



Faculty of the
Built Environment

Module
Introduction to Law

Module No. B1HV01

Land Registration

University of the West of England

ACKNOWLEDGEMENTS

The team involved with the development and production of these independent learning materials are:

Author: John A. Greed LL.B., Solicitor

Project Co-ordinator: Yvonne Finn

Open Learning Editor: Rachel Hudson

Stylist: Marion Biles

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Published by the Faculty of the Built Environment
University of the West of England, Coldharbour Lane,
Frenchay, BRISTOL BS16 1QY
Tel. 0117 9656261 Fax. 0117 9763895

LAND REGISTRATION

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Section 1

The Purpose of this Workbook

*** 1.1 Introduction

There are at present two conveyancing systems in use in England and Wales. These are the "registered land" and "unregistered land" systems. This workbook explains why this is so, and gives an outline of the documentation and registration requirements of both systems.

Because there is a lot of material to cover, a system of asterisks has been used to help you identify which parts of the workbook to concentrate on.

*** you are likely to be tested on this in the examination

** you will get a higher grade if you are familiar with this

* although you will not be tested on this information you will need to use it when you are in practice

*** 1.2 Learning Outcomes

By the time you reach the end of this work book, you should be able to:

- explain why records of ownership of rights in land are necessary
- give an outline of the "registered land" system
- give an outline of the use of deeds in the "unregistered land" system
- explain why the "unregistered" system is being superseded by the "registered" system
- indicate how far this superseding has progressed at the present time
- describe the layout of a Land Registry Title Certificate
- name and in outline describe the four categories of title registrable at the Land Registry
- differentiate between the Land Registry, the Land Charges Registry and the Local Land Charges Registries
- state which of these Registries should be searched in on a purchase of (a) registered and (b) unregistered land
- discuss the advantages and disadvantages of the registered system over the unregistered system

*** 1.3 Key Words and Phrases

- Land Registry
- Land Charges Registry
- Local Land Charges Registries

- Land Registration Act, 1925
- Land Charges Acts, 1925 and 1972
- Local Land Charges Act, 1975

- registration of land
- registration of incumbrances over registered land
- registration of incumbrances over unregistered land

- searches
- overriding interests.

1.4 How to use the Workbook

The workbook is loose-key and hole punched so that you can remove the staples and put it into a ring-binder if your wish.

It contains regular activities with white space for you to write down your answers. At the end of each activity you will find a line across the page known as a *reader stopper*. If you do not want to read the comment or 'answer' before completing the exercise, put a piece of paper across the reader stopper whilst writing out your answer.

The activities are an integral part of the workbook so that you will not be able to make sense of the workbook if you skip them. One of the advantages of using this workbook is that it allows you to make mistakes in private. If you are one of the many people who have developed strategies for avoiding making mistakes in learning situations, you may feel quite alarmed about trying out the activities and writing down your response in the workbook in case you get the answer 'wrong'. Remember, no-one is going to see, and you can learn a great deal by making mistakes. However, don't worry if you are the kind of person who likes to look at the answer first. Another advantage of this workbook is that it allows you to learn in ways that suit you and at a pace that suits you.

Section 2

Landownership and its Proof

** 2.1 Ownership of Rights in Land

Are you wearing shoes? YES/NO

If "yes", read paragraph (a)

If "no", read paragraph (b)

- a) Feel free to take off your shoes and put your feet up; and go to paragraph b).
- b) the fact that you usually wear shoes probably means that those shoes are yours. You could sell them to someone.

** Is the purchaser likely to have to borrow money on mortgage to pay for them?

YES/NO

** Have you ever sold part of a pair of shoes?

YES/NO

** The fact that you have almost certainly answered "no" to these questions means that in these respects the sale of the shoes should be straightforward.
As soon as the purchaser pays for them, you can hand the shoes over.

** On the other hand, the fact that you are inside a house or a flat or other property does not mean that the property is yours.

*** You may be any of the following:-

- i) the owner of the freehold,
- ii) the owner of a long "specific term of years" such as a 125 years Lease,
- iii) the owner of (i) or (ii) above but subject to a mortgage,
- iv) the owner of (i) or (ii) jointly with someone else,
- v) the owner of (i) or (ii) as a trustee, holding the property for the benefit of someone else,
- vi) a lodger,
- vii) a squatter,
- viii) a tenant of a "periodic term of years" such as a weekly tenancy,
- ix) a son, daughter, granddaughter (etc.) of the owner or tenant,
- x) the partner of the owner, to whom you may or may not be married and to whom you may or may not have provided a financial contribution towards the purchase of the property,
- xi) on commercial property you may be the business partner or an employee of the owner,
- xii) you may be the owner or tenant but subject to items (a) (b) (c) (d) and/or (e) below.

- (a) The property may be subject to easements, permitting the neighbour's pipes, electricity cables etc. to run through it.
- (b) It may be subject to covenants.
- (c) It may be in the path of a proposed new motorway or by-pass.
- (d) It may have been declared unfit for human habitation, or have some other Planning or Environmental Health restriction affecting its use.
- (e) It may be that part of the property has already been sold to someone else but that the purchaser has not yet fenced it off.

** None of these problems applies to the purchase of a pair of shoes.

*** Therefore there needs to be a recording system by which a prospective purchaser can check on (a) the shape, size and location of the land, (b) who is the present owner, and (c) what the property is subject to.



Activity

Explain in your own words why records of ownership of rights in land are necessary.

Comment

They are necessary to avoid disputes as to who is the legal owner of the freehold or leasehold, and also to reveal matters to which the property is subject. These could include easements, covenants, mortgages, and planning and environmental health matters.



Activity

State what three things a prospective purchaser needs to be able to check.

- 1
 - 2
 - 3
-

Comment:

- 1 *the shape and size and location of the property,*
- 2 *the identity of the present owner,*
- 3 *the matters to which the property is subject.*

2.2 Proof of Ownership of a Legal Estate in Land

The two Systems of proving Ownership

*** There are two recording systems at present in use in England and Wales. These are:-

- the "unregistered land" or "old conveyancing" system, which is now being phased out,
- the "registered land" or "new conveyancing" system.



Activity

Say whether each of the following two statements is true or false:-

The "new conveyancing" system is the "registered land" system.

TRUE/FALSE

The "unregistered land" system is being phased out.

TRUE/FALSE

Comment:

Both statements are true.

Section 3

The "Unregistered Land" System

3.1 Deeds

- ** On the "unregistered land" or "old conveyancing" system, ownership is shown by formal legal documents known as deeds.
- ** These deeds are not recorded on any register, which is why the land subject to this system is known as unregistered land.
- ** Deeds are documents on which certain formalities have been complied with. Until 31st. July 1990, these formalities required that all deeds must be signed by the person or persons making the deed, and also sealed with either a sealing-wax seal or a red waxed-paper seal.

This requirement was changed by section 1 of the Law of Property (Miscellaneous Provisions) Act, 1989. For deeds made after 31st. July 1990, the seal is no longer necessary (though you can still use one if you want to) but the deed must be signed *and must also be signed by a witness*. (The witness may be any responsible person who was there and actually saw the deed signed.)



Activity

State the requirements to be looked for on (a) a deed made in 1984, and (b) a deed made in 1994.

a)

b)

Comment:

A deed made in 1984 is not valid unless it has a signature and a seal; a deed made in 1994 is not valid unless it has a signature which has been witnessed.

- ** ● A deed of transfer of ownership of land must always be signed by the seller, and usually also by the buyer. The signatures must be witnessed.
- ** ● A mortgage deed must always be signed by the borrower, and by a witness.
- ** ● If the seller is a limited company, the usual practice is to use the company's seal, and a Director (or other authorised official of the company) will sign beside the seal.
- ** ● A contract is not a deed, but by section 2 of the Law of Property (Miscellaneous Provisions) Act, 1989, a contract for sale of land must be signed by the seller and the buyer. No witness is needed.
- ** ● A will is not a deed and needs no seal, but by the Wills Act, 1837 (as amended by the Administration of Justice Act, 1982) a will must be signed by the testator (the person making the will) and by two witnesses.



