, e.g., to paint a fence every 5 years. ❖ A restrictive covenant: prevents a person from doing something, e.g., the land must not be used for offices.
	<p>Benefit / Burden</p>	<ul style="list-style-type: none"> ❖ Covenants have both a “benefit” and a “burden”. <ul style="list-style-type: none"> ➢ The burden of a covenant: this is the obligation to do something, or avoid doing something. ➢ The benefit of a covenant: this is the benefit of the promise, the owner of land which has the benefit of a covenant will be entitled to sue the landowner that is subject to the burden, in the event that the promise is broken.
	<p>Does the burden of the covenant “run with the land”?</p>	<ul style="list-style-type: none"> ❖ Positive covenants = <ul style="list-style-type: none"> ➢ The burden of a positive covenant <u>DOES NOT RUN WITH THE LAND.</u> ➢ I.e., a <i>positive obligation</i> to do something will not, as of right, bind a subsequent purchaser of the land.

		<ul style="list-style-type: none"> ❖ <u>Restrictive covenants =</u> <ul style="list-style-type: none"> ➤ The burden of a restrictive covenant can run with the land if the rule in Tulk v Moxhay (1848) 2 Ph 774 applies. ➤ For the purposes of the LPC, all that is required is to understand that the consequence of this is that the burden of a restrictive covenant over registered freehold land will always run with the land <i>if the restrictive covenant appears on the Register of Title.</i> ➤ So, if you are acting for a purchaser of registered land and you know, from the Title Register, that that land has a restrictive covenant to prevent its use as offices, you know that your client will be bound by that restriction, and will need to be advised accordingly as to the limitation on their use. 						
<p>Co-Ownership</p> <p>Property Law & Practice, 3.8</p>	<ul style="list-style-type: none"> ❖ Co-owned land will always be held on trust. The co-owners hold the land as trustees for each other as beneficiaries. ❖ There are two types of trust of land in English Law: 	<table border="1"> <tr> <td data-bbox="359 965 528 1447"> <p><u>Joint Tenancy</u></p> </td> <td data-bbox="528 965 1485 1447"> <ul style="list-style-type: none"> ❖ Both tenants own 100% of the property jointly. They do not hold distinct shares. ❖ In the event of a sale, the joint tenants will split the proceeds of the property evenly between them. ❖ When one joint tenant dies, the remaining tenant automatically inherits the deceased’s share (this is known as “survivorship”). ❖ This means that, if one tenant dies, a purchaser can deal solely with the one remaining owner (unlike with a Tenancy in Common, see below). </td> </tr> <tr> <td data-bbox="359 1447 528 1767"> <p><u>Tenancy in Common</u></p> </td> <td data-bbox="528 1447 1485 1767"> <ul style="list-style-type: none"> ❖ By contrast with a joint tenancy, tenants in common each own distinct shares in the Property. ❖ E.g., Person A owns 30%, and Person B owns 70%. ❖ When a tenant in common dies, their share of the property will pass under their will or pursuant to the intestacy rules (if there is no will). </td> </tr> <tr> <td data-bbox="359 1767 528 2085"> <p><u>Form A Restriction</u></p> </td> <td data-bbox="528 1767 1485 2085"> <ul style="list-style-type: none"> ❖ Where co-owners wish to hold the land as Tenants in Common, the Land Registry will place a restriction in the Proprietorship Register on the register of the title, known as a “Form A Restriction”. This states: <p><i>“No disposition by a sole proprietor of the registered estate (except a trust corporation) under which capital money arises is to be registered unless authorised by an order of the court”.</i></p> </td> </tr> </table>	<p><u>Joint Tenancy</u></p>	<ul style="list-style-type: none"> ❖ Both tenants own 100% of the property jointly. They do not hold distinct shares. ❖ In the event of a sale, the joint tenants will split the proceeds of the property evenly between them. ❖ When one joint tenant dies, the remaining tenant automatically inherits the deceased’s share (this is known as “survivorship”). ❖ This means that, if one tenant dies, a purchaser can deal solely with the one remaining owner (unlike with a Tenancy in Common, see below). 	<p><u>Tenancy in Common</u></p>	<ul style="list-style-type: none"> ❖ By contrast with a joint tenancy, tenants in common each own distinct shares in the Property. ❖ E.g., Person A owns 30%, and Person B owns 70%. ❖ When a tenant in common dies, their share of the property will pass under their will or pursuant to the intestacy rules (if there is no will). 	<p><u>Form A Restriction</u></p>	<ul style="list-style-type: none"> ❖ Where co-owners wish to hold the land as Tenants in Common, the Land Registry will place a restriction in the Proprietorship Register on the register of the title, known as a “Form A Restriction”. This states: <p><i>“No disposition by a sole proprietor of the registered estate (except a trust corporation) under which capital money arises is to be registered unless authorised by an order of the court”.</i></p>
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	<ul style="list-style-type: none"> ❖ This alerts third parties dealing with the land that a trust of land is in existence, meaning that any sale of the legal estate <u>will need to be effected by two trustees.</u> ❖ If one tenant in common dies and the surviving co-owner wishes to sell, they will <u>need to appoint a second trustee before completion of the transaction</u> (because the sale must be effected by two trustees). ❖ If there is <u>no restriction on the register, the buyer is entitled to assume that the co-owners were joint tenants,</u> and will take a good title from the survivor.
<p><u>Mortgages</u></p> <p><i>Property Law & Practice 3.9</i></p>	<ul style="list-style-type: none"> ❖ A mortgage is a legal agreement where a bank lends money to the borrower, in exchange for which the borrower agrees to: <ul style="list-style-type: none"> ➢ <u>Repay</u> the loan; ➢ Pay <u>interest</u> on the loan; and ➢ Grant the lender <u>title to their property as security</u> until the debt is discharged. ❖ The mortgage must be <u>registered</u> as a registered charge in the charges register of the borrower's title. ❖ When acting for a buyer, we need to bear in mind that the mortgage will be <u>inherited by the buyer</u> unless the seller takes specific steps to <u>discharge this</u> before sale. ❖ The lender retains a <u>power to sell</u> the property in the event of default on the loan by the borrower, subject to certain conditions.
<p><u>Commercial vs Residential Conveyancing</u></p>	<ul style="list-style-type: none"> ❖ This guide is written primarily following the structure of the LPC at the University of Law which focuses on <i>commercial property transactions</i>, rather than residential conveyancing.

