Hayward v *Challoner*, 1967 – The period required (**458**)
Littledale v *Liverpool College*, 1900 – Acts must be inconsistent with owner's rights (**459**)

Whether adverse possession necessarily involves inconvenience to the true owner is not clear. In *Wallis's Caton Bay Holiday Camp* v *Shell-Mex & BP* [1974] 3 All ER 575, the defendants had purchased land for development, though they had no immediate use for it. The claimants used it for 12 years for the purposes of grazing cattle on it and cultivating it. The Court of Appeal held that the claimants had not established a good possessory title because what they had done was of no inconvenience to the defendants who had no immediate use for the land. However, in *Treloar* v *Nute* [1977] 1 All ER 230, the claimant owned freehold land for which he had no immediate use and which was left derelict. The defendants bought land adjacent and occupied part of the derelict land for a period of 12 years. In holding that the defendants had a good possessory title to that land the Court of Appeal said it was not necessary to import into the definition of adverse possession a requirement that the owner must be inconvenienced or affected by that possession.

This line of reasoning was adopted also in *Buckinghamshire County Council* v *Moran* [1989] 2 All ER 225 where the council had acquired a plot of land adjacent to some houses for future use as a road diversion. They had no immediate use for it. Mr Moran (and previous owners) treated it as part of the garden of the Moran residence. It was fenced in and the grass was cut regularly and bulbs planted. This went on for more than 12 years and the Court of Appeal eventually held that Mr Moran had a possessory title to the plot although the council having no immediate use for the plot were not inconvenienced by what had been done.

Where a tenant, during the currency of his tenancy, takes possession of other land belonging to the landlord, the land is presumed to have been taken as part of the holding comprised in the tenancy, and the tenant cannot acquire a good possessory title unless he communicates to his landlord some disclaimer of the landlord's title.

It should be noted that periods of successive trespass (for that is what it is) may be added together. A trespasser who has occupied for, say, five years may add to that a period of seven years enjoyed by the immediate previous trespasser in order to bar the claim of the true owner provided there was no gap in adverse possession. However, each occupier must have had exclusive possession. Thus where the landlord of a property adjoining the disputed strip of land claimed adverse possession of it on the basis that his tenants had enjoyed exclusive possession for the necessary time his claim failed because the tenants had from time to time given the keys to others and that showed a lack of intention to exclude others which is a requirement of the law of adverse possession (see *Battersea Freehold and Leasehold Property Co Ltd* v *Wandsworth LBC* [2001] 20 LS Gaz R 41).

Rather than wait for a legal claim to be brought, a claim to legalise adverse possession can be made to the Land Registry in London. It will then be up to the Registry to determine the claim.

It should be noted that there are a few limited exceptions where the 12-year period is increased, e.g. to 30 years in the case of acquisition of title by the Crown (Limitation Act 1980, s 15(1)).

Smirk v *Lyndale Developments Ltd*, 1974 – Taking possession of a landlord's land (**460**)

Adverse possession: effect of Land Registration Act 2002

Landowners including business landowners will welcome restrictions on the acquisition of squatters' rights over registered land. There was some concern over the apparent ease with which land could be acquired in this way – in some cases land belonging to companies. *Squatters' rights remain as stated above where the land is unregistered land.*

The Act abolishes a squatter's automatic right to register title after 12 years' adverse possession. Instead the squatter will be entitled to apply for registration after 10 years but the Land Registry will serve a notice of the application on the registered owner or proprietor. The registered proprietor has three months to object. If there is no objection the squatter will be registered. If there is an objection the squatter has to establish certain conditions before he or she can be registered. The main condition on which a squatter may succeed in a claim for registration is that the property over which adverse possession has been exercised is adjacent to his or her own and the boundaries have never been properly and acceptably defined. More importantly in order to obtain registration given no objection by the owner, the squatter will have to establish that for at least 10 years of the period of adverse possession ending on the date of the application for registration he or she reasonably believed that the land belonged to him or her. This will defeat many claims by squatters.