Activity

John Smith has today had a deed drawn up to sell a piece of freehold land to Mary Jones. He has also made a contract today in which he promises that he *will* sell his house to Betty Bloggs for £99,000. He has also made his will. State what formalities are necessary for each of these three documents.

deed:

contract:

will:

Comment:

The deed requires the signatures of John and a witness; the contract requires the signatures of John and Betty; the will requires the signatures of John and two witnesses. No seals are required.

3.2 An "Unregistered Land" Example

* Here is an outline of a set of deeds for a piece of unregistered land:-

EXAMPLE:

- 1891 Bain sold a property (it was a house with a large garden) to Cain in fee simple, and imposed a number of restrictive covenants such as not to use the premises for giving music lessons.
- 1905 Cain sold all this property to Dain.
- 1929 Dain went bankrupt. His trustee in bankruptcy (Fain) then sold the property to Grain.
- 1933 Grain granted an equitable easement to the neighbour Hain. (As this was treated by informal writing, not a deed, this may not show up from the deeds.)
- 1944 Grain died, leaving all his property by will to Idrain.
- 1970 Idrain sold it to Jane and Krain as co-owners (beneficial joint tenants on Trust for Sale).
- 1971 Jane and Krain granted a legal easement by deed to their neighbour, Laine.
- 1973 Jane and Krain sold the property to Main who mortgaged it to Nain.
- 1989 Main paid off the mortgage and sold part of the garden of the property to Payne as a building plot, with Planning Permission for the erection of a bungalow on it. Main imposed certain restrictive covenants onto the plot for the benefit of the rest of the property, which he kept (and which he later sold to Quain). Payne then mortgaged his building plot to Rain and built a bungalow on it.
- 1990 Payne paid off the mortgage and sold his property to Sprain, the present owner, who has mortgaged it to the Teignmouth Building Society.

* This set of title deeds therefore includes at least 15 deeds and documents (as well as various searches etc. not listed in this example) - these 15 can be classified as:-

- 7 Conveyances (purchase deeds)
- 1 Order in Bankruptcy
- 1 Deed of Grant of a legal easement (and there is also an informal written grant of an equitable easement, which may or may not be with the deeds)
- 1 Probate (proof of genuineness of a will)
- 3 Mortgage deeds
- 2 Mortgage receipts. (The latest mortgage is not yet paid off.)

* The deed of 1990 does not prove that Sprain owns the property: it shows only that Sprain made a purchase from Payne. Was Payne entitled to sell it?

- * The deed of 1989 shows that Payne bought the property from Main. But was Main entitled to sell it?
- * The deed of 1973 shows that Main bought it from Jane and Krain: but were they entitled to sell it? Was it theirs?
- * - And how far back does all this have to be checked?
- ** The Law of Property Act, 1969, states that the purchaser's conveyancer must check back to a deed at least 15 years old. This deed is known as the "root of title".
- ** The relevant parts of these deeds have to be set out for the purchaser's conveyancer to check: so the Abstract of Title (the set of typed or photocopied extracts from these documents, which is sent to the purchaser's conveyancer) will be several pages long.
- * Sprain (or rather, the Building Society) will be holding the 1989 and 1990 original deeds: but will only have copies, in an Abstract of Title, of the deeds before 1989 - because all of those deeds will have gone to Quain. Payne's conveyancer in 1989 will have insisted on having Abstracts of deeds going back at least 15 years prior to 1989. (Quain will have deeds and documents going back to 1851 or earlier, because he has the deeds back to 1891, and, under the law as it stood in 1891, conveyancers in those days had to check back for at least 40 years.) So Sprain's present Abstract will probably show the 1973 sale and mortgage but nothing earlier than that, except that there should be copies of the 1971 easement and 1891 covenants, as these were created by deed.



Activity

State which deed will be the root of title in the above example.

Comment

It will have to be the deed of 1973, because the next deed (1989) is not yet 15 years old.

Though the deeds before the 1973 deed are "before the root of title" and need not be checked, the purchase-deeds of 1973, 1989 and 1990 can be expected to mention that there is a legal easement which was created in 1971 and that there are covenants which were imposed in 1891: and it may be necessary to go back to the 1971 and 1891 deeds, to obtain details of these matters. As to the 1933 equitable easement, see Section 5.5(iv) of this workbook.

3.3 Disadvantages and Advantages of the "Unregistered Land" System

** Disadvantages

Relevant information is scattered around in separate deeds (1990, 1989, 1973, 1971 and 1891 in this example).

If the deeds are lost, there are often no duplicate copies. This can make the property impossible to sell, unless a "squatter's title" of 12 years occupation can be shown.

The bundles of deeds, growing larger every time a mortgage or other deed is added to the bundle, are bulky and inconvenient to store.

Bundles of deeds should never be sent by post without insurance against the risk of their being lost or damaged.

Old deeds are often mouldy, unhygienic and falling apart, and have sometimes been chewed by rats or mice.

Checking back to a deed at least 15 years old takes time, and it had to be done every time the property was sold, because the buyer's conveyancer is not entitled to assume that previous conveyancers have done their job properly.

(The writer of this book had a case in practice in which, on checking the title deeds on behalf of a buyer, he found that the seller owned only half of the back garden, though he thought he owned all of it. The other half of the garden was still in the name of a previous owner, who was dead and it was necessary to look for the executors of his will to put the matter right.)

Advantages

A person with sufficient legal knowledge could do his or her own conveyancing, for unregistered land. For registered land he or she can still do so but then has to pay a large Land Registry fee (see 4.3 below) for registration of what he or she has done.



Activity

In the example in 3.2 above, what deeds and documents is Sprain likely to have deposited with the Building Society?

Comment:

The deeds will include the 1989 purchase deed (it is called a deed of Conveyance) made between Main and Payne; and the 1990 Conveyance from Payne to Sprain. There will also be Payne's mortgage deed (with a receipt showing that the mortgage has been paid off) and Sprain's own mortgage to the Teignmouth Building Society. There will also be an abstract of the earlier deeds going back at least to 1973, but the originals of these deeds will not be here because Quain has them. There will also be various searches etc. and a planning permission. Details of the 1971 easement and the 1891 covenants should also be there, either in the abstract or on separate pieces of paper.

3.4 A Better Way

- ** Would it not be more efficient and convenient to go through a set of title deeds once and for all, and then put all the currently-relevant information into a single Certificate of Title which would be guaranteed by the government?
- ** And each time the property changes hands, would it not be better to update the information (which would be kept on computer) and update the Certificate so that it only showed currently relevant information?
- ** Answer to both questions: YES! - And this is the principle on which the "registered land" conveyancing system is based.



Activity

Betty bought a bungalow in 1990. Now Norman the nose neighbour is accusing her of being a squatter. Explain how Betty can prove that she is the owner of the freehold or leasehold estate in the property.

Comment:

If the property is registered land, she can prove her ownership by producing her Title Certificate. If the property is unregistered land, she can prove her ownership by producing her deeds.

Section 4

The "Registered Land" System

4.1 The Principle of "Registered Land"

- *** The basic principle of the "registered land" system is that there is one single document, the Title Certificate, instead of an ever-growing bundle of deeds.
- ** Thus the 15 documents in the example in Section 3.2 above will be replaced, next time the property is sold, by a single Title Certificate.
- ** "Office copies" (photocopies or computer printouts) of the information in the Title Certificate are available from the Land Registry - see the end of paragraph 4.4 below for the fees payable for this service.
- ** The main statute governing this system is the Land Registration Act, 1925, which is part of the 1925 Land Law legislation.



Activity

Circle the correct alternative.

- (a) Unregistered land has ONE MAIN DOCUMENT/ MANY DOCUMENTS.
- (b) Registered land has ONE MAIN DOCUMENT/MANY DOCUMENTS.

