REAL PROPERTY LAW FOR BEGINNERS

SECOND EDITION

Part4

by John A.Greed

A ST. TRILLO PUBLICATION

REAL PROPERTY LAW FOR BEGINNERS

GREED

REAL PROPERTY LAW

FOR BEGINNERS

PART 4

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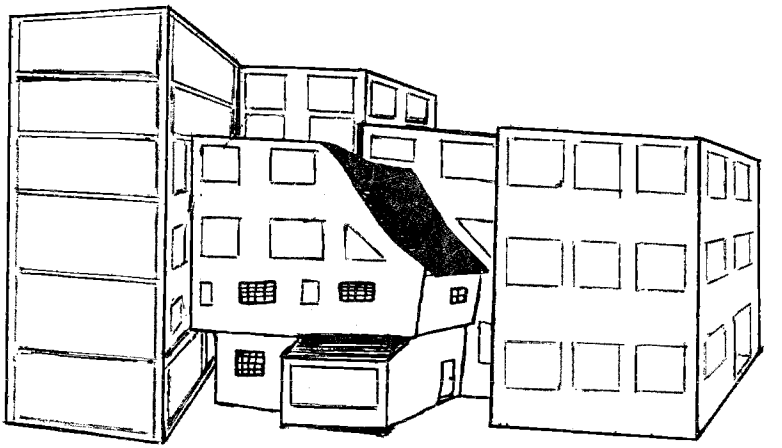
Part 4

Other Matters concerning Land Law



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REAL PROPERTY LAW FOR BEGINNERS

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of
Part 4

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PD Stamp

A specimen Conveyance of freehold unregistered land:-

THIS CONVEYANCE is made the thirteenth day of March One Thousand Nine Hundred and Eighty-three BETWEEN IVOR QUIRKE *[address and occupation]* hereinafter called "the Vendor" of the one part and ROBERT RUSSELL *[address and occupation]* hereinafter called "the Purchaser" of the other part

WHEREAS the Vendor is seised of the property hereinafter described and intended to be hereby conveyed for an estate in fee simple subject as hereinafter mentioned and has agreed to sell the same to the Purchaser subject as aforesaid but otherwise free from incumbrances at the price of Twenty-eight Thousand Pounds

NOW THIS DEED WITNESSETH as follows:-

1. In pursuance of the said agreement and in consideration of Twenty-eight Thousand Pounds paid by the Purchaser to the Vendor (receipt of which sum the Vendor hereby acknowledges) the Vendor as Beneficial Owner hereby conveys to the Purchaser ALL THAT *["Tiny Nook" - full description]* TOGETHER WITH the benefit of a covenant contained in a Conveyance of adjoining property known as "Greenacre" dated the sixteenth day of August One Thousand Nine Hundred and Seventy-six and made between Alan McAllister of the one part and Boris Braine of the other part not to keep a pig or pigs on the said property known as "Greenacre" or any part thereof TO HOLD the same unto the Purchaser in fee simple SUBJECT TO a right of way (on foot only) at all times and for all purposes for such persons as may be entitled thereto over the pathway along the East side of the property hereby conveyed between the front gate and rear garden entrance thereof
2. IT IS HEREBY CERTIFIED that the transaction hereby effected does not form part of a larger transaction or of a series of transactions in respect of which the amount or value or the aggregate amount or value of the consideration exceeds Thirty Thousand Pounds

IN WITNESS WHEREOF the said parties hereto have hereunto set their hands and seals the day and year first before written:- *[signed, sealed and delivered]*

Note: this is a typical Conveyance, not a perfect one. It lacks a plan, and does not tell the Purchaser WHO is entitled to use the right of way - see pages 107 & 401.

PART 4 (CHAPTERS 36 - 50)

OTHER LAND LAW MATTERS

Section A (Chapters 36 - 39)

Conveyancing: Law and Procedure

CHAPTER 36

CONVEYANCING (UP TO EXCHANGE OF CONTRACTS)

OUTLINE OF CHAPTER:-

A: Introduction: and, What is Exchange of Contracts?
B: Procedure up to Exchange of Contracts

A: INTRODUCTION, AND "EXCHANGE OF CONTRACTS"

So far we have seen many rules about land, but very little has been said about what is involved when a piece of land is transferred from one person to another. Transfer of land is a branch of Land Law to which the name Conveyancing is often given. This book "Real Property Law for Beginners" is not about Conveyancing: it is about what is conveyed, and we have seen that this is not the land but an estate in the land, which may be subject to or affected by all the matters we have seen in this book. But this chapter and the next will give a brief outline of what is involved in Conveyancing.

A transfer of land often takes about six weeks - and sometimes much longer - to complete. What steps does it require?

First let us be clear that the description of Conveyancing given in these two chapters is a bare skeleton, the details being outside the scope of this book. Almost every paragraph of this chapter could be expanded to form a chapter in itself. Furthermore it does not even outline the whole story: if the property is leasehold, or is a house in course of erection, or

fronts onto a private road - etc. - etc. - many other points not mentioned in this book can arise. And Conveyancing in compulsory-purchase cases, and on the sale of council houses etc., is similarly not covered.

The transaction falls into two major parts, "pre-contract" and "post-contract". The transition from the first part to the second is marked by the formality known as "exchange of contracts".

The contract, by which the vendor promises to sell and the purchaser promises to purchase, at a certain price, is usually typed in duplicate: the purchaser signs one copy and his solicitor posts it to the vendor's solicitor; then the vendor signs the other copy and his solicitor posts it to the purchaser's solicitor - so the two solicitors have swopped or exchanged their contracts. This is legally known as "exchange of contracts" and once it has taken place the agreement is binding on both the vendor and the purchaser. If either of them later tries to back out, he is likely to find that the Equitable remedy of specific performance (see page 56) is used to force him to continue with the transaction. (If the purchaser backs out because he cannot obtain the purchase-money, there is no point in trying to force him to go on, but it is normal for the purchaser to pay one tenth of the purchase price as a deposit at the time of exchange of contracts, and if the purchaser later backs out the vendor does not have to return this.)

Before exchange of contracts, the agreement is not legally binding on the parties: either of them can back out freely. It should be borne in mind however that a letter or even a note on a scrap of paper may in certain circumstances be legally binding on the person who has signed it. Section 40 of LPA (repeating a requirement which has been with us ever since the 1677 Statute of Frauds) states:-

> "No action may be brought upon any contract for the sale or other disposition of land or any interest in land, unless the agreement, or some memorandum or note thereof, is in writing, and signed by the party to be charged or by some other person ... authorised".

By virtue of this section, the contract does not necessarily have to be in writing: but there must be *something* in writing (either the contract, or a letter, or something) because otherwise the contract - though not void - will be unenforceable in court through lack of evidence. There must be some writing as evidence, to satisfy section 40.

The writing must *at least* identify the vendor, the purchaser, the property, the price, and any special conditions there may be.

Equity provides us with one exception to this rule in cases where the party wishing to enforce an oral contract has *partly performed* his side of the agreement - but he must show four things:-

(a) he has done something he would have not have done if it had not been for the contract,
(b) he has thus altered his position irrevocably (i.e. he cannot go back on it) for the worse,
(c) the situation is one where Equity could make an order for specific performance (see page 56) and
(d) he can prove his case (e.g. by oral evidence).

If he shows all these four things, Equity can enforce the oral contract even though there is no writing. This is the *Equitable doctrine of part-performance*. Cases on part-performance include:- *Maddison v. Alderson (1883)*, *Rawlinson v. Ames (1925)*, *Wakeham v. Mackenzie (1968)*.

Thus a contract can become binding through the signing of a scrap of paper, or even without any writing at all. To minimise the risk that letters written in preliminary correspondence might by accident create a binding contract, all letters written before exchange of contracts should be marked with the words SUBJECT TO CONTRACT - meaning that there is not yet a contract.

The law allows vendors and purchasers to do their own conveyancing if they wish to do so, and sometimes some very informal contracts are made: but the safest way of entering into a binding contract concerning land is by exchange of contracts between two solicitors.

Ever since Queen Victoria's reign there has been a

conveyancing monopoly for solicitors: and today it is a criminal offence under the 1974 Solicitors Act for an unqualified person to draw up a *deed* for gain or reward - but this monopoly is now being broken by the 1985 Administration of Justice Act, passed in November 1985.

By this Act a new profession, Licensed Conveyancers, is created. A Council for Licensed Conveyancers (CLC) will be set up by the Lord Chancellor, and the CLC will make rules as to what examinations licensed conveyancers will have to pass, what accounts they must keep, what insurance they must have against Negligence, what fund the CLC will maintain to compensate victims of dishonest licensed conveyancers, and so on. (These requirements run parallel to those which the Law Society imposes on all practising solicitors.)

Licensed conveyancers will be qualified to draw deeds for gain or reward. The prohibition against unqualified persons doing so is to be extended so that unqualified persons will also be unable to draw contracts regarding land (except leaseholds not exceeding three years) for gain or reward.

Building Societies and Banks would also like to undertake conveyancing for their clients, and it is likely that in the next few months we shall see a 1986 Building Societies Act permitting this. The present proposal is that these bodies will be permitted to carry out conveyancing in any matter in which they are <u>not</u> also lending money on mortgage - because if they are granting a mortgage there could be conflict of interest - there may be clauses in the interests of the borrower and not the lender (or vice versa) which one party wishes to insert in the mortgage deed.

A committee chaired by Professor Farrand of Manchester University (author of the textbook "Contract and Conveyance") looked into these matters on Parliament's behalf in 1984-5 and produced two Reports. The First Report of the Farrand Committee (to do with Conveyancing carried out by persons other than solicitors) proposed the creation of the CLC. The Second Report (to do with simplification of Conveyancing) recommends extension of the registered land system, computerisation of the Land Registry, etc. [SEE PAGE 664.] It also recommends the

formation of a Standing Committee on Conveyancing which would make recommendations from time to time for keeping the Conveyancing system up to date.

So it is likely that we shall have a body of Licensed Conveyancers within a couple of years. Some may perhaps be on the staff of firms of estate agents or surveyors. In return, some solicitors have, since 1984, branched out into selling houses, through such bodies as NASPyC (National Association of Solicitors' Property Centres).

Book-keeping and accountancy rules will be required, to govern non-solicitor conveyancers' handling of clients' money. These are likely to be similar to the Solicitors' Accounts Rules, which require a separate ledger-account to be kept for every client. These rules are more demanding than those in the 1979 Estate Agents Act and 1981 Estate Agents (Accounts) Regulations.

But the person to beware of most is the *unlicensed* conveyancer - because if a crooked *solicitor* runs off with your money you have the Law Society's compensation fund available, but if some cut-price fly-by-night unqualified unlicensed conveyancer vanishes with your life's savings, what do you do? (You lose!)

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Since 31st. July 1970 no stamp has been needed on an ordinary signed contract (before then it was 6d.) but stamping is still necessary on the purchase-deed in some cases as mentioned in the next chapter.

The second part of the transaction is from exchange of contracts up to the time (known as "completion") when the remaining nine-tenths of the price is paid and the purchaser is given possession of the property - but this must wait until our next chapter. If there is anything wrong with the property (structurally, legally or in any other way) the purchaser needs to discover it before exchange of contracts. Afterwards is too late, for the contract is then binding - even if the house has a demolition order put on it by the Council. There is a saying, *caveat emptor* - meaning, the purchaser must look out for himself. Therefore the purchaser's solicitor will take certain precautions before exchange of contracts:-

B: Procedure before Exchange of Contracts

The solicitor acting for the proposed purchaser will usually take four main steps before exchange of contracts. These are:-

1. He will make a Local Search (see page 251). This is sent to the District Council in whose area the property is situated. It is accompanied by a printed form of "District Council Inquiries" asking about Planning and other matters. The present fee for the replies to the Search and Inquiries is £13.50. These replies give the purchaser's solicitor information on various matters which the District Council and also the County Council knows about, concerning the property. For instance, is it affected by any slum clearance scheme - or is it going to be demolished to make way for a new road - or is it subject to any other registered proposal which might make the purchaser not want to buy the property.

Some District Councils send their replies within a few days. Others take several weeks. The Second Report of the Farrand Committee (on simplification of conveyancing) which was published in March 1985, recommends that the Search should be applied for by the vendor, as soon as he puts the property onto the market, in order to cut out this delay.

But this is not the sole cause of delay. Another major cause of delay is that, more often than not, the purchaser cannot afford to buy the house unless he can first sell his present house. So he advertises it, and a purchaser comes along, who says, "But I shall have to sell my present house first" - and so *he* finds a purchaser, who in turn must first sell another property - and so on. Don't blame the solicitor for these chains of transactions: they are not his fault, and people who imagine that the abolition of the solicitors' conveyancing monopoly will make these delays magically disappear are sadly misguided.

2. The second pre-contract step that the purchaser's solicitor will take is that he will make a number of

Inquiries before Contract. He sends these to the vendor's solicitor, in order to find out information which any careful purchaser needs to know. For instance, where are the deeds - or Land Registry Title Certificate? (Usually these are with the vendor, or his solicitor, or a mortgagee; but it is necessary to find out: they are the means by which the vendor will later show that he is entitled to sell what he is selling.) Another common question is: who owns the boundary walls and fences? - At some future date they will need repair, so the purchaser wants to know whether this will be at the expense of himself, or his neighbour, or both together.

There is a printed form of Inquiries before Contract, but most purchasers' solicitors add further typed questions after the printed ones.

3. The third pre-contract step is that the purchaser's solicitor should check the proposed terms of contract to ensure that they do not include any matters which are unacceptable to his client. There is, for example, no point in letting a developer go on with a purchase if the land is found to be subject to a covenant not to build on it! A well-drawn contract will include details of all covenants, easements etc. affecting the property, together with numerous other details; and the legal effect of these needs to be considered carefully: any alterations required must be negotiated before exchange of contracts.

4. It is essential before exchange of contracts to ensure that the purchaser can obtain sufficient funds to complete the purchase, and to pay the legal expenses which can be considerable as is shown in the example of typical costs set out on page 510. If the purchaser is borrowing money on a mortgage, his solicitor should ensure at this stage that the purchaser has completed his mortgage arrangements and that a mortgage is definitely available for him. There needs to be written evidence of this, because s.40 of LPA which we saw on page 488 applies to mortgages just as it applies to sales.

A mortgage is basically an arrangement by which a

Building Society or other organisation (or a private individual) lends the purchaser money so that he can buy a house, on the terms that (i) he will pay interest on the money until the loan is repaid, and (ii) if the purchaser fails to make the required payments the lender (mortgagee) has certain legal remedies, the most important being a power to sell the house.

If the purchaser applies to a Building Society for a mortgage he will find the Society particularly interested in three matters:-

(a) the purchaser's income and liabilities (e.g. his hire-purchase and other commitments) - the basic question being, "Is this person reasonably likely to be able to afford the regular mortgage-payments which we shall require from him?"

(b) the legal title to the property: "If this man fails to make his payments and the Building Society has to sell the property to get its money back, are any special legal problems likely to arise?" - With regard to this question, matters concerning Real Property Law frequently have to be investigated.

(c) the structural state of the property: "If the property has to be sold, is it a sound saleable structure?" - The Building Society will send a valuer or a surveyor to inspect it. The purchaser will be well advised to have it surveyed separately by his own surveyor, because the Building Society's valuation will only report on whether the premises are good security for the mortgage-amount, which is usually considerably less than the purchase price. But in this connection we must remember the *Yianni* case:-

In *Yianni and another v. Edwin Evans & Sons (1981)* Mr. Yianni wanted to purchase a certain property at a price of £15,000. He did not see the Building Society's Surveyor's Report on it (because he is not entitled to - it is made for the Building Society and not for him) but the Building Society, having read the Report, agreed to advance him a £12,000 mortgage on the property, and that was good enough proof to him that the property was sound so he went ahead and

bought it without having any further survey carried out. Less than a year later the property was found to have serious defects in the foundations, which the Building Society's surveyor had missed. The defects would cost £18,000 to rectify, and Mr. Yianni sued the firm of surveyors for Negligence. Though they had no contract with him (and he had been told that the Report was exclusively for the Building Society and not for him) did their duty of care in Tort of Negligence extend to him? - The Court held that it did, as it was foreseeable that Mr. Yianni would rely on what he was told - and there was no contributory negligence by Mr. Yianni in not obtaining a separate structural survey.

But *Stevenson v. Nationwide Building Society (1984)* went the other way. Mr. Stevenson, who was an estate agent but not a surveyor, purchased shop property (built on a bridge over a small river) with the aid of a mortgage from the Nationwide Building Society. The mortgage application form stated: "The inspection carried out by the Society's Valuer is not a structural survey and there may be defects which such a survey would reveal. Should you wish to arrange for a structural survey this can be undertaken by the Society's Valuer, at your own expense..." but Mr. Stevenson did not have a structural survey done. A few weeks later, while a toilet at the rear of the building was being used, the toilet floor collapsed into the river below. *Then* a structural survey was made, and it showed that much of the property was in a dangerous condition. Mr. Stevenson sued the Building Society for their Valuer's negligence.

The Court held that the Valuer had not exercised reasonable skill or care - but this did not give Mr. Stevenson any remedy because the application-form had offered him a structural survey (at extra expense) and he had turned it down. Since he had chosen to rely on a mere Building Society Valuation and not a structural survey, he had to accept that the Society would not be responsible for undiscovered defects that a structural survey might have revealed.

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When the purchaser's solicitor has received satisfactory replies to his Local Search and Inquiries and his Inquiries before Contract, and is satisfied with the contract's terms, and is sure that the financial arrangements are adequate, exchange of contracts takes place: both parties are thenceforth legally bound to go through with the sale and purchase at the agreed price. The second stage of the transaction - the procedure from exchange up to completion - then begins.

This chapter would present a very false picture if no mention were made of the sudden crises by which the conveyancer is sometimes beset. For example, if demand for a certain type of property exceeds the supply, it is unfortunately not uncommon for the vendor to throw down an ultimatum that unless contracts are exchanged more or less immediately he will raise the price, or alternatively will sell to someone else. The purchaser (through no fault of himself or his solicitor) thus finds himself in a position where he must either take dangerous chances (e.g. exchange contracts without waiting for the Local Search, or without being sure of his financial arrangements) or run the risk of losing the property altogether.

There is a particularly nasty practice known as "gazumping", in which (shortly before exchange of contracts is due) the vendor blandly informs the purchaser (usually without warning) that he *has* raised the price, and that unless the purchaser will agree to the increased figure the property will be sold to another purchaser who is waiting for it. The purchaser's wisest course in such a situation is often to look for another property, admitting that the time (and fees) expended so far have been wasted, and hoping the same thing will not happen again. But all too often the purchaser is just not in a position to do this - especially if he has already exchanged contracts on his sale and realises that if he does not exchange contracts on his purchase he is going to be out of house and home in a few weeks' time!

SUMMARY

The purchaser's solicitor's primary objective is to see that the purchaser receives a legal estate (fee simple absolute in possession or term of years absolute) free from any unexpected incumbrances.

In this chapter we have seen:-

the meaning of "exchange of contracts",

s.40 of LPA,

five precautions taken by purchaser's solicitor before exchange of contracts:-

1. Local Search and Additional Inquiries (sent to Local Authority)
2. Inquiries before Contract (sometimes known as Preliminary Inquiries) (sent to vendor's solicitor)
3. peruse the draft contract (received from vendor's solicitor) (also visit the property, if possible)
4. check financial arrangements
5. he may suggest a structural survey.

TEST QUESTIONS on Chapter 36:-

1. What is the difference between "exchange of contracts" and "completion"? Up to what stage can the purchaser change his mind about buying the property, and at what stage is he entitled to take up residence there? Up to what stage can the vendor change his mind about selling the property?

2. Write about 1,000 words on the effect of s.40 of LPA.

3. Any problems which might make the purchaser decide not to purchase must be discovered before exchange of contracts: afterwards is too late. Such problems might be structural, financial, or legal. Give a dozen examples of legal problems which might exist, and show how the purchaser's solicitor might discover them before exchange of contracts.

4. What matters are revealed by a "Local Search"?

A specimen Land Registry office copy:-

TITLE NUMBER .....

This register consists of 2 *pages*

A. PROPERTY REGISTER

ADMINISTRATIVE AREA:- Westshire

PARISH OR PLACE:- Charming Village

The freehold land shown and edged with red on the plan of the above Title filed at the Registry registered on the 10th. July 1961 known as Magpie Cottage 13 Main Road together with rights of way over the land tinted brown on the filed plan and rights of passage of pipes wires and cables thereunder

B. PROPRIETORSHIP REGISTER

TITLE ABSOLUTE

Entry no.		*Application no. and remarks*
1.	**FRED SMITH of *[address]*, Driver and FLORENCE EMILY MIRANDA SMITH of the same address, his Wife, registered on 10th. July 1961**	**Price paid: £2,500**
2.	**RESTRICTION registered on 10th. July 1961: No disposition by one proprietor of the land (being the survivor of joint proprietors and not being a trust corporation) under which capital money arises is to be registered except under an order of the Registrar or of the Court**	

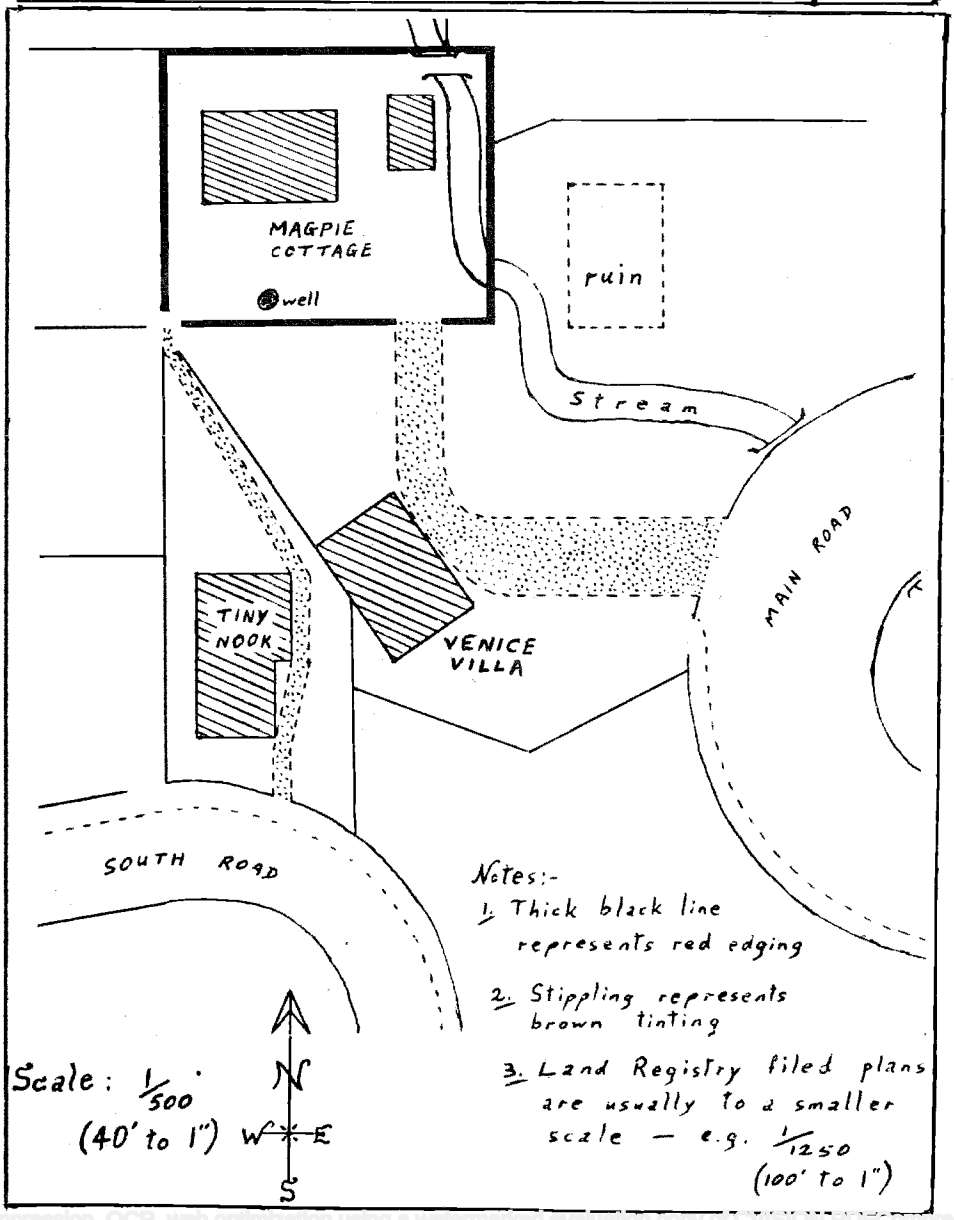
C. CHARGES REGISTER

1.	**10th. July 1961: A conveyance of the land in this title and other land dated 2nd. May 1884 made between (1) George L..*(vendor)* (2) T and U *(trustees)* and (3) Gerry B..*(purchaser)* contains the following covenant: "The purchaser hereby covenants for himself and his successors for the benefit of all that adjoining land of the vendor and every part thereof that the purchaser will not at any time permit the land to be used for any noisy or offensive occupation whatsoever"**	
2.	**10th. July 1961: CHARGE dated 6th. July 1961 registered on 10th. July 1961 to secure the**	**..../61**

C. CHARGES REGISTER (continued)

moneys including the further charges therein mentioned

3. PROPRIETOR: LESSER TROUTVILLE PERMANENT BUILDING SOCIETY of *[address]* and registered on 10th. July 1961



CHAPTER 37

CONVEYANCING (FROM CONTRACT TO COMPLETION AND AFTER)

OUTLINE OF CHAPTER:-

A: From contract to completion
B: After completion
C: Costs and disbursements

A: FROM CONTRACT TO COMPLETION

Once contracts have been exchanged the purchaser's solicitor's first action should be to insure the property against fire. It is now at the purchaser's risk and he will be bound to continue with the purchase at the agreed price even if the property burns down the day after exchange of contracts.

