

2.3 Module 8 Land Law

2.3.1 Headline information about the module

Module title	Land Law
Module NFQ level (only if an NFQ level can be demonstrated)	N/A
Module number/reference	Module 8
Parent programme(s) the plural arises if there are embedded programmes to be validated.	LLB (Hons)
Stage of parent programme	2
Semester (semester1/semester2 if applicable)	Semester 1 and 2
Module credit units (FET/HET/ECTS)	ECTS
Module credit number of units	15
List the teaching and learning modes	Full Time, Part Time
Entry requirements (statement of knowledge, skill and competence)	Learners to have successfully completed Stage 1 of the programme.
Pre-requisite module titles	None
Co-requisite module titles	None
Is this a capstone module? (Yes or No)	No
Specification of the qualifications (academic, pedagogical and professional/occupational) and experience required of staff (staff includes workplace personnel who are responsible for learners such as apprentices, trainees and learners in clinical placements)	Lecturers expected to hold at least a level 8 legal qualification, preferably with a professional legal qualification. It is an advantage to have completed the Certificate in Training and Education provided by Griffith College.
Maximum number of learners per centre (or instance of the module)	60
Duration of the module	Two Semesters, 24 weeks
Average (over the duration of the module) of the contact hours per week (see * below)	4
Module-specific physical resources and support required per centre (or instance of the module)	Lecture room with internet access and digital projector.

Analysis of required learning effort (much of the remainder of this table must also be presented in the programme schedule—take care to ensure consistency)										
Effort while in contact with staff										
Classroom demonstrations and		Mentoring and small-group tutoring		Other (specify)		Directed e-learning (hours)	Independent learning (hours)	Other hours (specify)	Work-based learning hours of learning effort	Total effort (hours)
Hours	Minimum ratio teacher/learner	Hours	Minimum ratio teacher/learner	Hours	Minimum ratio teacher/learner					
96	1:60						279			375
Allocation of marks (within the module)										
				Continuous assessment	Supervised project	Proctored practical examination	Proctored written examination	Total		
Percentage contribution				40			60	100%		

2.3.2 Module aims and objectives

The module aims to provide learners with a detailed knowledge of the rules of Land Law, at both a statutory and common law level. Key philosophical concepts are introduced and examined such as the distinction between equitable and legal interests and the distinction between freehold and leasehold interests.

From these core foundational concepts, the module then builds the knowledge of the learner over a broad range of areas including the settlement and trusts of land, succession law and securities on land. Learners also examine the hierarchy of legal interests over land ranging from freehold to easements and licences. Key procedural aspects of Land Law are also addressed, including the land registration systems used. Finally, learners are enabled to apply their learning to real-life, factual scenarios.

2.3.3 Minimum intended module learning outcomes

On successful completion of this module, learners will be able to:

- (i) Communicate a clear understanding of land law and how it operates in both an historical and modern context;
- (ii) Discuss and critique the rules of land law, including engaging in an analysis of these rules and proposals for reform, where applicable;
- (iii) Evaluate the rights that attach to land and how they operate in both a historical and modern context;
- (iv) Analyse equitable doctrines as they apply to Irish land law;
- (v) Employ research skills and communicate effectively in relation to land law;
- (vi) Interpret and apply the various Land Law concepts, rules, principles and techniques;
and
- (vii) Analyse factual legal problems in light of the principles and rules of land law.

2.3.4 Rationale for inclusion of the module in the programme and its contribution to the overall MIPLOs

It is vitally important that any graduate planning to work in the legal field has a comprehensive understanding of Land Law and the theories underpinning it. For graduates not planning to work directly as legal practitioners, the key skills and knowledge acquired in this important module are transferable across a range of employment types and industries.

This module serves to directly underpin programme learning outcomes 1, 6, 8, 9, 10.

2.3.5 Information provided to learners about the module

Learners will receive the following resources and materials in advance of commencement including:

- Learner Handbook;
- Module descriptor;
- Module learning outcomes;
- Assessment strategy;
- Reading materials;
- Class Notes (on a weekly basis).

Additionally, this material will be made available through Moodle, the College Virtual Learning Environment, along with other relevant resources and activities.