Overview of the Conveyancing Process

❖ [Property Law & Practice, 2.2](#)

<p>Overview</p>	<ul style="list-style-type: none"> ❖ The below sets out, by way of background, an overview of the conveyancing process. ❖ The <u>Property Law & Practice</u> module looks at each stage in detail, firstly for Freehold Land, and secondly for Leasehold Land. 			
<p>Step 1 – Marketing the Property</p> <p><u>Property Law & Practice, 2.2.1</u></p>	<ul style="list-style-type: none"> ❖ The seller puts the property on the market and looks for a buyer, normally with the help of an estate agent. ❖ When a buyer is found and a price is agreed upon, the conveyancing process can begin. ❖ Although the buyer and seller have reached an agreement in principle, they have not yet entered into a legally binding relationship. Either party can walk away at any time. 			
<p>Step 2 – Taking Instructions</p> <p><u>Property Law & Practice, 2.2.2</u></p>	<ul style="list-style-type: none"> ❖ The solicitor takes the client’s instructions and verifies the client’s identity (to comply with Anti-Money Laundering Regulations). 			
<p>Step 3 – Pre-Contract Stage</p> <p><u>Property Law & Practice, 2.2.3</u></p>	<p>(1) The buyer and seller’s solicitor investigate title.</p> <p><u>Property Law & Practice, 2.2.3.1</u></p>	<ul style="list-style-type: none"> ❖ The buyer’s solicitor will investigate the seller’s title to the property. ❖ The <i>title</i> to the land is what a seller actually sells in a property transaction. For registered land, title is investigated by reviewing documents available from the Land Registry, principally the Register of Title, and Title Plan. See notes on <u>Investigation of Title</u>. ❖ It is of essential importance that a buyer’s solicitor investigates title in order to: <ul style="list-style-type: none"> ➤ Ensure that the seller is able to transfer what they are contracting to sell, and ➤ Identify whether there are any defects or problems with the land which could adversely affect the interests of the buyer, and on which they need to be advised. <table border="1" data-bbox="491 1753 1469 2042"> <tr> <td data-bbox="496 1760 635 1839"> <p><u>Caveat Emptor</u></p> </td> <td data-bbox="635 1760 1465 2042"> <ul style="list-style-type: none"> ❖ Normally, it falls to a <i>buyer</i> to satisfy themselves that a property is free from defects and / or issues. ❖ The maxim of “<i>caveat emptor</i>” applies to conveyancing, which means “let the buyer beware”. This means that it is for the buyer to make sure of their bargain. </td> </tr> </table>	<p><u>Caveat Emptor</u></p>	<ul style="list-style-type: none"> ❖ Normally, it falls to a <i>buyer</i> to satisfy themselves that a property is free from defects and / or issues. ❖ The maxim of “<i>caveat emptor</i>” applies to conveyancing, which means “let the buyer beware”. This means that it is for the buyer to make sure of their bargain.
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		<ul style="list-style-type: none"> ❖ The consequence of this is that a buyer will have no redress against a seller if they discover, subsequent to the purchase, issues with the property which <u>the buyer could have discovered prior to completion</u> (even if the seller knew of these and stayed silent). The only obligation on the seller is to <u>honestly disclose information</u> that they are asked for by the buyer. ❖ The buyer thus has the responsibility to <u>find out all of the information that they need</u> about the property before committing to the purchase. <ul style="list-style-type: none"> ❖ It is also important for a <i>seller's solicitor</i> to carry out an investigation because the seller prepares the contract of sale. ❖ The contract must <u>reflect what the seller is actually selling</u>, and the seller must also be able to <u>anticipate and deal with any problems which might be revealed by the title</u>. <table border="1" data-bbox="491 920 1469 1281"> <tr> <td data-bbox="491 920 662 1281"><u>Certificate of Title</u></td> <td data-bbox="662 920 1469 1281"> <ul style="list-style-type: none"> ❖ When title has been investigated, the <u>buyer's or seller's solicitor may need to prepare a Certificate of Title</u>, which is a report on the property given to the buyer's lender. ❖ The intention of this report is to enable the lender to <u>avoid carrying out their own title investigation</u> and unnecessarily duplicating work (see notes on <i>Drafting Certificates of Title</i>). </td> </tr> </table>	<u>Certificate of Title</u>	<ul style="list-style-type: none"> ❖ When title has been investigated, the <u>buyer's or seller's solicitor may need to prepare a Certificate of Title</u>, which is a report on the property given to the buyer's lender. ❖ The intention of this report is to enable the lender to <u>avoid carrying out their own title investigation</u> and unnecessarily duplicating work (see notes on <i>Drafting Certificates of Title</i>).
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	<p><u>(2) The buyer's solicitor conducts searches.</u></p> <p><i>Property Law & Practice, 2.2.3.2</i></p>	<ul style="list-style-type: none"> ❖ Due to the principle of <i>caveat emptor</i>, it falls to the buyer to discover as much information about the property as they can in order to protect themselves before entering into the contract. ❖ The buyer's solicitor will, therefore, normally <u>conduct searches</u> before the buyer enters into the contract. ❖ These essentially amount to <u>requests for certain information from (a) the seller, and public bodies such as (b) the Local Authority, and (c) the Land Registry</u> to discover as much information about the property as they can. ❖ See notes on <i>Searches</i>. 		
<p><u>Step 4- Exchange of Contracts</u></p> <p><i>Property Law &</i></p>		<ul style="list-style-type: none"> ❖ As title is being investigated and searches conducted, the <u>draft contract will be prepared</u>, by convention, by the seller's solicitor. ❖ It is usual in sales of land for contracts to be prepared in <u>two identical parts</u>. One is signed by the buyer, the other by the seller. 		