The next step after exchange of contracts is that the vendor must "prove his title" - i.e. he must show that he is entitled to sell what he has agreed to sell. (If it transpires that he cannot do so, he is likely to be found liable for breach of contract: the case of *Bain v. Fothergill (1874)* is a House of Lords decision laying down what happens in such a situation.)

The title is proved by means of the deeds. The vendor's solicitor (or vendor's mortgagee's solicitor if there is one) will not part with the actual deeds at this stage but will send the purchaser's solicitor a set of extracts and/or copies known as an Abstract. Often the Abstract is long and complicated. It should show the title for at least the last 15 years (the period was formerly 30 years but was reduced to 15 by the 1969 Law of Property Act) but sometimes a much longer period has to be shown, because the title has to start with a document describing the property at least 15 years old - and if a property has been in one family ever since great-grandfather bought it in 1880, the purchase-deed of 1880 is the only document available to be the "root of title". As it is a pre-1926 document, the purchaser's solicitor will have to check that it

was correctly drawn in accordance with the law as it stood at that time. He needs a working knowledge of the pre-1926 Land Law!

If the property is registered land, an office copy of the entries in the Registers (obtained from the Land Registry) is supplied instead of an Abstract. A great advantage of the registered system is that office copies only need to show the present state of the title - they show none of the history at all - and so they are generally much shorter and simpler than Abstracts. The Farrand Committee's Second Report has recommended that the Land Registry system should be extended to the whole of England and Wales as soon as possible, and has also made recommendations on computerisation of the Land Registry, and on various other matters. See page 664.

A specimen of an office copy for "Magpie Cottage" appears on pages 498-9.

The adjoining property "Tiny Nook" is unregistered land, and an outline of the Abstract of the title to that property is as follows:-

ABSTRACT OF TITLE
to "Tiny Nook"

18 Nov. 1959 VESTING DEED whereby the settled land was vested in the tenant for life Gigi in fee simple at common law.

(N.B. This is the Horace-Charles-George-Gigi Settlement of which Gigi became tenant for life after George died in Nov. 1959. It then consisted of over 2,000 acres, which the Abstract would identify and describe.)

29 Sep. 1973 CONVEYANCE whereby Gigi sold "Tiny Nook" and the adjoining "Greenacre" *(see diagram on page 107)* to John Doe in fee simple. *(Note: full description of what was sold must be set out in the Abstract.)*

10 Oct. 1973 John Doe died, leaving a Will dated 3rd. Feb. 1948 by which he appointed Richard Roe to be the Executor of his Will.

24 Nov. 1973 PROBATE of John Doe's Will was granted to the said Richard Roe.

10 Jan. 1974 CONVEYANCE of "Tiny Nook" and "Greenacre" from Richard Roe to Alan McAllister in fee simple.

18 Feb. 1974 GRANT of legal easement of way in fee simple over "Tiny Nook" to Fred Smith and Florence Emily Miranda Smith as owners for the time being of "Magpie Cottage".

16 Aug. 1976 memo (endorsed on the Conveyance of 10th. Jan. 1974) that "Greenacre" was sold by Alan McAllister to Boris Braine in fee simple and that a covenant was reserved against keeping of pigs on "Greenacre".

17 Apr. 1977 CONVEYANCE whereby Alan McAllister sold "Tiny Nook" *(full description needed)* to Barney Pugg in fee simple with the benefit of the covenant against keeping of pigs on "Greenacre" but subject to the said right of way for "Magpie Cottage".

18 Apr. 1977 MORTGAGE by Barney Pugg to the Lesser Troutville Permanent Building Society for a loan of £6,000 secured on "Tiny Nook".

22 May, 1979 the said Mortgage was repaid.

23 May, 1979 CONVEYANCE by Barney Pugg to Ivor Quirke of "Tiny Nook" (with benefit of ... and subject to ... as aforesaid).

13 Mar. 1983 CONVEYANCE of "Tiny Nook" by Ivor Quirke to Robert Russell (with benefit and subject as aforesaid). *This is the deed set out on page 486.*

13 Mar. 1983 MORTGAGE by Robert Russell to the West Woolifax and National Building Society.

20 July 1983 PUISNE MORTGAGE by Robert Russell to Jacob Marley (registered at Land Charges Registry as C(i) on 22nd. July 1983).

11 Oct. 1984 (or earlier) SEARCHES in Land Charges Registry against Horace, Charles, George, Gigi, John Doe, Richard Roe, Alan McAllister, Barney Pugg, Ivor Quirke, and Robert Russell.

12 Oct. 1984 both the 1983 Mortgages were repaid.

12 Oct. 1984 CONVEYANCE of "Tiny Nook" from Robert Russell to Ashok Singh (with benefit and subject as aforesaid) in fee simple.

27 Oct. 1984 cancellation of said C(i) entry at Land Charges Registry.

To set those items out in full would take quite a number of pages! But the vendor's solicitor must set it all out, and the purchaser's solicitor must check it all through.

It is rare to find an Abstract which can be accepted without question: some point or other always seems to crop up. Just about any Real Property Law point, and lots of points not directly connected with Real Property Law (such as tax questions) may occur here. The questions which the purchaser's solicitor poses to the vendor's solicitor to clear these points are known as Requisitions.

It is the duty of the purchaser's solicitor to ensure that his client obtains the legal estate (fee simple or term of years) free from any incumbrances (covenants, rights *in alieno solo*, etc.) other than any the purchaser knows of and has agreed to accept. The contract, if well drawn, will have given the purchaser details of all easements and other such matters affecting the property, though we have seen in this book several matters which can be implied if mention of them is omitted. (See for example page 397 for *Wheeldon v. Burrows (1879)* - and easements arising by prescription are legal rights binding on any purchaser, as we observed on page 402 - and Equitable easements too are binding if certain conditions which we looked at on pages 73-7 and 105-124 are met.)

When the purchaser's solicitor has satisfied himself (from the Abstract or the Office Copy Land Registry Entries as the case may be) that his client will obtain the desired legal estate, free from any unexpected incumbrances, he prepares a purchase-deed by

which the legal estate will be passed from the vendor to the purchaser. This is prepared first as a draft copy which he will ask the vendor's solicitor (and purchaser's mortgagee's solicitor, if there is one) to approve, and then an engrossment copy is made, which is the fair copy that will be signed sealed and delivered.

The deed of Mortgage (first a draft, and then an engrossment of it) will also be prepared at this stage. If the solicitor acting for the mortgagee (lender) is not the same one as acts for the purchaser, the Abstract and all the other documents must be sent at this point to the mortgagee's solicitor, so that he too can satisfy himself as to the title. As likely as not, he will think of some further questions and will raise them as Requisitions which he will send to the purchaser's solicitor, who may find that he has to send them on to the vendor's solicitor in order to obtain the correct answers.

When all such points have been satisfactorily dealt with, the purchaser executes (i.e. signs, seals and delivers - see page 82) the Mortgage and also (except in certain special cases) the purchase-deed; the purchase-deed is then sent to the vendor's solicitor who arranges for the vendor to execute it.

The format of the mortgage-deed (or Legal Charge, as the modern type of mortgage-deed is called) is peculiar and will be explained in Chapter 39: but the format of the purchase-deed is not difficult to follow, once one gets used to it. Let us look at its outline:-

On unregistered land the purchase-deed will be either a CONVEYANCE (of a freehold estate in the land) or an ASSIGNMENT (of a leasehold). In either case the layout of the deed will follow the following pattern:-

Introductory Part of the Deed:-

Date, and Parties: The parties are the vendor and purchaser and anyone else involved in the sale.

Recitals: These set out the reason for having the deed (e.g. the vendor has agreed to sell the property to the purchaser) and they always begin with the word WHEREAS.

Operative Part of the Deed:-

Transfer: This normally begins, NOW THIS DEED WITNESSETH ... and continues by stating that the vendor "hereby conveys" or "assigns" or "grants" the property: this passes the legal estate to the purchaser.

Parcels: The description of the property. It usually begins with the words, ALL THAT piece or parcel of land...

Any covenants, easements etc. of which the property has the *benefit*, and also any new exceptions or reservations being put into the deeds for the first time, would usually appear here, introduced by the words TOGETHER WITH and EXCEPT AND RESERVING respectively.

Habendum: (from Latin *"habeo"* I hold) TO HOLD unto the purchaser in fee simple - or for all the residue now unexpired of the Lease. (If there is no habendum, the deed passes to the purchaser all the estate that the vendor has. 1925 LPA.)

Reddendum: YIELDING AND PAYING: the rent of a leasehold; or it could be a rentcharge on a freehold.

Any already-existing matters to which the property is subject should appear here: look for the words SUBJECT TO.

Joint tenancy clause (for co-owners): The Purchasers shall hold the property on Trust for Sale, with power to postpone ... etc. - see page 278.

Covenant for Indemnity: a covenant to keep the covenants. See page 458.

other clauses: various possibilities. If there are numerous new covenants or easements to be created, as there often are with newly-built properties, there may be one or more Schedules setting these matters out separately at the end of the deed.

Acknowledgment for Deeds' Production: If vendor is selling only a part of his property, he will keep the bundle of deeds but will give the purchaser the right to have them produced if required, and to have copies of them.

Certificate of Value (not above £30,000): No Stamp Duty (tax) is payable if the consideration can be certified as not exceeding £30,000 in total. (Otherwise, duty of 1% of the whole consideration is payable.)

Execution and Attestation: SIGNED, SEALED and DELIVERED, normally in the presence of a witness who writes his name, address and occupation in the space provided.

memoranda: A memorandum should be endorsed on the back of the deed if part of the land is sold off, to show that the deed no longer gives title to the whole of the land. (There is an example of this on page 502.)

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Now look at the deed on page 486 and try to pick out the various items thereof.

On registered land the purchase-deed will be a deed of TRANSFER. Often it is drawn on a Land Registry printed form. The same form can be used whether the land is freehold or leasehold. This deed is much shorter than the purchase-deed drawn for unregistered land, and will follow this pattern:-

County and District .....
Land Registry Title Number.....
Address of the Property .....

The vendor *(name, address and occupation)* as Beneficial Owner hereby transfers to the purchaser *(name, address and occupation)* ALL THAT the property comprised in the above title number.
(Other clauses may be added if necessary.)
Certificate of Value not exceeding £30,000
Executed and attested.

- - -

There is no detailed description of the property,

and no mention of existing easements or covenants etc. The Land Registry has a record of these already, and so quoting the Title Number is all that is required.

(There is a parallel with the registration of motor cars. I could describe a car by stating its make, colour, size, engine-capacity and so on - but I could describe it much more surely by quoting its registration-number. Unregistered conveyancing of land describes the property by shape, size etc., while registered conveyancing quotes the registration-number. No two pieces of land have the same number: if part of a field is sold off, a new number is issued for the sold-off part.)

A statement in a deed that the vendor sells as "Beneficial Owner" implies four (or on leaseholds six) matters to the purchaser's advantage. The words imply that the vendor covenants (i.e. promises) that:-

(1) he has a good right to convey the property,
(2) the property is free from incumbrances, other than any the purchaser already has notice of,
(3) the purchaser shall have quiet enjoyment of the property,
(4) if any further assurance (e.g. a further deed) becomes necessary, the vendor will provide it.

If the property is leasehold, a further two covenants are implied by the words "Beneficial Owner":-

(5) the Lease is valid and still subsisting,
(6) the rent has been paid and the covenants in the Lease have been observed and performed.

If the vendor does not sell as "Beneficial Owner" but sells as "Personal Representative *(i.e. executor or administrator)* of John Doe deceased", or as "Mortgagee" or as "Trustee", only one covenant is implied, namely that the vendor personally has done nothing to cause any incumbrance - but he gives no guarantee as to what his predecessors may have done: the rule on this is *caveat emptor*, the purchaser must look out for himself.

By the time the purchase-deed and mortgage-deed have been executed, completion date is usually near.

The purchaser's solicitor makes a final Search

with the intention of discovering any pitfalls which have not already appeared: this is made (by filling in the appropriate application form) in the Land Registry if the property is registered, the Land Charges Registry otherwise. (See pages 597 and 598 for details.)

If the result of the Search is satisfactory, completion can take place - provided of course that there are no last-minute hitches such as the purchase-deed being lost (either through delay in the Post or an error in filing) ... or the Building Society sending the wrong amount of money ... or sending the right amount on the wrong date ... or the vendor failing to move out because his furniture removal van has broken down ... - a competent conveyancer has to be able to cope with all these little hiccups.

At the completion of the purchase, the remaining nine-tenths of the purchase-money is handed over to the vendor's solicitor, and/or vendor's mortgagee's solicitor; in return for which the purchaser (or his solicitor) receives the keys of the property - so the purchaser can now move in - and the purchaser's mortgagee's solicitor takes possession of all the deeds.

Sometimes the solicitor literally has to race the furniture van. For example: his client moves out of the old house, and the van drives off loaded with furniture, leaving the house empty. Only then can the sale be completed. At the completion of the sale the keys are handed over and the solicitor receives the money, which he at once pays into his Bank. That puts him in funds to complete the purchase. He immediately draws out the necessary amount and heads for the builders' solicitors, overtaking the removal van *en route*, his aim being to complete the purchase and make the keys of the new house available before the van arrives there.

B: After Completion

Two matters must be remembered after completion.

First, the purchase-deed must be presented to the Inland Revenue Stamp Office within 30 days, for information, and for payment of Stamp Duty in all cases

where the price exceeds £30,000. (It must be presented for information in any case, whether the consideration exceeds £30,000 or not, but on registered-land transfers not exceeding £30,000 the Land Registry deals with this on the purchaser's solicitor's behalf.)

Secondly, if the property is registered land, or is unregistered land which is due for its First Registration (see page 181) then the purchase-deed, the mortgage, and certain other documents must be sent (with the appropriate fee) to the Land Registry for registration.

With unregistered conveyancing, a large bundle of deeds gradually builds up. Another deed is added to the pile each time the property changes hands. But with registered conveyancing, the deed of Transfer is sent to the Land Registry with the Title Certificate. The Registry updates the Certificate in accordance with the information contained in the deed, and then returns the Certificate - but not the deed. Thus on registered land there is only one document of title, i.e. the Title Certificate.

If there is a mortgage on the property, the deeds or Charge Certificate will be kept by the lender as security, until such time as the mortgage is paid off. If there is no mortgage, the purchaser should see that the deeds or Land Certificate are deposited for safe custody in some fireproof place, such as the strongroom at his solicitor's office or his Bank.

C: Costs and Disbursements

Purchasers should bear in mind, when planning the financial arrangements for their purchase, that Stamp Duties, solicitors' costs, and other expenses can amount to a considerable sum. By way of example, there is set out below a list of the type of payments which might be expected on the purchase of a £50,000 house where the purchaser is providing part of the purchase money himself but is borrowing a major part of it from a Building Society on a mortgage. Incidentally it is worth asking for an estimate: some firms of solicitors do a good job more cheaply than others.

SOLICITOR'S COSTS

Professional charges		
(a) on purchase at £50,000 (Note:- this figure is a guide only, for the sake of this example: solicitors' "scale fees" were abolished in 1972 and the correct charge now is "such sum as may be fair and reasonable having regard to all the circumstances".)		£250·00
(b) on the mortgage (on behalf of the borrower)		37·50
(c) on the mortgage (on behalf of the lender - the borrower has to pay the lender's legal fees)		112·50
		£400·00
(The lender may use a separate solicitor to deal with (c).)		
VAT on all the above		60·00
		£460·00

DISBURSEMENTS (i.e. expenses)

Stamp Duty on £50,000 Conveyance *(1% on transactions over £30,000)*	£500·00	
Local Search	13·50	
Land Registry fees on the £50,000 purchase	115·00	
Miscellaneous (travelling expenses to the completion, etc.)	25·00	
other expenses - see the next paragraph for examples:	700·00	
	£1,353·50	1,353·50
		£1,813·50

There are various other expenses, which are not listed above because they are in the main matters with which the solicitor is not directly concerned. These may include the following:-

insurance (against fire, storm, flood etc.)
mortgagee's surveyor's inspection fee
fees for purchaser's own surveyor's report
furniture removal firm's charges
purchase of curtains/carpets (the old ones never fit!)
etc. (i.e. all sorts of things: paint, wallpaper, plumber, electrician and man to re-tune the TV; also hotel bills, furniture storage and a boarding fee for the cat if the purchase is completed at a later date than the sale - but interest will have to be paid to the Bank on a Bridging Loan if the purchase is to be completed at an earlier date than the sale.)

If the mortgage is for more than 80% of the Building Society's valuation of the house, the borrower must pay for an Indemnity Insurance: the Building Society insists on this as an insurance protection against the risk that on a sale of the house the price obtained might be insufficient to pay the Building Society in full.

If at the time of his purchase the purchaser is also selling a house for (shall we say) £50,000 let him not forget that on the sale he can expect to pay legal costs of perhaps £400 or more; and if the house was sold through an estate agent, the estate agent's commission may be £1,000 or more.

Thus the total expenses of the sale and purchase in this example may be well over £3,000.

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In 1974 a little seed of the species "title insurance" floated across from America. It looked for land, and on finding England it took root and attempted to grow. The basis of the scheme is that if there turns out to be anything wrong with the title, the loss is covered by an insurance policy. It is claimed that it can cut the costs and time involved in conveyancing by more than half, which must inevitably mean that some of the matters in the normal conveyancing process do not receive full attention, but if anything goes wrong the purchaser is insured - so he may lose the property but he should get his money back through the insurance.

Opinions vary as to whether this little seed is a rose indeed or a noxious weed - but whichever it is, in ten years it does not seem to have become in the least widespread; in fact it is quite a rare species.

SUMMARY

In this chapter we have seen a brief outline of the chief steps taken by a purchaser's solicitor on a typical transfer of land *registered or unregistered*
with or without buildings on it
freehold or leasehold
with or without a mortgage
from one person to another, from exchange of contracts onwards. These steps are:-

EXCHANGE OF CONTRACTS

insure

check proof of title (i.e. vendor's entitlement to sell)
by abstract of title for unregistered land;
by office copy entries for registered land

[note: office copy entries are often supplied before exchange of contracts - but abstracts are not.]

requisitions

purchase-deed *(draft and then engrossment)*

mortgage-deed *(draft and then engrossment)*

search *(in Land Charges Registry for unregistered land; in Land Registry for registered land)*

COMPLETION

stamping
PD (i.e. "produced" stamp - free of charge) is required on all purchase deeds, to show that information about the transaction has been supplied to the Inland Revenue;

Stamp Duty (tax) at 1% of purchase-price is payable on all purchase-deeds for over £30,000.

registration at Land Registry *(if the land is already registered land, or if First Registration is now required).*

Also in this chapter we have seen:-
an outline of the format of the purchase-deed,
an outline of the costs involved in Conveyancing.

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TEST QUESTIONS on Chapter 37:-

1. Fred and Florrie Smith are considering selling "Magpie Cottage" to Joan Jones. Joan says she will hand Fred a cheque for the agreed price (£48,000) and Fred can hand her the keys and they need not bother with solicitors or legal formalities. What risks is Joan running if she follows this course?

2. Compare and contrast the information provided by:-
   (a) Inquiries before Contract
   (b) Requisitions
   (c) Local Search and Additional Inquiries
   (d) Land Registry Search
   (e) Office Copy Entries
   (f) the Contract
   (g) the Abstract
   (h) Land Charges Registry Search.

3. (a) Compare and contrast Contracts and Conveyances,
   (b) Compare and contrast Conveyances and registered land deeds of Transfer,
   (c) Compare and contrast Exchange of Contracts and Completion.

4. Your cousin is buying a house. Cousin has not yet signed anything and is going to see a solicitor, but asks you to explain what the solicitor will do. Explain it (from the first interview until the solicitor submits his final bill).

5. Is your cousin safe in buying this house if
   (a) its drains run under someone else's property,
   (b) the vendor has lived there for 50 years but cannot remember where the deeds were put 50 years ago,
   (c) the vendor's wife has registered a Class F Land Charge ?

CHAPTER 38

FORMER METHODS OF CONVEYANCING

OUTLINE OF CHAPTER:-

A: Feoffment with Livery of Seisin
B: Fine
C: Lease and Release
D: Bargain and Sale
E: Lease and Release incorporating a Bargain and Sale
F: The Development of Today's System
G: Indentures
G: Lease for Life, or until Marriage

Much of this chapter consists of material on which I would never set an examination question but it contains information which I have sometimes found useful in practice.

We have seen (page 500) that on a sale of unregistered property the purchaser's solicitor must "investigate the title", starting from a "root of title" which is at least fifteen years old. But I was recently asked to advise on a property (it was a Baptist Chapel) which had not changed hands since it was built in 1834: so the only possible "root of title" was a deed of "Bargain and Sale" dated 7th. May 1834.

On other occasions I have had to accept a "Lease and Release" as the root of a freehold title.

What was a "Bargain and Sale"? What was a "Lease and Release"? And what other ghosts of the past can arise to haunt the busy conveyancer? This chapter is just a bare outline of some of these matters, beginning with the "feoffment with livery of seisin", the method of land transfer used by the Normans.

A: FEOFFMENT WITH LIVERY OF SEISIN

Until 1066, the Anglo-Saxons had a system - of a sort - in which land could be classified into FOLCLAND (folk-land, also called reeve-land: to some extent it may possibly have been community land in some areas - it was held by the custom of the district) and BOCLAND (book-land, otherwise known as thain-land, held by Charter or other writing) and LAENLAND (loan-land). To

what extent the Anglo-Saxons used deeds or documents for the transfer of their land, we cannot know with any certainty - but after 1066 the Normans replaced the Anglo-Saxon system with their own. Henceforth all land was to be held of the King on one or another form of tenure, as we saw in Chapter 3. The rights and duties over this land (i.e. the estate in the land) might be held in fee simple (inheritable) or for life. And the method which was developed for the transfer of such estates from one person to another used no writing but required a physical act of handing-over to take place in public: and this (as we saw briefly on page 81) was feoffment with livery of seisin.

These words mean a grant of fee, or estate (fee today means an inheritable estate but in those days it also included life estates) with livery, i.e. delivery or handing-over, of seisin, i.e. possession. The following ritual had to be performed:-

The transferor (vendor or grantor) had to go onto the land, or at least within sight of it, and hand the transferee the handle of the door, or a piece of turf, or a stick from the hedge, symbolising the land. After that the transferee (grantee - donee or purchaser) had to step onto the land, signifying that he was taking possession. This was done in public in front of anyone who cared to come and watch, the whole intention being that it should be common knowledge that the land had passed from the transferor to the transferee.