If the squatter fails to establish one of the conditions for registration the proprietor has two years in which to take action to remove the squatter or regularise his or her position, e.g. by a lease. If the registered proprietor fails to remove the squatter or institute proceedings to effect removal within the two years then the squatter can apply for registration of his or her possessory interest. This time no one will be entitled to object. Section 96 and Sch 6 of the Act apply to the above law.

The fact that the Act does not apply to unregistered land does not provide a long-term difficulty since unregistered land is being converted to registered land as registrable events occur over it at the Land Registry, e.g. a sale or mortgage. Consequently, little if any unregistered land will remain in the medium or longer term.

Bailment

Bailments are concerned with pure personalty and not with real property. The bailment may or may not originate in a contract. As to the source of the expression 'bailment', it derives from the adoption by English law of an old French word to describe the handing over of goods without passing the title and property, i.e. *bailler* – to deliver.

Possession

An essential feature of a bailment is the transfer of possession to the bailee. There is no precise definition of possession, but the basic features are *control* and *an intention to exclude others*. However, a person can have possession of chattels which he does not know exist (see *South Staffordshire Water Co* v *Sharman* (1896)). An employee who receives goods from his employer to take to a third party has mere *custody*; possession remains with the employer and the employee is not a bailee. If a third party hands goods to an employee for his employer, the employee obtains possession and is the bailee.

In a bailment for a fixed term the bailee has possession to the exclusion of the bailor, and is, therefore, the only person who can sue a third party for wrongful interference. In a bailment at will, i.e. one which the bailor can terminate at will, the bailor retains either

possession or an immediate right to possess and an action for wrongful interference is available to him as well as to the bailee. A bailee can sue a third party in tort for loss of or damage to the goods even though the bailee is not liable to the bailor for the loss or damage.

The Winkfield, 1902 – Recovery of damages, bailee in possession (**461**)

Bailment and licence

The problem of distinguishing between bailment and licence has arisen mainly in connection with the parking of vehicles. If a vehicle is parked on land, either gratuitously or even on payment of a charge, the transaction may amount to a mere licence and not a bailment which gives rise to duties of care.

Ashby v *Tolhurst*, 1937 – Is it a bailment or a licence? (**462**)
Ultzen v *Nicols*, 1894 – A stolen coat (**463**)
Deyong v *Shenburn*, 1946 – An actor's clothes (**464**)

Finders and involuntary recipients

For an act to constitute a bailment, the person who is given possession of goods must be entrusted with them for a particular purpose, e.g., to use and return as in the case of loan or hire, or to take from one place to another as in carriage. A banker is not a bailee of money paid into a customer's account, for his obligation is to return an equivalent sum and not the identical notes and coins. However, a banker is a bailee of property (e.g. jewellery) deposited with him for safe custody.

A finder is not a true bailee because he is not entrusted with the goods for a particular purpose. However, if he takes them into his possession he will be liable for loss or damage resulting from his negligence.

Newman v *Bourne & Hollingsworth*, 1915 – A finder and bailment (**465**)

A person cannot be made a bailee against his will. Where the receipt of the goods is involuntary it is unlikely that the recipient is under any higher duty than to refrain from intentional damage. However, he must not convert the goods, but although liability for conversion is usually strict, an involuntary recipient will only be liable if he acts intentionally or negligently.

Neuwirth v *Over Darwen Industrial Co-operative Society*, 1894 – An involuntary bailee (**466**)

The Unsolicited Goods and Services Acts 1971 and 1975 are relevant in this connection. The Acts are designed to deal with selling techniques involving the sending of unsolicited goods, thus rendering the recipient an involuntary bailee. The Acts provide for fines to be made on persons making demands for payment for goods they know to be unsolicited. If the demand is accompanied by threats a higher scale of fines applies. Furthermore, unsolicited goods may be kept by the recipient without payment *after a period of 30 days* provided the

recipient gives notice to the sender asking that they be collected, or *after six months* even if no notice has been given. The legislation applies to private, not business, recipients.