<p><u>Practice, 2.2.4</u></p>	<ul style="list-style-type: none"> ❖ A binding contract then only comes into existence when <u>the two respective parts of the contract are “exchanged” between the buyer and seller.</u> ❖ Historically, this would take place in person. However, in modern times, the most common method is that contracts are exchanged by way of <u>telephone.</u> ❖ This presents issues in that neither party is present to check that (a) the other party has signed the contract, or (b) that the other’s contract is in the agreed form. ❖ Accordingly, the parties <u>make use of solicitors’ undertakings set out in formulae issued by the Law Society.</u> We look at Law Society <u>Formula B</u> on the LPC. ❖ See notes on <u>Exchange of Contracts.</u> 												
<p>Step 5 - Pre-Completion Steps</p> <p><u>Property Law & Practice, 2.2.5</u></p>	<ul style="list-style-type: none"> ❖ After exchange, both parties need to carry out a number of <u>preparatory steps</u> to ensure that the next step, “completion”, proceeds smoothly. ❖ This includes: <ul style="list-style-type: none"> ➤ <u>Drafting the Transfer Deed (TR1).</u> ➤ Sending a <u>Request for Completion Information</u> to the seller. ➤ Engrossing and <u>Executing the Transfer Deed.</u> ➤ Making <u>Pre-Completion Searches.</u> ➤ Ensuring the buyer’s solicitor is <u>in funds.</u> ➤ <u>Preparing any undertakings</u> necessary on completion (for instance, from the seller’s solicitor to discharge the seller’s mortgage on completion). ➤ Addressing various <u>practical issues.</u> ❖ See notes on <u>Pre-Completion Steps Checklist.</u> 												
<p>Step 6 – Completion</p> <p><u>Property Law & Practice, 2.2.6</u></p>	<ul style="list-style-type: none"> ❖ Completion is the final step in a conveyance. It is the point where legal title passes in unregistered land. ❖ For registered land, legal <u>title does not pass</u> to the buyer <u>until the buyer is registered</u> at HM Land Registry. ❖ The effect of Completion in registered land is, therefore, more limited; it will <u>“merge” the contract with the Transfer Deed where they cover the same ground.</u> 												
<p>Step 7 - Post-Completion Admin</p> <p><u>Property Law & Practice, 2.2.7</u></p>	<ul style="list-style-type: none"> ❖ Both parties must undertake final administration following completion, including: <table border="1" data-bbox="300 1615 1484 2094"> <thead> <tr> <th data-bbox="300 1615 890 1659">The seller’s solicitor must...</th> <th data-bbox="895 1615 1484 1659">The buyer’s solicitor must...</th> </tr> </thead> <tbody> <tr> <td data-bbox="300 1666 890 1749">❖ <u>Discharge the seller’s mortgage</u> on receipt of completion monies.</td> <td data-bbox="895 1666 1484 1749">❖ Pay <u>Stamp Duty Land Tax (SDLT).</u></td> </tr> <tr> <td data-bbox="300 1756 890 1839">❖ Send any remaining <u>proceeds of sale to their client.</u></td> <td data-bbox="895 1756 1484 1839">❖ Complete the <u>Mortgage Deed.</u></td> </tr> <tr> <td data-bbox="300 1845 890 1928">❖ Send the <u>bill</u> to the client, if this has not already been done.</td> <td data-bbox="895 1845 1484 1928">❖ Account for any <u>bridging finance.</u></td> </tr> <tr> <td></td> <td data-bbox="895 1935 1484 2018">❖ <u>Register the buyer</u> as the legal owner with the Land Registry.</td> </tr> <tr> <td></td> <td data-bbox="895 2024 1484 2094">❖ Once registered, check the Register Entries by <u>confirming that the Title</u></td> </tr> </tbody> </table>	The seller’s solicitor must...	The buyer’s solicitor must...	❖ <u>Discharge the seller’s mortgage</u> on receipt of completion monies.	❖ Pay <u>Stamp Duty Land Tax (SDLT).</u>	❖ Send any remaining <u>proceeds of sale to their client.</u>	❖ Complete the <u>Mortgage Deed.</u>	❖ Send the <u>bill</u> to the client, if this has not already been done.	❖ Account for any <u>bridging finance.</u>		❖ <u>Register the buyer</u> as the legal owner with the Land Registry.		❖ Once registered, check the Register Entries by <u>confirming that the Title</u>
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		<p><u>Information Document received from the Land Registry is correct.</u></p> <ul style="list-style-type: none">❖ <u>Register the Mortgage</u> at Companies House.❖ <u>Send the bill</u> to the client, if this has not already been done.
<p>❖ See notes on <i>Post-Completion Steps</i>.</p>		