Feoffment with livery of seisin remained legal until 1925 (although any contract for such a transfer had to have evidence in writing from 1677 onwards, as we saw on page 81) but it had fallen into general disuse by the end of the middle ages. It had two particular disadvantages, namely:-

1) the transferor and transferee had to travel to the land; and
2) the transfer had to be in public - secret sales of land were therefore impossible.

In Norman times this was the only permitted method of land transfer: but the need was felt for some means of transferring land without these inconveniences, and so the Fine was developed:-

B: Fine

The Fine was a fictitious court action (we saw a refinement of it in "Levying a Fine" to bar an entail on page 151) in which

the parties reached an agreement - a "fine" means a "final agreement" - which was entered on the common law court record.

So, by this fictitious court action which the Judge accepted, the purchaser's name was entered as owner upon the court record - and that was final. This had two advantages:-

1) there was no need to go to the land; and

2) the transfer was not public.

It was realised however that such a system could be abused: the landowner could use its lack of publicity for fraudulent purposes, or the landowner might himself be defrauded by a forged "Fine" document. The practice therefore grew up, as early as 1195, of drawing the document in three parts, on a single parchment. The parchment was then cut into its three parts: the transferor and transferee took one piece each, and the bottom part - the foot of the Fine - was put with the court records. These "Feet of Fines" form one of our most valuable sources of local history, for they are preserved in an almost complete series running from 1195 until 1833 when land transfer by Fines was abolished by the 1833 Fines and Recoveries Act.

But a method of land transfer which involved having to make an appearance in court to go through the charade of pleading a fictitious court case was not really convenient, and lawyers looked for a better way of transferring estates in land. And the Lease and Release was the result of this.

C: Lease and Release

Leasehold in mediaeval times was not recognised as a right in Land Law, but was treated as being a personal matter between the parties (as we saw on page 39). So a transfer of a leasehold did not need a feoffment: the transfer could be done by a deed. And so the two-stage method of Lease and Release was developed. It worked like this:-

a) there was a Lease (e.g. for a year) to the transferee, by deed;

b) this left the transferor with the reversion, i.e. the right to receive the property back after a year, but no right of occupation before then. The reversion could not be transferred by feoffment because the transferor had no immediate right of occupation. The correct way to transfer a reversion was by deed. Therefore the transferor made a Deed of Release, which transferred the reversion in fee simple to the transferee.

Advantages of this were threefold:-

1) there was no need for the transferor to go to the land;
2) there was no need to have any publicity; and
3) there was no need to go to court.

But there was still the disadvantage that the transferee had to go to the land and step onto it (after the Lease but before the Release) because a Release of a freehold reversion could only be made to a lessee in possession. Someone might see him there - in which case any hopes he had of keeping the transaction secret would be dashed.

Then Henry VIII's Statute of Uses (1535) gave the opportunity for a new method, the Bargain and Sale.

D: Bargain and Sale

The background to the Bargain and Sale is that by about the fourteenth century Equity had come to recognise the "Use" (what we today would call the Trust) - with "A" holding the freehold for the benefit of "B". We saw an example of this on page 55.

Then the Use became a popular method of avoiding the tax known as the Relief: we saw on pages 68-70 that if property was granted to Ben in fee simple there was Relief payable on Ben's death - but if the property was granted to Tom and Dick to the use of Ben, no Relief was payable on Ben's death because he only had an Equitable interest, and none was payable on Tom's death because Dick was still alive, and none was payable on Dick's death as long as he had appointed another trustee before he died.

King Henry VIII lost so much Relief that he forced the Statute of Uses through Parliament in 1535, to say that on a grant "to X and Y to the use of A", X and Y had no estate, and A had the legal estate - and so Relief was payable. See pages 68-9 for the details.

But this provided a new means of transfer: the Bargain and Sale which worked like this:-

If a vendor V promised to sell land to a purchaser P, and P paid V the money, V was thenceforth holding the property on behalf of P. In other words, V held to the use of P. So, by the Statute of Uses, V had nothing and the legal estate belonged to P - and that is without P walking onto the land and without any publicity.

The legislators in 1535 foresaw that this could lead to secret transfers, and so they provided that all such transfers had to be registered at Westminster.

So the Bargain and Sale had an advantage, in that there was no need for either of the parties to go onto the land;

but it had two disadvantages, namely:-

1) it had to be registered - which made it public; and
2) the land could not be granted to P as trustee for someone else, because there was already a Use (V to the use of P) and a Use upon a use was not permitted until the seventeenth century. (Of course, this second disadvantage applied to all types of transfer, not just Bargain and Sale, from 1535 onwards, because of the Statute of Uses.)

The next step followed naturally from this: it was a Lease and Release incorporating a Bargain and Sale.

E: LEASE AND RELEASE INCORPORATING A BARGAIN AND SALE

This was in two parts:-

a) Bargain and Sale of a Lease to P for one year - this was just like the Bargain and Sale under heading D above, except that, being only a leasehold, it did not require registration. So it could be secret.
b) Next day, there was a Release to P of the legal fee simple reversion, by a deed. (P might not have entered onto the land, but that didn't matter now: he had a legal estate by the Statute of Uses.)

P got the Lease by virtue of the Statute of Uses, by Bargain and Sale - but he got the fee simple reversion by the Deed of Release - nothing to do with the Statute of Uses but simply an ordinary release of the freehold to the legal lessee.

As far as the fee simple reversion was concerned, there was no need for a feoffment because this was a sale of a reversion; and as the Deed of Release was not under the Statute of Uses it became accepted by the mid-seventeenth century that the grant of the freehold reversion could be made to P as trustee for someone else.

So we see three advantages:-

1) there was no need for the transferor or the transferee to enter upon the land;
2) the transaction could be private - indeed secret - as no registration was required; and
3) the property could be granted to P as trustee for someone else - whose identity could be kept secret.

This method was invented in the first half of the seventeenth century and was the usual form used in the eighteenth and early nineteenth centuries. So the typical entrepreneur of the Industrial Revolution, assembling pieces of land for the building of his factory or his railway, could thus buy secretly, so that the owner of the last plot required would not realise what was going on and therefore ask a ransom price.

In 1841 Parliament enacted that there could be a Release without bothering with a Lease - so the Lease for this purpose became a legal fiction.

By the 1845 Real Property Act, Parliament replaced this system with the system of Deeds, which is what we use today. But the old methods, though not much used after 1845, were not finally abolished until 1925.

Although a feoffment with livery of seisin (which originally needed no writing) could be used right down to 1925, from 1677 onwards there had to be something in writing to satisfy s.4 of the 1677 Statute of Frauds - now re-enacted in s.40 of 1925 LPA.

F: Today's Systems

Since 1925 LPA, the transfer of any legal estate or interest (except certain leasehold tenancies not exceeding three years) *must* be by deed.

On unregistered land the deed is normally a Conveyance for freeholds, and an Assignment for leaseholds, as we saw on page 504: on registered land a deed of Transfer is used for both freehold and leasehold property.

Today there is no legal need to go onto the land, and the identity of the owner can be secret. Indeed some tenants who pay their rent to an agent who acts on behalf of their landlord, do not even know their

landlord's name and address - which can make life difficult for the tenants if they want to sue the landlord for failing to carry out repairs. The Local Authority and (if the land is registered) the Land Registry know the name of the legal owner (who may of course be trustee for some other unidentifiable person) but they are unlikely to divulge the information - on the contrary indeed, the Land Registry will *refuse* to give information unless it receives an Authority to do so, signed by the registered proprietor: and obviously you cannot ask him for such an Authority if you do not know who he is.

In 1985 both the Law Commission and the Farrand Committee have suggested that the Land Registry's information should be open to the public. Some people see this as an unacceptable invasion of privacy - but normally such people should be able to maintain their secrecy by using trustees. They could even use different trustees for different properties so that even the trustees themselves do not know what other properties their beneficiary has an interest in.

In most other countries where registration systems are operated, the Registers are open to the public.

Land Registration was first used in London (voluntary, and very seldom used) in 1862. It was made compulsory for London in 1897. In 1926 it was compulsory in London and Eastbourne only. As late as 1955 it was only compulsory in London, Middlesex, Surrey, Eastbourne, Hastings, Croydon and Oxford: but today registration is compulsory throughout south-east England and in nearly all large urban areas elsewhere - see map on page 168.

[See also page 664.]

G: INDENTURES

An Indenture means a deed with an indented (i.e. uneven) top edge. In former times it was the practice to write a deed out on the parchment at least twice, and then to divide the parchment with an uneven cut and give one part to each party. If at a later date there was a suspicion that someone had a forged deed, the parts could be fitted together like a jig-saw puzzle to show that they were genuine.

After 1845 the requirement of an uneven edge ceased to be

enforced, but the name Indenture continued to be used until 1925.

H: LEASES FOR LIFE, OR UNTIL MARRIAGE

The lease for life (and its variation, lease for three lives) was useful until 1925. Being for an unascertainable period (a life or lives) it was technically a freehold estate, but there was a landlord and a tenant and so there was privity of estate and it did not have the difficulties concerning positive covenants on freehold land which we saw on pages 454-464.

The same remarks apply to a pre-1926 lease granted "until marriage" - another unascertainable period.

The 1925 legislators were not prepared to accept such hybrid forms between freehold and leasehold. They would not recognise them as freehold. (One reason for this was that many of these estates were on properties which were of copyhold tenure; and if such a copyhold were to be changed into freehold tenure, the lord of the manor would lose the land for ever. It would have been a grievous loss for the landowner if all his tenants with leases for life had thus acquired freehold tenure and legal fee simple estates.) So leasehold they had to be. Therefore:-

1925 LPA converts all Leases for Life or Lives, and all Leases "until Marriage", into leases for 90 years, terminable by either party giving at least one month's notice to the other (or to his personal representatives etc. as the case may be) at any time after the end of the life (or after the marriage as the case may be).

Read those last six lines again, and then answer this question:- If your eccentric neighbour grants you a lease of his lock-up garage "for four years on condition you do not get married", how long will the lease last?

(Answer at foot of next page.)

SUMMARY

In this chapter we have seen a little bit about former methods of Conveyancing, in particular the
feoffment with livery of seisin,
fine (and feet of fines)
Lease and Release,
Bargain and Sale,
the Indenture,
and Leases for Lives.

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TEST QUESTIONS on Chapter 38:-

1. Should some (or all) of the registers at the Land Registry be open to the general public? Give reasons.

2. The following persons each occupy lands which their families acquired before 1926. They have only these deeds or documents (granted in each case to the present occupier's great-grandfather):-

Tom: a deed of Bargain and Sale dated 1820,

Dick: deeds of Lease (for a year) and Release dated 1820,

Harry: a Lease for life, dated 1910,

Ann: a deed of Lease for 999 years from 1820,

Zola: an admittance (i.e. copyhold tenure) dated 1910,

Yolanda: no documents at all can be found,

Xenia: no documents at all can be found, but a yearly rent has been paid to a local landowner for as long as Xenia can remember *(see pages 535 and 537)*

Edwina: a deed of Conveyance "to Edwin in fee simple" dated 1846 *(see page 127)*.

Advise each of them (with reasons) whether they can make good title to sell the legal fee simple.

Answer to the question on page 521:-

This is a lease which can be ended on your getting married, and it therefore takes effect as a lease for NINETY years as long as you do not get married!

CHAPTER 39

MORTGAGES

OUTLINE OF CHAPTER:-

A: What is a mortgage?
B: Mortgagee's remedies for non-payment
C: The "Homeloan" scheme for first-time buyers

Mortgages are more suited to a textbook on Conveyancing than to this book and are therefore only dealt with in outline in this chapter.

Don't confuse mortgagor and mortgagee. Here is a possible way to remember which is which:-

Mortgag**or** is the b**or**rower;

Mortgag**ee** is the l**e**nder.

A: WHAT IS A MORTGAGE?

A mortgage, as we saw on pages 493-4, is basically an arrangement whereby the mortgagor, the borrower, obtains a loan of money by using his land as "security". This means that until the loan is repaid the mortgagee has certain rights against the property - including in most cases the right to evict the borrower and sell the property if the borrower does not regularly pay the interest on the loan and carry out all other obligations to which he has agreed.

The deeds (or Land Registry Title Certificate) and other documents such as Searches relating to the mortgaged property are normally handed to the lender. In cases where this is not done, the registration of the mortgage in the appropriate Register (at the Land Registry if the property is registered land, Land Charges Registry otherwise) protects the lender.

In former times the common law concerning mortgages was very severe: the form taken by mortgages was that the borrower conveyed the fee simple of his house to the lender with a proviso that if the borrower repaid the debt in full on a certain stated date (the "LEGAL REPAYMENT DATE") the property would be conveyed

back to him. If he did not repay on the legal repayment date (usually one year from date of loan) he lost his house for ever - and still had to repay the debt.

Equity alleviated this harsh rule by providing that the borrower could repay *after* the legal repayment date. This proviso became known as the "EQUITABLE RIGHT TO REDEEM".

(As Equity gave this right, Equity can also take it away if it considers it right that it should do so. The act of taking away the Equitable right to redeem is the basis of "foreclosure" of the mortgage, which we shall see below.)

The legal repayment date is still inserted in mortgages today. Until that date has passed, many of the lender's powers against the borrower and his property do not come into existence. In some mortgages the legal repayment date is as little as a month after the borrowing date - but both parties know full well that the borrower has no intention of repaying the loan on that date, as he will rely on his Equitable right to redeem.

Until 1925, mortgages still took the form of a conveyance of the fee simple to the lender, subject to the proviso for reconveyance on repayment of the loan. The 1925 legislation abolished this practice, but the lender needs to have the powers of a legal estate owner, so the 1925 LPA provided that a lease for a long term of years (a "demise") should be granted to the lender. A 3,000 year term is normally used. *[If the property is leasehold, a term ten days shorter than that owned by the borrower is used instead.]*

So, in legal theory, the lender becomes tenant of the borrower *(note that:- I did not say the borrower becomes tenant of the lender)* but in fact the lender does not go into possession as long as the borrower performs his obligations and makes his payments regularly.

So it must be admitted that a mortgage does not say what it means - "No-one ... by the light of nature ever understood an English mortgage..." as Lord Macnaghten once said.

Suppose for example the borrower is borrowing £12,000 repayable with interest over a period of 25 years. Will the mortgage deed say so? Quite possibly not. It is quite likely that it will not mention the 25 years: instead it may first say that the whole £12,000 is to be repaid in a month's time, and then may appear to say that the property is to be handed over to the lender for the next 3,000 years - much to the borrower's alarm. His solicitor has to explain to him the true facts, namely (i) that Equity will allow him to repay over 25 years although the deed does not say so, and (ii) the 3,000 year term does not affect the borrower's possession of the property, and can in any case be cancelled at any time by the borrower paying off the mortgage.

(The borrower can repay the mortgage at any time; he does not have to wait until the end of the 25 years. Some Building Societies however charge a penalty if the mortgage is paid off within the first two or three years - as a result of which the borrower can sometimes find that although he has made his payments regularly, he still owes more than he first borrowed.)

The £12,000 mortgage above is an illustration of a LEGAL MORTGAGE BY DEMISE. It is a legal mortgage although the borrower is relying heavily on Equity.

If the same transaction were carried out by an informal document instead of a deed, or if it were a mortgage of an Equitable interest (e.g. a future interest) or if the borrower and lender intended only to create Equitable rights and duties, then the transaction would be an EQUITABLE MORTGAGE BY DEMISE. *(We saw on pages 70-1 that a transaction can be Equitable as a result of informality, inability to create a legal right, or intent.)*

An alternative form of mortgage created by the 1925 LPA is the LEGAL CHARGE. Instead of demising the property to the lender for 3,000 years, it "charges the property by way of legal mortgage". The effect of this is that although the lender does not receive a legal term of years, he has (by virtue of the 1925 legislation) all the rights and powers he would

have had if he had had a legal term of years. This has an advantage when dealing with leasehold property, for a mortgage by demise counts as a sub-lease, and would be in breach of any covenant there might be not to sub-let. A legal charge is not a sub-lease and so is not in breach of such a covenant. The legal charge is also a slightly shorter document than the mortgage by demise.

Again if the transaction were carried out in an informal manner, or were a charge of an Equitable interest, or the parties intended only to create Equitable relations, the result would be an EQUITABLE CHARGE. Handing the deeds of one's property to one's Bank Manager as security for a loan amounts to an Equitable charge.

In ordinary day-to-day speech the word "mortgage" is used to cover both mortgages by demise and charges, and will be so used for the rest of this chapter.

When the legal charge was first introduced by the 1925 LPA, many solicitors thought it would not work because it does not give the lender a legal estate: and so they used the mortgage by demise instead. Sixty years later we know that the legal charge works: and mortgages by demise are today something of a rarity.

It is possible to have a legal or an Equitable mortgage of a legal estate, but there cannot be a *legal* mortgage of an *Equitable* interest.

Mortgages may also be divided into repayment and endowment mortgages. On a REPAYMENT MORTGAGE, the borrower has to make payments (usually monthly) which are part-interest and part-capital. Let us use a round-figure example:-

Boris borrows £12,000 on mortgage at 10% interest. His interest (ignoring the tax allowance he will normally receive on it) is £1,200 per year, i.e. £100 per month. But the monthly payment required will be perhaps £120 - so each month he is paying his interest and also repaying £20 of the capital.

So at the end of a year he has repaid £240 capital,

and therefore only owes £11,760. Interest on this is only £1,176 per year, i.e. £98 per month.

Boris continues paying £120 per month, but now £98 of this is interest and £22 repayment of capital.

At the end of the second year he has thus repaid another £264 capital, and only owes £11,496 - on which monthly interest is a little less than £96, so each £120 payment will now include a £24 capital repayment.

And so on. Building Societies calculate the figures so that the entire capital is repaid over the term (25 years, more often than not) of the mortgage.

If the above mortgage were an ENDOWMENT MORTGAGE, the system would be different. Boris would pay the lender interest only: £100 per month in the above example. If this is a 25 year mortgage granted in 1985, Boris will have to repay the £12,000 in a lump sum in the year 2010.

Boris therefore takes out a "With Profits" Endowment Life Assurance Policy which states that the Assurance Company will pay at least £12,000 in the year 2010 or on Boris' death, whichever happens first. Boris has to pay the premiums on this policy in addition to the mortgage interest, so in the early years he will pay out a lot more than he would have paid on a repayment mortgage. But the tax advantages and the "profit" which he will receive in the year 2010 over and above the £12,000 (the exact amount of profit being dependent on how successful the Life Assurance Company's investment policy has been) can make the endowment mortgage a well-worth-while long-term investment.

Alternatively Boris may have a "Low Cost" Endowment Life Assurance Policy. It works the same way as a "with profits" policy except that it costs less (which may explain why it is more popular than the full "with profits" policy at present) and will also provide Boris with less "profit" when the year 2010 comes.

If Boris dies before the maturity date (the year 2010) the Life Assurance Company immediately pays off the mortgage in accordance with the terms of the

Life Assurance Policy, so Boris' widow does not lose the house. (On repayment mortgages, which do not have this protection, it is advisable to arrange special insurance against this risk. It is also possible, at extra cost, to get structural defects insurance, and redundancy insurance which covers the borrower's mortgage payments if he loses his job - as well as the usual fire-storm-tempest-etc. comprehensive insurance which the lender will normally insist upon.)

Note the terminology: fire insurance (because it deals with something which may never happen) but life assurance (end of life assuredly *will* happen).

The student who needs details of the many rights and duties of lenders and borrowers should consult other textbooks. He will find requirements as to possession of deeds, formalities on repayment, the order in which lenders are repaid if there are several mortgages on one property, and many other points. Building Societies are governed by the 1962 Building Societies Act, and it is almost certain that Parliament will pass a 1986 Building Societies Act (to deal with conveyancing by Building Societies) within the next few months.

This chapter will now close with a statement of the remedies available to a legal mortgagee if the borrower fails to make the proper payments.

B: The Mortgagee's Remedies for Non-Payment

There are five rights enabling a lender under a legal mortgage to enforce payment if the borrower has fallen into arrears. *(Note: the rights of an Equitable mortgagee are not so extensive.)* The five rights are:-

1. to sue the borrower for debt,
2. to foreclose,
3. to sell the mortgaged property,
4. to take possession of the mortgaged property,
5. to appoint a receiver.

A brief comment on each of these:-

1. The lender is unlikely to sue, as the other remedies are better. If however the property is sold

and the proceeds of sale are insufficient to pay the mortgage debt and outstanding interest and costs in full, the lender may sue the borrower for the balance. *Power to sue does not arise until the legal repayment date is past.*

2. Foreclosure consists of the taking away by Equity of the Equitable right to redeem. It is rarely used nowadays. The usual foreclosure procedure is that when the Equitable right is taken away (e.g. because the borrower has behaved inequitably) the borrower is given a new legal repayment date, e.g. a date six months from the date of the order. He must either redeem the mortgage by that date or lose the property. *Foreclosure cannot take place until the legal repayment date is past.*

3. Sale is one of the most frequently used remedies. The mortgagee of a freehold property does not have the fee simple (as we know from page 524) but by virtue of 1925 LPA he can sell the fee simple. This is one of those situations where a person has a legal power to sell something which is not his. (If the mortgaged property is leasehold the lender has a similar power to sell the whole of the borrower's term of years.) The property is normally sold with vacant possession as the borrower and/or other persons in occupation will be evicted by Court order (unless they show cause otherwise, as Mrs. Boland did - see page 314) before the sale. The eviction will be carried out by bailiffs if necessary. *The mortgagee's power of sale does not arise until after the legal repayment date is past.*

4. The lender's power to take possession of the mortgaged property *arises as soon as the mortgage begins* but its use is not recommended. It is a dangerous remedy, because the borrower can require the lender who has taken possession to account for all moneys he has received, or should have received, from the property. For example, if the lender after taking possession lets the property to a tenant at a lower rent than the best rent reasonably obtainable, the lender can find himself liable to the borrower for the difference between the rent obtained and that which could have been obtained.

5. Appointing a receiver to manage the property is much safer than taking possession, as the receiver is appointed by the lender but is deemed to be the agent of the borrower. So if on the lender's instructions the receiver lets the property to a tenant, and the rent is lower than the best rent reasonably obtainable, the loss falls on the borrower. But *the lender's power of appointing a receiver does not arise until after the legal repayment date is past.*

C: The "Homeloan" Scheme

Every student should know about the government's "Homeloan" scheme, introduced to help first-time buyers. To qualify for the benefits of the scheme, when you buy a property you must fulfil the following conditions:-

(1) You have never bought a house or flat before,

(2) Your purchase price does not exceed a certain figure. (The figure varies for different parts of the country.)

(3) You must show that you have been saving with a Building Society or other approved body (and gave notice that you intended to save under this scheme) for at least two years,

(4) You must have at least £300 in the account for a full year before applying for the benefits of this scheme.

If you fulfil these conditions when you buy your first property, you qualify for a tax-free cash bonus, paid by the government, of £40 - or more:- if you have had at least £400 in the account for a full year you are entitled to £50, and so on (on a sliding scale) up to £110 if you have had £1,000 in the account for a year.

So if you have no Building Society account I suggest that you go and deposit £1 to open one today!

If when you apply for the mortgage you have at least £600 in the account (even if some of it was only put there a few days previously) you qualify for an extra £600 loan which will be tax-free for five years.

SUMMARY

In this chapter we have seen:-

legal and Equitable mortgages by demise,
legal and Equitable charges.

repayment and endowment mortgages.

the five remedies for enforcing payment of a legal mortgage:-

1. to sue
2. to foreclose
3. to sell
4. to take possession *(this being the only one of the five which is available before the legal repayment date has passed)*
5. to appoint a receiver.

TEST QUESTIONS on Chapter 39:-

1. What is the difference between
(a) a legal mortgage by demise and a legal charge?
(b) a legal mortgage by demise and an Equitable mortgage by demise?
(c) a legal mortgage by demise and a lease for 3,000 years?

2. (a) Fred and Florrie Smith have mortgaged "Magpie Cottage" to the Lesser Troutville Permanent Building Society for £5,000 by means of a Legal Charge. On reading the deed through, Florrie notices a provision saying that all the money has to be paid back on 31st. December this year. This worries her. Explain the position to her.
(b) What rights does the Building Society as mortgagee have by virtue of the legal charge, and which remedies would you recommend the Society to use against borrowers who fall into arrears with their payments?