2.3.6 Module content, organisation and structure

Land Law is a 15 ECTS credit module taught and assessed over one academic year. The module is delivered over 24 lecture sessions of 4 hours' duration for Full Time learners and 2 hours duration for Part Time Learners.

The Learning Outcomes for this programme have been aligned with the knowledge, skills and competencies indicated as appropriate for Level 8 on the NFQ. They have been articulated using the *Quality and Qualifications Ireland (QQI) Awards Standards for Honours Bachelor of Laws and Master of Laws (July 2014) and for Generic Higher Education and Training (July 2014)*.

- Introduction to Irish Land Law
- Estates
- Equity and the Doctrine of Notice
- Registration systems
- Settlements of land and trusts of land
- Co-ownership
- Adverse possession
- Succession law
- Family and civil partnership property
- Easements
- Covenants
- Mortgages
- Rights of residence and licences
- Landlord and tenant law

2.3.7 Module teaching and learning (including formative assessment) strategy

The module uses participative lectures, which consist of tutorial-style discussions, group work sessions and exercises. The lectures are supplemented by structured on-line resources and directed reading. Formative assessment is provided in the form of interactive exercises such as directed class discussion topics which reference current affairs pertaining to Land Law at the time of instruction. Formative assessment is also provided through tutorial-style discussions, group work and exercises. These focus on specific case law and problem-based learning requiring learners to analyse the law and apply it to practical Land Law disputes or issues.

Learners also engage in collaborative work in pairs or small groups to brainstorm what learning has been achieved at the end of lectures. In order to support learners through the examination process, they engage in the answering of sample examination questions and correction of their own or peer's papers, thereby familiarising themselves with the marking criteria. Learners also engage in activities where they draft their own exam questions in order to recap and consolidate a particular topic.

Learners undertaking the course via blended learning benefit from varied and additional options for engagement to compensate their reduced attendance of campus. These include

webinars, screencasts (recorded lectures), discussion fora, and increased use of the College's VLE (Virtual Learning Environment), Moodle.

In addition to what has been stated, classroom assessment and benchmarking techniques are deployed to encourage learners to develop more agency in terms of their own learning including in-class presentations, group work, peer-review exercises and reflective practice. The variety of teaching, learning and assessment techniques reflect an enhanced emphasis on skills acquisition to deepen practical knowledge. Finally, the attention of learners is drawn to current industry practice and technology used in the specific area of law to add a further dimension to learning, tracking the actual practice of legal professionals.

2.3.8 Work-based learning and practice-placement

Land Law is a class based 15 ECTS credit module and does not require work-based learning and practice placement.

2.3.9 E-learning

Moodle, the College Virtual Learning Environment, is used to disseminate notes, advice, and online resources to support the learners. Moodle can be accessed in the learner's home, various open labs on campus and in the library. The learners are also given access to Lynda.com as a resource for reference.

2.3.10 Module physical resource requirements

Requirements are for a fully equipped classroom. The classroom is equipped with a PC and Microsoft Office; no other software is required for this module.

The College library has a dedicated law section and online legal research tools (JustisOne, Westlaw, Hein Online).

2.3.11 Reading lists and other information resources

Primary Reading:

De Londras, F. (2011) Principles of Irish Property Law. Dublin: Clarus Press

Howlin, N. & McGrath, N. (2018) Lyall on Land Law. Dublin: Roundhall

Wylie, J.C.W. (2013) Irish Land Law. Dublin: Bloomsbury

Secondary Reading:

Bland, B. (2009) Easements. Dublin: Roundhall,

Conway, H. (2010) Co-Ownership of Land. London: Bloomsbury Professional

Coughlan, P. (1998) Property Law. Dublin: Gill and MacMillan

Courtney, P. (2012) Wills Probates and Estates. Dublin: Law Society of Ireland

Fitzgerald, B. (1995) Land Registry Practice. Dublin: Round Hall

Keating, A. (2001) The Construction of Wills. Dublin: Round Hall

Maddox, N. (2007) Mortgages Law and Practice. Dublin: Roundhall.

McFarlan, B., Hopkins, N. & Nield, S. (2012) Land Law: Text, Cases, and Materials. Oxford: OUP

Pearce, J. & Mee, R.A. (2011) Land Law. Dublin: Roundhall

Wylie, J.C.W. (2017) *The Land and Conveyancing Law Reform Act 2009: Annotations and Commentary*. London: Bloombury Professional

2.3.12 Specifications for module staffing requirements

Lecturers expected to hold at least a level 8 legal qualification, preferably with a professional legal qualification. It is an advantage to have completed the Certificate in Training and Education provided by Griffith College.