Conduct Issues in Conveyancing

❖ [Property Law & Practice, Chapter 5](#)

Overview	<ul style="list-style-type: none"> ❖ Professional Conduct is a pervasive topic on the LPC, meaning that questions relating to it can come up in any LPC Core Module. ❖ The below table provides a summary of the common professional conduct issues that arise in the <u>Property Law & Practice</u> module.
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Acting for Multiple Parties

<p>Acting for Both Seller and Buyer¹</p> <p><u>Property Law & Practice, 5.2</u></p>	<ul style="list-style-type: none"> ❖ Summary: We should not generally do this. 			
	<table border="1" style="width: 100%;"> <tr> <td style="background-color: #e0e0e0;">Overview</td> <td> <ul style="list-style-type: none"> ❖ <u>Principle 7</u>: we must act in the best interests of each client. ❖ <u>Para 6.2 of the SRA Codes</u>: supports this <u>Principle</u>; it sets down the basic rule that a solicitor cannot act if there is a client conflict or a significant risk of a client conflict. ❖ “Client Conflict” is defined in the <u>SRA Glossary</u> as “<i>a situation where your separate duties to act in the best interests of two or more clients conflict</i>”. ❖ Whilst the <u>SRA Codes</u> do not <i>explicitly prohibit</i> acting for both seller and buyer, doing so will likely breach <u>para 6.2</u>: <ul style="list-style-type: none"> ➤ Even in a situation where both parties agree on a deal at the outset, <u>there is still the risk of a conflict coming to light</u>. ➤ For example, as a result of the searches and enquiries which may cause a buyer and seller to come into conflict because, for instance, the buyer may want to reduce the purchase price, or insert conditionality clauses into the contract. </td> </tr> <tr> <td style="background-color: #e0e0e0;">Assessing the Risk of a Conflict</td> <td> <ul style="list-style-type: none"> ❖ It is up to the firm to <u>assess the risk of a conflict</u> and whether it is appropriate to act. ❖ In considering the risk, you should bear in mind: <ul style="list-style-type: none"> ➤ <u>Law Society Guidance on Conflict of Interests in Conveyancing²</u>: “<i>there is a high risk of a conflict of interest if you act for both a buyer and a seller</i>”. ➤ <u>Complexity</u>: The more complex the transaction, the greater the risk of a conflict. </td> </tr> </table>	Overview	<ul style="list-style-type: none"> ❖ <u>Principle 7</u>: we must act in the best interests of each client. ❖ <u>Para 6.2 of the SRA Codes</u>: supports this <u>Principle</u>; it sets down the basic rule that a solicitor cannot act if there is a client conflict or a significant risk of a client conflict. ❖ “Client Conflict” is defined in the <u>SRA Glossary</u> as “<i>a situation where your separate duties to act in the best interests of two or more clients conflict</i>”. ❖ Whilst the <u>SRA Codes</u> do not <i>explicitly prohibit</i> acting for both seller and buyer, doing so will likely breach <u>para 6.2</u>: <ul style="list-style-type: none"> ➤ Even in a situation where both parties agree on a deal at the outset, <u>there is still the risk of a conflict coming to light</u>. ➤ For example, as a result of the searches and enquiries which may cause a buyer and seller to come into conflict because, for instance, the buyer may want to reduce the purchase price, or insert conditionality clauses into the contract. 	Assessing the Risk of a Conflict
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¹ [Workshop 1, Task 1](#)