Obligations of the bailor

Where the bailment is gratuitous it has been said that the limit of the liability of the bailor is to communicate to the bailee defects in the article lent of *which he is aware*. However, the principle in *Donoghue* v *Stevenson* (1932) may apply to gratuitous bailments so that the bailor would be liable if he had not taken reasonable care to ensure that the goods bailed were not dangerous, even though he had no actual knowledge of a defect in the chattels lent.

When the bailment is for reward there is an implied warranty on the part of the bailor that he has a title to the goods so that the bailee's possession will not be disturbed, and that the goods are fit and suitable for the bailee's purpose. This does not mean that the bailee is liable for all defects but only for those which skill and care can guard against. However, the warranty as to fitness and suitability does not apply where the defect is apparent to the bailee and he does not rely on the skill or judgement of the bailor.

Hyman v ***Nye***, 1881 – A defective carriage (**467**)
Reed v ***Dean***, 1949 – A fire on a motor launch (**468**)

Obligations of the bailee

When Lord Holt, in *Coggs* v *Bernard* (1703), established the liability of the bailee in negligence he laid down different duties of care for different kinds of bailments. Thus, in a bailment for the sole benefit of the bailee, such as a gratuitous loan, the bailee's duty of care was much higher than in a bailment for the benefit of both parties such as a hiring. However, in more recent times there has been disapproval of Lord Holt's different standards of care, and it is now the better view that the standard of care required of a bailee is to take reasonable care in all the circumstances of the case, which equates his duty with that owed by any person in the law relating to negligence, though the burden of disproving negligence is on the bailee.

Houghland v ***R Low (Luxury Coaches) Ltd***, 1962 – An old folks' outing (**469**)
Global Dress Co v ***W H Boase & Co***, 1966 – Goods stolen from the docks (**470**)

The *main* circumstances which the court is likely to consider when deciding the question of negligence in a bailee are as follows.

The type of bailment

Although some current legal opinion is against a legal distinction between bailment for reward and gratuitous bailment, reward or lack of reward will continue to be an *important circumstance* in the matter of the bailee's negligence. A gratuitous bailee must take the same care of the property bailed as a reasonable man would take of his own property. It is no defence for a bailee to show that he kept the goods with as much care as his own because the test of reasonableness is objective. In a bailment for reward the duty of care tends to be somewhat higher.

Doorman v ***Jenkins***, 1843 – Negligence leading to theft (**471**)
Brabant v ***King***, 1895 – Damage to explosives (**472**)

The expertise of the bailee

If the bailee's profession or situation implies a certain expertise he will be liable if he fails to show it.

Wilson v *Brett*, 1843 – A horse and slippery turf (**473**)

The property bailed

If the goods bailed are, to the knowledge of the bailee, fragile or valuable, a high standard of care will be expected. In addition a bailee may be liable in negligence if he does not give notice to the bailor of a loss or try to recover lost or stolen property.

Saunders (Mayfair) Furs v *Davies*, 1965 – Valuable fur coat: the care required (**474**)

Coldman v *Hill*, 1919 – Giving notice of loss of cows (**475**)

Bailor's negligence

In some cases the court may regard the negligent or dilatory conduct of the bailor as negating the liability of the bailee. Thus in *Jerry Juhan Developments SA* v *Avon Tyres Ltd* [1999] CLC 702 the claimants allowed the defendants to make and distribute tyres made from the claimants' moulds. AT later terminated the contract and for two years thereafter made enquiries of the claimants as to the disposal of the moulds but received no instructions. Some five years after termination of the contract the claimants demanded the moulds which by that time had been lost. The court implied a term into the contract that the owner would collect within six months of their being available. The claimants being in breach of that term had relieved AT of their obligations as bailees. The claimants' case failed.

A bailee is vicariously liable for the torts of his employees, but an employee who becomes a thief may not be regarded as acting within the scope of his employment. However, in *Morris* v *C W Martin & Sons Ltd* (1965) it was held that a bailee for reward cannot necessarily escape liability for loss of goods stolen by his employee because theft is not necessarily beyond the scope of employment (see Chapter 20). The decision in *Morris* represents the better view.