Learners also benefit from the support of the Programme Director, Programme Administrator, Lecturers, Learner Representative, Students' Union and Counselling Service.

2.3.13 Module summative assessment strategy

Theoretical knowledge is assessed by both continuous assessment (40%) and a summative end of year examination (60%). The continuous assessment consists of a written assignment (40%). The examination consists of both essay and problem style questions. Essay style questions will place emphasis on the demonstration of understanding pertaining to Land Law. Problem Style questions will enable learners to apply the principles of Land Law to a factual scenario.

The assessed work breakdown can be seen in the table below.

No	Description	MIMLOs	Weighting
1	Exam	i, ii, iii, iv, vi, vii	60%
2	Assignment	iii, v, vi	40%

2.3.14 Sample assessment materials

Sample Assignment - Assignment Title

“Section 31 of the of the *Registration of Title Act, 1964* as amended, sets out a principle known as the ‘mirror principle’. It is sometimes suggested that section 72 of the same Act, figuratively permits ‘cracks’ to appear in the ‘mirror’ which section 31 had created.”

With respect to the system of land registration in Ireland, describe how each of the foregoing sections operate, and critically discuss the interaction between them, setting out whether or to what extent you agree with the above statement.

Refer to relevant statutory provisions; case law; and/or academic commentary in your answer.

Submission Information and Presentation Guidelines

The submitted assignment should be 2,500 – 3,000 words in length. This does not include reasonable footnotes. Referencing must be in accordance with the OSCOLA referencing system.

Assignments should be typed in Size 12, Times New Roman Font, 1.5 spacing.

Please submit via the link on the Land Law Moodle page. Completed assignments must be uploaded as one document with the first page being the Assignment Cover Page (available on the Land Law Moodle page).

Sample Examination
Answer any three of the following questions.
All questions carry equal marks.

Question 1

In 2012, three brothers, Tom, Dick and Harry, inherited their father's farm as joint tenants. Faced with the options of keeping the land, selling it, or leasing it, the brothers disagreed over what should be done. Tom, who believed they should keep the land, didn't want to leave the farm idle pending a final decision, and took possession of the farm and has worked it ever since.

As time passed, Tom began to resent his brothers' desires to either lease or sell the land and felt that this money-orientated attitude was disrespectful to their father and their heritage. Tom decided to cut off all communication with Dick and Harry and would not allow them onto the property.

In the last year, both Dick and Harry have become unemployed and they both now want to sell their respective shares in the property to Tom. They also see that Tom is earning significant profits from the farming and they wish to share in those profits given their current unemployment.

Tom refuses to give his brothers any of the profits he is currently making, and while his brothers think this is unfair, they are willing, for the purposes of reaching an agreement more quickly, to drop this issue if they could simply sell their shares of the property to Tom at a fair price.

Ultimately they cannot reach agreement with Tom over the purchase price of the farm as Tom feels it should be sold to him at a lower price, as he was the only one of them who was honouring their father's memory by keeping the farm.

A local property developer has now expressed an interest in the land at a very good price. Dick and Harry think that the best resolution is for them all to sell the farm to the developer, since they are not willing to accept Tom's low offer. Tom opposes the sale. Dick has also been diagnosed with a terminal illness and he wants to know whether he will be able to leave any portion of the farm in his will to his children in case the matter is not resolved by the time he is deceased.

Advise Dick and Harry on what procedures and remedies are open to them, supporting your answer with relevant authority.

Sample answer 1

This problem question about co-ownership clearly identifies the type of co-ownership at issue as being a joint tenancy. Students may set out the nature of the ownership and contrast with tenancy in common. An important feature is the right of survivorship and in respect to the terminal illness arising in this case, Dick should be advised that prima facie a joint tenancy will not permit him to leave a portion of the estate in his

will, but good students will also point out that the negotiations in respect of the sale may give rise to an equitable recognition of severance of the joint tenancy (section 30(4) LCLRA 2009 and Burgess v Rawnsley).