² <https://www.lawsociety.org.uk/en/topics/property/conflict-of-interests-in-conveyancing>

		<ul style="list-style-type: none"> ➤ The likelihood of negotiations: The more likely negotiations are, the greater the risk of a conflict. This is a risk especially where the transaction is high value. ➤ The bargaining power of the parties and any particular vulnerability of a party: it is more difficult to act in the best interests of both clients if one has far greater bargaining power than the other. 				
	<p><u>If we determine that there is a client conflict / risk of a conflict.</u></p>	<ul style="list-style-type: none"> ❖ It is still possible to act for two clients even where Para 6.2 is breached if the circumstances of para 6.2(a) or 6.2(b) apply: <table border="1" data-bbox="506 567 1497 1881"> <tr> <td data-bbox="506 567 721 1680"> <p>Para 6.2(a) <u>“Substantially Common Interest”</u></p> </td> <td data-bbox="721 567 1497 1680"> <ul style="list-style-type: none"> ❖ The clients must have a “substantially common interest” (para 6.2(a)) and the circumstances of para 6.2(i)-(iii) must be satisfied. ❖ A “<i>substantially common interest</i>” is defined in the SRA Glossary as a situation where “<i>there is a clear common purpose between the clients and a strong consensus on how it is to be achieved”.</i> ❖ It can be argued that a seller and buyer have a substantially common interest as they both have a common purpose in effecting the sale of the property to the buyer. ❖ However, the 2011 version of the SRA Code indicated that the SRA did not consider that a seller and buyer had a substantially common interest: <ul style="list-style-type: none"> ➤ The definition of “<i>substantially common interest</i>” in the 2011 Code required any client conflict to be “peripheral” to the common purpose between the seller and buyer. ➤ It was previously thought that this would only occur in very rare circumstances. ➤ Despite this wording having been removed from the 2019 Codes of Conduct, it is unlikely that the SRA would take a different view now. </td> </tr> <tr> <td data-bbox="506 1680 721 1881"> <p>Para 6.2(b) <u>“Competing for the Same Objective”</u></p> </td> <td data-bbox="721 1680 1497 1881"> <ul style="list-style-type: none"> ❖ Para 6.2(b) allows a solicitor to act where clients are competing for the same objective. ❖ This does not apply when acting for a seller and buyer as they are not “competing” for the same asset. </td> </tr> </table> 	<p>Para 6.2(a) <u>“Substantially Common Interest”</u></p>	<ul style="list-style-type: none"> ❖ The clients must have a “substantially common interest” (para 6.2(a)) and the circumstances of para 6.2(i)-(iii) must be satisfied. ❖ A “<i>substantially common interest</i>” is defined in the SRA Glossary as a situation where “<i>there is a clear common purpose between the clients and a strong consensus on how it is to be achieved”.</i> ❖ It can be argued that a seller and buyer have a substantially common interest as they both have a common purpose in effecting the sale of the property to the buyer. ❖ However, the 2011 version of the SRA Code indicated that the SRA did not consider that a seller and buyer had a substantially common interest: <ul style="list-style-type: none"> ➤ The definition of “<i>substantially common interest</i>” in the 2011 Code required any client conflict to be “peripheral” to the common purpose between the seller and buyer. ➤ It was previously thought that this would only occur in very rare circumstances. ➤ Despite this wording having been removed from the 2019 Codes of Conduct, it is unlikely that the SRA would take a different view now. 	<p>Para 6.2(b) <u>“Competing for the Same Objective”</u></p>	<ul style="list-style-type: none"> ❖ Para 6.2(b) allows a solicitor to act where clients are competing for the same objective. ❖ This does not apply when acting for a seller and buyer as they are not “competing” for the same asset.
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	<p><u>Conclusion</u></p>	<ul style="list-style-type: none"> ❖ Only in very exceptional circumstances will it be acceptable to act for both seller and buyer. 				