Comment:

- (a) *MANY DOCUMENTS*
- (b) *ONE MAIN DOCUMENT*

4.2 What legal Estates are registrable?

- *** All legal freeholds, and all legal leaseholds exceeding 21 years, are registrable.
- ** Leases not exceeding 21 years, made by deed, are good without registration, as "overriding interests"
- and leases not exceeding 3 years (whether they are specific or periodic terms) are good, without registration, even if made by word of mouth.

Note:-

- Legal estates divide into freeholds and leaseholds.
- All legal freeholds are fee simple absolute in possession.
- Legal leaseholds divide into specific and periodic terms of years absolute.
- Specific terms may be for any period less than for ever.
- Periodic terms (such as weekly, monthly, three-monthly and yearly tenancies) can in theory be based on any period, but in practice the basic recurring period is not going to be shorter than a week nor longer than a year.
- Thus leases and tenancies ~~which~~ made by word of mouth may be specific or periodic terms, but all leaseholds longer than three years will in practice be specific terms.

*** Beneficiaries' equitable rights under trusts are not shown on the register.

*** Legal and equitable easements etc. are shown on the register - see Section 4.10(3) below.



Activity

- (a) Name the two legal estates.**
 - 1.
 - 2.
 - (b) State which of these are registrable at the Land Registry.**
 - (c) Do legal easements appear on the register? YES/NO**
 - (d) Do equitable easements appear on the register? YES/NO**
 - (e) Do equitable rights under a trust appear on the register? YES/NO**
-

Comment:

- (a) *fee simple absolute in possession;*
terms of years absolute (periodic or specific)
- (b) *all fee simple estates;*
all terms of years longer than 21 years
- (c) *yes*
- (d) *yes*
- (e) *no*

4.3 Advantages and disadvantages of the "Registered Land" system

**

Advantages

All information is in one document issued by the Land Registry instead of many documents. (This is not *absolutely* true, because such matters as planning permissions and road improvement proposals etc. affecting the property are not shown but are kept by the Local Authority in a separate register which will be described in section 6.1 below - but nevertheless, the principle that there is one Certificate, instead of many deeds, results in a great saving of time.)

Out-dated material (such as mortgages that have been paid off) are deleted from the Land Registry computer and are not shown on the Certificate. This also results in a great saving of time.

The Certificate is only a *copy* of the record: the computer entry is the official legal record. So, if a Certificate is lost or destroyed, the Land Registry is able to issue a new one.

All Title Certificates include a plan, drawn to scale - this is a great improvement on the "unregistered land" system in which deeds often contain rather poor descriptions.

Registration is a form of insurance for registered proprietors, because in certain cases of fraud they are entitled to government compensation from the Land Registry in circumstances in which a defrauded purchaser of unregistered land would receive no such compensation.

Disadvantages

Due to government restrictions on the employment of extra staff in the late 1980s the Land Registry had a backlog of nearly a million transactions awaiting attention. Registrations were in some cases taking more than a year to complete. (Very inconvenient if you wanted to sell the property during that year!) This backlog has now been cleared, and registrations take only a few weeks.

A registration fee (in addition to solicitors' fees, search fees, the Stamp Duty tax, etc.) has to be paid. The 1994 scale of registration fees is set out below.

| Consideration (e.g. price) not exceeding | Land Registry Fee | Consideration (e.g. price) not exceeding | Land Registry Fee |
|--|-------------------------|--|-------------------------|
| £25,000 | £40 | £150,000 | £230 |
| £30,000 | £50 | £200,000 | £260 |
| £40,000 | £60 | £250,000 | £300 |
| £50,000 | £80 | £300,000 | £350 |
| £60,000 | £100 | £400,000 | £400 |
| £70,000 | £120 | £500,000 | £450 |
| £80,000 | £140 | etc. | |
| £90,000 | £170 | over | |
| £100,000 | £200 | £5,000,000 | £1,800 |

These fees are quite separate from the Stamp Duty (tax) payable to the Inland Revenue, of 1% of the purchase price, on all purchases for more than £60,000. (For example, the Stamp Duty on a £75,000 purchase is £750.)

- ** "Office copies" (printouts or official photocopies of the entries on the register - applied for by filling in Land Registry Form 109) and Land Registry Searches (applied for on Form 94, to check that no changes have occurred since the date the office copies were issued) are £5 each. So are copies of the plan.



Activity

Fred is buying a freehold house for £88,000. Assuming the conveyancer charges Fred 0.5% of the purchase price, what are the main expenses Fred will be faced with?

Comment:

| | |
|--------------------------|-------|
| conveyancer's fee | £440 |
| stamp duty | £880 |
| Land Registry fee | £170 |
| Land Registry Search fee | £5 |
| | <hr/> |
| | £1495 |

(The fees for the office copy entries and plan are paid by the vendor.) There will also be a fee for a Local Search - see section 6.3 below.

4.4 Where is the Land Registry?

- ** The Land Registry formerly operated from an address in Lincoln's Inn Fields in central London, but is now decentralised. It now consists of the Lincoln's Inn Fields headquarters offices, and 19 District Land Registries:

| <u>Registry</u> | <u>Area served</u> |
|------------------------------------|--|
| Birkenhead | Cheshire, Merseyside, Staffordshire, part of London, |
| Coventry | West Midlands, |
| Croydon | Part of London, |
| Durham | Cleveland, Cumbria, Durham, Northumberland, Surrey, Tyne and Wear, |
| Gloucester | Berkshire, Gloucestershire, Oxfordshire, Warwickshire, Wiltshire, |
| Harrow | part of London, |
| Hull | Humberside, Lincolnshire, Norfolk, Suffolk, |
| Leicester | Buckinghamshire, Leicestershire, |
| Lytham St. Annes | Greater Manchester, Lancashire, |
| Nottingham | Derbyshire, Nottinghamshire, South Yorkshire, West Yorkshire, |
| Peterborough | Bedfordshire, Cambridgeshire, Essex, Northamptonshire, |
| Plymouth | Avon, Cornwall, Devon, Isles of Scilly, Somerset, |
| Portsmouth | East Sussex, Isle of Wight, |
| Stevenage | Hertfordshire, part of London, |
| Swansea | Clwyd, Dyfed, Gwent, Gwynedd, Hereford and Worcester, Mid Glamorgan, Powys, South Glamorgan, West Glamorgan, part of London, |
| Telford | Shropshire, part of London, |
| Tunbridge Wells | Kent, |
| Weymouth | Dorset, Hampshire, West Sussex, |
| York | North Yorkshire. |
| <i>Add future registries here:</i> | |



Activity

State which is the appropriate District Land Registry for:

(a) the area in which the University of the West of England, Bristol, is situated.

(b) the area in which your home address is situated.

Comment

UWE is in Avon County which comes under the Plymouth District Land Registry.

(Plymouth will continue to be the appropriate registry of the forthcoming local government re-organisation, in which Avon County is to be abolished and the UWE campus will become part of a new local government area, which will probably be named South Gloucestershire).

** 4.5 Registered and Unregistered Conveyancing compared

Unregistered conveyancing:

Sprain in the example on page 10 has at least 15 deeds and documents, which are at present held by the Teignmouth Building Society as security for the mortgage. (It is standard practice for the deeds to be held by the mortgagee - the lender - so that he can sell the property if the mortgagor - borrower - fails to pay the mortgage payments regularly.)

Sprain is now paying off the mortgage and is selling the property to Vain, who is going to mortgage it to the Wainfleet Building Society.

Therefore a mortgage receipt, another purchase deed and a new mortgage will be added to this fat bundle of deeds which will be handed over to the Wainfleet Building Society.

To avoid the risk of fraud, none of these deeds will be handed to the purchaser's or Wainfleet Building Society's conveyancers until the moment that the purchase is completed and the property is paid for. Until then the conveyancers will only be allowed to have copies - i.e. abstracts of the title. (If some unauthorised person gets hold of the deeds, it is a fairly simple fraud to hide the existing mortgage, take the deeds to a Bank and obtain a new mortgage by forging the owner's signature - and then disappear with the money.)