A bailee may attempt to exclude his liability by an exemption clause in the contract of bailment. This matter must now be considered in the light of the rules of construction of contracts and the Unfair Contract Terms Act 1977 (see Chapter 15).

Delegation by bailee

Whether a bailee can delegate performance of the contract to another depends upon the nature of the bailment and the particular contract which may authorise delegation. Contracts involving the carriage, storage, repair or cleaning of goods often assume personal performance by the bailee. Where there is a delegation, even though unknown to the bailor, the delegate is a bailee and owes a duty of care directly to the bailor.

Davies v *Collins*, 1945 – Delegation by a bailee (**476**)

Edwards v *Newland*, 1950 – Where a bailee sub-contracts (**477**)

Learoyd Bros v *Pope*, 1966 – Duty of care following delegation (**478**)

Estoppel and interpleader

A bailee is estopped at common law from denying the title of his bailor and if the bailor demands the return of the goods it is no defence for the bailee to plead that the bailor is not the owner. However, a bailee may defend an action for non-delivery of the goods:

(*a*) by showing that he has delivered them to another under an authorisation by the bailor;
(*b*) by showing that he has not got the goods because he has been dispossessed by a person with a better title, as in a bailment of stolen goods which are reclaimed by the owner;
(*c*) if he still retains possession he may allege that a third party has a better title but he must defend the action on behalf of, and with the authority of, the true owner.

Rogers, Sons & Co v *Lambert & Co*, 1891 – Defence of superior title (**479**)

Where adverse claims are made against the bailee by the bailor and a third party, the bailee should take interpleader proceedings under the rules of the Supreme Court. The effect of this will be to bring the bailor and the third party together in an action which will decide the validity of their claims. The bailee can then hand over the goods to whichever party has established his claims and will not risk liability for wrongful interference.

Lien

A bailee may, in certain circumstances, have a lien on the goods. The general nature of a lien is described later in this chapter.

Land law

Since the Norman Conquest, absolute ownership of land has been impossible. William the Conqueror considered himself owner of all land in England and parcelled it out to his barons who became his tenants. In return for this 'honour', the barons had to render to the Crown certain services, of either a military or other public nature, but an exception was made in the case of land held by the Church. The ecclesiastics were not able to provide military services, and special spiritual tenures were introduced.

In order to assist themselves in supplying the services required by the King, the barons began to subgrant part of the land, and a series of tenures sprang up, all persons holding as tenants of the Crown in the last analysis.

It is outside our scope to pursue the rise and fall of the system of tenures, but all land is now held on a single tenure called 'common socage', and all obligations to the Crown have disappeared, except for certain ceremonials preserved because of their antiquity. Even today, however, a person does not own land; he holds an estate in land. The *tenure* answers the question 'How is the land held?' The term *estate* answers the question 'For how long is the land held?'

The term 'estate' arises because in legal theory the Queen is still the owner of all land and we can only have a part of what the Queen owns. This is called an 'estate'. The matter is purely traditional and theoretical since the Queen has no rights over our 'estates'.

The legislation of 1925

Before this legislation, which is described below, there were many different ways of holding land, referred to as estates in land. The existence of so many estates in land made the transfer

of land most complicated. There might be a large number of legal owners of the same piece of land, and before the land could be conveyed to a purchaser all the interests had to be got in. Other problems arose on intestacy, which occurs where the deceased does not leave a will or an effective will, because the rules for intestate succession were not the same for realty and personalty. In 1925 a thorough reform of land law was undertaken and was eventually achieved by the following statutes: the Law of Property Act 1925, the Settled Land Act 1925, the Administration of Estates Act 1925, the Land Charges Act 1925 and the Land Registration Act 1925.

Legal estates – generally

The Law of Property Act 1925 reduced the number of legal estates which can exist over land to two, and the number of legal interests or charges in or over land to five. All other estates, interests and charges in or over land take effect as equitable interests, and can exist only behind a trust, the trustees having the legal fee simple estate.

The difference between a legal estate and a legal interest is that the owner of the legal estate is entitled to the enjoyment of the whole of the property, either in possession or receiving rents, whereas the owner of a legal interest has a limited right in or over the land of another.