The exclusion of two of the brothers from the land invites a discussion of the rights of co-owners:

Rights of Co-owners

- *Right to possession Bull v Bull [1955] QB 234, Dennis v McDonald [1982] 1 ALLER 590*
- *Right to Rents and Profits from the land, Jones v Jones [1977] 2 ALL ER 231(now under 2009 Act (s.31))*
- *Right to alienate the land (now under 2009 Act (s.31) – consent or Court order required)*

On the main issues in the question regarding buy-out/sale/share of profits, what is required to be discussed in section 31 LCLRA 2009:

Section 31 of the LCLRA (particularly relevant provisions highlighted):

Any person having an estate or interest in land which is co-owned whether at law or in equity may apply to the court for an order under this section.

An order under this section includes—

- *an order for partition of the land amongst the co-owners,*
- *an order for the taking of an account of encumbrances affecting the land, if any, and the making of inquiries as to the respective priorities of any such encumbrances,*
- *an order for sale of the land and distribution of the proceeds of sale as the court directs,*
- *an order directing that accounting adjustments be made as between the co-owners,*
- *an order dispensing with consent to severance of a joint tenancy as required by section 30 where such consent is being unreasonably withheld,*
- *such other order relating to the land as appears to the court to be just and equitable in the circumstances of the case.*

In dealing with an application for an order under subsection (1) the court may— make an order with or without conditions or other requirements attached to it, or dismiss the application without making any order, or combine more than one order under this section.

In this section—

- *“person having an estate or interest in land” includes a mortgagee or other secured creditor, a judgment mortgagee or a trustee,*
- *“accounting adjustments” include—*

- *payment of an occupation rent by a co-owner who has enjoyed, or is continuing to enjoy, occupation of the land to the exclusion of any other co-owner,*
- *compensation to be paid by a co-owner to any other co-owner who has incurred disproportionate expenditure in respect of the land (including its repair or improvement),*
- *contributions by a co-owner to disproportionate payments made by any other co-owner in respect of the land (including payments in respect of charges, rates, rents, taxes and other outgoings payable in respect of it),*
- *redistribution of rents and profits received by a co-owner disproportionate to his or her interest in the land,*
- *any other adjustment necessary to achieve fairness between the co-owners.*

Question 2

What are the criteria that must be fulfilled by a “squatter” on land that does not belong to them, in order to claim adverse possession against the legal owner? What can the legal owner do to ‘stop time’ running against them in respect of their property rights where there is such a “squatter” trespassing on their land?

Sample Answer 2

Essay question concerning Adverse Possession – roughly in two parts – the main part is in relation to meeting the criteria for a claim in Adverse Possession, but reference is also sought to how a landowner may intervene to stop time running against them.

On the main issues, the student is expected to outline the elements of Adverse Possession:

The possession of the land (by the squatter) must be adverse to that of the true /legal owner; therefore the true/ legal owner must have had a right to possession of the land. The Squatter must be in possession of the land.

There must be discontinuance or Dispossession of the landowner and Animus Possidendi by the squatter.

Students may exceptionally refer to the controversy involved in cases in which the legal owner has a future intended use for the land (Leigh v Jack (1879); Buckinghamshire County Council v Moran [1990] Ch 623; Durack (Seamus) Manufacturing v Considine [1987] IR 677; Cork Corporation v Lynch [1985] ILRM 598)

A wide selection of cases may be used to illustrate knowledge of the criteria and a student could make reference inter alia to some of the following cases:

- *Murphy v Murphy [1980]*
- *Bellew v Bellew [1982]*
- *Kelleher v Botany Weaving Mills [2008]*
- *Powell v McFarlane*
- *Seddon v Smith*
- *J.A. Pye (Oxford) Ltd. v Graham [2002]*
- *Hickson v Boylan*

- *Leigh v Jack (1879) 5 Ex*
- *Wallis's Cayton Bay Holiday Camp Ltd. v Shell-Mex and BP Ltd*
- *Bula Limited & Others v Crowley [2003]*
- *Dunne v Iarnrod Eireann*
- *Dooley v Flaherty*

The second part of the question concerning the stopping of time will refer to the landowner exercising rights which have the effect of re-starting the clock on the squatter. Indicative cases on this point are Feehan v Leamy [2000]; and Dunnes v CIE (2007).