First Registration

The property must then be registered within two months after completion of the purchase. This involves sending the entire bundle of deeds, and also the abstracts and other documents such as searches which are kept with the deeds, and other documents such as the contract for the purchase, and any Planning Permissions, etc., to the Land Registry. The Registry officials check the title and then issue a Title Certificate to replace the bundle of deeds. This is known as First Registration.

Registered conveyancing

Instead of a bundle of deeds, there would be a single document, namely a Title Certificate held by the Building Society, showing that Sprain is the owner subject to (a) the easements (b) the covenants, and (c) the Teignmouth Building Society's mortgage. Sprain's conveyancer will obtain from the Land Registry an official office copy showing this information (£5) and a copy of the plan (£5). These copies are the equivalent of unregistered conveyancing's Abstract of Title, but they only need to show the present position, whereas the Abstract must show at least 15 years of past transactions.

As the sale of a legal estate (other than a tenancy not exceeding three years) can only be made by deed, a Deed of Transfer to Vain is signed by Sprain in the presence of a witness.

This deed will be on a printed Land Registry form and will be very short, as it does not need to describe the property or to mention the easements or the covenants because the Land Registry already has all these details on its computer. The property has an official Land Registry number (just as a motor car has a number) and quoting this number to the computer brings forth all this information.

This deed and the Title Certificate, and the new mortgage deed, are then sent to the appropriate District Land Registry. The purchase deed will not be returned. The Title Certificate will be returned (to the Wainfleet Building Society) updated to show that Vain is the owner and Wainfleet Building Society is the mortgagee. The mortgage deed will be bound into the Title Certificate, usually with blue tape.

Thus all the currently-relevant information is in the Title Certificate, and the superseded information (Sprain's ownership and the paid-off mortgage to the Teignmouth Building Society) has been deleted.



Activity

On *unregistered conveyancing*, the steps to be taken by the purchaser's conveyancer include:

- (a) read the Abstract of Title,
- (b) prepare a deed of Conveyance (a typed deed).

On completion of the purchase, the purchaser's or mortgagee's conveyancer receives the deeds.

After completion of the purchase, the deeds must be sent to the Land Registry for First Registration.

On *registered conveyancing*, the steps to be taken by the purchaser's conveyancer include:

- (a) read the
- (b) prepare a

On completion of the purchase, the purchaser's or mortgagee's conveyancer receives

After completion of the purchase,

Fill in the spaces above.

Comment:

(a) office copy

(b) deed of transfer (usually on a printed Land Registry form)

On completion, the purchaser's or mortgagee's conveyancer receives the Title Certificate (and also receives back the deed of transfer which has been signed by the vendor; and deed of mortgage - if any - signed by the purchaser).

After completion, the Title Certificate and deed of transfer (and deed of mortgage, if any) must be sent to the Land Registry, to enable its records and the Title Certificate to be brought up to date.

4.6 Types of registration at the Land Registry

** Registrations may be of four types:

- absolute
- good leasehold,
- qualified
- possessory.

** *Absolute Title* is the best. It means that the Land Registry officials examined the title set out in the deeds immediately before First Registration, and were satisfied. On leasehold land it means

that the Registry officials investigated the leasehold title and also the landlord's freehold title.

- ** *Good Leasehold Title* means that the Registry officials investigated the leasehold deeds but have not seen the landlord's freehold deeds. The Registry is satisfied with the title, on the assumption that the landlord was entitled to grant the Lease in the first place. Building Societies usually regard a good leasehold title as good enough to grant a mortgage on.
- ** *Qualified Title* is very rare. It means that the Registry is satisfied with the title except on a particular point. It leaves it to the purchaser to make investigations (or to take out insurance) regarding that point.
- ** *Possessory Title* means only that the person registered is in possession. Even a squatter can register such a title. A purchaser of a property which is registered with such a title needs to make investigations, beginning by asking to see the deeds, just as if the title was unregistered.



Activity

Would a Building Society grant a mortgage (subject to the structural survey etc. being satisfactory) on a property registered with

- | | |
|---------------------------|--------|
| (a) absolute title? | YES/NO |
| (b) good leasehold title? | YES/NO |
| (c) possessory title? | YES/NO |
-

Comment:

(a) yes; (b) normally yes; (c) not without further investigation.

* **4.7 Reasons for not disposing of old deeds after First Registration**

- 1) The writer of this book has had a case in practice in which the Land Registry made a mistake and it was necessary to produce the old deeds to prove that the registration contained an error.
- 2) The deeds may contain information such as evidence of ownership of boundary fences, which is often not shown in the Title Certificate. (There are historical reasons why the Land Registry does not show ownership of boundaries. A previous registration system which began in 1862 broke down, partly because it had such strict requirements about proof of ownership of boundaries that it created neighbour-disputes where there had been no disputes before.)
- 3) While writing this book, the writer has been involved in a case in which it was necessary to identify previous owners in order to set up a chain of Privity of Contract in connection with a covenant.
- 4) The Land Registry does not always show positive covenants on freehold land, because of the difficulties involved in enforcing them.
- 5) The deeds are still of great value for research into local history. County Record Offices will often provide facilities for storing such deeds.



Activity

Name four matters which might be present in the superseded deeds but absent from the Title Certificate.

- 1.
- 2.
- 3.
- 4.

Comment:

Ownership of boundaries; positive covenants; information to prove a chain of Privity of Contract; information useful to historians.

4.8 Compulsory Registration

*** Since 1st. December 1990, registration (of all legal freeholds, and all legal leaseholds exceeding 21 years) has been compulsory on change of ownership, for all properties throughout the whole of England and Wales.

** Registration has been compulsory:-

- since 1899 in parts of London,
- since 1st. January, 1926, in Eastbourne and Hastings,
- since the 1950s in Kent and much of south-east England,
- since 1962 in Birmingham,
- since 1967 in Bristol,
- since 1974 in Bath and Cardiff,
- since 1989 in North Avon,
- since various other dates in the rest of England and Wales.

** Until 1st. December, 1990, there were still some parts of England in which the registration requirements had not yet been brought into effect: but since that date, registration is compulsory throughout the whole of England and Wales.

*** When an area has become a compulsory registration area, properties in that area do not have to be registered immediately. (If they did, it would produce a rush of work that would overwhelm the Land Registry staff.) The rule is that after an area has become a compulsory land registration area, every property in that area must be registered the next time it is sold (or the next time it is leased out on a Lease of longer than 21 years). The purchaser, or the lessee (tenant) as the case may be, must register the title within two months after completion of the transaction.

** Example - If you are buying a property in Bristol from someone who bought it in 1985, the title will already be registered. The present vendors will have registered it at the time of their purchase in 1985, because Bristol is an area in which registration has been compulsory since 1967. (You will need to register the change of ownership, in the manner set out in the right-hand column of paragraph 4.5 above.) - But if you are buying a property in Bristol from someone who bought it in 1965, the title will probably not be registered: on completion of your purchase you will receive a bundle of deeds and you must send these to the Land Registry with an application for First Registration of the title, within two months after completion of your purchase.

* If First Registration is accidentally forgotten, the Land Registry will normally allow it to be done later if a written explanation of how the mistake occurred is given.

** There are estimated to be more than five million properties not yet registered, in England and Wales. One of them is the Coldharbour Lane campus of the University of the West of England, Bristol, which, despite its name, is within the area of North Avon District Council, not Bristol City Council. The campus is not registered land because it has not changed hands since North Avon District became a compulsory registration area in 1989. (As there is no intention of selling this land in the foreseeable future, it could remain unregistered land for very many years to come.)

Note: ⁱⁿ the forthcoming local government re-organisation, North Avon ^{District} Bristol is likely to be combined with Kingswood District, and the combined area will probably be re-named South Gloucestershire.



Activity

The UWE is buying a piece of land, just across the road from its present campus, from a company which has owned it (freehold) for four years. Can the vendor can be expected to have deeds or a Title Certificate?