The three legal estates possible today are:

(*a*) *a fee simple absolute in possession* (or a freehold); and
(*b*) *a term of years absolute* (or a lease);
(*c*) *a commonhold*.

The word *fee* implies that the estate is an estate of inheritance, and the word *simple* shows that the fee is capable of descending to the general class of heirs, and is not restricted to heirs of a particular class. The word *absolute* distinguishes a fee simple which will continue for ever, from a fee which may be determinable. The fee simple must be *in possession*, although this does not imply only physical possession but also the right to receive rents and profits. Even if a landlord has granted a lease he may still have a fee simple in possession because he is entitled to the rent reserved by the lease.

The *term of years absolute* is what is normally understood by a lease. But a term of years includes a term for less than a year, or for a year or years and a fraction of a year, or even a tenancy from year to year. The essential characteristic is that a term of years has a minimum period of certain duration. It seems, therefore, that a lease for life is no longer a legal estate; nor is a tenancy at will or sufferance since there is no certainty as to the period of their continuance. A term of years may be absolute notwithstanding that it may be determined by notice, re-entry, forfeiture or operation of law or other event.

Legal estates – the commonhold

The Commonhold and Leasehold Reform Act 2002 created a new form of landholding called the 'commonhold'.

Commonhold generally

A commonhold is defined as a freehold with special characteristics – mainly that it is not necessary for the property to have foundations in the land, which is a requirement for the ordinary freehold. This is why it is often referred to colloquially as a 'flying freehold'.

The owners of commonhold units such a commonhold flats will be members automatically of the commonhold association that will own the common parts such as lifts, entrance halls, stairs, refuse areas, gardens and driveways. The association will be a company limited by guarantee governed by the Companies Act 1985. The use and maintenance of the units will

be governed by the commonhold community statement (CCS): the CCS is the constitution of the commonhold land and must be registered at HM Land Registry, and a commonhold assessment will fix the percentage payable for each unit. This in other situations, e.g. leasehold flats, would be a service charge.

Most commonholds will be a block of flats but they could be shop units in an arcade or units on a business park. Therefore, property capable of becoming a commonhold unit is residential or commercial property. A unit holder will have a registered freehold title to it.

The usual provisions for company winding-up will apply where a commonhold association becomes insolvent and it will be necessary to dissolve an association where the unit holders wish to sell the block for redevelopment.

Three major points about commonhold from a commercial aspect are:

(a) Although it is possible to convert from leasehold to commonhold it is necessary to obtain the consent of all the existing leaseholders, which indicates that the legislation is aimed mainly at new developments.

(b) In the case of a residential commonhold there is a restriction on the commonholder letting the premises. A maximum of only seven years is permitted. This provision is most unattractive to the property industry because it means in effect that investors will not want to invest in commonhold property. The object of the restriction is to develop a community and not encourage the absentee landlord syndrome which has often blighted leasehold developments. Business leases, e.g. shops within the development, are subject to the terms of the commonhold statement that is filed at the Land Registry when the commonhold arrangement is set up, e.g. by the developer.

(c) It is anticipated that commonhold residential developments will become, in time, more desirable than leasehold properties and will trade at a premium compared with such properties.

Commonhold should not be confused with leasehold enfranchisement under which flat owners in blocks of flats collectively buy out the freehold owner of the property and so obtain control of the freehold of the block but not their individual flats in the sense that they are still tenants. Implementation of commonhold will necessitate the passing of detailed legislation much of it highly technical.

This subordinate legislation is clearly beyond the scope of this text and would not normally be required by examinations at this level.

Comment It is the responsibility of the association to enforce any breaches of the CCS. In effect this gives the association a role similar to that of a landlord in a landlord and tenant relationship. In common with most leases the CCS will restrict the granting of leases in the commonhold unit. In general a unit holder will not be able to grant a leasehold interest of the unit unless the commonhold association is a party to the lease or gives its consent (CLRA 2002, s 20(3)).