Question 3

Helen, an elderly lady, discovered in January 2016 that she required surgery to remove a tumor. Before she went into hospital, she drew up a Will making provision for her husband, Jack. She didn't think there was any need to include twenty-two-year old her son, Joe, in her Will because she thought that when Jack died Joe would inherit everything belonging to both of them. Joe lived in the house with them. He was 22 years old and was unemployed.

Helen asked her solicitor, Sarah, to draw up the Will and come to Helen's house to execute it the week before the operation was due to take place. The day before Sarah was to come with the Will, Helen won €100,000 in a lottery which she put straight into a new bank account that day.

When Sarah called to the house with the Will, Helen signed it at the end in the presence of Sarah and Joe, and they also signed the Will as witnesses. Joe was present when Helen read through the Will and understood why his mother did not include him in it. He did not however know that his mother was sick and was going to have surgery. She did not want to worry him, because he was an anxious young man, so she told him she was going for a short holiday.

When Joe was about to sign the Will, Sarah got a phone call from another client and left the room to take it. When she returned, Joe had gone to the kitchen to make tea and Sarah proceeded to also sign the Will as a second witness.

After Sarah left the house, Helen realized she had entirely forgotten to mention the lottery money to Sarah, but thought that she should add it to the Will now. She added a sentence in a small space between the end of the Will and her signature by writing in a provision to the effect that the contents of the bank account she had set up should go to her son Joe. She put the Will in an unsealed envelope and left it on a counter.

When Joe was going to bed, he had the same realization as Helen about the lottery money, and wondered whether it was in the Will. He saw the envelope and decided to open it and read over the Will again to see if it said anything about the lottery money. He then saw what Helen had written at the end and was happy that his mother had wanted him to have that money if she were to pass away.

The next morning, Jack came in to the living room to do some reading, and decided to light the fire. He gathered up some papers on the counter (which were mostly advertising leaflets) to throw on the fire, but inadvertently also threw in the envelope containing Helen's Will, which became entirely burned up. Helen did not realise that her Will had been destroyed when she went to hospital for her surgery and unfortunately, did not survive the procedure.

Joe and Jack are now having a falling out about the Will. Joe does not now trust his father and believes that Jack deliberately destroyed the Will so that Joe would not get the lottery money. Jack, having obtained a copy of the draft Will from Sarah, sees that it originally said that he is entitled to all assets to which Helen is legally or beneficially entitled, and he thinks that this by definition will include the lottery money. He thinks that Joe should accept the contents of the Will that was originally drafted, and he thinks that Joe agreed to that original version by witnessing it himself.

Joe comes to you looking for advice. Advise him generally on the issues in his case, and in particular, advise Joe on whether the original Will was valid when it was made; whether the subsequent addition that he saw Helen had made is valid; whether either of the original or amended Will are enforceable in light of the document being burned; and what legal options Joe has to attempt to get the lottery money in the event that either the original Will is valid, or there is no valid Will.

Sample Answer 3

Problem question concerning the validity of, and revocation of Wills; together with the procedure for codicils and the consequences of a valid or invalid will.

On Validity of original will: students may raise the witnessing of the will and consider whether the fact of the witnesses not both being present when each signed affects validity. Section 78(2) of the Succession Act likely is complied with in this regard.

Validity of Codicil / Additional Provision: Not valid by reference to the absence of witnesses, lack of attestation and lack of signature. If it had been witnessed by the same witnesses, Joe would be excluded in any event as a witness cannot be a beneficiary. Original wording of the will indicates that Jack will inherit the lottery money.

Destruction of the Will: Relevant case law for formalities: Cheese v. Lovejoy; McDonald v. Norris, ABC deed, Parker and Felgate. Section 85 of the 1965 Act not complied with in this case, the Will was not revoked by destruction. As the codicil was not effective in any event, it is for this reason rather than the destruction that it will not be enforceable.

Consequences: If the will is valid, as is likely, Joe can only seek to get something from the will now under section 117. What is against him is that he was agreeable to the will in its original form, and this reflected the good relationship between mother and son and which makes it less likely that a Court will interfere (CC v WC (1990)). In addition, the Court would take into account the inheritance the mother expected Joe to receive from his father per CW v LW (2005). In the unlikely event that the will is invalid, Joe, as the only child of the deceased will be entitled to 1/3 of the entire estate. Reference could also be made to the possibility of section 90 being applied as well as extrinsic evidence, to prove the content of the will.