CHAPTER 40
LEASEHOLDS

OUTLINE OF CHAPTER:-

A: General Principles
- *1. Introduction* *2. Specific term*
- *3. Periodic term* *4. Tenancy at will*
- *5. Tenancy on sufferance*
- *6. A note on oral agreements*
- *7. Contract for a lease*
- *8. An example of leases and underleases*
- *9. Underleases contrasted with assignments*

B: The Rent Act legislation
- *1. Residential tenancies (A) 1977 Rent Act*
  - *(B) Restricted contracts (1977 Rent Act)*
  - *(C) 1980 Housing Act*
  - *(D) Long leases: 1967 Leasehold Reform Act*
- *2. Business and agricultural tenancies*

C: The freeholder's position

D: Housing Associations
- *1. Introduction*
- *2. Types of Housing Association*
  - *(A) "traditional" associations*
  - *(B) Housing Societies*
- *3. Housing Associations - the present position*

E: Other points
- *1. Sale and leaseback* *2. Mobile homes*
- *3. Allotments* *4. Housing Acts*
- *5. Settled land, and mortgaged land*
- *6. Service occupancies*
- *7. Enlargement of leases by declaration.*

Note: As from 1st. April 1986 many provisions of the Housing Acts and other Statutes, and the whole of the 1977 Housing (Homeless Persons) Act, will be consolidated into three new Acts:-

1985 Housing Act,
1985 Housing Associations Act,
1985 Landlord and Tenant Act.

References (in this chapter and in Chapter 45 and elsewhere) to the legislation at present in force should then be amended accordingly. This note applies particularly to pages 103, 546, 552-6, 558, and 606-9.

A: General Principles

1. INTRODUCTION

Leaseholds are not Real Property and so are outside the scope of this book, but this chapter is necessary to show how they may affect the freeholder.

A lease is basically a contract or agreement whereby a person with land (a "landlord" or "lessor") grants possession of that land for some agreed period (the "term") to some other person (the "tenant" or "lessee"). Leasing of land developed primarily as a means of investment and so the letting (i.e. leasing) is normally in return for a rent - but a rent is not essential: we saw on page 28 that the one *vital* characteristic of leasehold tenure is a "landlord's reversion" - a returning of the land to the lessor at the end of the lease.

A lease can be for any ascertainable period less than eternity: there is a Lease for ten million years in the 1986 Guinness Book of Records. (The land reverts to the landlord of course after that!)

The majority of leases contain a covenant by the lessee that the lessor can re-enter and that the lease may be forfeit if the lessee fails to pay his rent or fails to observe covenants. Lessors' powers under these provisions are to some extent limited however by the Rent Act legislation - see below, page 541.

Until 1915 the Law of Landlord and Tenant (as the law of leaseholds is generally called) was a comparatively straightforward subject. Since 1915 there has grown up, for the protection of the tenant, a truly remarkable succession of statutes, notorious for their complexity: these are referred to in this chapter as the Rent Act legislation. As far as residential tenancies are concerned, a whole series of these statutes is now consolidated into the 1977 Rent Act.

Part A of this chapter attempts to make clear the general principles of leaseholds, and Part B dares to look at the Rent Act legislation. Part C mentions some of the ways a freeholder can be affected by leaseholds,

and Part D looks at a rather special branch of Landlord and Tenant Law - Housing Associations.

We saw on page 45 that leasehold estates divide into specific terms, periodic terms, and tenancies at will or on sufferance. Some examples will clarify what leaseholds are.

2. SPECIFIC TERM

Alan is moving to a large city and wishes to buy a house there. He finds that much of the land on which the city stands is in the hands of landowners who in the past were unwilling (or possibly unable: see page 237) to part with the fee simple, and would only sell a 99 year term, subject to numerous covenants and the payment of a rent. So when Alan finds his dream house, he also finds that the vendor cannot sell him the fee simple but only the residue of a 99 year period, and as well as paying the purchase price to the vendor, Alan will have to pay a small rent - say for example £12 per year - to a landlord.

Such a rent is sometimes known as a ground rent. Contrast it with the "rack rent" (i.e. full market-value rent with no capital payment) which occurs under heading 3 below.

The purchase price which Alan pays the vendor for this "term of years absolute" (legal leasehold estate) is not far short of what he would have paid for a freehold.

The lease is likely to contain covenants not to use the property for trade or business etc., and positive covenants to pay the rent and so forth; and a proviso for re-entry by the landlord (forfeiture of the lease) for breach of covenant.

(Note on protection of tenants:- We shall see in Part B of this chapter - page 547 - that since 1967 there has been a procedure under the 1967 Leasehold Reform Act whereby lessees of "long leases", i.e. leases of more than 21 years, of houses - not flats - can in most cases require the freeholder to sell them the fee simple, as a price calculated on principles advantageous to the lessee.)

3. PERIODIC TERM

Bill is moving to the same city as Alan, but does not wish to buy a house - perhaps he cannot afford it, or is not expecting to stay in the city permanently. (Perhaps he is a student!) He takes a flat on a monthly tenancy for which he pays no "premium" (i.e. no initial purchase-price) but will pay a rent of (e.g.) £120 per month. As in the example above there will be covenants and a proviso for re-entry on breach of covenant.

This too is a legal leasehold estate, a "term of years absolute" - notwithstanding that the basic period is less than a year.

(Note on protection of tenants:- Nearly all tenants of such leases as this are protected by the Rent Act of 1977. The tenant of residential property now has so much protection against eviction under this Act that there is now a shortage of residential property to let: potential landlords are unwilling to let such property because they know that once a tenant is in, it can be a nightmare to put him out.)

Alan's property and Bill's property are both held on a legal term of years absolute. They are legally both the same - i.e. legal leasehold estates. (But though they are the same for legal purposes, they are very different from each other for valuation purposes! Alan's estate is worth maybe more than £50,000, whereas Bill's estate has no capital value - except that if Bill cannot be evicted and the landlord wants to sell the property with vacant possession, which commands a much higher price than selling with a sitting tenant, the landlord might offer to pay Bill to move out.)

A specific tenancy ends at the expiry of the term. A periodic tenancy ends at the expiry of a complete period's notice. Thus a three months specific tenancy runs for three months and then expires. A three months periodic tenancy could run for many years, recurring three-monthly until one party gives the other party three months notice. *(And on residential property, if the landlord gives the tenant notice, the tenant can usually stay unless the landlord finds him suitable other accommodation: 1977 Rent Act - see page 544.)*

4. TENANCY AT WILL

Tenancies at will and on sufferance only exist in Equity - or at least we may treat them as so in this book. (The more profound legal textbooks devote many paragraphs to the question of whether tenancies at will and on sufferance are legal estates or Equitable interests or neither - but such considerations do not concern us here.) Tenants at will and on sufferance can be told to leave at any time, except that if they have paid a regular rent the Court will probably treat them as periodic tenants protected by the 1977 Rent Act.

One example of a tenancy at will is where a purchaser is buying a property, and the legal formalities seem to be taking a long time, and the vendor tells the purchaser, "We won't wait for the lawyers! You can move in, on the understanding that you'll move out again if I tell you to". The purchaser thus becomes, until completion of the purchase, tenant at the will of (i.e. subject to the wish of) the vendor.

(Any prospective vendor reading this is warned that such an arrangement is most dangerous: a tenant at will can frequently get the protection of the 1977 Rent Act and can insist on staying, once he is in, despite any understanding or promise to the contrary. The vendor should not give the purchaser possession before completion of the purchase without obtaining from him, at the very least, a signed agreement that he goes in as licensee and not as tenant - and even this is not always sufficient.)

5. TENANCY ON SUFFERANCE

A tenancy on sufferance occurs if a tenant had a lease for a specific term, and that term has expired, but neither the landlord nor the tenant has done anything about it. Thus the tenant is still in occupation because the landlord has suffered (i.e. permitted) him to stay.

Note that the tenancy at will arose because the landlord did *something* (he said, "You can move in") whereas the tenancy on sufferance arose because when a

tenancy expired the landlord did *nothing* about it.

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So (to summarise) the four types of leasehold are:-

1. specific (ending when the term expires)
2. periodic (ending when notice expires)
3. at will } (ending on demand).
4. on sufferance }

6. A NOTE ON ORAL AGREEMENTS

Any lease having a term of not more than three years, starting in immediate possession (i.e. the tenant can move in straight away, not as from some future date) at the best rent reasonably obtainable without a premium, may legally be oral.

(So if the student reading this book has a flat on an oral tenancy, this is the reason.)

In many cases however, for the sake of certainty, there is a written agreement, which is known as a tenancy agreement. On result of this is that for these not-over-three-year terms it is more common for the words "tenancy", "tenant" and "landlord" to be used, leaving the words "lease", "lessee" and "lessor" to be more commonly used for leases of over three years, which so far as common law is concerned require a deed. *(Equity will sometimes accept a written contract in lieu of a deed by treating it as though a deed incorporating the terms of the contract existed: see next paragraph.)*

7. A CONTRACT FOR A LEASE

In many cases a contract to have a lease is as good as a deed of lease, because Equity will treat it as a deed on the basis of the maxim (which we saw on page 61) "Equity looks on what ought to be done as if it was done". But it is only good in Equity, and it is void against a purchaser unless it is registered as a C(iv) estate contract (or Land Registry equivalent, which is a Notice on the Register). There has to be

evidence of the contract in writing to satisfy s.40 of LPA (see page 488). The leading case on a contract for a lease is *Walsh v. Lonsdale (1882)*.

8. AN EXAMPLE OF LEASES AND UNDERLEASES

Sometimes several leasehold estates exist in respect of one property. For example, in Birmingham (large areas of which are leasehold) it would not be unusual to find the following estates affecting a house:-

(A) the freehold: the fee simple is owned by some large landowner (either for his own benefit or as tenant for life of a strict settlement) who owns the freehold of the whole street.

(B) headlease: a lease for 99 years from a certain date to a building company, this being a lease of the entire street (on which the company has built a hundred houses) at a rent of £2,000 per year. *(Why 99 years instead of 100? Purely convention. Possibly in former times it may have saved stamp duty.)*

(C) sublease (also called underlease): a lease of the house, by the building company to the individual householder, for 99 years less 10 days, calculated from the same commencement-date as the headlease, at a rent of £25 per year. *(If all the underlessees are paying this figure, this provides a steady source of income for their immediate landlord the building company, for it will be in receipt of £2,500 and is only required to pay the head lessor £2,000 each year.)*

Note that the head lessee (the building company) did not part with the whole period of time making up its legal estate. In order to keep a legal estate (and the rights and remedies that go with it, including the right to receive rent) it retained the ten-day period (though one day would have been enough) as its reversion: at the end of the householder's lease the property reverts to the building company for that ten days, before the company's own lease expires.

(D) sub-sublease: a lease of a furnished bed-sitter in the house to a student at £100 per month.

The headlease and sublease are specific terms (of 99 years and 99 years less 10 days respectively) and

the sub-sublease is a periodic (monthly) term. All three are legal estates, "terms of years absolute". The sub-sublease, being monthly, may legally be oral: this remains the case even if the student stays longer than three years.

(E): if the student goes on vacation and lends his bed-sittingroom *(with the householder's consent, we hope! - see page 541)* to a friend, telling him, "You can stay until I want it back", the friend has a tenancy at will, but if any arrangement for periodic payment of rent is made, this will normally convert it into a periodic tenancy (in which case the friend can claim the protection of the 1977 Rent Act and the student may find he cannot get him out!) - so the student loses both a room and a friend.

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The relationship of landlord and tenant (lessor and lessee) exists between:-

the freeholder	and the building company
the building company	and the householder
the householder	and the student
the student	and his friend.

In this illustration, any two parties on the same line in the box can sue each other on the basis of the legal landlord-and-tenant relationship *(privity of estate: see page 450)*. Any two parties not on the same line cannot sue each other - e.g. the head landlord cannot sue the sub-tenant - on this basis.

Nevertheless the head landlord could sue the sub-tenant if both of them were parties to the same contract *(privity of contract: page 450)*: and for this reason head landlords sometimes insist on joining as parties in all contracts which their tenants make with sub-tenants.

9. UNDERLEASES CONTRASTED WITH ASSIGNMENTS

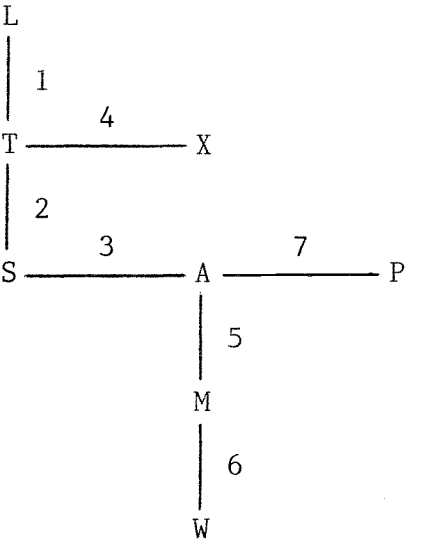
The owner of a leasehold estate may (i) dispose of it completely, retaining no estate (i.e., in layman's language, "I am selling my leasehold house" - though

what he really sells is his estate, the whole of what is left of the period of his term) - or alternatively he may (ii) dispose of any shorter term ("I am subletting my leasehold house") keeping for himself at least one day's reversion.

Disposing of it completely is an Assignment;

Disposing of any shorter term (even if it is only one day shorter) is a sublease.

The position regarding our Birmingham example, (A) - (E) above, can be diagramatically shown thus:-



This represents the following transactions:-

(1) lease by L, lessor, freeholder, to T, lessee, the building company, for 99 years,

(2) underlease by building company T to S, sublessee, original householder, for 99 years less 10 days,

(3) assignment by original householder S to A, assignee who is the present householder,

(4) assignment by building company T of its head-leasehold estate (i.e. the right to receive the rent for what is left of the 99 years less 10 days term, plus the right to repossess the property for ten days then) - the householder A, once he has been given notice of this, is obliged to pay his rent

henceforth to his new immediate landlord X,

(5) underlease by present householder A to M, monthly tenant, student,

(6) sub-tenancy granted by student M to W, tenant at will, his friend,

and finally

(7) assignment by present householder A ("selling his leasehold house") to purchaser P, new assignee, subject to M the student's and/or W the friend's tenancy of the bed-sittingroom (together with right of use of bathroom etc.) but with vacant possession otherwise.

W, M, P, X, and L all have present interests in the property. So has P's mortgagee.

- - - - -

One final point to beware of: leases often expressly prohibit assigning and/or subletting without the immediate and/or superior landlord's written consent.

B: The 1977 Rent Act and similar Legislation

The two chief purposes of the "Rent Act legislation" are (i) to prevent landlords from charging tenants a rent higher than certain limits, and (ii) to prevent landlords from evicting their tenants unless the Court is satisfied that there is some good reason for doing so.

The legislation is piecemeal and complex: different types of property come under different statutes. Important groups of property include:-

residential (with landlord not living on the premises) ..... 1977 Rent Act

residential (with landlord living on the premises) ..... 1977 Rent Act

houses on long leases ..... 1967 Leasehold Reform Act

business premises ..... 1927 and 1954 Landlord and Tenant Acts

agricultural holdings ..... 1948-1984 Agricultural Holdings Acts.

In the next six pages we shall look at what happens in the first three of these groups, these being the ones which apply to residential property.

1. RESIDENTIAL TENANCIES

The situation is confusing, but here is a guide:-

Heading (A) below *(1977 Rent Act)* applies to residential tenancies, whatever their length, on which the annual rent *exceeds* two-thirds of the rateable value of the property. The landlord is not the Council, and he does not reside on the premises.

Heading (B) *(restricted contracts)* applies to the same, but the landlord lives on the premises.

Heading (C) *(1980 Housing Act)* applies in part to the property in (A) above, and in part to Council Housing.

Heading (D) *(1967 Leasehold Reform Act)* applies only to houses (not flats and bed-sitters etc.) held on leases of over 21 years in length, on which the annual rent *does not exceed* two-thirds of the rateable value of the property.

(A) The 1977 Rent Act

The 1977 Rent Act applies to residential properties, whether they are houses, flats or mere bed-sitters. It protects tenants of all residential properties (with certain exceptions - see next paragraph) against any attempts made by their landlords to increase their rent beyond certain limits or to evict them without good reason.

The exceptions to this include (among others):-

large properties (with rateable value over £750 - or £1,500 in London)

holiday lettings

lettings by an educational body (e.g. students' hall of residence, or Polytechnic-owned flats)

lodgings, bed-and-breakfast, hotel and such like,

service occupancy (e.g. village policeman living in the

police station - the house goes with the job)

tenancies with a rent not exceeding two-thirds of the rateable value (e.g. Alan in our example on page 534)

properties (other than purpose-built blocks of flats) where the landlord lives under the same roof: but these have some protection as "restricted contracts" as explained under heading (B) below,

Council Housing (but see heading (C) below on this).

- - - - -

Until 1980, there were "controlled" tenancies and "regulated" tenancies. The 1980 Housing Act converted controlled tenancies into regulated tenancies, and so, today, all residential tenancies in which the tenants are fully protected by the 1977 Rent Act are REGULATED TENANCIES.

A landlord of a regulated tenancy may not charge more than a figure assessed by the Rent Officer (or, on appeal, the Rent Assessment Committee) as a "Fair Rent".

And the regulated tenant is protected from eviction. If his tenancy is terminated by notice (or if he has a specific term which expires) he can remain in the property (subject to the provisions mentioned on page 544) for the rest of his life - and two successors in his family (e.g. his widow and his daughter) can remain there for their lives - as "statutory tenant".

Until the notice has expired, or until the specific term expires, the tenant is there by virtue of his tenancy agreement: he is a contractual tenant (alternatively known as "protected tenant"). After the expiry of the notice or the specific term, he is no longer there by agreement but he remains there (at the same rent and on the same terms and conditions) by the statute: so he is a statutory tenant. Both contractual tenants and statutory tenants are regulated tenants.

Thus Bill in our example at the foot of page 534 is protected. Alan with his specific term of years on the same page is not protected because his rent is far less than two-thirds of the rateable value - but if his rent

on this term of years had exceeded two-thirds of the rateable value he would have been protected.

If the landlord wishes to evict a regulated tenant, the landlord must either provide the tenant with suitable alternative accommodation or let him stay where he is, unless the eviction is on certain specified grounds (such as non-payment of the rent) on which it is up to the landlord to satisfy the Court.

In s.98 and Schedule 15 of the 1977 Rent Act there is a list of twenty cases in which possession can be obtained without alternative accommodation being offered. They include, 'Tenant has caused Nuisance to neighbours', 'Tenant has caused the premises to deteriorate' and 'Landlord needs the premises for himself in circumstances where there will be greater hardship in keeping the landlord out than in putting the tenant out' - but they do not include, 'Landlord wants to sell, or demolish and redevelop, the premises, and will make more money if the tenant is not there'.

There is no Rent Act protection for the tenants if the premises are so overcrowded as to constitute an offence under the 1957 Housing Act. Someone has to go, and no alternative accommodation need be offered.

Where does a homeless person go? In certain circumstances (particularly if the person is homeless through no fault of his own and there are children or disabled persons involved) the Local Authority is under a duty to provide accommodation under the 1977 Housing (Homeless Persons) Act.

Hand-in-hand with the 1977 Rent Act is the 1977 Protection from Eviction Act, which makes harassment of tenants (e.g. turning their water-supply off) a criminal offence, and provides that even in cases where the tenancy-agreement gives a contractual right to evict, there shall be no eviction of a tenant without a Court order.

And what if the landlord decides that he will not harass, but will just let the premises fall in on the tenant's head? - In addition to the landlord's duty of care under Tort of Negligence, the 1972 Defective

Premises Act imposes on the landlord the duty to take reasonable care to see that anyone who might be affected by defects in the tenanted property is reasonably safe - but only if the landlord knew or should have known of the defect, and the defect is due to his failure to repair.

Landlords who do not mind having a tenant as long as they can remove him on a month's notice, but are not happy to have a tenant with lifelong protection (and his widow and child protected too!) have often tried to find ways around the Rent Act. Giving him breakfast (so that the arrangement counts as Board Residence) is one successful way.

In *Somma v. Hazlehurst (1978)* an unmarried couple were living in a flat - but the landlord had given them separate agreements and so, in theory at least, neither of them could claim exclusive possession. (There is no tenancy unless the tenant has exclusive possession of at least one room. "Exclusive possession" is the right to keep the rest of the world, including the landlord, out. If the unmarried couple in this case had been given one contract, the two together would have counted as "the tenant" with exclusive possession, able to keep everyone else out: but they had separate contracts, and as they could not keep each other out, neither contract gave "exclusive possession".) Is that a genuine arrangement, or is it a sham invented by the landlord to dodge the Rent Act? The Court of Appeal accepted it and held that the couple had only licences, not tenancies, and the Rent Act did not apply.

On more than one occasion since 1978, I have had students ask my advice on a printed form which they called a tenancy agreement, but which was in fact a licence whose wording had been copied from the *Somma v. Hazlehurst* Law Report! Clever landlord!

But in *Street v. Mountford (1985)* in which there was exclusive possession but both parties intended only to have a licence, the House of Lords held that there was a tenancy despite what both parties wanted: and this case has cast some doubt on the validity of what the Court of Appeal decided in *Somma v. Hazlehurst*.

Furnished tenancies (which had no Rent Act protection until 1974) are now protected as regulated tenancies under the 1977 Rent Act in most cases. If a furnished tenancy is not protected as a regulated tenancy (e.g. because it is accommodation granted to a student by an educational body) it may still have some limited protection as a "restricted contract" (see below) - but many educational authorities avoid this by using a form of non-exclusive licence which is intended to ensure that students will not have any such protection.

(B) Restricted Contracts

(s.19, and Parts V and VII, of 1977 Rent Act)

These chiefly apply where the landlord lives under the same roof as the tenant - e.g. he has one flat in a Victorian house which has been divided into several flats. (These provisions do not apply to a *purpose-built* block of flats, unless the landlord has subsequently sub-divided the flat in which he himself lives.)

The tenant under a restricted contract can refer the rent to the Rent Tribunal (which is made up of the same people as the Rent Assessment Committee) and the Tribunal can confirm the amount of the rent, or alter it.

If, after the rent has been referred to the Rent Tribunal, the landlord gives the tenant notice to quit, the Rent Tribunal can give the tenant up to six months security of tenure, and before the end of the six months the tenant can apply for a further period. But except for this, the tenant does not have security against being told to leave.

(C) 1980 Housing Act

The 1980 Housing Act affects two quite different types of property: (i) Council Housing (ss.1-50 of the Act) and (ii) tenancies held from private landlords (starting at s.51 of the Act). The provisions on Council Housing are amended in some respects by the 1984 Housing and Building Control Act.

On Council Housing, the 1980 Housing Act provides that as soon as the tenant moves in he is protected (himself and one successor after his death) as a "secure tenant" - and after two years *[1980 Act said three years but 1984 Act amended it to two]* the tenant has the right to buy the property, at a discount of more than 30% of its market value, and can also claim a Local Authority mortgage to enable him to do so.

As to private landlords' properties, the 1980 Housing Act has created a new form of tenancy, the SHORTHOLD TENANCY. This is for a specific term (which must be for at least one year and not more than five years) and at the end of the term the landlord can recover his property. It is specifically designed for those property-owners who are not happy to let to a tenant who would have lifelong protection. But as there is a fear that on a change of government shorthold tenants might be given lifelong protection as regulated tenants, these provisions have not been as widely used as they might have been.

There is also a provision in the 1980 Housing Act for certain approved bodies such as Life Assurance Companies and Pension Fund Trustees - the sort of body which would invest its money in office blocks but not residential blocks because it thinks that residential tenants have too much protection by the 1977 Rent Act. These bodies (after being individually approved by the government as reputable bodies who are unlikely to take unfair advantage of tenants) will be permitted to build residential blocks and to let them to tenants on a system to be known as ASSURED TENANCIES under which the tenants will have less protection than they would have had under the 1977 Rent Act.

(D) Long Leases

(1967 Leasehold Reform Act)

These provisions apply to *houses* held on leases of over 21 years at a rent not exceeding two-thirds of the rateable value.

Here we shall see a provision whereby the tenant can

buy the fee simple at an advantageous price.