Advantages over leaseholds

The commonhold legislation is concerned to overcome certain weaknesses in leasehold arrangements as follows:

- A lease is granted for a fixed term and admittedly the term may sometimes be lengthy. However, the issue of renewal will arise and this may require troublesome negotiation that can also be costly. A commonhold is a type of freehold and therefore permanent.
- Leasehold properties have no standard management structure as the commonhold has and the structures offered can vary greatly in their quality.

- Mistakes may occur in the documentation so that the terms of the various leases in, say, a block do not match. This can cause difficulty in enforcing conditions that do not occur in a commonhold development where one document, i.e. the CCS sets out the obligations and terms of ownership for all units. There is thus no chance of mismatching provisions.
- Premature termination of a leasehold development can cause problems in terms of dividing assets. However, commonhold arrangements have documentation laying down the terms in advance of termination but the court has a power to vary these in a termination situation.
- A leasehold is a wasting asset. A leasehold is a term of years absolute that will eventually come to an end even where there is a long term, e.g. 99 years. A freehold is a *perpetual estate*.
- A lease is subject to forfeiture if there is a breach of covenant, e.g. assigning or sub-letting by the tenant.

A main business application is, therefore, that a freehold title in commonhold land is a better security than a lease in terms of lending and borrowing.

Disadvantages over leaseholds

These are, first, that the commonhold association in spending money on the commonhold property is not restricted by the 'reasonableness' of the expenditure requirement on the landlord of a lease. Secondly, the Commonhold and Leasehold Reform Act 2002 relies on alternative dispute resolution through an Ombudsman, so that there is no redress through the courts. Therefore, commonhold developments will not offer the rights and protections available to leaseholders.

Setting up a commonhold

A commonhold may be established in two ways:

- It can be registered at the Land Registry *with unit-holders* where the identity of the unit-holders is known. The freehold of the units vests in them and the commonhold arrangements come into force on registration; this will occur where there is a conversion from a leasehold arrangement but will otherwise be uncommon.
- A person developing by building afresh or converting an empty building with the intention of selling off the units will register a commonhold *without unit-holders*. The developer retains ownership after registration for an interim period until the first unit is sold. The developer has complete control during the interim period and can, if he wishes, abandon the development and cancel the registration. Even after the initial sale the developer's business is protected in the sense that the CCS can give him rights to prevent early purchasers from interfering with the process of marketing the units.

Comment The cost of establishing commonhold arrangements will not always justify conversion of an existing leasehold arrangement unless the leases are near to termination. However, since commonhold arrangements will put a premium on sale of the units, this might prove an incentive to conversion from leasehold.

The nature of the property

Agricultural land cannot be registered as commonhold but an existing freehold or leasehold can be converted. An existing freehold can be divided into parcels or plots and held under commonhold arrangements.

Termination of commonhold

A commonhold arrangement is brought to an end by winding-up the commonhold association. Since the units are not owned by the association they are not available to pay its debts.

However, the court may make what is called a 'succession order' under which a new commonhold association is substituted, the members being those who have met their liabilities to the full. This has been called a 'Phoenix association' that takes over the management so that the unit-holders can continue to hold and enjoy their properties. If no succession order is made the commonhold arrangement ceases to exist and the properties will be dealt with in accordance with the directions of the liquidator.

Joint owners

A commonhold unit can be held by joint owners.

Legal interests and charges

We have seen that there are only three possible legal estates: a fee simple absolute in possession, a term of years absolute and a commonhold but the Law of Property Act 1925 also lays down a number of legal interests in land. The most important are:

(*a*) an easement, right or privilege for an interest equivalent to either of the above estates. Thus, an easement for life would not be a legal interest;
(*b*) a charge by way of legal mortgage.

Equitable interests

All estates, interests or charges over land except those outlined above take effect as equitable interests only and must exist behind a trust. Life interests, for example, are equitable.

The two major trust arrangements over land are called settled land and trusts of land.

Settled land

Settlements created after 1925 other than by will require, under the Settled Land Act 1925, two deeds to be executed – the vesting deed and the trust instrument. The vesting deed must contain a description of the settled land, a statement that the settled land is vested in the tenant for life upon the trusts for the time being affecting the settled land, the names of the trustees of the settlement, and a statement of any larger powers granted to the tenant for life in addition to his statutory powers.