Question 4

Rights of Residence can be categorised as exclusive or general, and can be treated differently depending on whether they relate to registered or unregistered land. Discuss the nature of the interest that arises when a “Right of Residence” is granted and describe how Irish law deals with the above outlined distinctions

Sample Answer 4

*This is an essay question on rights of residence. Students should identify the relevance of whether the property is registered or unregistered. It would be expected the student would explain the rights one has as the right-holder and as the title-holder to the property; the impact of s.81 Registration of Title Act 1964 and the case law that led to its enactment; how some Rights of Residence can be satisfied by money payments; the valuation considerations (Considering comments in *Johnston v Horace* [1993] ILRM 594 and *Bracken v. Byrne & Another* [2005] IEHC 80). A particularly good student may note that such rights are s.69 burdens and the impact of same if the right holder decided to try and sell. It is essential for a high mark that the student would introduce appropriate sources of law.*

Question 5

Tim and Jane have been married for 20 years and throughout this time they have lived in the family home which is in Tim’s sole name. Recently Jane saw Tim’s email account was open on their home computer. One email in particular caught her attention as she was about to close it, because she saw the word “love”.

She read this email correspondence between Tim and a woman named Linda, and between this and other emails, she can see that Tim is professing that he has fallen in love with Linda. The emails reveal a plan that Tim has made to secretly sell the family home and use the proceeds of sale to elope with Linda, change his identity and set up a new life. In the alternative, he says that if it turns out that he cannot practically sell the house, he will instead secretly obtain a large personal loan, which he would not intend to pay back but rather let the lender put a judgment mortgage on the family home, for Jane to deal with in due course.

It is clear that Tim does not intend to tell Jane anything in advance of his proposed financial transactions or to end the marriage legally and that he intends to simply disappear and change his identity. Tim appears not to be troubled by the subterfuge because he says that because Jane owns the couple’s summer house by the sea, “Jane could move there or sell it and buy a flat nearby”.

The two houses are the couple’s only significant assets, and Jane does not believe she could pay off any judgment mortgage put on the family home, were that to happen.

Jane comes to you for advice. She says that she has no intention of seeking to formally separate from Tim legally, or to divorce him, as that would be against her religion. She plans to win Tim back through prayer and by way of an intervention with the assistance of their priest. She nonetheless does want to know what legal protections she may be able to avail of in the event that Tim does nonetheless try to sell the family home, or to put it at risk with

reckless borrowing. She heard from a friend at church that there is legislation about family homes which may assist her. Advise Jane.

Sample Answer 5

Students should identify this as a problem question relating to Family property and particularly the Family Home Protection Act as the scenario involves an existing marriage. Mention of options contained in the Family Law Acts 1995/6 would not be out of place in the context of advice generally in the area, though a focus on the FHPA would be expected. Issues particularly pertaining to sections 3 and 5 of that Act are raised. Some indicative case law expected:

- *Bank of Ireland v Hanrahan (Unrep, High Court, 10 February 1987)*
- *Bank of Ireland v Smyth [1995] 2 IR 459*
- *Somers v Weir [1979] IR 94*
- *Reynolds v Waters [1982] ILRM 335*
- *R v R (Unreported, High Court, December 1978)*
- *S O'B v M O'B (Unreported, High Court, December 1981).*

Candidates are required to apply the law to the facts concerned and reach a conclusion (including alternate conclusions) based on their analysis.

Question 6

In *Re Ellenborough Park* [1956] Ch 131, the Court of Appeal in the UK described the four essential characteristics of an easement. Critically analyse these characteristics and their continued application in Irish Land law today.

Sample Answer 6

*Students should examine the definition of an easement to see whether this situation falls within it using *Re Ellenborough Park* criteria. Relevant case-law includes:*

Re Ellenborough Park

Latimer v Official Cooperative Society

Hill v Tupper

Students should also look into validity of easements looking at issues such as the following:

- *is the right conferred to vague?*
- *is the right concerned inconsistent with the proprietorship or the possession of the alleged servient owners?*
- *is it merely a recreational right with no utility or benefit?*

High-end grades would expect an analysis of the current application of this test to a modern Irish situation