Deeds



Title Certificate

Comment

Since the present vendor bought the land since 1989 (the date when North Avon became a compulsory registration area) it should have registered the title at the time of its purchase, if the title was not registered before then. The vendor should therefore have a Title Certificate.



Activity

The UWE is buying another piece of freehold land, adjacent to the present campus. The vendor, who has been there since 1988, has deeds. State briefly what points the UWE's conveyancer will need to bear in mind in this respect.

Comment

The conveyancer will need to check back through the deeds to a Root of title at least 15 years old. The conveyancer must also send all the deeds to the Land Registry for First Registration within two months after completion of the purchase. The Land Registry will issue a Title Certificate which will take the place of the deeds.

4.9 Public Access to Land Registry Records

** Until 3rd. December, 1990, all information held by the Land Registry was confidential. Since that date, information is available to the general public for a fee of £5. This can be very useful to prospective developers who wish to know who owns a piece of land which they wish to acquire. (Some matters, such as how much the land is mortgaged for, are not disclosed.)



Activity

1. a) The writer of this workbook owns (jointly with his wife) a freehold house. Are you (the reader) entitled to obtain particulars of this property, and of the incumbrances on it, from the Land Registry?

YES/NO

- (b) Can you obtain similar particulars about the UWE campus?

YES/NO

2. You are buying a freehold house in central Bristol from an old lady who bought it in 1971. Will her title be registered (with a Title Certificate) or unregistered (with deeds)?

- registered
- unregistered
- could be either

3. You have just bought a freehold house close to Bristol Parkway railway station, in North Avon, from a man who has owned the house since 1977. On completion of your purchase, the vendor has handed over a bundle of deeds instead of a Title Certificate, because the property has never been registered at the Land Registry.

- Do you
- (a) sue the vendor,
- (b) tell him to get it registered,
- (c) sell it again as quickly as possible,
- (d) apply for registration yourself, or
- (e) do nothing?
-

Comment:

1. (a) Yes.

(b) *The Land Registry has no such particulars because the campus is not registered land.*

2. *It is registered. As Bristol has been a compulsory registration area since 1967, her title will have become registered when she bought the property in 1971, if it was not registered before then.*

3. *(d) is the correct answer. As the property is in North Avon and the vendor bought it before 1989, there is no reason why it should not be unregistered land: but you (or your conveyancer) must apply for First Registration within two months after completion of your purchase.*

4.10 The contents of a Land Registry Title Certificate

*** The Title Certificate is always in three sections:-

- the Property Register,
- the Proprietorship Register,
- the Charges Register.

*** **(1) The Property Register.**

This gives a very brief description of the property, with reference to a plan drawn to scale (usually 1:2500 scale). It shows the shape, size and location of the property, and states whether it is freehold or leasehold. If leasehold, the length and other brief details of the lease will be stated here. (This is a much better system than the "unregistered land" system in which the deeds often contain long yet unclear descriptions, often out of date and often with no plan.)

*** Note that the Land Registry is a registry of land. If a building on the land is demolished or a new building or an extension is built, this is of no concern to the Land Registry. And the Land Registry will not show such items as Planning Permissions. (See section 6.1 below for these.)

*** **(2) The Proprietorship Register.**

This gives the name, address and occupation of the present proprietor (freeholder or leaseholder). Note that it will not name previous ones: the whole idea of the Land Registry system is that there will be no time-wasting check into previous ownership. If there is more than one present proprietor (i.e. there is co-ownership) these proprietors are trustees on Trust for Sale. If they are beneficial joint tenants (i.e. joint tenants in Equity as well as at common law) then if one of them dies, the survivor takes all; but if they did not buy as beneficial joint tenants, there will be a printed restriction stating that the property cannot be sold by less than two trustees unless the trustee is a Trust Corporation such as a Bank.

3) **The Charges Register.**

*** This shows matters to which the property is subject: such as easements, mortgages, etc. - This is a different topic from what we have been talking about so far. Up to now, we have been talking of **REGISTRATION OF LAND** (or at least, registration of the title to the land) and we have seen that the Property Register shows *what* land it is (its shape, size and location) and the Proprietorship Register shows *whose* land it is. Now, we are suddenly talking of **REGISTRATION OF INCUMBRANCES OVER THE REGISTERED LAND.**

delete underlining

*** Incumbrances are other people's rights to which this land is subject. It may be subject to any of the following:-

- legal easements,
- Equitable easements,
- profits à prendre,
- restrictive covenants,
- legal mortgages,
- Equitable mortgages,
- Inland Revenue Charges for unpaid Inheritance Tax
- and numerous other matters.

All these are shown in the Charges Register.

* Strictly speaking, the correct terminology is:- "Legal incumbrances are *registered* on the Charges Register", and "Notice of Equitable incumbrances is *entered* on the Charges Register" - but the result is the same: legal or Equitable, if the incumbrance is shown on the register, any purchaser of the property buys it subject to that incumbrance.

** Incumbrances which should be registered (or entered) are known as "minor interests", to distinguish them from "overriding interests" (interests good without being shown on the register) which are dealt with in section 4.13 below.

** Rights of which this property has the benefit (e.g. easements for the benefit of this property over a neighbour's property) will appear on the Property Register. They will appear on the Charges Register in the neighbour's Title Certificate, because that property is subject to those incumbrances. (One property's rights are the other property's incumbrances!) The property with the benefit of these matters is known as the "dominant tenement", and the property subject to them is the "servient tenement".

** If a property is subject to a minor interest which has not been registered or entered on the register, a purchaser of that property buys it free from that interest, *even if he knew of it.*



Activity

Define an incumbrance. Explain what is the difference between registration of land and registration of incumbrances over land.

Comment:

An incumbrance is a right which some person other than the landowner has over a piece of land. Registration of land means the registration of the legal estate (fee simple absolute in possession or term of years absolute) which the proprietor of that land has. Registration of incumbrances means the registration of rights which other people have over that land.

4.11 The Crux of what we have just seen

- *** ● The title to registered land is registered in the Land Registry.
- *** ● Incumbrances over registered land are also registered in the Land Registry. (The incumbrances are shown in that section of the Land Registry records which is known as the Charges Register.)

4.12 Notices, Restrictions, Inhibitions and Cautions

- * The Land Registry enters Notices, Restrictions, Inhibitions and Cautions on the registers. An example of each:-
- * **Notices**
Notices of Equitable easements and numerous other rights (such as a spouse's right of occupation of the matrimonial home) are entered on the Charges Register;
- * **Restrictions**
An example has appeared at the foot of page 28 - a restriction against the property being sold by less than two trustees;
- * **Inhibitions**
These are Court Orders preventing any dealing with the land except as authorised by the Court;
- * **Cautions**
These are used when something has gone wrong and/or there is a suspicion of dishonesty. Entering a Caution on the register is a way of preventing any transaction from being registered without the cautioner first being told about it. The writer of this book once entered a caution against the title of a vendor who *appeared* to be dishonest. The man had sold part of his land, and had been paid for it, and it appeared that he was refusing to deposit his Title Certificate at the Land Registry to enable the transaction to be registered. (But what had actually happened was that the vendor's solicitor had sent the Title Certificate to the wrong registry!)



Activity

What is the difference between a Notice and a Caution?

Comment:

A Notice entered on the register is a notification of some matter, usually an equitable right. A

Caution is a means of preventing any sale or other dealing from being registered without the cautioner's knowledge, and is usually used as a precaution where there is a suspicion that something improper is happening.

4.13 Overriding Interests over Registered Land

*** In section 70 of the Land Registration Act, 1925, there is a long list of matters which are binding on a purchaser even though they are not shown on the register. The most important of these include:-

- easements by prescription, and some other easements
- rights of anyone in actual occupation of the premises,
- leases not exceeding twenty-one years.