A rule so basic that we saw it on the first page of Chapter 1 of this book (and again on page 21) is that whoever owns the land owns the buildings on the land. Nevertheless it was felt unjust that a lessor should lease land to a lessee, on which the lessee should build a house - and at the end of the term the land and the house should revert to the lessor without the lessee receiving any compensation. The 1967 Leasehold Reform Act has therefore provided that once the lessee has been in occupation of the house as his residence for three years *[originally five years but 1980 Housing Act shortened it to three]* the lessee can require the lessor to sell him the freehold at a figure based on site value - as though the freehold of the ground belonged to the lessor, and the house to the lessee.

These provisions apply whether the lessee is the original grantee of the lease, or an assignee who has been in occupation at least three years.

1967 Leasehold Reform Act does not apply to flats, because it is desirable under the present law that flats should remain leasehold, in view of the possible difficulties regarding enforcement of positive covenants upon freehold flats, which we saw on page 463.

2. BUSINESS AND AGRICULTURAL TENANCIES

There are provisions in the 1954 Landlord and Tenant Act to prevent a shopkeeper or other person in business from being evicted from business premises of which he is tenant, as long as he pays the rent and observes the covenants: the procedure which has to be followed is complicated, but in most cases it enables the tenant to obtain a new lease, by Court order, for up to fourteen years. In a case where the tenant cannot obtain a new tenancy he normally receives compensation for eviction.

And the 1927 Landlord and Tenant Act contains provisions whereby the business tenant, if he is leaving, can obtain compensation for improvements (e.g. a modernised shop-front) which he has made to the premises during his tenancy.

As to agricultural tenancies, the basic statute is the 1948 Agricultural Holdings Act, part of which has been replaced by the 1977 Agricultural Holdings (Notices to Quit) Act - and the part which has not been replaced by this Act has been amended in various respects by the 1958 Agriculture Act, the 1963-76 Agriculture (Miscellaneous Provisions) Acts, and the 1984 Agricultural Holdings Act! (See page 664.)

There are provisions in these Acts whereby an agricultural tenant (which includes tenant farmer , market gardener, commercial fruit-grower etc.) can refer his rent to Arbitration. Furthermore if he leaves the property he can claim compensation for improvements - and for disturbance if evicted.

By the 1977 Agricultural Holdings (Notices to Quit) Act, an agricultural tenant can be given notice to quit, but (except in eight cases set out in the Act) the tenant can serve a counter-notice - whereupon the notice to quit becomes of no effect unless the Agricultural Land Tribunal decides otherwise - which it may do in five circumstances which are set out in the Act.

For agricultural tied cottages there is yet another statute, the 1976 Rent (Agriculture) Act, which is intended to give protection to farm workers but also to protect the farmer, by obliging the local Housing Authority to provide alternative accommodation if the farmer needs the house for another worker - e.g. if a worker has become too old to work and the farmer needs the cottage for a younger worker to replace him. (So the old countryman who has lived all his life in the farm cottage is moved to Council accommodation in the town, but the cottage on the isolated farm is thus made available for the younger farm-worker.)

C: The Freeholder's Position

What is the effect of all these provisions on the freeholder?

First, if his property is leased he still has his legal estate, his fee simple absolute in possession,

but that word *possession* means the right to receive the rent: he has no right of occupation. The freeholder has no right to set foot in the property, except to carry out forfeiture of the lease, or to distrain (i.e. to take away goods in lieu of unpaid rent) or - by express agreement written in the lease - to enter to view the state of repair, and so forth. (And on a Rent Act protected tenancy there can be no forfeiture nor distraining without a Court order, though on an unprotected tenancy - e.g. a tenancy of a lock-up garage - a Court order will usually not be essential in such cases, though it may still be advisable to obtain one, because if he enters without one and uses any force in so doing, he may be liable to criminal penalties under the 1977 Criminal Law Act.) - The lessee has exclusive possession, which means he has the right to keep all other persons, including the lessor, out.

Secondly, as we saw under heading B of this chapter, in most cases the freeholder cannot evict a tenant he dislikes, nor can he put the rent up above certain limits. If the tenant is a residential tenant, the tenancy will probably have protection *either* in one of the two ways provided by the 1977 Rent Act:

regulated tenancy
"restricted contract" tenancy

or in one of the five other ways we have seen:

shorthold tenancy (by 1980 Housing Act)
assured tenancy (by 1980 Housing Act)
secure tenancy (from Council, by 1980 Housing Act)
long lease with rights of 1967 Leasehold Reform Act
tied agricultural cottage protected by 1976 Rent (Agriculture) Act.

If the tenant is a business tenant he will have the protection of:

1927 and 1954 Landlord and Tenant Acts,

and if he is an agricultural tenant he has the protection afforded to him by:

1948 Agricultural Holdings Act (and its amendments up to the 1984 Agricultural Holdings Act) and
1977 Agricultural Holdings (Notices to Quit) Act.

Thirdly, as again we saw under heading B of this chapter, the freeholder has to face up to the fact that if the lessee's rights are those which arise under the 1967 Leasehold Reform Act, the lessee can insist on buying the freehold at a price calculated on principles favourable to the lessee, and so the freeholder is going to lose the land altogether. (The Duke of Westminster is faced with this problem at the present time on his central London estates: as the law stands, he has to stand by and watch freeholds which have been in his family for centuries being sold off at a rather low price to tenants who have only been there for three years.)

Fourthly, tenants have the same rights as tenants-for-life to remove trade fixtures and ornamental-and-domestic fixtures - see page 161.

Fifthly, all sorts of questions can arise between the lessor and the lessee over the payment of rates, carrying out of repairs, and many other matters. Certain rights and duties are implied by law, but in the main these matters should be covered by the wording of the lease or the tenancy agreement, at the beginning of the leasehold term. It is up to the parties (and their legal advisers) to foresee what questions may arise during the term, and to make provision for such matters in the lease.

Inadequately-drawn leases and contracts can be a source of irritation, sometimes litigation, and occasionally fisticuffs, between landlord and tenant. They can also sometimes lead to one party or the other finding himself caught in a more onerous position than he had anticipated. For example:-

Suppose the lease provides that the lessor is responsible for insurance and the lessee for repairs. Suppose that during the term there is a fire, and the insurance company promptly pays the insurance money to the lessor, who keeps it and does not pass it on to the lessee. The lessee has to pay for the repairs himself. - The lessor has acted correctly if the lease does not contain any proviso for the insurance moneys to be used

for re-instatement of the property. (Once the lessee has repaired the property, the lessor has suffered no loss - so he returns the insurance money to the insurance company.) Both lessor and lessee need to be on their guard against such pitfalls, when a lease is entered into.

D: Housing Associations

1. INTRODUCTION

Until the first World War it was quite normal for a man to rent a house from a private landlord if he did not wish (or could not afford) to buy one. Today, largely as a result of the Rent Act legislation, the number of private landlords of residential property has greatly dwindled, and the number of properties they let to tenants has dropped from over seven million in 1918 to under two and a half million today. Today's young married couple looking for a house must generally either buy one (which not all can afford) or apply for a council house and wait.

A third source of housing - though at present not a major one - is provided by Housing Associations. Basically these are non-profit organisations set up for the purpose of supplying housing, usually on a short-lease basis. The idea is that a number of persons join together and provide housing for letting, and any surplus money is ploughed back into the scheme, e.g. in improvements or in providing further housing.

There are probably over 3,000 Housing Associations in England and Wales, providing over 240,000 houses. (This figure includes 111,000 owned by the Coal Industry Housing Association, which was formed by the amalgamation of a number of associations in 1952.) Cynics would say there are also about 3,000 different *types* of Housing Association.

As defined in s.189 of the 1957 Housing Act, a housing association is either a society, or a body of trustees, or a company, that has the object of

constructing houses, or improving them, or at least managing them. It must not trade for profit, or at least its rules must prohibit the issue of any capital with interest or dividend exceeding the current rate prescribed by the Treasury.

Some Housing Associations are nation-wide, but most are small and local. Some have a paid staff, but most are run by volunteers. Some improve old properties, some build new. Some are registered with the Registrar of Friendly Societies, some are registered as Charities (which gives a tax advantage) some are registered elsewhere - and some are unregistered. Some of them are "Housing Societies" which were created under the provisions of the 1964 Housing Act, which precluded them from being Charities but gave them the possibility of financial assistance from a government body known as the Housing Corporation. (The scope of this assistance was widened in 1972 to include many other Housing Associations - see below.)

2. TYPES OF HOUSING ASSOCIATION

For this brief survey it is sufficient to divide Housing Associations into (A) "traditional" associations and (B) those Housing Associations which are also Housing Societies.

(A) "Traditional" Associations

These vary from ancient to modern: they include mediaeval almshouse trusts, and philanthropic trusts dating from Victorian times which were set up to provide housing for the poor. These are sometimes called "Housing Trusts". A Housing Association "for the relief of poverty" can enjoy charitable status (and the tax advantage which goes with it) though the provision of housing is not recognised as charitable in itself. (See page 574.)

"Traditional" associations also include numerous (more than a thousand) twentieth-century organisations providing housing (either by building new or improving old property) for letting, either to the public

generally or to groups of special need - unmarried mothers, ex-prisoners, students, pensioners etc.

As the associations' purpose is the laudable one of providing housing, without a mercenary desire for profit, various tax advantages and subsidies and loans are available which are not available to a profit seeking organisation.

(B) Housing Societies

Most of these were originally created under the 1964 Housing Act. They have to satisfy not only the general definition of Housing Associations in s.189 of the 1957 Housing Act (see page 552) but also the following requirements:-

(i) They must be registered with the Registrar of Friendly Societies - which means they cannot be limited companies *(and neither can they be charities, because these organisations are not "for the relief of poverty": their aim is to make housing available for those who <u>can</u> afford it)*

(ii) They must not trade for profit at all,

(iii) Their objectives must be confined to constructing managing and improving houses (and purposes incidental thereto).

These Societies are nearly all either for "cost-rent" letting or for a "group ownership" scheme. (Note: the correct name of what I call "group ownership scheme" is "co-ownership scheme", but as it has no connection whatever with the co-ownership which we studied in Chapter 22, I prefer to say "group ownership scheme".)

"Cost-rent" letting means that the tenants pay the Society a rent which covers the costs of the scheme. The Society needs no subsidy but also makes no profit.

It was expected that most Societies set up under the 1964 Housing Act would be of the "cost-rent" type, and that the alternative "group ownership" - which is regarded as a sort of halfway stage between leasehold and freehold - would only be used by persons wishing to experiment in group-living. But in fact (partly

because the cost of "cost-rent" goes up so much with inflation plus wear-and-tear etc.) "group ownership" is used more than "cost-rent".

In a "group ownership" scheme, the tenants pay rent to their landlord the Society - but the members of the Society are the tenants themselves. Thus they are leaseholders, but they all have an interest in the freehold. (We saw a somewhat similar arrangement, for a different reason, in connection with positive covenants on a block of flats on page 464.)

3. HOUSING ASSOCIATIONS - THE PRESENT POSITION

Housing Associations (including, since the 1972 Housing Finance Act, Housing Associations which do not rank as Housing Societies) enjoy 100% mortgage facilities from the HOUSING CORPORATION - a government body set up under the 1964 Housing Act to assist them with finance. Each scheme is financed partly by a Building Society and partly by the Housing Corporation: once a Building Society has offered a satisfactory mortgage to provide part of the capital, the Housing Association can apply to the Housing Corporation for a second mortgage for the rest.

"Group ownership" was simplified in some ways in 1967, and at that time certain tax advantages were extended to it. As these were not extended to "cost-rent", very many Housing Societies which would have set up "cost-rent" schemes set up "group ownership" schemes instead. (As a result of this and other financial difficulties, cost-renting under the 1964 Housing Act had come to a complete halt by 1972, after providing less than 1,600 houses; whereas "group ownership" had by then provided over 10,000 houses.)

The 1972 Housing Finance Act improved the position by introducing a series of new subsidies (which set "cost-rent" in motion again) and by providing that the Housing Corporation should have a duty to assist Housing Associations generally - both those which are Housing Societies and those which are not.

The 1974 Housing Act provided what has been described as a new charter for the housing association movement. It extended the functions of the Housing Corporation, and provided for Housing Associations to register with the Housing Corporation. (This registration is in addition to, not instead of, any registration wih the Charity Commissioners or the Registrar of Friendly Societies.)

A Housing Association is registrable with the Housing Corporation if:-

(i) it is registered with the Registrar of Friendly Societies or is registered as a charity,

AND (ii) it fulfils certain other conditions - e.g. it does not trade for profit and it exists to provide housing or hostels.

Registration with the Housing Corporation is not compulsory but (with certain exceptions) Housing Corporation loans are only available to registered associations.

The 1977 Rent Act does not apply to registered Housing Associations, though there are certain limitations on what rents can be charged; but most Housing Association tenants have the rights of "secure tenants" (see page 547) under the 1980 Housing Act, including the "right to buy" (i.e. to buy the freehold or - in the case of a flat - a long lease). So Housing Associations, like the Duke of Westminster on page 551, can find individual properties within their estates being sold off: but there are certain exceptions: for instance, if the Housing Association is a Housing Society or a registered charity the "right to buy" provisions do not apply.

The Housing Corporation imposes considerable control on registered Housing Associations: it may carry out enquiries into their affairs and is empowered to take remedial action.

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There are also other, less important, types of Housing Association, such as self-build schemes - which

are what their name implies: schemes whereby people build their own houses.

E: Other Points

1. Sale and Leaseback

The idea of Sale and Leaseback is that a businessman (a manufacturer or a shopkeeper, for example) sells his business premises in fee simple at full market value to an investor, who then leases it back to him at a rack rent.

Or if the premises are leasehold, the businessman sells the lease for a capital sum to the investor, who sub-leases it back to him at a rent.

The advantage to the investor is that the property is a sound capital investment producing a good rent.

The advantage to the businessman is that (i) the transaction solves his cash-flow problem, because he can use the proceeds of the sale to buy new stock and equipment for his business, instead of having all his capital tied up in bricks and mortar and having to borrow at a high interest rate from his Bank; and (ii) there are tax advantages: the rent of the leaseback is deductible for tax purposes from his trading profit, as a trading expense.

2. Mobile Homes

Caravans, houseboats and such like are chattels and have no place in this book. But the sites on which they stand are land. (Land covered with water in the case of the houseboat, but still legally land.)

The relationship between the occupier of the mobile home and the owner of the site is mainly governed by the 1983 Mobile Homes Act. Agreements between occupier and site-owner under this Act appear not to be leases and so are presumably licences, but they give the occupier security of occupation. The Act provides for the burden of these agreements to run with the land, so if the site is sold to a new owner he takes it subject to these agreements.

Parking a single caravan in a field with the farmer's permission, for not more than two nights, is permissible as long as the field is not used in this way for more than twenty-eight days in a year. (For "a single caravan" read "three caravans" if the land is more than five acres.) For any more intensive use for caravans than this, it is in general necessary to obtain Planning Permission, and a Site Licence under the 1983 Mobile Homes Act, from the Local Authority, which will of course raise questions about the availability of toilet facilities and such like.

There are special provisions for gypsy caravan sites. County Councils have a duty to provide them. (Finding suitable sites is often not easy.)

3. ALLOTMENTS

Tenancies of allotments are affected by various statutes, including the 1922 and 1950 Allotments Acts which give some limited security of tenure to tenants of "allotment gardens" (which are allotments not larger than a quarter of an acre) and if the tenant leaves he can claim compensation for improvements which he has carried out. An allotment may also in certain circumstances count as an Agricultural Holding - see page 549.

4. HOUSING ACTS

The 1957, 1961, 1964, 1969, 1974 and 1980 Housing Acts (and other statutes) deal with overcrowding, the unfitness of tenanted properties for human habitation, and the management of houses in multiple occupation (e.g. to deal with the problems which arise if a house is divided into ten bed-sitters and *nobody* is willing to clean up the front garden or the entrance hall) and very many other matters.

5. SETTLED LAND, AND MORTGAGED LAND

There are restrictions on the granting of leases on settled land: we saw them on page 248. And mortgages usually contain a clause that the borrower will not let

the property to a tenant without the lender's consent. (The lender may well refuse to give his consent, because by allowing a Rent Act protected tenant in the property the lender is prejudicing his chief remedy, the power of sale with vacant possession in the event of non-payment of the mortgage interest.)

6. SERVICE OCCUPANCIES

Outside the scope of this chapter come service occupancies, in which a house goes with a job.

Examples are: a policeman in a police house, a soldier in an army married quarters house, a farmworker in a tied cottage (but see page 549 as to tied cottages) an office caretaker occupying the caretaker's flat in an office block, and the Prime Minister in No. 10, Downing Street.

In all these cases, once they cease to have the job they must leave the house: the Rent Act legislation does not assist them. (So, if a soldier or a policeman is killed on duty, his widow and children have no right to remain in the army house or the police house.)

7. ENLARGEMENT OF LEASES BY DECLARATION

A Lease of at least 300 years, with a residue of at least 200 years still unexpired, with no rent payable (or a rent not exceeding £1 per year which has not been paid for at least 20 years) can in most cases be turned into a fee simple by the tenant. The tenant does this by executing a Deed of Declaration under s.153 of LPA: the tenant thenceforth has the legal fee simple - but subject to the same covenants etc. as the Lease.

Housing in Britain in the early 1970s:-

owner-occupied..... 52%
council and new town corporation houses.....30.5%
renting from private landlords, housing associations, and all others.....17.5%

SUMMARY

In this chapter we have seen:-

A: General outline of leaseholds
specific
periodic
at will
on sufferance
headleases, underleases and assignments.

B: The Rent Act legislation

Class of tenancy	*Statute*	*Rent limit*	*Protection from eviction*
residential (landlord not under same roof)	1977 Rent Act	"fair rent" decided by the Rent Officer	Tenant and two successors can stay as Statutory Tenants, against landlord's will
residential (landlord under the same roof)	1977 Rent Act	Rent Tribunal can alter the rent	six months security of tenure is available from Rent Tribunal
long leases of houses (not flats)	1967 Leasehold Reform Act	none	Tenant who has been there three years can buy the freehold
residential (Council landlord)	1980 Housing Act	Council decides the rent	Tenant and one successor can stay as Secure Tenants; there is also a right to buy the freehold
residential (shorthold)	1980 Housing Act	there are "fair rent" provisions	Landlord can recover the property at end of tenancy (1 - 5 yrs)
other provisions for assured tenancies, commercial and agricultural tenancies, etc.			

C: the freeholder's position

D: Housing Associations

E: sale and leaseback, mobile homes, allotments, service occupancies, etc.

TEST QUESTIONS on Chapter 40:-

1. **(a) Explain what is meant by a "term of years".**

   (b) What is the difference between a six month specific term and a six month periodic term?

2. (a) L has granted T a tenancy (monthly) of a luxury house in Harrogate, the rateable value of which is £800. When L hears that T made his money as a scrap-metal dealer, L decides he does not want T as a tenant, and gives him a month's notice. Advise T as to his legal position.

   (b) How, if at all, would your answer differ if the rateable value of the house were £600 instead of £800?

   (c) How, if at all, would your answer differ if, instead of a monthly tenancy, T had bought the residue of a 25 year lease - which has 6 years to run but L says he will not then renew it? (Rent £6 per year.)

   (d) How, if at all, would your answer to (c) differ if the property were a flat instead of a house?

3. Fred and Florrie Smith have leased the garage of Magpie Cottage to their neighbour Shylock for a specific period of one year at a rent of £3 per month. That was eighteen months ago, but Shylock is still paying £3 per month, and until today Fred and Florrie have accepted this. Today Fred has bought a car and tells Shylock he must vacate the garage by next Friday. Advise Shylock, with reasons, as to whether or not he can continue to occupy the garage.

CHAPTER 41

EQUITY SHARING AND TIME SHARING

OUTLINE OF CHAPTER:-

A: Equity sharing
B: Time sharing

A: EQUITY SHARING

Equity sharing in the true sense means an agreement whereby the purchaser buys a percentage of the property and pays rent on the rest. This is co-ownership on trust for sale as in Chapter 22: he owns a freehold of (say for example) 50% and pays rent to the other co-owner on the other 50% - which should mean that if the property is sold he will receive 50% of the proceeds of sale.

As long as the property is not sold he can live there, provided he makes the required payments: if he bought his freehold percentage with the help of a mortgage he will pay mortgage interest, quite separately from the rent.

But many so-called "Equity sharing" schemes (including some which Local Authorities offer to their tenants) are not Equity sharing in the above sense at all: they are no more than leaseholds for which the tenant pays a premium plus a reduced rent, instead of a full rent. In such schemes, there are likely to be restrictions on the tenant's powers of selling his part, and the tenant is unlikely to receive any benefit from the increasing value of the property unless he himself buys the entire freehold. So this is really a lease containing an option to purchase the freehold.

By s.12 and Schedule 3 of the 1984 Housing and Building Control Act, a "secure tenant" who wishes to buy his Council property under the "right to buy" provisions of the 1980 Housing Act (see page 547) can choose to buy a 50% share now and the rest by four 12½%

instalments. A person buying in this way receives a so-called "shared ownership lease" (which must be for a term of at least 125 years at a rent not exceeding £10 per year) but when he has acquired the whole 100% of the shares he can require the freehold to be conveyed to him.

B: Time Sharing

Times shares are a new phenomenon which has arisen during the last ten years or so.

The idea of a time share is that you buy a property (or the right to use a property) for a certain period each year: e.g. in respect of a holiday cottage you buy the third week of August, or (much cheaper) the third week of February in each year.

It is yours to do what you like with for that week, subject to a duty to leave it tidy for the people coming in next week.

This bundle of rights-and-duties-for-a-week is something you can sell, or lend to a friend, or leave in your will, and so on.

This particular example (holiday cottage) *could* be drawn as a series of leases - a lease giving exclusive possession for the third week of August 1986, and a lease for the same week in 1987, and so on ... but a lease cannot be drawn to commence more than 21 years in the future, so this method seems to be limited to 21 years. But these are more likely to be drawn as licences than leases.

The 1977 Rent Act would not apply to this example because the property is a holiday home, and anyway the grant is in consideration of a capital sum, so the rent (if any) would be a tiny nominal figure far below two-thirds of the rateable value.

Not all time shares are holiday homes: in one Bristol docklands re-development there is a time-share squash court - you buy a leasehold flat plus the right to use the squash court for a specified two hours each

week. As this does not give exclusive possession even for one complete day, it probably could not be a lease, though it could be drawn as a contractual licence.

Contrast this block of flats, with its rights of using the squash court (to the exclusion of all others) at certain times, with another block of flats in Bristol in which the lessees of each flat have the right to use a private swimming pool (in common with the occupiers of all the other flats) at *all* times. This communal right to use the pool could be drawn as an easement: a *jus spatiandi* or right to use a pleasure ground as we saw on page 360 (and I would think that the right to use the time-share squash court could also be drawn as an easement - a *jus spatiandi* limited to certain hours).

Returning to our time-share cottage, another possibility is to keep it freehold - grant it in fee simple to X and Y on trust to sell (with power to postpone) and to hold the proceeds of sale in trust for A, B, C etc. and until sale to allow A (or his successors or assignees) to occupy the premises for the third week of every August, B for the fourth week of every August, and so on. Each of the beneficiaries would thus have an Equitable licence as well as an Equitable interest in the proceeds of sale.

Difficulties can arise over what happens if the property becomes uninhabitable or needs structural repairs. One possibility might be to sell or lease the cottage to a Maintenance Company in which all the time-share owners would be shareholders. The Company would keep the property in repair and would grant the individuals licences to occupy for their appropriate weeks.

Problems can arise with the Perpetuity Rule, and because of this some time shares are limited to eighty years. (See page 205.)

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Time-sharing does not fit at all comfortably into English Land Law, which was never designed to accommodate such an idea. (It is even more troublesome

than the sale of flats!) In fact the concept of time sharing fits less comfortably into English Law than it does into Scottish Law and most continental systems, but unless Parliament chooses to improve it by Statute (which is unlikely) we have to do the best we can with the present law.

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Contrast a time share with an ordinary holiday letting. A holiday letting for the third week of August is for one week only and you probably never see the people again, though they may perhaps telephone you at Christmas to see if they can arrange another similar letting for next year. A time share goes on year after year.