	<ul style="list-style-type: none"> ❖ There will normally be a <u>significant risk of a client conflict</u> and: <ul style="list-style-type: none"> ➤ It is unlikely that the seller and buyer will have a “substantially common interest”; and ➤ A seller and buyer are not “competing for the same objective”. ❖ Even if a solicitor feels they could act having regard to the Codes, they must bear in mind that if a conflict arises part-way through the transaction, they must cease acting and the clients will therefore have to go through disruption and additional expense in changing solicitors. 		
<p>Acting for Joint Buyers</p> <p>Property Law & Practice, 5.3</p>	<p>❖ Summary: This is acceptable.</p> <p>❖ The solicitor must have regard to whether a conflict of interest exists, however, if both parties are seeking to purchase a property on the same terms this is unlikely to be the case.</p>		
<p>Acting for a Borrower and a Lender³</p> <p>Property Law & Practice, 5.4</p>	<p>❖ Summary: this is unlikely to be acceptable unless the mortgage is on standard terms (i.e., the terms are non-negotiable).</p> <table border="1" data-bbox="316 976 1518 1808"> <tr> <td data-bbox="316 976 535 1808"> <p>Overview</p> </td> <td data-bbox="535 976 1518 1808"> <ul style="list-style-type: none"> ❖ Principle 7: must act in the best interests of each client. ❖ Para 6.2: supports this Principle; it sets down the basic rule that a solicitor cannot act if where there is a conflict of interest or a significant risk of one. ❖ A “<i>conflict of interest</i>” is defined in the SRA Glossary as “<i>a situation where your separate duties to act in the best interests of two or more clients in relation to the same or a related matters conflict</i>”. ❖ Acting for both borrower and lender would potentially give rise to a conflict of interest under para 6.2 as we would owe separate conflicting duties to act in the best interests of both the borrower and lender in relation to the same matter. ❖ This is particularly the case where the terms of the mortgage are not standard but are negotiable, as this will inevitably mean the parties will have competing aims as to the best outcome to be negotiated (the borrower, for instance, will want a lower interest rate, the lender, a higher one). </td> </tr> </table>	<p>Overview</p>	<ul style="list-style-type: none"> ❖ Principle 7: must act in the best interests of each client. ❖ Para 6.2: supports this Principle; it sets down the basic rule that a solicitor cannot act if where there is a conflict of interest or a significant risk of one. ❖ A “<i>conflict of interest</i>” is defined in the SRA Glossary as “<i>a situation where your separate duties to act in the best interests of two or more clients in relation to the same or a related matters conflict</i>”. ❖ Acting for both borrower and lender would potentially give rise to a conflict of interest under para 6.2 as we would owe separate conflicting duties to act in the best interests of both the borrower and lender in relation to the same matter. ❖ This is particularly the case where the terms of the mortgage are not standard but are negotiable, as this will inevitably mean the parties will have competing aims as to the best outcome to be negotiated (the borrower, for instance, will want a lower interest rate, the lender, a higher one).
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³ [Workshop 1, Task 2, Question \(a\)](#)