Easements by Prescription

** If a path, or a drainage pipe (etc.) over a neighbour's property has been used for more than twenty years *without* any permission (but also without any objection) it may become an easement through long use. This is known as an easement by prescription. Easements by prescription have nothing in writing, so usually they will not appear on the register - but they hold good as overriding interests without registration. It is common sense that easements by prescription should hold good without registration, for we can hardly expect a person to realise that a path or a drain, which he or she has used without thinking for years and years, has now been used for just over twenty years and so he or she must fill in a form and send it to the Land Registry. People just don't think of that sort of thing!

** Easements by prescription are legal, not equitable and purchasers are bound by them whether they realised their existence or not. They must look for evidence of them on the ground. Muddy footprints may be evidence of a right of way; an inspection cover may be evidence of an easement of drainage.

And some other Easements

* There is a case, *Celsteel Ltd v. Alton House Holdings Ltd. [1985] 1 WLR 205*, by which many easements made in writing but not registered may be treated as overriding interests. It is an unsatisfactory case because it means that a purchaser may be bound by unregistered easements which neither the purchaser nor the purchaser's solicitor nor a surveyor could have discovered by any reasonable inquiries. It is only a High Court case, and the present writer would not be surprised if in a future case the Court of Appeal or House of Lords reversed this rule: but until that happens we are stuck with it.

* And all legal easements created before First Registration are binding even if the Land Registry has not been informed of their existence and so they have not been registered.

Persons in actual occupation

** Anyone in actual occupation (spouses, grown-up children, grandma, lodgers, mistresses etc.) should be asked what rights they have. In *Williams & Glyn's Bank Ltd. v. Boland [1981] AC 487* - a House of Lords case - the house was registered at the Land Registry in Mr. Boland's name, but his wife who lived with him in the house had an unregistered equitable interest by which she was able to prevent the Bank from taking possession of the house when her husband failed to pay the mortgage interest.

Leases not exceeding twenty-one years

** Leases not longer than 21 years are overriding interests. A practical effect of this is that if a group of students has a monthly tenancy, or a shorthold or assured shorthold tenancy, and their landlord sells the freehold of the house to a purchaser, the purchaser cannot tell the students that their lease or tenancy is void for non-registration. It holds good as an overriding interest. If there were no such rule, all tenancy-agreements would have to be sent to the Land Registry for registration.



Activity

Bess buys a freehold property (registered land) from the executors of the will of David who has recently died. The executors, who are not familiar with the property, fail to inform Bess that the property is subject to an easement made by a deed in 1971, and a restrictive covenant made by a deed in 1891, and part of the property is let on a weekly tenancy. There is also an easement by prescription over the property. How will Bess discover these matters?

Comment:

Details of the easement made by deed and the restrictive covenant should appear in the Charges Register, but the tenancy and the easement by prescription are overriding interests, binding on Bess whether she discovers them or not. Bess should discover them by inspecting the premises.

Section 5

Registration of Incumbrances over Unregistered Land

*** We have seen, in 4.10(3) above, registration of incumbrances over registered land. We now turn to registration of incumbrances over unregistered land.

5.1 The Problem of Things getting missed

** We have seen already that the title to unregistered land is not registered anywhere: the ownership is shown by deeds. But there are some matters which do not show up at all well from a bundle of deeds. Take another look at the outline of a set of unregistered deeds in Section 3.2 above. It appears from these deeds that Sprain will be entitled to sell the property, provided he first pays off the mortgage which he owes to the Teignmouth Building Society.

** But it may be that the property is subject to two mortgages, and the second one, to Urbane, is not shown on this list. (Note. If a property is worth - say - £100,000 it is quite legal and normal for it to be mortgaged to a Building Society for £60,000 and to a Bank or some other lender for a further £15,000. The value of the property is sufficient to cover both mortgages.)

** Or the property may be subject to an equitable easement of drainage, or some restrictive covenants, not shown on this list.

* The solicitor who drew up the Abstract of Title, ending with the mortgage to the Teignmouth Building Society and not showing these last items, has not been negligent. The deed creating the covenants for the benefit of the neighbours was drawn up by the neighbours' solicitor, and the second mortgage was drawn up by Urbane's solicitor; and those solicitors are now holding those two deeds for safe custody in their own strongrooms; and the document creating the equitable easement was drawn without any legal advice at all. So none of these documents was placed with Sprain's deeds, which are in the strongroom at the Building Society's headquarters in Teignmouth; and Sprain has forgotten to mention them to his own solicitor.

* Or Sprain may have gone bankrupt, in which case he is not entitled to sell the property, though his trustee in bankruptcy, Xain, could sell it. And Sprain (being somewhat dishonest) has "forgotten" to tell his solicitor of this.

5.2 The Land Charges Registry - for Unregistered Land

*** There are believed to be more than five million properties still on the "Old Conveyancing" system. For these properties, ownership of the legal estate (the legal fee simple absolute in possession, or a legal term of years absolute) is not registered anywhere, and it is necessary to rely on deeds.

*** The Land Charges Registry is intended to safeguard purchasers against particular types of incumbrances which do not show up well from deeds. Taking easements as an example:- A legal easement created by express grant is made by a deed, and we hope that the deed, or a copy of it, has been placed with the bundle of deeds. (Probably the original Deed of Grant will

have been put with the deeds of the dominant tenement - the land with the benefit of the easement - and a copy will have been put with the deeds of the servient tenement - the land subject to the easement.) But the documentation for equitable easements, made by informal writing not amounting to a deed, and usually made without legal advice, often does not get placed with the deeds - as in the example in 5.1 above - and can therefore very easily be missed by a conveyancer checking the title on behalf of a prospective purchaser. Because of this, there is a system of *Registration of incumbrances over unregistered land*. These matters (there is a list of them on pages 35-36) have to be registered at the Land Charges Registry.

Don't get confused over this.

- *** ● For registered land, the title to the land is registered at the Land Registry, and so are incumbrances over that land.
- *** ● For unregistered land, certain matters which do not show up well from the deeds are registered in the Land Charges Registry.
- *** The Land Charges Registry is not a register of land: it is a register of incumbrances affecting unregistered land.
- ** The Land Charges Registry is only for unregistered land. It is never used (except in one special case to do with bankruptcy) for registered land.
- ** The statute formerly governing the Land Charges Registry was the Land Charges Act, 1925, but, prior to the computerisation of the Land Charges Registry in the early 1970s, that statute was repealed and was replaced by the present provision, the Land Charges Act, 1972.
- ** The Land Charges Registry's office for the whole of England and Wales is in Plymouth. Applications for Land Charges Registry searches are made by filling in a standard Form K15 and sending it to the Plymouth office.



Activity

What is the difference between the Land Registry's Charges Register and the Land Charges Registry?

Comment:

*The Land Registry's Charges Register (see 4.10(3) above) is the third of the three main registers kept by the Land Registry. It shows many types of incumbrances affecting **registered** land. These incumbrances include (i) all easements (except some such as those by prescription, which are overriding interests) and (ii) all mortgages, (iii) all restrictive covenants and (iv) various other matters, but not such matters as planning permissions.*

*The Land Charges Registry shows certain types of incumbrances (ones which do not show up well from the deeds) affecting **unregistered** land. (It will be seen in section 5.3 below that these*

incumbrances include (i) all equitable easements created since 1925, (ii) all equitable mortgages and all puisne mortgages (i.e. mortgages in respect of which the bundle of deeds has not been handed over to the lender) (iii) all restrictive covenants created over freehold land since 1925, and (iv) various other matters, but not such matters as planning permissions. Compare this list (i)-(iv) with the list (i)-(iv) in the first paragraph of this comment.

** 5.3 Matters registrable at the Land Charges Registry

Matters registrable at the Land Charges Registry are:-

1. **Pending Actions:** i.e. any impending court case which affects the land (e.g. a claim to ownership).
2. **Writs and Orders** of the court, affecting the land. (This includes orders as to the owner's bankruptcy.)
3. **Deeds of Arrangement** with creditors, if they affect the land.
4. **Register of Annuities** created and registered before 1st. January, 1926. (No more entries will be made in this Register: modern annuities are registrable as Class C(iii) Land Charges - see below.)
5. **Register of Land Charges.** This is by far the most important of these five matters. Land Charges are divided into six classes, A-F. Those underlined in the list below are the most important.