SUMMARY

In this chapter we have seen:-

(1) Equity Sharing - in which the idea is to buy a share (e.g. a 50% or 75% share) of the whole of the premises, and pay rent on the rest - so that every square inch of the premises is partly yours and partly rented (though methods vary)

(2) Time Sharing - in which the idea is that you buy a share of the time (e.g. a particular week or fortnight in each year) of the whole of the premises (and again, methods of doing this vary).

TEST QUESTIONS on Chapter 41:-

1. Does an Equity Share have all or any of the four unities of a joint tenancy? Say which ones it has.
2. What in your opinion is the best way to grant a Time Share? Give reasons for your answer.

P.T.O.

3. Describe the chief differences between:-
   (a) a holiday letting for the first week of July,
   (b) a specific term of one week commencing 1st. July [nb. pages 542-3]
   (c) a time share for the first week of July,
   (d) a "licence" (specifically stating that the owner is not prepared to grant a tenancy) for one week commencing 1st. July [see page 545].

4. (a) A had a house for sale at £20,000. B paid A £10,000 for a 50% share in the house, and paid A a rent on the other 50%. Ten years later the house is being sold to C for £50,000.
   (i) Who will sell it to C?
   (ii) What share of the £50,000 will A receive?
   (b) X had a house for sale at £20,000. Y paid X £10,000 and left £10,000 owing, for which Y executed a Legal Charge (mortgage) and paid X mortgage-interest. Ten years later, the house is being sold to Z for £50,000.
   (i) Who will sell it to Z?
   (ii) What share of the £50,000 will X receive?

5. Can a tenant for life of settled land grant (a) a time share (b) an Equity share, of a cottage forming part of the settled land?

6. White, an unscrupulous property-owner, grants a flat to Grey, a night-shift worker, for two years, to use between 8·30 a.m. and 8·30 p.m. only. White grants the same flat to Green, a student, for two years, on condition he uses it only between 8·30 p.m. and 8·30 a.m. - Have Grey and Green each been granted
   (a) a time share (b) a lease (c) an Equity share
   (d) a joint tenancy (e) a tenancy in common
   (f) a licence (g) some other right?

   Green wants to transfer what he has into the joint names of himself and his friend Blue. Can he do so?

7. What is a "shared ownership lease"?

Section C (Chapters 42 - 43)

Disabilities; and Limitation

CHAPTER 42

DISABILITIES

OUTLINE OF CHAPTER:- So far, we have assumed that the estate owner is an adult sane sober English man. Sometimes this is not the case: the owner may be:-

A: a minor
B: mentally disordered
C: drunk
D: a married woman
E: bankrupt
F: under duress etc.
G: a traitor or a criminal
H: an alien
I: a corporation
or J: a charity.

This chapter looks at each of these ten classes.

A: MINORS

Minors are sometimes referred to as infants. Whichever word is used, it means a person who has not yet reached his eighteenth birthday.

Since 1925, a minor cannot own a legal estate in land, nor can he be a mortgagee in respect of land. The seven points below follow from this rule.

1. If land is granted to a minor, the grant acts as a contract to make a settlement in favour of the minor, and the vendor is treated as legal owner holding the land as settled land for the benefit of the minor.

2. If land is granted to a minor and an adult as co-owners, the adult receives the legal estate, in trust for himself and the minor.

3. A minor cannot act as executor of a will, nor as administrator of an intestacy. If he would be the sole executor or administrator, the position may be filled

by someone (e.g. his guardian) acting on his behalf until he reaches full age. If he would be executor or administrator jointly with adults, no-one is appointed on his behalf; he must wait until he reaches his majority, when he can be joined in with the others.

A minor who is a *beneficiary* of land under a will or an intestacy cannot receive it until he comes of age. Pending his majority the land is held (settled or on trust for sale) in trust for him.

4. No minor may be a trustee of land.

5. If the tenant for life of settled land is a minor, an adult known as the "statutory owner" takes the legal estate and the tenant for life's statutory powers, on the minor's behalf.

6. A minor may have an Equitable interest in land, but if he disposes of it the disposition is voidable at his option (but not at the grantee's option) when the minor attains his majority.

7. Though a minor may not own a legal estate, a beneficial interest in a lease granted to him can only be enjoyed subject to the obligations in the lease, and he is bound by the lease unless he repudiates it within a reasonable time after attaining his majority. In other words the seventeen-year-old student reading this cannot own a legal estate, but if he has taken a flat on a three-years lease (a specific term of years) he can only stay there if he observes the covenants and conditions in the lease. If he does not want to stay he can without penalty repudiate the lease (i.e. break his agreement) at any time before his eighteenth birthday - or within a very short time after it - but if he does not do so the lease then becomes legally binding on him for the whole three years.

B: Mentally Disordered Persons

If through mental disorder a person is incapable of managing and administering his property and affairs, the Court of Protection and certain nominated Judges of the Chancery Division of the High Court have power (by 1959 and 1983 Mental Health Acts) to make such orders

as appear fit, for the sale, mortgage, lease, settlement or other disposition of the patient's property. The paramount consideration in the exercise of these powers is the welfare of the patient.

To protect the patient's interests, dealings with his property are supervised by the Court of Protection. The carrying-out of most of the dealings is attended to by a guardian called a "receiver" who is usually a relative, appointed by the Court.

What about the person who can usually manage his affairs, but suffers from some degree of mental disorder from time to time? Such a person can make a binding contract during a lucid interval, but if he makes a contract when he is not in a state to know the normal consequences of his actions - *and the other party to the contract is aware of this* - there is a provision similar to that for drunken persons (see below) whereby the disordered person can treat the contract as voidable if he so chooses, when he recovers. But there has to be mental disorder: the fact that a person signed a contract in the heat of the moment during a quarrel and says afterwards, "I was mad with rage," is not enough.

Defining the boundaries between the two categories - those who can act for themselves and those whose affairs must be dealt with by a receiver - is a matter beyond the scope of this book.

C: Drunken Persons

If a person entering into a contract is so drunk that he does not appreciate what he is doing, and the person contracting with him knows that he is in this state, the contract is voidable by the drunken person on his recovery.

D: Married Women

In general, married women today are under no disability.

At common law, a married woman could not dispose of her

property without the concurrence of her husband. Equity and subsequently statute amended this: there came a division of married women's property into her "non-separate" property, to which the above common law rule applied, and her "separate" property, which she could dispose of as if she were unmarried.

No new non-separate property has been created since 1882; and none will be found still in existence today, for it would be necessary to show (a) that the lady owning the property acquired it before 1883, and (b) that she was married before 1883 - to her present husband! (This provision is laid down in the 1882 Married Women's Property Act.) But examples of it are still very occasionally to be found in old title deeds, and it is the duty of the solicitor "investigating the title" on a purchaser's or mortgagee's behalf to check that it was properly dealt with under the old rules.

Solicitors may also find restrictions in old deeds due to what was called a "restraint on anticipation". This was abolished on 16th. December 1949.

Since 1949, married women generally have been able to dispose of their property as though they were unmarried.

E: Bankrupts

Bankruptcy means a person cannot (or in some cases will not) pay his debts.

A person who is declared bankrupt has in general no power to sell or otherwise dispose of land. The power to do so passes to his "trustee in bankruptcy". The 1985 Insolvency Act lays down the rules to be followed.

If a bankruptcy petition is presented against a person, and that person sells property after the date of the petition but before the date he is actually adjudged bankrupt, the sale is void unless the Court consents to it or afterwards ratifies it.

So if you are in course of buying from Fred and you find that a bankruptcy petition has been presented against him, do not complete the purchase - because if he goes bankrupt the sale to you will be void, and your chances of recovering the whole purchase price from the bankrupt Fred are virtually nil: you must join the queue with all the other creditors.

But if you had no notice of the bankruptcy petition you are normally safe, because the rule that such a sale is void does not apply against a bona fide purchaser for value of a legal estate without notice.

Registration at the Land Charges Registry is the commonest form of notice - see pages 219 and 265.

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On the bankruptcy of a company (this being known as "liquidation") the 1985 Companies Act is applicable. Liquidation is commenced either by a "winding-up" petition (usually presented by an unpaid creditor) or by a Resolution by the company to wind up. Any attempt by the company to dispose of its property after liquidation is commenced is void unless the Court orders otherwise. (The Court will deal with each disposition on its own merits, with particular regard to whether the parties acted in good faith and with honest intent, as long as the disposition was completed before the date of the winding-up order which completes the liquidation process.) The company's property can be disposed of by the person appointed as liquidator.

The above paragraph does not apply to a "voluntary liquidation" of a company which is not in financial difficulties. An example of a voluntary liquidation is a company which runs ferryboats across a river, voluntarily closing its business down because a bridge across the river has just been built.

F: Persons affected by Duress, Undue Influence, Mistake or Misrepresentation

If a person enters into a contract as a result of duress (threats) or undue influence (e.g. a solicitor using his influence over his client to persuade the client to buy the solicitor's house) the contract is voidable if the "victim" so wishes.

The Court can also provide remedies (rescinding the contract and/or giving damages) for persons who enter into contracts based on mistake (e.g. a contract to buy

the wrong house) or on misrepresentation (e.g. a representation or encouragement such as, "It's a good weatherproof house", when in fact the roof needs repairs) - but such matters are more suited to a book on the Law of Contract than to this book.

G: CRIMINALS

Until 1870, the property of felons [see page 33] and traitors was subject either to escheat or to forfeiture - or both. These rules were abolished in 1870, but certain disabilities remained until they were removed by the 1948 Criminal Justice Act.

Since 18th. April 1949 criminals have been able to deal with their property in the normal way, acting through agents where necessary (e.g. if in prison).

H: ALIENS

An alien is someone who is not a British subject. At common law he could not hold land, but the law today (by 1914 British Nationality and Status of Aliens Act) is that he can generally own both real and personal property in the same way as a British subject, so he is now no longer under any disability.

Whether he comes from a Common Market country or some other country, the above paragraph applies.

Advertising "House for sale - no foreigners", or "House for sale - no blacks", is an offence against s.21 of the 1976 Race Relations Act. (So is "House for sale - blacks only".) (And an advertisement, "House for sale to women only" is contrary to the 1975 Sex Discrimination Act. But there are exceptions: "Fourth white English girl required, to share flat" appears to be permissible.)

In wartime, enemy aliens are under disabilities with regard to the making and enforcing of contracts, and numerous other matters.

I: CORPORATIONS

Corporations include limited companies and other

"persons" created by law, as we saw on page 134.

An ancient feature of English law known as "mortmain" ("dead hand") was intended to restrain conveyances to monasteries - the reason for it being that the monastery never died, and so the "Relief" tax (which we saw on pages 34 and 68) never became payable. Mortmain originated in Magna Carta (1215). Several centuries later, corporations became caught in its out-of-date provisions. It continued to place restrictions on the ownership of land by certain corporations right up to the year 1960, by which time it had long been a useless anachronism and a trap. It was abolished on 29th. July 1960.

Today, a corporation created under statute (e.g. a limited company which is created under the Companies Acts) may generally hold land unless to do so would be *ultra vires*, i.e. beyond the powers contained in its Memorandum of Association.

The company has power to hold land if this is one of the objects set out in the company's Memorandum of Association, or if there is some reasonable connection between the company's objects and the holding of land: but it has no power to hold land inconsistent with the objects, for that would be *ultra vires*. (For example: a company formed for the purpose of building ships could own a shipyard, but to own a supermarket would be *ultra vires* unless otherwise stated in the company's Memorandum of Association.)

The *ultra vires* doctrine is amended, to conform with Common Market requirements, by s.9 of the 1972 European Communities Act, which states: "In favour of a person dealing with a company in good faith, any transaction decided on by the directors *[the directors as a body, not just individual directors, apparently]* shall be deemed to be one which is within the capacity of the company to enter into ... and a party to a transaction so decided upon shall not be bound to enquire as to the capacity of the company to enter into it ... and shall be presumed to have acted in good faith unless the contrary is proved".

So unless a party had *actual notice* that the transaction was *ultra vires*, or he is shown to have

acted in bad faith, the transaction is binding on the company as though it had not been *ultra vires*.

Corporations otherwise have no major disabilities affecting their dealings with land.

If a company borrows money on mortgage, the mortgage must be registered at the Companies Registry (in addition to any registration required at Land Registry or Land Charges Registry) - otherwise the mortgage is void as far as the company's other creditors (and liquidator, if any) are concerned. This is s.395 of 1985 Companies Act. In *Re Monolithic Building Co.; Tacon v. Monolithic Building Co. (1915)* a director who lent money to his company on a registered mortgage debenture, was given priority over an unregistered earlier mortgage even though he had been fully aware of its existence.

The position (regarding land) of companies in liquidation has already been referred to, under the heading "Bankruptcy", above. (Page 572.)

J: CHARITIES

The law gives the word "charity" a meaning somewhat different from what it has in everyday speech.

"Charity" in a legal sense means:-

(1) for the relief of the aged, the sick or the poor,
(2) for the advancement of education,
(3) for the advancement of religion (not necessarily the Christian faith) and
(4) other purposes beneficial to the community (but only within the nature of those mentioned in the 1601 Charitable Uses Act).

Thus the provision of housing is not charitable unless the persons receiving it are "the poor" or are sick or aged.

Under (4) above, a gift to the National Trust is charitable - but a gift of a community centre for the improving of race relations is probably not, unless the gift is also "for the relief of poverty" which brings it within heading (1).

A grant of land for public recreation can be charitable (with consequent tax advantages for the grantor) whereas a grant of land for the encouragement of football or some other sport is not.

Charitable institutions which have use or occupation of any land (other than places of worship and certain other exceptions) must be registered with the Charity Commissioners under s.4 of the 1960 Charities Act.

The severe restrictions which formerly existed on the power of charities to deal with property were greatly reduced by the 1960 Charities Act. Some restrictions still exist, e.g. the charity's land is subject to many of the rules which apply to settled land, and no land forming part of the charity's permanent endowment may be disposed of without an order from the Court, the Charity Commissioners or the Secretary of State for Education and Science. (There are exemptions to this for certain charities such as the Universities of Oxford, Cambridge, London and Durham.)

The 1985 Charities Act makes provision for more effective use of funds by small charities.

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The categories we have considered in this chapter are classes of persons who through some *personal legal defect* are (or formerly were) subject to restrictions on their ownership and/or control of estates and interests.

Such persons as tenants in tail, lessees, etc., who are restricted by the nature of their estate or interest, and not by any personal defect of themselves, do not come within the definition of "persons under disability" - unless of course they are infant, or mentally disordered, or drunk, and so forth.

SUMMARY:-

In this chapter we have seen:

1. minors ..... cannot hold a legal estate.
2. mentally disordered persons .. their property is dealt with by a receiver.
3. drunken persons ..... contract is sometimes voidable.
4. married women ..... are no longer under a disability.
5. bankrupts ..... their property vests in their trustee in bankruptcy.
6. persons under duress or undue influence ..... contract voidable.
   or mistake or misrepresentation ..... rescission and/or damages may be awarded.
7. traitors and criminals ..... are no longer under disability.
8. aliens
9. corporations ..... *ultra vires* rule.
10. charities ..... are subject to various restrictions.

TEST QUESTIONS on Chapter 42:-

1. **Jacques and Jill have bought a house in fee simple as joint tenants. What is the position as to ownership of the legal estate if**
   (a) Jacques is 18 years of age and Jill is 17,
   (b) Jacques is 16 and Jill is 17,
   (c) Jacques is 18 and is in prison in France for burglary; Jill is 17.

2. **Fred Smith, who has to dispose of the property of his uncle who has recently died, offers the uncle's house "Rookery Nook" for sale. Marlene Schmidt, a German lady, agrees to buy it for £25,000 but does not tell her husband Heinrich Schmidt that she is making the purchase. As she signs the contract she smells slightly of drink and is also at that moment suffering from an intermittent form of mental illness which prevents her from realising the true consequences of her actions, but Fred is not aware of this. Explain with reasons whether any binding legal contract exists.**

3. **Yolanda who lives in Oldtown wants to buy a house in Newtown. Xenia (who is at present lodging with Yolanda in Oldtown to avoid her creditors in Newtown) offers to sell Yolanda the house which Xenia owns in Newtown, at what seems a very reasonable price. Advise Yolanda as to what dangers may arise because of Xenia's circumstances.**

4. Last month, X (a famous pop-idol) offered for sale a house in London which you hope to buy. From whom would you buy it if X today is
   (a) aged 17
   (b) aged 19 and bankrupt
   (c) in prison
   (d) in a mental institution
   (e) a married woman
   (f) a divorced woman
   (g) an American
   (h) blind
   (i) alcoholic
   (j) deceased
   (k) sharing the house with a friend who paid for the building of the extension (see pages 308 and 303)
   (l) director of a Company which (for tax reasons) holds the fee simple of the house
   (m) founder of a Movement to help the poor in Ethiopia; the house was donated to the Movement for it to sell?

CHAPTER 43

LIMITATION

OUTLINE OF CHAPTER:-

A: What limitation is
B: Running of time
C: Five special cases:
1. *settled land*
2. *trusts for sale*
3. *cases where the person entitled to the benefit of the land is a minor*
4. *cases where the person entitled to the benefit of the land is a mental patient*
5. *leaseholds*

A: LIMITATION - WHAT IT IS

Limitation is a provision (statutory under the 1980 Limitation Act) whereby if a person has taken possession of a piece of land, treating it as his own and keeping other people out, then after twelve years the previous owner loses all claim to the land.

Thus if B takes possession of land which belongs to A, and remains on it for twelve years without A making any claim to the land, A loses his right to the land. B gains a legal title by adverse possession, sometimes called a "possessory title" or a "squatter's title".

If B can show after the end of the twelve years that A, whom he dispossessed, was legally entitled to a certain legal estate in the land, B has a good title, which would be recognised by the Court, to a legal estate identical to that which A had.

Note that the squatter takes subject to all existing easements etc.; they bind him both before and after the twelve years is up.

If B dispossesses A, and after keeping the property for (e.g.) five years, B passes it on to C, then after C has had the property for seven years he can show that he and B have had adverse possession for the necessary

total of twelve years: so A loses his right to the property.

Merely putting animals to graze on someone's land is insufficient to show adverse possession. *(Powell v. McFarlane (1977).)* And occupying a piece of land for which the owner has no immediate use, and using it in a way which does not frustrate the owner's future plans for it, is similarly insufficient. In such cases the Courts are very willing to find that what has been done is insufficient to give rise to a squatter's title. Thus in *Williams Brothers Direct Supply Ltd. v. Raftery (1958)* there was a dispute over a strip of land which the owner planned to develop at such time as the wartime and post-war restrictions on building came to an end. The squatter had moved onto the land during the war and had been in occupation for more than twelve years, during which time he had erected fences, grown vegetables, and built sheds for breeding greyhounds. The Court held that, as the owner had not abandoned the land but had intended that it should be developed in due course, what the squatter had done was insufficient to give him a squatter's title.

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There are two major ways in which limitation may be contrasted with prescription:-

(i) A right by prescription is obtained by using someone else's land - e.g. by walking across it, or by taking a profit à prendre from it. Limitation applies where someone has not just used the land but has possessed it as if it were his own and has kept out everyone else - including the true owner if he comes along.

(ii) Prescription is a positive thing: e.g. if B uses a path over A's land for over twenty years an easement arises. Limitation is negative: it is not true to say that if B possesses A's land and keeps A out for twelve years a fee simple for B arises: it does not. All that happens is that A becomes barred from making any claim to the land. So B, being in possession, has *a better title than anyone else*. (He has possession, whereas everyone else has nothing at all.)

It is in a way frustrating, having read and learnt 580 pages of Real Property Law, to find that the basis of estate ownership is *possession*: but this is the case: the man in possession has title against the whole world except anyone with a better title.

Thus if B takes possession of A's land, B has good title as possessor against everyone except A: so if C tries to dispossess B a couple of years later and B takes the matter to court, the Court will decide in favour of B.

So, when A has been dispossessed for twelve years, the law does not create a fee simple (or any estate) for B, but B can stay unless anyone can show a better title - and no-one can.

This can produce the result that a right may be barred as against one person but not as against another person. Let us take two typical examples:-

Example I:- B dispossesses A; seven years later C dispossesses B. For the next five years A has a claim against C: then his twelve years has run and A has no further claim. But B still has a claim against C until B has been dispossessed for twelve years.

Note that if B had *abandoned* the property after seven years, and C had moved into the vacant land, B would have had no claim against C, for B was not dispossessed. (B was not owner, and was not turned out of occupation.) And once B had gone, A (owner) was no longer dispossessed - until C came and dispossessed him: so A has a claim running for twelve years from the date that C took possession.

Example II:- A holds the property from L on a 99 years lease. When the lease still has nineteen years to run, B dispossesses A. After twelve years A loses all claim. Seven years later the lease ends: L has a valid claim against whoever is in possession, running for twelve years from the date of the ending of the lease.

(So if B possessed the land for twelve years, and then, believing he was safe, built himself a new house on the land, he now finds himself in difficulties.

But if B is really clever he will not have allowed such difficulties to arise, because before the end of the lease he will have taken steps to buy the freehold under the 1967 Leasehold Reform Act: see page 547.)

In some cases more than twelve years possession must be shown: the limitation periods are as follows:-

against land (including a mortgagee's rights to the land) ..... 12 years
against Crown lands ..... 30 years
against Crown foreshore ..... 60 years.

Some other limitation periods are shorter:-

claims for debts (including outstanding mortgage interest) ..... 6 years
and *(a limit which any reader who suffers injuries in a car accident or elsewhere should note)* **claims for personal injuries ..... 3 years.**

If the claim is not made within the stated period it fails. The case does not have to be heard within that period, but at least a Writ must be served.

If on a rentcharge nothing is paid for twelve years, the rentcharge ceases to exist. If for twelve years it is paid to the wrong person, that person will continue to receive it, and cannot be defeated by the payer or the person who should have received it.

B: Running of Time

The twelve years (or other period) runs from when the dispossession took place, or (if it has been concealed by fraud) the time when the person wronged had actual or constructive notice thereof.

If the person entitled to the property is a minor or a lunatic at the time of dispossession, the time does not start to run until he has attained full age or has regained his sanity: it then runs as set out under heading C of this chapter.

Though time does not start to run if the person entitled is a minor or a lunatic, once it has started

it does not stop. Thus if the owner A becomes insane today, and B tomorrow takes possession of A's land, time does not begin to run. But if B dispossesses A today, and then A goes mad tomorrow, the twelve year period has begun to run and does not stop.

C: Five Special Cases

The five special cases we need to look at are:-

1. settled land
2. trust for sale land
3. cases where the person entitled to the benefit of the land is a minor
4. cases where the person entitled to the benefit of the land is a mental patient
5. leaseholds.

In the first four of these five cases we shall see a general rule that Court action for recovery of the land can be brought within twelve years after the dispossession, or within six years after the happening of some event - whichever period is longer.

1. SETTLEMENTS

"To A for life, then to X". B dispossesses A. A can bring an action for recovery within twelve years of the dispossession (normal rule). X on becoming entitled can bring an action for recovery within twelve years of the dispossession, or within six years after A's death.

Thus if B dispossessed A on 1st. June 1960, A could have have brought an action against B at any time before 1st. June 1972. And if A had died in 1963, X similarly could have brought an action against B at any time before 1st. June 1972. But if A had died on 1st. September 1985, the position would be:- A could have claimed at any time before 1st. June 1972, then from 1st. June 1972 to 1st. September 1985 no-one could claim, but X has six years from 1st. September 1985 in which he can claim.

For X, if A had died before 1st. June 1966, the

former right (twelve years from dispossession) would have been the most valuable. If A died after 1st. June 1966, the latter right (six years from A's death) is the more valuable - e.g. if A had died in 1967, six years from then would have given X until some date in 1973 to make his claim. And if A died in 1985, X has six years from then.

2. TRUST FOR SALE

The trustees' rights are not finally extinguished until the title of all the beneficiaries is extinguished. Thus "to S and T (trustees) on trust to sell with power to postpone ... and hold the proceeds ... in trust for A for life and then for X" - and then B dispossessed A (who was in occupation) on 1st. June 1960.

Our period (as in the previous example) is twelve years from dispossession or six years from the life tenant's death.

So first, the trustees had a claim at any time before 1st. June 1972. If A died in 1963 the trustees or X himself could have claimed at any time before 1st. June 1972. But if A died on 1st. September 1985, the position is:- the trustees could have brought an action at any time before 1st. June 1972; and from then until 1st. September 1985 no-one could make a claim; and within the six-year period from 1st. September 1985 X or the trustees can bring an action. At the expiry of the period, if no action has been brought, B's Equitable fee simple and the trustees' legal title are both extinguished.

