This chapter serves as a reminder of the principles which decide whether or not a purchaser of unregistered land takes subject to a third party interest.

4.1 Is the Third Party’s Interest Legal or Equitable?

When deciding whether or not the interest will bind a purchaser, the first question to decide is whether the interest is a legal interest or an equitable one. The reason is that generally speaking a purchaser of an unregistered title will take subject to legal estates and interests, whether he knows of them or not.

Interests capable of being legal include:

(a) A lease. Remember, however, that a lease is capable of being legal. In order to be so, it must have been granted by deed. A lease created by signed writing which does not amount to a deed will be equitable only (See Chapter 13 for the rules which now determine whether or not a document is a deed). The exception to this is a lease for 3 years or less at best rent without a premium, and giving an immediate right to possession. This can be created as a legal estate without a deed (Sections 52-4 of the Law of Property Act 1925.) So a periodic lease e.g. a weekly tenancy, will be legal, even though granted informally.

(b) An easement which is either perpetual, or granted for a term of years. (An easement for life can only be equitable.) Again, if the easement is to be legal, it must have been granted by deed.

(c) A legal mortgage or legal charge. However, if the mortgage or a legal charge is not protected by a deposit of title deeds with the lender, it is registrable under the Land Charges Act 1972, and will not bind a purchaser merely because it is legal (see later).

4.2 Is It Overreachable?

Equitable interests do not automatically bind a purchaser. So if faced with an equitable interest, the next questions will be, is the interest overreachable, and was it overreached?

Interests of beneficiaries behind a trust for sale of the legal estate, or behind a settlement under the Settled Land Act 1925 are overreachable. If, for example, the legal estate is vested in two or more trustees for sale, and
they all convey, the interests of the beneficiaries will be overreached, and it is irrelevant whether the purchaser knew of their existence or not (see Chapter 11). If the sale had been by a single trustee for sale, the interests would not be overreached, and would bind a purchaser who had notice of them.

4.3 Does the Land Charges Act 1972 apply?

Once you have decided that the equitable interest has not been overreached, the next questions to ask are, was the equitable interest registrable under the Land Charges Act 1972, and if so, was it registered? The principle is that if an interest is registrable, then if it is registered, it will bind a subsequent purchaser. If it is not registered, it will not. Registration is all. Of course, it is not quite as simple as that, and the principle is elaborated in section 4.5.

4.4 Notice

If you are left with an equitable interest that has not been overreached, and is not registrable as a land charge, you come to the well-known rule that the equitable interest will bind anyone who acquires the land with the exception of a *bona fide* purchaser for value of the legal estate without notice of the equitable interest.

Many equitable incumbrances are registrable under the Land Charges Act 1972, and if an interest is registrable under that Act, the concept of notice is irrelevant (see *Midland Bank Trust Co. Ltd v. Green* [1981]). The rule about the *bona fide* purchaser covers only those interests that do not fall within the Act. These interests include:

- restrictive covenants created before 1926;
- the interest of a beneficiary behind a trust for sale that has not been overreached;
- an interest created by proprietary estoppel.

If a purchaser wishes to escape such an interest, he must prove that he bought a legal estate for value (this would exclude a donee, someone acquiring property by a gift in a will, and a squatter) without *notice*.

(a) Actual Notice

Notice can be actual, i.e. the purchaser actually knows of the third-party interest. A purchaser may have actual notice of pre-1926 restrictive covenants because they are mentioned in the title deeds, and he reads them. (If he escapes actual notice because of his careless failure to read the title deeds, he will be fixed with constructive notice.)