		<ul style="list-style-type: none"> ❖ Law Society Guidance issued in June 2020⁴ indicates that it may be acceptable to act where: <ul style="list-style-type: none"> ➤ The mortgage is on standard terms; ➤ A “significant part of” the lender’s activities consist of lending; ➤ The mortgaged property is the borrower’s private residence; and ➤ The certificate of title required by the lender is in the form approved by the Law Society and UK Finance. ❖ However, the terms of a mortgage in <i>commercial transactions</i> will rarely be standard (they are generally negotiable) and so a client conflict is likely to arise. 				
	<p><u>Exceptions</u></p>	<ul style="list-style-type: none"> ❖ It is still possible to act for two clients even where Para 6.2 is breached if the circumstances of para 6.2(a) or 6.2(b) apply: <table border="1" data-bbox="548 844 1494 1879"> <tr> <td data-bbox="548 844 763 1759"> <p>Para 6.2(a) <i>“Substantially Common Interest”</i></p> </td> <td data-bbox="763 844 1494 1759"> <ul style="list-style-type: none"> ❖ The clients must have a “substantially common interest” (para 6.2(a)) and the circumstances of para 6.2(b)(i)-(iii) must be satisfied. ❖ “Substantially common interest” is defined in the SRA Glossary as a situation where “<i>there is a clear common purpose between the clients and a strong consensus on how it is to be achieved”.</i> ❖ It can be argued that a borrower and lender have a substantially common interest. They both have a common purpose in wanting to ensure the property is taken free from defects which may adversely affect the value of the property, has good title, and is sellable in the future. ❖ However, it is still unwise to act unless the mortgage is on the standard terms of the lender. If the parties need to negotiate then there is a risk that the parties, at some point during the transaction, will cease to have a substantially common interest, which would require the solicitor to stop acting for both parties. </td> </tr> <tr> <td data-bbox="548 1759 763 1879"> <p>Para 6.2(b) <i>“Competing”</i></p> </td> <td data-bbox="763 1759 1494 1879"> <ul style="list-style-type: none"> ❖ Para 6.2(b) allows a solicitor to act where clients are competing for the same objective. </td> </tr> </table> 	<p>Para 6.2(a) <i>“Substantially Common Interest”</i></p>	<ul style="list-style-type: none"> ❖ The clients must have a “substantially common interest” (para 6.2(a)) and the circumstances of para 6.2(b)(i)-(iii) must be satisfied. ❖ “Substantially common interest” is defined in the SRA Glossary as a situation where “<i>there is a clear common purpose between the clients and a strong consensus on how it is to be achieved”.</i> ❖ It can be argued that a borrower and lender have a substantially common interest. They both have a common purpose in wanting to ensure the property is taken free from defects which may adversely affect the value of the property, has good title, and is sellable in the future. ❖ However, it is still unwise to act unless the mortgage is on the standard terms of the lender. If the parties need to negotiate then there is a risk that the parties, at some point during the transaction, will cease to have a substantially common interest, which would require the solicitor to stop acting for both parties. 	<p>Para 6.2(b) <i>“Competing”</i></p>	<ul style="list-style-type: none"> ❖ Para 6.2(b) allows a solicitor to act where clients are competing for the same objective.
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<p>Para 6.2(b) <i>“Competing”</i></p>	<ul style="list-style-type: none"> ❖ Para 6.2(b) allows a solicitor to act where clients are competing for the same objective. 					

⁴ <https://www.lawsociety.org.uk/en/topics/property/conflict-of-interests-in-conveyancing>

		<p><i>for the Same Objective”</i></p>	<p>❖ This does not apply because a buyer and lender are not competing for the same aim.</p>
	<p>We must also consider the likelihood of a conflict between the duty of confidentiality and disclosure.</p>		<p>❖ If, for example, you are told by a client that they intend to breach the terms of the mortgage by, for instance, letting the property to a tenant and will not agree to a lender being told of this, a conflict of interest will arise.</p> <p>❖ The duty of confidentiality trumps the duty of disclosure, and so the solicitor will be unable to inform the lender client of this.</p> <p>❖ The solicitor should therefore cease to act and inform the lender client they are withdrawing due to a conflict of interest.</p>
<p>Acting for Joint Borrowers – Undue Influence</p> <p><i>Property Law & Practice, 5.5</i></p>			<p>❖ Summary: A solicitor must be mindful of the steps they need to take to protect against undue influence when co-owners seek a mortgage. If a co-owner has been subject to undue influence and a mortgage is defaulted upon, that mortgage may be able to be set aside by the co-owner who was subject to undue influence.</p>
	<p>Effect of Undue Influence</p>		<p>❖ Where a party's consent to a contract is induced by undue influence, the contract is voidable by the aggrieved party (that is, the contract remains effective and binding, however, the aggrieved party can elect to terminate this).</p>
	<p><i>RBS v Etridge [2001] 4 All ER 449 Guidance</i></p>		<p>❖ <i>RBS v Etridge [2001] 4 All ER 449</i>: provided detailed guidance as to what solicitors should do when acting where a husband and wife seek to use a co-owned property as security⁵.</p> <p>❖ The solicitor should have a discussion with the wife at a face-to-face meeting in the absence of the husband, and the following advice should be given in non-technical language. The solicitor should:</p> <ol style="list-style-type: none"> 1. <u>Explain to the wife why the solicitor has become involved.</u> <ul style="list-style-type: none"> ➤ i.e., to protect against a risk of undue influence. 2. <u>Explain that, if necessary, the lender will rely on the solicitor’s involvement to counter a suggestion that the wife has been unduly influenced.</u> 3. <u>Obtain confirmation from the wife that she wishes the solicitor to act, and advise as to the legal and practical implications of the transaction.</u> 4. <u>The advice will depend on the facts of each case but should include:</u> <ul style="list-style-type: none"> ➤ An explanation of the nature of the documents and the practical consequences of signing them.