3. MINORS *(i.e. under 18)*

A period of twelve years from dispossession or six years from coming of age (whichever gives the longer period) applies. Thus if dispossession takes place when the person entitled to the benefit of the land is aged 16, he has twelve years from then. But if dispossession takes place when he is aged 3, he can claim within six years after he becomes 18.

(He would of course only have an Equitable interest while under 18: see pages 567-8.)

4. MENTAL PATIENTS

Once again a similar rule: a period of twelve years from dispossession, or six years from recovery of sanity - but this rule is subject to an overall maximum of thirty years from when the action accrues. So:-

(i) if owner is dispossessed while he is a mental patient, but two years thereafter recovers his sanity, he can claim within twelve years of his dispossession.

(ii) if dispossessed while mental patient, and twenty years thereafter recovers his sanity, he can claim within six years after his recovery.

(iii) if dispossessed while mental patient, and forty years later he recovers his sanity, he cannot claim.

5. LEASEHOLDS

In this category, the period during which the *landlord* can bring an action for recovery against whoever is in possession is *twelve* years from the date of expiry of the lease, as in Example II on page 580.

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Note that in all cases where the time is running, acknowledgment of the owner's right (or, in the case of a debt, part-payment) starts the period running afresh. Thus if Shylock digs out the hedge at the end of his garden and encroaches little by little onto Fred and Florrie Smith's garden (this being a mode of dispossession far more common than the more dramatic squatting in unoccupied houses which makes more news) - and after ten years, by which time Shylock has encroached 4ft., Fred writes to Shylock, "Give me back the 15ft. strip you have taken from me", and Shylock angrily writes back, "I've not got 15ft. of your land: I've only got 4ft." - *he has thus acknowledged* that he has got 4ft. of Fred and Florrie's land: Fred and Florrie therefore have twelve years from the date of Shylock's letter in which they can bring an action.

D: Removal of Squatters

Squatting in unoccupied houses is good newspaper-copy but the squatters can be removed unless they have been there for more than twelve years. Nevertheless, removing them involves time and effort if they will not depart voluntarily. In the 1970s, numbers of squatters took advantage of an antique statute which had never been repealed, the 1381 Forcible Entry Act. This statute, passed in the days when property disputes were likely to be settled by a pitched battle on the property, said that no-one (not even a person legally entitled to possession) was to enter "with strong hand nor with multitude of people": and this was held to include *any* violence or even a show of force. So the owner risked imprisonment if he forcibly threw the squatters out. To evict them he had to obtain a Court order - for which he needed the squatters' names, which was rather difficult if they refused to say who they were. (Names are now no longer essential - see below.)

The 1381 Act has now been replaced by the 1977 Criminal Law Act. Under this 1977 Act, it is a criminal offence for any person without lawful authority to use or threaten violence for the purpose of securing entry into premises if he knows that someone on the premises is opposed to the entry, even if the person wanting to go in has a right to do so. But there is an exception to this for a person who is excluded from his own *residence* by a trespasser. So he can legally throw the trespasser out, although, as Lord Denning said in *McPhail v. Persons, Names Unknown (1973)* "This is not a course to be recommended because of the disturbance which might follow".

So what other ways are there of removing squatters? There are two:-

(1) Court action for possession. The common law has provided this for centuries, but in the 1960s and early 1970s it was found to be inadequate in cases where the squatters' names could not be ascertained, and also in cases where one squatter followed another in quick succession.

These inadequacies were remedied in changes in the Court Rules, which made available a new remedy, by a summons. This summons is referred to in Order 113 of the Rules of the Supreme Court (for the High Court) and Order 26 of the County Court Rules as a "fast possession action".

(2) Fast possession action. Using this method, the landowner can issue an originating summons claiming possession even though he does not know the name of the squatter. The Court may make an order for possession to be given seven days from the service of the summons (or less in an emergency) and it applies against anyone who is in the property, whether they were there on the date of the Court hearing or whether they have moved in since - e.g. new members joining a squatters' commune.

This method can also be used against a licensee whose licence has expired, and in the case of *University of Essex v. Djemal (1980)* it was used to remove students who were holding a sit-in in the University's administrative offices.

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The Housing Department of the Local Authority often has much difficulty in finding accommodation for homeless families who are their responsibility. So if a family of squatters moves into a vacant council-owned house (e.g. one that has been bought for demolition or for future improvement) it may be cheaper to leave them there than to evict them and then have to re-house them, which could involve breaking up the family and taking the children into Council care. So squatters of reasonable behaviour (not vandals) may be left in comparative peace and may even become regarded as licensees rather than as trespassers.

SUMMARY

In this chapter we have seen:

nature of limitation: possessory or "squatter's" title by 12 years adverse possession of land.

periods of limitation

circumstances in which time does not run *(e.g. owner's insanity at time of dispossession)*

circumstances which start time running afresh *(e.g. acknowledgment of owner's right)*

Five cases in which an owner may have a right to recover the land although a squatter has been in possession without hindrance for over 12 yrs.

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TEST QUESTION on Chapter 43:-

Shylock has taken over Joe's empty and overgrown property. Shylock has fenced it and padlocked the gate, and is using it for storage of building materials. - After 11 years Shylock wants to build a luxury bungalow on the property, but wants to be sure that no-one can recover the land from him. What would be the earliest time he could safely build in each of the following situations?

(a) the land was Joe's in fee simple absolute in possession,
(b) the land was Joe's under a lease expiring 9th. September 1999,
(c) the land was Joe's for life and then to Ken,
(d) Joe went mad a month before dispossession,
(e) Joe went mad as a result of the dispossession,
(f) the land is held by trustees on Joe's behalf during his minority; he is at present 15,
(g) Joe is an angry alien who has issued a writ for repossession against Shylock,
(h) Joe is drunk and is threatening Shylock with a shotgun,
(i) Joe is dead and his widow has issued a writ for repossession against Shylock,
(j) Joe has been in prison for the last 5 years,
(k) Caliban dispossessed Shylock 2 years ago but Shylock forcibly took the land back from Caliban last year,
(l) Caliban dispossessed Shylock 5 years ago but abandoned the land 2 years later; the land then stood empty until Shylock moved into it again last year.

Section D (Chapter 44)

Registration

CHAPTER 44

A FURTHER LOOK AT REGISTRATION

OUTLINE OF CHAPTER:-

A: The main points of registration
1. the registered land system
2. the unregistered land system
3. an example of each
B: Further details of registration

In Part 2 of this book (page 167 onwards) we dealt with Registration, but the treatment it was given was in a form which is of little help for reference or revision purposes. The object of this chapter is therefore: under heading A to set out in a more get-at-able form the main points on registration which we have seen, and under heading B to deal with some further details, particularly Priority Notices.

A: THE MAIN POINTS OF REGISTRATION

All land in England and Wales is in either a compulsory registration area or a non-registration area. Compulsory areas are generally the more built-up areas - London and the home counties, Birmingham, Liverpool and Manchester, industrial South Wales, Torquay etc. - see page 664 for latest (1986) list.

It is intended that the registration system shall be extended until the whole of England and Wales is subject to compulsory registration.

1. THE REGISTERED LAND SYSTEM

This, the system which is gradually being spread to the whole country, is much quicker and less cumbersome than the unregistered system. Instead of deeds, the

grantee has a TITLE CERTIFICATE which he receives from the Land Registry. If the property is subject to a mortgage this Certificate will be a CHARGE CERTIFICATE; if not, it will be a LAND CERTIFICATE. In either case the Certificate is set out in three parts, containing the extracts relevant to this particular property of the entries contained in the Land Registry's *Property Register*, *Proprietorship Register* and *Charges Register*.

The extract from the PROPERTY REGISTER describes the land, which is shown on an accurate Plan. If the land is leasehold, brief details of the lease are added.

The extract from the PROPRIETORSHIP REGISTER shows who is the registered proprietor (freeholder or leaseholder) and whether the title with which he is registered is *absolute*, *good leasehold*, *qualified* or *possessory* title.

Absolute title (freehold or leasehold) is the best title which anyone can hold in respect of land in England and Wales.

Good leasehold title is not as good as absolute leasehold: good leasehold means that when the title was first registered the Land Registry satisfied itself as to the leasehold title, but *it did not investigate the freehold title for the fifteen years before the granting of the lease* so it does not know that the original grantor was entitled to grant the lease. The Registry is saying, "The leasehold title is a good one, *assuming* the grantor had a right to grant the lease".

In the case of absolute leasehold title the Registry has satisfied itself both as to the leasehold title and as to the grantor's freehold title.

Qualified title is granted where, when the title is first registered, the Registry is dissatisfied as to some particular point. It says in effect, "The title is good *except* for such-and-such a point on which the proprietor of the land must look out for himself". (He can do this by - for instance - insuring against any loss which might arise because of the faulty title.)

On possessory title the Registry does not commit itself as to ownership at all. All it says is that the

registered proprietor is in possession: it does not say why. The only safe course for a purchaser of such a title is to investigate the history of the title for at least the last fifteen years, just as with unregistered property.

The CHARGES REGISTER shows things to which the land is subject - e.g. legal and Equitable Charges (i.e. mortgages), legal and Equitable easements and profits à prendre, rentcharges, covenants, etc. All these, if on the Register, are called minor interests.

But the Register does not show overriding interests, such as easements and profits by prescription and the rights of persons in actual occupation (as in the *Boland* case on page 314). These are binding without being shown in any Register. *Caveat emptor* (i.e. the purchaser must look out for himself, concerning such matters).

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The purchaser of land in a compulsory registration area may find that his land is registered or unregistered. The title has to be registered the first time the property changes hands after the area becomes a compulsory area. Take for example the purchase of a property in Brighton, which became a compulsory area on 1st. October 1965. If the property has already changed hands at least once since then, it will have been registered on that occasion. If it has not changed hands since 1st. October 1965, the title may possibly be registered but the chances are that it is not. If it is not, the purchaser is required to register his title within two months after completion of his purchase.

Freeholds, and all leases of 40 years or more, *must* be registered if the property is in a compulsory registration area. Leases of over 21 years but under 40 years *may* be; those of 21 years or less *cannot* be registered.

But if the title to the reversion is registered, *all leases of over 21 years must be registered, even if the land is in a non-registration area.*

A purchaser of land in a non-registration area may also find the title registered or unregistered. This is because until 1966 it was possible voluntarily to register land, in any area. Properties thus registered can stay registered but no further registrations can now take place in non-registration areas, except for the four special cases set out on page 195 which may be summarised as:-

(i) lost deeds
(ii) development of 20 or more plots
(iii) lease exceeding 21 years where freehold is already registered
(iv) purchase of Council house under 1980 Housing Act.

In this list, (i) and (ii) *may* be registered; (iii) and (iv) *must* be registered.

Every piece of land is given, on first registration, a title number by which it can be identified on the Land Registry maps. All registrations are made against the land by means of this title number.

2. THE UNREGISTERED LAND SYSTEM

This is the older of the two systems. Although it is being phased out, it is far from extinct yet.

A person proves his title to unregistered land by the DEEDS. Each time the land is sold, mortgaged, leased, or even given away, the grantee's solicitor prepares another deed (passing the appropriate legal estate to the grantee) which is added to the existing ones. Title is proved by looking back through the deeds for *at least* fifteen years (1969 LPA - page 459).

On such a system it would not be particularly difficult for a dishonest person to conceal certain facts which he did not want the purchaser to know. For instance:- Crook is selling his unregistered house to Simple for £40,000. Crook admits that he has a £25,000 mortgage to the Lesser Troutville Building Society; he cannot do otherwise because the Building Society has the deeds. What Crook does not mention is that he has a second mortgage to the XYZ Finance Company for a further £12,000. He hopes that on completion of the

sale Simple will see that the Building Society is repaid, and will then pay the balance to Crook - who will disappear before the true position comes to light. This suits Crook particularly well because he has also omitted to mention that he is bankrupt and therefore has no right to be selling the property at all!

The LAND CHARGES REGISTRY guards the purchaser against situations like this, for, although the *land* is unregistered, *these matters* can be registered in the registers of *incumbrances on unregistered land*, at the Land Charges Registry. The registrations are made by the persons having the benefit of the rights - the finance company and the trustee in bankruptcy in our example, and are made against Crook by name. *(Contrast the - much better - registered land system, in which registration is against the land.)* A full list of the things registrable in the Land Charges Registry is given on pages 219 and 221-2: reference to these pages will show that the bankruptcy is registrable in the Register of Writs and Orders, and the puisne mortgage (mortgage where the deeds are not handed to the lender) is registrable as a Class C(i) in the Register of Land Charges.

These rights do not hold good against a purchaser for money or money's worth (including a subsequent mortgagee) if they are not registered - or if they are registered against the wrong name:-

In *Diligent Finance Co. Ltd. v. Alleyne (1971)* a registration against "Erskine Alleyne" (when his true name was Erskine Owen Alleyne) was held to be a registration against an incorrect name. A Search made by the finance company against the true name did not reveal the registration, and the Court held that the registration did not hold good against the finance company.

In *Oak Co-operative Building Society v. Blackburn (1968)* Francis David Blackburn owned a house. He was generally known as Frank, and the name Frank D. Blackburn was painted over the door of his business premises (he was an estate agent). A registration was made against him, naming him as Frank David Blackburn.

Several years later a Search was made by the Building Society's solicitor against "Francis Davis Blackburn". (Note the "Davis" instead of "David", so it is a Search against an incorrect name.) This did not reveal the registration against the name Frank David Blackburn.

The Court of Appeal held that if the Search had been against the true name Francis David Blackburn and had not revealed the entry against Frank David Blackburn, the registration in the incorrect name would not have held good against the person with a clear Search. (This is what we saw in *Diligent Finance Co. Ltd. v. Alleyne* above.) But since in *Oak Co-operative Building Society v. Blackburn* the Search itself was against an incorrect name, the Search could not hold good against a registration which was a version of the owner's name although not his exact true name. So the result of this typing error ("Davis" for "David") was that the Building Society lost all its rights against the house.

Returning now to our example of Crook and Simple (page 592), what will happen is that three or four days before Simple's purchase is due to be completed, his solicitor will make a Land Charges Registry Search (by sending an "Application for an Official Search" form by post to the Land Charges Registry in Plymouth) and he will not complete the purchase before he receives the result of his Search. When the result comes it will reveal that there is a bankruptcy and a puisne mortgage (though it will give virtually no details) and the purchase will then of course not be completed. *(Simple will buy it from the trustee in bankruptcy instead.)*

If Simple completes his purchase from Crook in ignorance of these incumbrances because he omitted to search, he is bound by them: their registration counts as actual notice to him. But if he fails to discover them because they are not registered, then he is not bound by them.

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A major defect of the Land Charges Registry's system is that there may be registrations which it is impossible for a purchaser to discover. For example:

Restrictive covenants were imposed on a field in 1955. The field was sold in 1957 and again in 1959, and again (to a builder) in 1977. The builder erected ten houses and sold them to purchasers in 1978. By the 1969 LPA, the purchasers' solicitors only have to look back to a "root of title" at least fifteen years old, which is the deed of 1959. As each purchaser is buying only one house, and not the whole field, he does not receive the bundle of old title deeds. Each purchaser will receive a copy or abstract of the deeds back to the root of title (the deed of 1959) but will not receive copies or abstracts of any deeds prior to the root of title. So he cannot discover the registration of the covenants of 1955 because he has no way of discovering the name of the person who owned the land at that time and therefore cannot search against him. But the covenants *are* registered and the purchaser therefore is bound by them, whether he was aware of them or not. By 1969 LPA there is a compensation scheme for persons who suffer loss through no fault of their own because of this defect in the system.

3. AN EXAMPLE OF HOW THE REGISTERED AND UNREGISTERED SYSTEMS WORK IN PRACTICE

Our friend Fred Smith is selling "Rookery Nook", the property of his late uncle. (Uncle died last month and Fred is the executor of his will.) Fred is not at all familiar with "Rookery Nook" and honestly does not know that it is subject to the following incumbrances:-

(1) a covenant made in 1931, not to keep chickens;

(2) a mortgage to a Building Society for £7,500;

(3) a second mortgage (which Uncle was rather ashamed of and mentioned to absolutely nobody) to Scrooge;

(4) an estate contract to sell a 20 square metre plot to the Electricity Board (for a transformer sub-station) in October of next year;

(5) an easement (for which there is no deed) for the next-door neighbour Y to cross the garden;

(6) road-widening proposals which will take away three quarters of the front lawn; and

(7) neighbour Z has taken over a 25ft. strip of land at the bottom of the garden. (Z fenced it off seven years ago, and Uncle, who did not like gardening anyway, did not bother to do anything about it.)

How is a purchaser to find out about these things? The answer depends on whether the property is registered or not. Let us first take it as registered.

EXAMPLE I (in which this land is REGISTERED):-

The purchaser or his solicitor receives an Office Copy (supplied by the Land Registry, free of charge) of the entries in the Property Register, Proprietorship Register and Charges Register of the Land Registry.

With the Property Register there is a Plan, drawn to scale. This solves the problem of how to discover (7) above if the purchaser or his solicitor keeps his eyes open. There will be nothing on the Plan to say that Z has taken a strip of garden, but if the Plan and the actual property are compared it will be evident. But the rule is *caveat emptor* - "the purchaser must look out for himself". No-one will tell him.

The Proprietorship Register will show Uncle as the registered proprietor. Or it may have been up-dated to show Fred as the registered proprietor as executor.

Then comes the Charges Register: this contains brief details of the incumbrances on the property. Thus (1) the covenant, (2) and (3) the two mortgages, and (4) the estate contract, will be shown.

If (for example) the second mortgage is not registered, then the purchaser buys the property free from this incumbrance: this is the second mortgagee's own fault for not registering and he can make no claim against the property or the purchaser once the sale is completed - though he can still claim payment from Uncle's estate as a creditor.

The right of way (5) will also probably be shown on the Charges Register. As it is without a deed it is either Equitable (made by an informal document) or by prescription (long user - no writing at all). If it is Equitable it should have been protected on the Register

as we saw on page 116.

If it is prescriptive the Land Registry may possibly not know of it: but nevertheless it is binding as an overriding interest (i.e. an interest in registered land which is binding on the whole world even if not on the Register). *Caveat emptor.*

Overriding interests include:-

1. all legal easements by prescription,
2. rights acquired or being acquired under the 1980 Limitation Act (see Chapter 43),
3. rights of every person in actual occupation (e.g. Mrs. Boland) or in receipt of rents and profits, unless enquiry is made of such person and the rights are not disclosed - this is s.70(1)(g) of 1925 LRA - *(so most leaseholders are protected by this provision even if they have omitted to register their leases)*
4. on possessory, qualified and good leasehold titles, rights excepted from the effect of registration,
5. Local Land Charges (until registered)
6. leases not exceeding 21 years at a rent with no fine (i.e. no capital payment) *[but 3. above covers more leases than this]*
7. liability for sea walls, river banks etc.
8. various relics of the past, including franchises (page 340) manorial rights over former copyhold land (page 38) liabilities to repair the chancel of the parish church (page 352) etc.

Returning now to the seven incumbrances affecting "Rookery Nook" in our example, we have dealt with six of them already but what about item (6) - the road widening? The Land Registry will not show this. But right at the beginning of the transaction (before exchange of contracts) the purchaser's solicitor will have made a Local Search in the registers of the appropriate District Council. A standard set of Additional Enquiries is normally sent to the Council with the application for the Search. The road-widening proposals will be shown in the replies to the Search and Enquiries. (See pages 492 and 251.)

Thus the purchaser need not be deluded into buying something other than what he expected, by any of the seven items above - except possibly item (5): an easement by prescription across a concreted piece of open land such as a car park might be totally invisible but would be binding. One safeguard here is to ask the vendor about it: if the purchaser is told there is nothing when there is something, he has a claim on the grounds of misrepresentation.

Note especially that persons in actual occupation have rights which are binding even though not on the Register. So a purchaser or mortgagee needs to ask who the persons in the house are. *(Mrs. Boland!)* They are probably the vendor's family, or visitors, but they may be licensees, or tenants protected by the 1977 Rent Act - or even squatters. The purchaser should ask. *Caveat emptor.*

By the time completion is due to take place, the Office Copy is likely to be several weeks old. So the purchaser's solicitor makes a Land Registry Search (for which the Registry charges no fee) which shows him any entries which have been made since the date of the Office Copy.

Now let us take the same example again assuming the property is unregistered land.

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EXAMPLE II (in which this land is UNREGISTERED):-

We can clear item (6) (the road-widening) straight away: this is discovered by making the Local Search and Additional Enquiries in exactly the same way as with registered land.

Now what about item (7): that 25ft. strip of garden the neighbour is acquiring? We must rely on the deeds. If they are well drawn, they may state measurements or may include an accurate plan, in which case the purchaser can discover from the deeds what has happened. But all too often the deeds do not adequately describe the size and shape of the property, and in this case what has happened may never come to

light, now that Uncle has died.

As to items (1), (2), (3) and (4) (the covenant, the two mortgages, and the estate contract) the first mortgage will not be recorded in any Register. But the Building Society has the deeds, so no sale of the property can take place without the Building Society's rights being shown. The second mortgage, the covenant and the estate contract will all be registered in the Land Charges Registry.

From the list on pages 221-222 it will be seen that the second mortgage is a C(i), the estate contract a C(iv) and the covenant a D(ii). If they are not registered they do not hold good against a purchaser for money or money's worth - e.g. if the second mortgage is not registered the purchaser buys free from it, the position being just the same as we saw on page 595 in the registered land example.

The function of the Land Charges Registry is to put the purchaser on notice that there is an incumbrance: not to give him full details of what the incumbrance is. Thus, in our example, the purchaser or his solicitor will receive the result of his Search, showing "C(i); C(iv); D(ii)" together with dates of registration. He will not know what they are, nor even whether they apply to "Rookery Nook" or another of Uncle's houses. His reaction will probably be to telephone the vendor's solicitor to ask what they are. The vendor's solicitor will fairly easily find the restrictive covenant in the deeds (and he knows he ought to have found it earlier, when he was drawing up the contract!) but he will be in difficulties with the puisne mortgage and the estate contract, so he will ask Fred, who will reply, "I don't know: my uncle would have known but he's dead".

A further application will now be made to the Land Charges Registry, which will be able to show that the C(i) refers to a mortgage (of which the Registry will have no copy) made between Uncle and the lender Scrooge; and the estate contract was made between Uncle and the Electricity Board. Now we are getting somewhere: Scrooge's solicitor and the Electricity

Board's legal department will be contacted and within a few days should be able to unearth copies of the documents in question. So the purchaser receives the information he needs - but it takes time: he may have to store his furniture and go into a hotel for a few days. (In such circumstances, it may seem very reasonable to let him move into "Rookery Nook" as a tenant at will. But this can be risky: see page 536.)

Item (5), the easement, will (if it is Equitable) also be revealed by the Land Charges Registry Search, as a D(iii) entry, and it is binding if registered. (If it is an Equitable easement and is *not* registered, see *E. R. Ives Investment Ltd. v. High*, on page 108.) If the easement is legal it will be binding but it will not be registered: *caveat emptor*. Normally it will be discoverable either from the deeds or from making enquiries or from inspecting the property.

B: Some Further Details about Registration

The 1925 legislators missed very few points, but on registration of incumbrances they overlooked something, and this had to be remedied by the 1926 Law of Property (Amendment) Act. Here is what the problem was:-

Alan sold Greenacre to Boris (as we saw on page 455) subject to a covenant not to keep pigs. Boris bought Greenacre with the aid of a mortgage, and (as is usual in such cases) the purchase and the mortgage were both completed on the same day.

As soon as completion of the purchase brought the covenant into existence, Alan posted an application for registration to the Land Charges Registry. This could not be registered until next day at the earliest. So the point was, *at the moment the mortgage was entered into, the covenant had not yet been registered.*

Therefore the covenant was not binding on the lender and his successors. So if Boris failed to keep up his mortgage payments and so the lender sold Greenacre to Cyril, Cyril and his successors were not bound by the covenant. Alan could not stop them from keeping pigs.