Class A

Rent, annuity etc. charged on the land by statute on the application of some person. (These are possible under the Land Drainage Act, Agricultural Holdings Act, etc., but there are not many of them. In fact, no new ones were registered during the year 1993-4.)

Class B

Rent, annuity etc. charged on the land by statute other than on the application of some person. (They are imposed by the statute automatically, without any application being necessary. Such matters are rare but include charges imposed on the land under the Legal Aid Act in respect of repayable legal aid contributions which the recipient has failed to repay: 3,346 new ones were registered in 1993-4.)

Class C

- (i) **Puisne Legal Mortgage:** i.e. a legal mortgage where the deeds have not been handed over to the lender. Most of them are Second Mortgages where the deeds have been handed over to the First Mortgagee. 38,112 new ones were registered in 1993-4. (129,007 new ones were registered in 1982-3. This drop in numbers shows the extent to which registered conveyancing has replaced unregistered conveyancing over the last eleven years.)
- (ii) **Limited Owner's Charge:** e.g. a tenant for life's charge on settled land, for Inheritance Tax which he has paid. 48 new ones were registered in 1993-4.
- (iii) **General Equitable Charge:** i.e. any equitable charge not secured by deposit of deeds

and not included under any other head: it includes annuities created since 1925, and equitable mortgages. 1,791 new ones were registered in 1993-4. (5,074 new ones were registered in 1982-3.)

- (iv) **Estate Contract:** e.g. an agreement to sell or lease all or part of the property. Or an option for someone to purchase it. 15,296 new ones were registered in 1993-4. The figure in 1982-3 was 27,726.

Class D

- (i) Charge on land in favour of the Board of Inland Revenue, for unpaid Inheritance Tax. 418 new ones were registered in 1993-4.
- (ii) **Restrictive Covenant** (other than between landlord and tenant) **created since 1925:** e.g. a covenant not to keep chickens on the property. 11,004 new ones were registered in 1993-4 - a great drop from the figure for 1982-3 which was 62,291.
- (iii) **Equitable Easement created since 1925** a right of way granted by a contract instead of by a deed is an example of such an easement. 823 new ones were registered in 1993-4. The number for 1982-3 was 1,482. Note: LEGAL easements are not registrable in the Land Charges Registry. Nor are equitable easements and restrictive covenants which were created before 1926.

Class E

Annuities created before but registered after 1st. January, 1926. There were no new entries in 1993-4, and no more are expected.

Class F

Spouse's right of occupation under the Matrimonial Homes Acts, 1967 and 1983. (Example: Harry owns a house. He deserts, leaving his wife living there. She has a right to stay there and can prevent Harry from selling the property without her consent, if she has registered a Class F Land Charge.) 2,131 new registrations in this class were made in 1993-4, as against 7,679 in 1982-3 - a reduction which signifies less unregistered land rather than more happy marriages. Note that a "common law wife" - i.e. a cohabitee or mistress - has no right to register a Class F Land Charge. The right is only for lawfully married spouses. A husband can register such a charge if the house is owned by his wife.

It is the duty of the person with the benefit (e.g. the lender, in the case of the mortgage) to make the registration. This is done by filling in a form and sending it (with a small fee) to the Land Charges Registry in Plymouth.



Activity

Bill owns a freehold property (unregistered land) which is subject to an equitable easement made in 1971, a restrictive covenant made in 1981 and a right of occupation registered by his wife in 1991. The property is also subject to a first and a second legal mortgage, both made in 1988. In which classes (if any) will these matters be registered at the Land Charges Registry?

- | | |
|-------------|--------------------------|
| Class A | <input type="checkbox"/> |
| Class B | <input type="checkbox"/> |
| Class C (i) | <input type="checkbox"/> |
| (ii) | <input type="checkbox"/> |
| (iii) | <input type="checkbox"/> |
| (iv) | <input type="checkbox"/> |
| Class D (i) | <input type="checkbox"/> |
| (ii) | <input type="checkbox"/> |
| (iii) | <input type="checkbox"/> |
| Class E | <input type="checkbox"/> |
| Class F | <input type="checkbox"/> |

Comment:

The equitable easement will be in class D(iii), the restrictive covenant D(ii), the right of occupation is Class F, and the second mortgage is C(i). The first mortgage will not be registered: the mortgagee's rights are secure because it is holding the bundle of deeds of the property.

5.4 Matters not registrable at the Land Charges Registry

- ** Any matters which do not appear on the list in 5.3 are not registrable on this system. (Note therefore that legal easements and positive covenants, over unregistered land, cannot be registered.)
- ** Covenants and easements created earlier than 1926 (including thousands of Victorian restrictive covenants) also cannot normally be registered on this system.

- ** Common law rights which cannot be registered (such as legal easements, whether created by deed or arising by prescription) are binding without registration, whether the purchaser of the land subject to them knew of them or not.
- ** Equitable rights which cannot be registered are subject to the Equitable Doctrine of Notice, whereby a purchaser of the land is not bound by them if the purchaser did not know of the rights and had no way of discovering them by reasonable inquiries.
- ** Contrast the "registered land" system, in which one can expect to find all these matters (except overriding interest) shown on the registers at the Land Registry.



Activity

Ben owns a freehold property (unregistered land) which is subject to a legal easement made in 1971, a restrictive covenant made in 1891, and a contract made last year that a corner of the garden is to be taken next year by the Electricity Authority for erection of a transformer sub-station. In which classes (if any) will these matters be registered at the Land Charges Registry? - Where would they appear if the land was registered land?

- Class A
- Class B
- Class C (i)
- (ii)
- (iii)
- (iv)
- Class D (i)
- (ii)
- (iii)
- Class E
- Class F

Comment:

The contract as to the transformer sub-station will be registered in Class C(iv) but the other matters will not be registered. The easement is not registrable because it is legal, not equitable; and the restrictive covenant cannot be registered because it was created before 1st. January, 1926. - If the land was registered land, all these matters would appear in the Charges Register

5.5 Disadvantages of the Land Charges Registry's Registration System

- (i) As indicated in 5.4 above, not all matters can be registered.
- (ii) Registration is against the names of persons. (Contrast the Land Registry's system, in which registration is against pieces of land.) Making a Land Charges Registry search against such names as "John Smith" or "Avon County Council" will produce details of a large number of entries, most of which will be nothing to do with the property being sold. (The cost of making a search in the Land Charges Registry is £1 per name.)
- (iii) The results of a Land Charges Registry Search only give limited information. For example, if the vendor has obtained a second mortgage on the property, and has also granted a neighbour an equitable easement, the result of the Search will state only "C(i)" and "D(iii)" (the codes for a puisne mortgage and an equitable easement - see 5.3 above) plus an index-number and the date of registration. It is left to the purchaser to make further investigations to find out such details as who the mortgagee (lender) is, what the easements are, etc. (Contrast this with the "registered land" system, in which brief details of such matters are shown in plain English on the Land Registry's Charges Register.)
- (iv) Registrations in the Land Charges Registry made before the root of title may be impossible to discover. For instance, in the example on page 10, an equitable easement was granted by Grain to the neighbour Hain in 1933. But we saw on page 11 that Sprain will not have any deeds or abstracts prior to 1973, when Jane and Krain sold to Main: so Sprain will never have heard of Grain (against whose name the equitable easement is registered) and therefore has no way of making a search against him. Thus a situation can arise in which the equitable easement is binding on the present purchaser, because it is registered, but there is no way for the purchaser to make a search to discover it. The Law of Property Act, 1969, contains compensation provisions to recompense purchasers who suffer loss as a result of this defect in the system.

