



SELF CHECK QUESTION 4

You may have come across leases for different lengths of time. Write down the length of the leases you have come across.

Compare your answer with the one given at the end of this section.

The term or length of the lease is infinitely flexible and, as stated earlier, can be for any period agreed between the freeholder and the leaseholder.

The **exclusive possession** given under the lease allows the leaseholder to exclude all others from the premises, including the freeholder, for the duration of the lease (as long as they comply with the terms of the lease). The lease is a contract (legal agreement) between the freeholder and the leaseholder.

Commonhold

This is a system which will allow a number of units to share a freehold, for example a development of flats or a mixed development of commercial and residential uses. At the moment such developments need to have leasehold units.

3.3 LEGAL AND EQUITABLE INTERESTS IN LAND

It is possible, while owning a property, that others may have certain rights over it. These are called 'interests', and can be legal or equitable (as derived from common law).

Legal interests are listed in the Law of Property Act 1925, but we are particularly interested in one of the legal interests listed – **easements**.

Of the equitable interests that can exist, we are particularly interested in **restrictive covenants**.

Easements

An easement is a right over land. The person who has the benefit of the easement may have the right to use the land of another, or restrict the use of the land of another in some way.

Common examples of easements include

- rights of way – ie a right to have access over adjacent land
- rights of light – ie a right that a property will not obstruct the natural passage of light to a neighbour's home
- rights of support – ie the right, for example, for a first floor flat to expect support from the flat beneath
- rights of water – ie the right for a property to have access to a water supply running through neighbouring land or extract modest amounts of water from a stream

There must be two pieces of land in different ownership for an easement to arise. They are

- land which enjoys the right over another person's land (this is called the dominant tenement)
- land over which the easement is exercised (this is called the servient tenement)

Easements can be expressly granted as easements, in which case the written document will refer to an easement. Alternatively an easement may arise because someone has used the land of another

- uninterrupted
- without force
- without secrecy
- without permission

for an extended period of time. As a minimum this needs to be 20 years, but it will need to be 40 years if it is claimed a verbal permission was given. (Note that if, at any time, written permission was ever given to occupy land or use it in some way, no right to an easement can be established.)

Figure 3.2 should help to explain what an easement is.

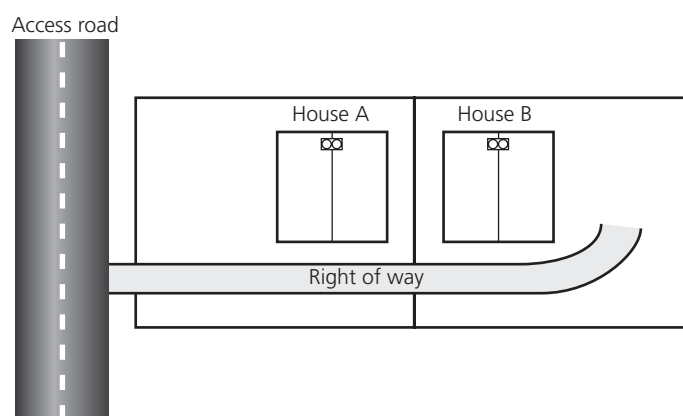


fig 3.2

House B benefits from an easement, in this case a right of way from the access road across the land of house A.



SELF CHECK QUESTION 5

Study figure 3.3. Which section of the drain needs an easement? Explain why.

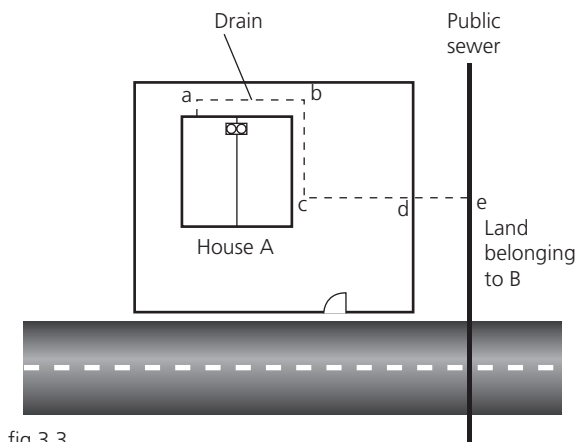


fig 3.3

Compare your answer with the one given at the end of this section.

Because easements are legal interests attaching to the land, they are passed from one owner to the other. The existence of an easement may have valuation consequences for the land affected by the easement. For example, the existence of a right of way across the garden of a house may be undesirable and reduce the value of the property.

Restrictive Covenants

A covenant is simply a promise made by one party to another. They are most commonly found in leases where the landlord and the tenant each make promises or covenants to the other.

We said earlier that an easement is a legal interest and gives the owner of the land benefiting from the easement the right to **do something** on or over the land of someone else.

A restrictive covenant is an equitable interest because, unlike an easement, it owes its origins to equity, which is derived from common law. It allows someone with the benefit of the restrictive covenant to **stop** the owner of other land from using that land in some way for the benefit of the owner of the covenant.