The trust instrument must contain the appointment of the trustees, the names of the persons entitled to appoint new trustees, a statement of any additional powers conferred by the settlement in extension of the statutory powers, and the trusts of the settlement. Where a settlement is created by will, the will is regarded as the trust instrument, and the personal representatives must execute a vesting instrument, vesting the legal estate in the tenant for life. Thus, a purchaser of settled land is only concerned with the vesting deed or assent, since it is from such documents that he derives his title. The trusts can remain secret since the trust instrument need not be produced on sale.

Under the settlement the person obtaining the benefit from the estate is usually an adult with a life interest and he is called the *tenant for life*. It is his function to manage the estate and he has power to sell or exchange the settled land or any part of it with an adjustment of any difference in value in the case of exchange. He may grant leases subject to certain restrictions, but in the absence of a contrary provision in the settlement, he has no power to mortgage or charge the legal estate for his own benefit, although he can mortgage or assign his own beneficial life interest.

He has other powers which he can only exercise with the consent of the settlement trustees or the court, e.g. the power to sell or otherwise dispose of the principal mansion house, the power to cut and sell timber, the power to compromise claims and sell settled chattels. He has the power to make improvements at his own expense, or the cost may be borne by the capital money if he complies with the provisions of the Act. He has also power to select investments for capital money.

The tenant for life is in a strong position, for he is subject to no control in the exercise of his powers except that he must give notice to the trustees of his intention to exercise the most important ones, he must obtain the consent of the trustees or leave of the court in certain cases, and he is in fact himself a trustee for the other beneficiaries. There may be joint tenants for life under a settlement and, where this is so, they must usually agree as to the exercise of their joint powers. The court will exercise a power, e.g. by ordering a sale of property, but only if the joint tenant who does not agree to sell is acting in bad faith (*Barker* v *Addiscott* [1969] 3 All ER 685).

It is clear that under a settlement a proper balance must be preserved between the tenant for life and the persons who will be entitled to the land or the proceeds of the land after his death. He is not allowed, therefore, to run down the estate during his lifetime in order to increase his own income, but is only allowed to take from the land the current income and must pass on the estate substantially unimpaired.

Trusts of Land and Appointment of Trustees Act 1996

The above Act has effect upon strict settlements as described above.

The first effect is to prevent the creation of strict settlements over land. Formerly, if successive interests were created over land, as where land was left 'to A for life with remainder to B', then unless a trust for sale (now a trust for land) (see below) was specified in the instrument setting up the trust, e.g. a will, the land became settled land and subject to the Settled Land Act 1925, the trust being managed by the life tenant A as described above. The scheme of the Act is to stop the Settled Land Act applying even where no trust for land is specified in the creating instrument but to allow it to apply to existing settled land arrangements. Therefore these will exist for some time and so it is worth acquiring some knowledge of them (see above).

Where successive interests are created now they will be regarded as trusts of land and operate under the management of the trustees as a trust of personal property, e.g. as shares would.

The second effect is to give trustees of trusts of land all the powers of an absolute owner in regard to the land. There is now no need for the trust instrument to specifically confer such powers on the trustees. The new arrangements do not apply to the power of trustees to invest the trust property, e.g. rents, received as they wish. They were still subject to control in regard to investment in, e.g., equity (or ordinary) shares in companies unless the trust instrument gave them power to do so. However, the Trustee Act 2000 gives a full power of investment of the trust property to trustees as if it were their own, subject to liability in negligence for investing trust property in a risky investment. The power given in s 3 of the Act covers acquisition of freehold and leasehold land (s 8) and may be extended or restricted by the particular trust instrument, i.e. the instrument setting up the trust. The rule of conversion formerly applied to land in a trust is abolished. Thus, if a beneficiary under a trust leaves 'all my realty to R and all my personalty to P', then P no longer gets the land but R does. The land is no longer converted into personal property merely because it is held under a trust for land. This does not affect what has been said in the chapter about the nature of a lease which remains personal property.