If a registrable incumbrance is not registered, a purchaser of the land is not bound by the incumbrance, *even if the purchaser knew of it*. This can cause injustice, because not everyone realises that such matters have to be registered over unregistered land. (See also the last paragraph of 4.10 above.) There can sometimes be ways round this rule, as is shown by the case of E. R. Ives Investment Ltd. v. High [1967] 2 QB 739, [1967] 1 All ER 504, [1967] 2 WLR 789.



Activity

In the example of an unregistered title in section 3.2, if equitable easements had been created by Cain in 1898, Dain in 1928 and Main in 1988, would these three equitable easements be registered in the Land Charges Registry, and would the present purchaser, Vain, be able to discover them?

Comment:

The 1898 easement will not be registered, as it is pre-1926. Vain will not be bound by it if there is no way that by reasonable inquiries he could have discovered it. The 1928 easement is registered against the name of Dain, and is therefore binding on Vain, even though Vain's abstract only goes back to 1973 and so there is no way he can discover Dain's name and make a search against him. The 1988 easement is registered against Main, whose name appears in the abstract; and so a search against him, which will reveal this incumbrance, can be made.

Section 6

Local Searches and Enquiries - for both Registered and Unregistered Land

6.1 Local Searches

*** Every District Council and every London Borough Council keeps a Local Land Charges Registry. This is quite different from the Land Charges Registry, which is based in Plymouth.

*** A search made in a Local Land Charges Registry (by filling in a printed Form LLC1) will reveal various matter of which the Local Authority is aware. These include:-

- liability for contribution to cost of maintaining sea walls, and carrying out certain sewerage work;
- liability for cost of destruction of rats and mice infesting premises;
- enforcement notices (after a breach of the Planning requirements) and other Planning matters;
- tree preservation orders;
- highway improvement lines;
- and many others.

Registration of these Local Land Charges is governed by the Local Land Charges Act, 1975.

6.2 Additional Enquiries

* It is usual for a conveyancer to send a printed list of Additional Enquiries (largely as to Planning matters) with the form of application for a Search. The Local Authority must reply to the Search, and will normally also agree to reply to the Additional Enquiries.

6.3 Cost

* Some Authorities charge as much as £85 for providing this service: and some purchasers are none too pleased to find that their conveyancer has incurred expenditure of £85 (which the purchaser has to pay) to be told that there are *no* breaches of Planning Conditions, *no* demolition orders, *no* plans for a motorway through the property, and so on: but it would be a brave - or reckless - conveyancer who took a chance and did not make a search to check such matters.

6.4 Matters not covered by Local Searches and Additional Enquiries

*** Note that such matters as mortgages, easements and covenants are not entered in the Local Land Charges Registries, because they have nothing to do with the Local Authority. In respect of registered land they are to be found (except overriding interests) in the Land Registry - see 4.10(3) above - and in respect of unregistered land some of them are to be found in the Land Charges Registry, some are in the deeds, and some must be sought from other sources - see 5.3

and 5.4 above.



Activity

On registered land, where would registrations of (a) an easement created by deed, (b) an easement arising by prescription, and (c) a closing order (declaring the property unfit for human habitation) be found?

Comment:

- (a) *in the Charges Register of the Land Registry;*
- (b) *nowhere (it is an overriding interest, to be discovered by inspection of the property)*
- (c) *in the Local Land Charges Registry.*

6.5 Summary

- **On Registered Land**

*** A conveyancer acting for a purchaser of registered land will use the Local Land Charges Registry and the Land Registry; he will not use the Land Charges Registry except possibly in connection with a search against bankruptcy.

- **On Unregistered Land**

*** A conveyancer acting for a purchaser of unregistered land will use the Local Land Charges Registry and the Land Charges Registry. The conveyancer will not use the Land Registry, which at this point will never have heard of this property; but the property must be registered at the Land Registry within two months after completion of the purchase.

Section 7

Other Registries

** 7.1 Other Registries

There are also other registries, for commons registration, registration of mining workings, etc. These are not dealt with in this workbook.

Section 8

Review

8.1 Worked Examples

Here are two freehold properties:-

- Greenacre - (registered land)
- Brownacre - (unregistered land)

Each of them is subject to

- restrictive covenants made in 1894,
- restrictive covenants made in 1984,
- a legal easement made in 1935,
- an equitable easement made in 1945,
- a tree preservation order,
- a mortgage to a Building Society, made in 1987,
- a second mortgage to a Bank, made in 1987.

Yaen wishes to purchase both of them.

Greenacre (registered land)

There are no deeds. There is a Title Certificate which is in three parts:-

The *Property Register* shows the present owner (guaranteed by the government and so there is no need to check on past owners).

The *Charges Register* has brief details of

the 1894 restrictive covenants,
the 1984 restrictive covenants,
the 1935 legal easement,
the 1945 equitable easement,
and both mortgages.

A Local Search will reveal the tree preservation order.

Brownacre (unregistered land)

There is a bundle of deeds showing the present and previous owners and their transactions (mortgages etc). going back to a "root of title" at least fifteen years old.

Incumbrances:

- 1894 covenants: a copy is probably with the deeds, but they are not registered: Yaen will be bound unless there was no way of discovering their existence by reasonable enquiries.
- 1984 covenants: probably are with the deeds, but must be registered as D(ii) in the Land Charges Registry. (Registration is essential. If they are not registered, Yaen can break them even if they are set out in the deeds.)

(unregistered land continued)

- 1935 legal easement: binding on Yaen, who must discover it from the deeds if he has not been told of it.
- 1945 equitable easement: must be registered as D(iii) in the Land Charges Registry: the rule is the same as for the 1984 restrictive covenants.
- Local Search (in the Local Land Charges Registry) will reveal the tree preservation order.
- The Building Society's mortgage will not be registered, but the Building Society's position is safe, as it is holding the whole bundle of deeds.
- The second mortgage must be registered as C(i) at the Land Charges Registry, and so Yaen's conveyancer will discover it and will ensure that the vendor pays it off. If it is not registered, Yaen is not affected by it even if it is not paid off: the Bank could only sue the vendor for personal debt.



Activity

- (a) A property is subject to an equitable easement created in 1981. (i) In which part of the Title Certificate would you expect to find details of this? (ii) Where would you find a record of a 1981 equitable easement affecting unregistered land?
- (b) Where would you find the name of the present owner (i) of unregistered land, and (ii) of registered land?
- (c) Where would you find the names of previous owners (i) of unregistered land, and (ii) of registered land?

Comment

- (a) (i) *The Charges Register.* (ii) *The Land Charges Registry - the easement is a Class D(iii) entry.*
- (b) (i) *In the deeds.* (ii) *In the Proprietorship Register in the Title Certificate.*
- (c) (i) *In the deeds.* (ii) *This information is not needed for registered conveyancing and will not be given in the Title Certificate. (If you want it for purely historical interest, or to show a chain of privity of contract, you will find it in the old deeds if you still have them.)*

8.2 Where are you now?

Now that you have reached the end of this workbook you should have achieved the learning outcomes. Take the time to reflect on whether you are confident about your ability to:

- explain why records of ownership of rights in land are necessary (Section 2.1)
- give an outline of the "registered land" system (Section 4)
- give an outline of the use of deeds in the "unregistered land" system (Sections 3.1, 3.2)
- explain why the "unregistered" system is being superseded by the "registered" system (Sections 3.3, 3.5)
- indicate how far this superseding has progressed at the present time (Sections 4.9, 5.2)
- describe the layout of a Land Registry Title Certificate (Sections 4.11)
- name and in outline describe the four categories of title registrable at the Land Registry (Section 4.7)
- differentiate between the Land Registry, and Land Charges Registry and the Local Land Charges Registries (Section 4.1, 4.2, 4.11, 5.2, 6.1)
- state which of these Registries should be searched in on a purchase of (a) registered and (b) unregistered land (Section 7.1, 7.2)
- discuss the advantages and disadvantages of the registered system over the unregistered system. (Section 4.3, 4.4, 5.5, 5.6)