⁵ The judgment in *RBS v Etridge* was given on the premise that the wife is the prospective victim of undue influence from a husband; that language is merely repeated here.

		<ul style="list-style-type: none"> ➤ A warning as to the <u>seriousness of the risks</u> involved. ➤ An explanation is that the wife has a <u>choice</u> whether to proceed or not and the choice is hers and hers alone. <p>5. <u>The solicitor must then check if the wife wishes to proceed and if the wife is happy for the solicitor to write to the lender to confirm that matters have been explained to her.</u></p> <p>6. <u>The solicitor should check that the following financial information has been made available from the lender, and refuse to make confirmation until they are received:</u></p> <ul style="list-style-type: none"> ➤ The <u>purpose</u> for which the loan is being made available; ➤ The current amount of the husband's <u>indebtedness</u>; ➤ The <u>amount of the current overdraft</u> facility; ➤ The amount and <u>terms of the new facility</u>; and ➤ A <u>copy of any written application</u> made by the husband for the facility. <p>7. <u>It is not for the solicitor to veto the transaction, but if the solicitor thinks that the transaction is not in the wife's best interests, they should give reasoned advice to that effect. Ultimately, the decision is one for the wife.</u></p> <p>8. <u>If it is 'glaringly obvious' that the wife is being 'grievously wronged', the solicitor should decline to act.</u></p>
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Mortgage Fraud⁶

❖ [Property Law & Practice, 5.12](#)

❖ [Law Society Guidance on Mortgage Fraud](#)

<p>What is it?</p>	<ul style="list-style-type: none"> ❖ Mortgage fraud is where individuals <u>misrepresent information about themselves</u> to obtain a mortgage, or to obtain a larger mortgage than they otherwise could obtain. ❖ An individual commits an offence of fraud under the Fraud Act 2006 where they either: <ul style="list-style-type: none"> ➤ <u>Fail to disclose information</u> which they have a legal duty to disclose, or ➤ <u>Falsely represent information</u>, either explicitly or implicitly. ❖ The value of a <u>mortgage obtained through fraud is the proceeds of crime</u>. Under the Proceeds of Crime Act 2002, a solicitor risks committing a money laundering offence if they acquire, use, have possession of, enter into an arrangement with respect to, or transfer this criminal property.
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⁶ [Workshop 1, Task 2, Question \(b\)](#)

⁷ <https://www.lawsociety.org.uk/en/topics/property/mortgage-fraud>

<p><u>Steps to Protect Your Firm from Mortgage Fraud – Due Diligence</u></p>	<p><u>Verify the identity of the client:</u></p>	<ul style="list-style-type: none"> ❖ You should take steps to identify your client and any beneficial owners of the property. You should <u>ensure that the information given to you corresponds with the information on any mortgage documents/bank accounts</u> relating to the transaction. ❖ This is <u>required in most cases by Regulation 28 of the Money Laundering Regulations 2017:</u> <ul style="list-style-type: none"> ➤ If you have suspicions, <u>check the identity given to you against a register of deaths</u> or a list of known fraudsters. ➤ Where the client is a company, <u>conduct a search of the Companies Register</u> to find out the names and addresses of the directors and the shareholders, which can be cross-referenced with the names of those connected with the client
	<p><u>Ideally, meet the client.</u></p>	<ul style="list-style-type: none"> ❖ <u>Reg 33(5)(b) of The Money Laundering Regulations 2017:</u> provides that where a solicitor has not met a client face to face, this is a <u>specific risk factor</u> to be taken into account when considering whether to undertake “enhanced due diligence”. ❖ This involves obtaining <u>further information to establish the client’s identity</u> and taking steps such as ensuring the first payment from the client is from a bank account in the client’s name.
	<p><u>Be wary that fraudsters may pose as solicitors.</u></p>	<ul style="list-style-type: none"> ❖ Occasionally fraudsters will <u>invent fake solicitor firms</u>, and use fake letterheads on correspondence etc. ❖ Use the “Find a Solicitor” database or the Directory of Licensed Conveyancers to check on the identity of the other party's solicitor.
	<p><u>Consider any inconsistencies with a previous retainer</u></p>	<ul style="list-style-type: none"> ❖ For example, if you do a conveyance of a modest family home, and then a few years later the same clients instruct you to buy an expensive holiday home, where has their money come from?
	<p><u>Ask questions, particularly regarding how the client is funding their purchase.</u></p>	<ul style="list-style-type: none"> ❖ Ask questions, particularly where: <ul style="list-style-type: none"> ➤ Any instructions are <u>unusual</u>. ➤ Any <u>warning signs</u> are present. ➤ There are any <u>inconsistencies in the retainer</u>.