So the 1926 Act provides that the covenantee (Alan in our example) can register a PRIORITY NOTICE when he anticipates that he will have something to register in the near future. In other words, the covenantee, realising that this situation is likely to occur, should register a Priority Notice about three weeks before completion is due: this would appear on the lender's Search and so the lender and his successors would be bound by the covenant on the strength of the Priority Notice.

By the 1972 Land Charges Act, Searches give protection for fifteen working days - in other words, as long as the person who made the Search completes his transaction within fifteen days thereafter, he has priority over any entries which are made in the Registers during those fifteen days - and there is accordingly a provision that a Priority Notice must be registered at least fifteen days before the registration is to take effect.

Example:- The purchase is to be completed on 30th. May. The purchaser and mortgagee may make their Searches up to fifteen days before that date. So the rules require that the Priority Notice, to be valid, must be registered at least fifteen working days before 30th. May, so that it will appear on the Searches.

The Priority Notice holds good for thirty days.

On registered land the situation is different. Let us use again the same example, in which (taking the land as registered) we have (1) sale by Alan to Boris and creation of the covenant, (2) mortgage by Boris, (3) registration of the transfer and the covenant, (4) registration of the mortgage.

The legal estate or interest passes by registration, not by deed, so the order of registration is what is important. And dealings which take place between the date of a deed and the date of application to register it *(e.g. Boris' mortgage: made after the transfer deed but before the application for registration thereof)* take effect as if they had taken place after the date of application. So, in our example, it seems that the

covenant must rank before the mortgage, and the mortgagee and his successors will normally be bound by it.

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Anyone interested in registered land whose interest is not registered can lodge a CAUTION: this gives him the right to be informed (by the Registrar) of any attempted dealing with the land, and he then has fourteen days to object. So the land cannot be sold without his having a chance to speak. The Registrar, after giving him a hearing, shall make such order as the Registrar may think just. So equity (fair play) and the Registrar's discretion can solve many a problem. Or the Registrar may refer the matter to the Court.

Cautions are one of four ways of protecting minor interests, i.e. interests which are not binding unless protected on the Register. The other three are:-

a NOTICE: a person claiming to have the benefit of a minor interest may enter a notice on the Register. Any subsequent dealing with the land is then subject to his right. A notice is the most widely used of the four methods, but, for it to be entered, the Title Certificate has to be sent to the Registry (except in the case of a Notice under the Matrimonial Homes Act, which can be entered without this). If the proprietor refuses to lodge his Title Certificate at the Registry, the person claiming the benefit may lodge a caution.

an INHIBITION is a Court order preventing any dealing with the land, subject to such conditions as the Court or the Registrar think fit. It is intended for use when there is no other way of protecting the claimant's claim but it is also used on a registered proprietor's bankruptcy to prevent the bankrupt from selling the land.

a RESTRICTION is like an inhibition except that it is usually entered by the registered proprietor himself: e.g. a restriction entered by a tenant for life against disposal of the settled land in any way contrary to SLA, etc.

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By the 1971 Land Registration and Land Charges Act it was provided that there need be no registration of land which has been declared by the Registrar to be "souvenir land", i.e. tiny pieces of land sold as "souvenirs" to foreign tourists. This followed the appearance of an advertisement: *"Buy a piece of Historical Olde England for only ten dollars"*, inviting its readers to buy one square foot of an estate in Sussex. One suspects that a multiplicity of such applications arriving at Her Majesty's District Land Registries would (to use the words of Wolstenholme and Cherry's "Conveyancing Statutes") "clog up the works".

Another situation involving the sale of tiny plots arose in the early 1980s, when a field which was on the line of a proposed motorway was sold in several thousand plots (the purchasers included conservationists from all over the world) with the intention of making the compulsory purchase of the field so difficult that the planned motorway route would be changed.

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There are also certain other matters as to registered land, such as indemnity against faulty registrations, rectification, conversion of titles (e.g. *a possessory title can be enlarged into an absolute title after fifteen years)* etc., which, though important, are outside the scope of this book.

SUMMARY

In chapter 15 and in this chapter we have seen:-

compulsory and non-registration areas
and registered and unregistered land,

the 3 Land Registry registers { Property Register
Proprietorship Register
Charges Register

absolute, good leasehold, qualified and possessory title,

the Land Charges Register: a register of incumbrances on unregistered land,

priority notices, on unregistered land,
notices, cautions, inhibitions and restrictions on registered land.

TEST QUESTIONS on Chapter 44:-

1. What is meant by:- (a) Charge Certificate
(b) Charges Register
(c) Land Charges Registry
(d) Legal Charge
(e) Local Land Charges Registry
(f) Land Charges Act?

2. Adam and Ben are selling their bungalow "Sun Haven" to Clara subject to restrictive covenants in favour of Gigi and a legal easement of drainage in favour of Joe. What documents will show the vendors' title to the property and how will the purchaser find out about the covenants and the easement if the property is (a) registered, (b) unregistered?

3. (a) For what reasons is the unregistered system being superseded by the registered system?

(b) What is the purpose of a priority notice in respect of a sale of unregistered land?

Section E (Chapters 45 - 47)

Government and other Controls over Land

CHAPTER 45

PLANNING AND PUBLIC HEALTH

OUTLINE OF CHAPTER:-

A: a brief outline of some of the Planning and Public Health matters which may affect an owner of land

B: an example of the effects of development

A: AN OUTLINE

A landowner cannot build what he likes on his own land - and it is right that on this crowded island a man should not be allowed to put up some monstrosity in a pleasant area, or a factory in lovely countryside (or anywhere else) without some investigation of whether it is good for and/or acceptable to the community. If he builds without Planning Permission, the Planning Authority (which is normally the District Council) can in most cases serve him with an ENFORCEMENT NOTICE, if necessary, ordering him to pull the offending building down within a stated time limit.

An alternative if the building is not yet completely erected is a STOP NOTICE, telling him to stop building.

Planning in its present fairly all-embracing form began with the 1947 Town and Country Planning Act which came into effect on 1st. July 1948. This Act has now been replaced: the present main planning statute is the 1971 Town and Country Planning Act.

Who are "the planners"? They are the District Council's Planning Committee, made up of ordinary Council members with no special training, supported and advised by a full-time staff of qualified Town Planners.

Planning Permission is not refused just because the Planning Committee dislikes the proposed scheme. The over-all plan for the County is contained in the

County's STRUCTURE PLAN (this is a lengthy written plan - thousands of words, plus a few maps and diagrams) and a number of written LOCAL PLANS for individual towns and other areas. Development is meant to follow what is laid down in these Plans.

For instance, certain areas on the edge of a city will be zoned for housing development, while others may be designated GREEN BELT in which development will in general not be permitted. (For example, it is felt that Bath, Bristol and Weston-super-Mare might all join up in a thirty-mile urban sausage if there were not "green belt" provisions to keep some of the countryside between them as green and pleasant country.)

Nevertheless it can be said that Planning Control is negative: it can prevent bad development from being built, but it cannot say, "Build so-and-so". It cannot make the landowner build anything if he does not want to; nor can it take the land from him unless it is required for a motorway or some other purpose to which the compulsory purchase provisions (page 441) apply.

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Let us consider the "typical" city (which does not exist, any more than the "typical" student exists - they are all different).

In the "typical" city, first there is the Central Business District (the CBD) containing shops, offices, the Cathedral, the traffic jam, etc. There may be a few mediaeval buildings surviving there.

Around the CBD is a ring of largely Victorian development - both industrial and housing - which in part has become or is becoming a zone of dereliction. The owner of property in such a "zone of transition" may be much affected by Planning (and by Public Health provisions, which are dealt with by another department of the same Council) - see below.

Outside this ring is the ring of more modern properties, with the commuter zone on the outskirts. The land beyond that may be earmarked for more commuter homes or may be green belt. Five miles further out is a charming village, untouched by industrialisation.

Fred Smith, who lives in "Magpie Cottage" in the said Charming Village, owns a couple of houses in the zone of transition in the city. How will Planning and Public Health matters affect him? Let us consider his houses in the city first.

Public Health deals with the question of whether they are UNFIT FOR HUMAN HABITATION. A series of Housing Acts (1957, 1961, 1964, 1971, 1974) governs this question, taking into account the following:- any defect in repair, stability, freedom from damp, natural lighting, ventilation, water-supply, drainage and sanitary conveniences, facilities for the storage and preparation and cooking of food, and disposal of waste water. A house is unfit if in any one of these it is so far defective as to be unfit.

If a house is capable of being made fit at reasonable expense, this can be done. Grants which may be available from the local Council are INTERMEDIATE GRANT (for a toilet or bath etc.) SPECIAL GRANT (only available for properties in multiple occupation) REPAIRS GRANT (for houses built before 1919) and IMPROVEMENT GRANT (for houses which will have a useful life of at least thirty years). A grant may also be available for loft-insulation.

The 1974 Housing Act has a Part (Part VIII) entitled "Compulsory Improvement of Dwellings".

If the house is incapable of being made fit at reasonable expense, then subject to certain conditions the Local Authority can make a DEMOLITION ORDER.

A demolition order may not be appropriate (e.g. the house may be in a terrace where if it is demolished the other houses may collapse) and so a CLOSING ORDER may be made instead. This is an order that the house must not be used for any purpose, except one (e.g. storage of non-combustible non-perishable goods) approved by the Local Authority.

Or the Local Authority may declare the whole neighbourhood a CLEARANCE AREA. A clearance area must be cleared of all buildings: and this includes well-maintained ones but there is provision for

payment of compensation. Compulsory purchase powers may be used to acquire the properties, if necessary.

When one sees whole streets of Victorian terraces being bulldozed in inner urban areas, to make way for "urban renewal", this is usually a sign that the area has been designated a clearance area.

On the other hand the buildings may form part of a Georgian square, of some architectural merit, which has been declared a CONSERVATION AREA. Or maybe they form part of a GENERAL IMPROVEMENT AREA - or maybe the street consists of well-built houses in a run down state which are to be given a major face-lift as a HOUSING ACTION AREA.

Suppose Fred wants to alter, or demolish and rebuild, his houses in the inner city? Can he do so?

He needs no Planning Permission to demolish them, except that if they are in a conservation area, or if they are BUILDINGS OF ARCHITECTURAL OR HISTORIC INTEREST, he is not allowed to demolish without permission - and this provision is likely to be extended one day to *all* buildings.

To build a small extension (i.e. not exceeding 15% of the original house - or 10% if in a terrace - not raising the roof-line and not extending in front of the existing front wall of the building) does not need Planning Permission. But Planning Permission is needed for most other building work.

There are two types of Planning Permission. A farmer wishing to build houses on one of his fields could apply first for OUTLINE PLANNING PERMISSION (giving permission to change the use of the field from agricultural to housing) and then at a later date DETAILED PLANNING PERMISSION (for which full plans have to be drawn up, showing design of house, estate layout and so forth). Fred does not need outline permission to replace houses with houses, but he will need detailed permission.

For all construction work (including those items which need no Planning Permission) consent under the

1985 BUILDING REGULATIONS is required. These are a body of rules produced by authority of the 1961 Public Health Act, based on the principle that if a man is going to build a building, it must be a proper building and not some tin-and-timber shanty-house. It must not be structurally unstable, inadequately ventilated, a fire hazard and so on.

The Building Regulations cannot be looked into in a book of this size, except to note the headings into which they are divided:-

Part A: Structure
B: Fire
C: Site preparation and resistance to moisture
D: Toxic substances
E: Resistance to the passage of sound
F: Ventilation
G: Hygiene *(food storage, bathrooms, toilets etc.)*
H: Drainage and water disposal
J: Heat producing appliances
K: Stairways, ramps and guards
L: Conservation of fuel and power.

Local Authorities have certain powers to relax the Building Regulations.

And how many tenants can Fred pack into these houses? He cannot put so many in that the properties are OVERCROWDED: and a house is overcrowded within the meaning of the 1957 Housing Act if (a) two persons, ten years old or more, of opposite sexes, and not living together as man and wife, must sleep in the same room, or (b) the house contains more people than the number of rooms permits. Basically the number of rooms (living and sleeping rooms) is:-

1 room permits 2 persons
2 rooms permit 3 "
3 " " 5 "
4 " " $7\frac{1}{2}$ " *(a child under 10 counts as $\frac{1}{2}$;*
5 " " 10 " *a child under 1 counts as 0)*

and for each additional room, another 2 persons

- provided in each case that the rooms are big enough:- if the floor area (excluding any floor area with less

than 5ft. headroom)
is 110 sq. ft. or more, it can be used for 2 persons
90 - 110 sq. ft. " " " " " 1½ "
70 - 90 " " " " " " " 1 "
50 - 70 " " " " " " " ½ "
under 50 " " is disregarded.

The 1961 and 1964 Housing Acts enable Local Authorities to make MANAGEMENT ORDERS in respect of HOUSES IN MULTIPLE OCCUPATION - the sort of tenanted property where everything is likely to go to rack and ruin because no occupier wants to shoulder the burden of seeing that repairs and maintenance are done. *("Why should I clear up everybody else's mess?" - so no-one does anything unless a Management Order is made.)* We mentioned this previously on page 558.

And the properties are in an area which has been declared a SMOKE CONTROL AREA, and so only authorised (i.e. "smokeless") fuel may be burnt. Ordinary coal fires are not allowed as the smoke from such fires pollutes the air. (1956 and 1968 Clean Air Acts, as amended by the 1980 Local Government, Planning and Land Act.)

But if Fred demolishes his houses and leaves the site derelict, overgrown and a dumping-ground for rubbish, he will find that the Planning Authority has powers which they can use against him with regard to WASTE LAND which is seriously injurious to the amenity of the area.

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And what of Fred's home, "Magpie Cottage" in Charming Village? Are there any Planning or Public Health matters which may particularly affect him there?

Though "Magpie Cottage" does not happen to be within the Conservation Area which covers the most charming part of the village, it is on the list (compiled by the Planning Authority) of Buildings of architectural or historic interest - in other words "Magpie Cottage" is a LISTED BUILDING. He will not be allowed to make changes which would destroy its character. (He cannot do what he has done in the picture on page 483!)

Planners have powers as to CONTROL OF ADVERTISEMENTS erected on land (powers as to protection of amenity, not for censorship!) and the advertisement in the picture on page 426 is just not acceptable.

The tree in his garden is a fine specimen on which a TREE PRESERVATION ORDER has been made: he would commit a criminal offence if he cut it down without a licence.

And under the tree a rare species of fritillary flourishes: so that spot has been declared to be a SITE OF SPECIAL SCIENTIFIC INTEREST and he must not disturb it.

And there will be special Planning controls for the whole district if it is an AREA OF GREAT LANDSCAPE VALUE or an AREA OF OUTSTANDING NATURAL BEAUTY or even a NATIONAL PARK.

He tries to bring CARAVANS onto his land without a licence: but (with limited exceptions) he will be prevented from doing so by the 1960 Caravan Sites and Control of Development Act. (See also page 557 for the 1983 Mobile Homes Act.) He will also be liable to a fine imposed on him by the magistrates, at level 4 on the standard scale, because of these caravans.

(The standard scale of fines is laid down by virtue of the 1982 Criminal Justice Act. The current rates are:-

level 1:	£50
level 2:	£100
level 3:	£400
level 4:	£1,000
level 5:	£2,000.)

A stream flows through his garden, but if he pours into the stream any poisonous, noxious, or polluting matter, he is guilty of an offence under Part II of the 1974 Control of Pollution Act.

And if his cess-pit overflows into the stream, or into the road, he will very quickly receive an Abatement Notice from the Local Authority's Public Health department.

If he has thistles, docks or any other injurious weeds growing on his property, then the Local Authority

can serve a notice on the occupier under the 1959 Weeds Act telling him to take such action (within a time limit) as may be necessary to prevent the weeds from spreading.

Wild birds and their eggs on his land are protected by the 1981 Wildlife and Countryside Act.

If Fred has obtained permission to carry out any trade process on any of his properties, but this process produces dust or effluvia which is a nuisance or is prejudicial to health, he may be served with an abatement notice under the 1936 Public Health Act. If his premises are in a defective state, the Local Authority may take action either under this provision or (if this would take too long) by a speedier method under the 1984 Building Act.

And if Fred proposes to bring any radio-active matter onto his land, let him first check his position under the 1960 Radio-active Substances Act and the 1965 and 1969 Nuclear Installations Acts.

If by this time he feels so restricted that he fixes a loudspeaker to his chimney-pot (or to his car) and tells the whole neighbourhood of his woes, he will find that he falls foul of Part III of the 1974 Control of Pollution Act.

And if he then dumps and abandons his loudspeaker and/or his car and/or any other thing either on land or on the highway, he will find that he is in breach of that same Control of Pollution Act and/or the 1978 Refuse Disposal (Amenity) Act and/or the 1983 Litter Act.

And there are restrictions on OFFENSIVE TRADES. If without the consent of the Local Authority he establishes anywhere the trade or business of a blood boiler, blood drier, bone boiler, fat extractor, fat melter, fellmonger *[i.e. skin-monger]* glue maker, gut scraper, rag or bone dealer, size maker, soap boiler, tallow melter, tripe boiler, or any other trade, business or manufacture which has been declared to be an offensive trade, he is liable to a penalty (level 3 on the standard scale, see page 610) and a further penalty of £5 for each day on which he

continues it after being convicted or being given notice by the Local Authority to discontinue it. 1936 Public Health Act as amended by 1972 Local Government Act.

B: An Example of the Effects of Development

X owned a detached Victorian house standing on half an acre close to the town centre. In 1973 X demolished the house and (with planning permission) built a fifteen-storey office block with a frontage of 50ft. and a depth of 160ft. He leased this to a company wishing to move its headquarters out of London: his fortune was made.

The Office Block

What effect did this office block have on the town? Aesthetically it may be a noble landmark or "a blot on the landscape", depending on its design and siting. But that is only one of its effects.

Frontage 50ft., Depth 160ft.; i.e. 8,000 sq. ft. per floor.

15 floors: total floor area 120,000 sq. ft.

at 100 sq. ft. per person: work space for 1,200 people (plus cleaners, night security guards, etc.: 50).

TOTAL 1,250 PEOPLE.

People:-

So 1,250 new jobs came to the town, and (more or less) 1,250 people moved from London and came to the town to take them. (So the effect on the town's unemployment problem was negligible in this respect.)

Say that they each had one wife (or husband) and on average 2 children. (This is below the national average for the 1970s which was 2·4 children.)

Total: 1,250 x 4 = 5,000 persons: enough for a complete new neighbourhood.

Houses:-

So 1,250 new houses were built by delighted local

builders, who take on extra employees - some of them being skilled men who come to the town from outside and swell the population even more.

1,250 houses at 15 to the acre needs 83 acres of land.

A major development such as this also requires schools, shops, entertainment, recreation areas (parks, playing fields, etc.) churches, libraries, pubs, Post Office, Police Station, community centres and halls...

Schools:-

2,500 children. Say 5 schools of 500 children each: two primary and three for the older age-groups. (More work for the builders - and jobs for teachers.)

Primary schools (1,000 children)
at one acre per 100 pupils ..... 10 acres.
Other schools (1,500 children)
at two acres per 100 pupils ..... 30 acres.

Total 40 acres for schools.

Shops:-

We need shops close to the new houses, and additional shops in the town centre.

In the town centre, say 6,000 sq. ft. for every additional 1,000 persons: i.e. 30,000 sq. ft. - That would be 30 small shops or a smaller number of larger ones.

In the new neighbourhood, at one shop per 150 people they needed 34 shops. They (and their access roads) would require about $1\frac{1}{2}$ acres.

Shoppers (even local ones) need to park their cars: another half an acre for 100 parking spaces.

Entertainment:-

A suggested 2,000 sq. ft. per 1,000 people would mean, in our example, 10,000 sq. ft. - For instance, a building 50ft. x 200ft. (a cinema/theatre? Or is it a Bingo Hall/amusement arcade?)

Recreation areas:-

At a recommended 6 acres per 1,000 people, they required 30 acres of parks, playing fields, etc. (This is in addition to the school playing fields which are generally not available to the public.)

Churches, libraries, pubs, halls...

It is said that 5,000 people drink 50 barrels of beer a week and need $1\frac{3}{4}$ acres for pubs. They also need at least one hall (for amateur operatics, the Wolf Cubs' Nativity Play and everything in between) a library, and probably more than one church. Say: a total of 3 acres.

So here is our new neighbourhood which suddenly sprang up in the mid 1970s:-

houses	83	acres
schools	40	
neighbourhood shops	$1\frac{1}{2}$	
parking for these shops	$\frac{1}{2}$	
entertainment	$\frac{1}{4}$	
sports and recreation	30	
churches, libraries, pubs, halls ...	3	
surgery, fire station, police etc. .	$\frac{3}{4}$	
	159	acres.

(And the number of dairy cows in the district is reduced by three whole herds as a result of all this development.

And there are all these additional roads and sewers and police and schools and teachers and fire engines and dustcarts and civil servants to maintain - but the District Council must now be receiving more than £500,000 per year in extra rates from this extensive new development.)

To get an idea of size, bear in mind that a $\frac{1}{2}$ mile x $\frac{1}{2}$ mile square is 160 acres. Some other useful plot sizes and measurements are given at the foot of the next page.)

But what is the effect of all this on the old town?

The old town:-

We have seen that the old town now has a fifteen-storey office block in its centre, and 30 new shops. We also note that 1,200 office workers have to be at that new block at nine o'clock each morning.

Suppose half of them have cars. 600 cars. At 20

TABLE OF APPROXIMATE MEASUREMENTS

fractions of an acre:-	*acres and other units*
50ft. x 43·5ft. = 1/20 acre	4,840 sq. yds. = 1 acre
100ft. x 43·5ft. = 1/10 acre	43,560 sq. ft. = 1 acre
50ft. x 87·2ft. = 1/10 acre	
100ft. x 109ft. = ¼ acre	2·47 acres = 1 hectare
200ft. x 200ft. = just under 1 acre	10 houses per acre = 25 houses per hectare

acres and miles	*acres roods and perches*
640 acres = 1 sq. mile	40 perches = 1 rood
160 acres = ½ mile x ½ mile	4 roods = 1 acre
259·1 hectares = 1 sq. mile	160 perches = 1 acre

football pitches

1 full-size football pitch 330ft. x 210ft. = 1·6 acres
3 ditto ..... = 2 hectares
5 ditto ..... = 8 acres
10 ditto ..... = 16 acres
100 ditto ..... = 160 acres (i.e. ½ mile x ½ mile)
400 ditto ..... = 1 sq. mile

other pitches

1 hockey (or junior football) pitch 300ft. x 180ft. ..... = 1·25 acres
4 ditto ..... = 5 acres
1 rugby pitch 420ft. x 225ft. ..... = 2·17 acres
1 bowling green 126ft. x 126ft. ..... = ⅓ acre
8 tennis courts ..... = 1 acre
1 cricket field 390ft. x 390ft. ..... = 3½ acres
parking for 217 cars at 200 sq. ft. each . = 1 acre

per minute (one every 3 seconds) these would take half an hour to go by. This may be the last straw which brings the town's rush-hour to a standstill. Road improvements are needed - possibly a new road from the new houses to the centre. That involves the expense of demolition and compensation. A road 30ft. wide and a mile long uses between 3 and 4 acres of land.

(Plans were prepared for this new road in 1978 but it has not yet been built. "Shortage of money," says the Council. Meanwhile those people whose properties will be demolished to make way for the new road - if it is ever built - have seen their property-values tumble, and today some of these properties are boarded up, derelict and unsaleable. It is called PLANNING BLIGHT. In certain circumstances, a landowner in this position can demand that the Council buy the property from him: so a lot of those boarded-up properties belong to the Council. In a couple of them there are squatters who seem to take a delight in holding all-night parties.)

And when those 600 cars succeed in their struggle to reach the office block by 9·00 a.m., where does one put them? Each car in a car park needs 200 sq. ft. if there is to be room for manœuvring without damage. That's an interesting figure. We have 1,200 people working in the block with 100 sq. ft. each, and 600 cars needing 200 sq. ft. each. *So we need a fifteen-storey car park the same size as the office block*, or alternatively about 3 acres of parking space on the ground.

Probably such parking just will not be available so the cars will be parked in the streets around the town centre. Yellow lines are then painted and so they park somewhere else, in front of people's windows in those streets of Victorian terraced houses that form the inner residential zone of the town. As a result the value of the old houses in those once-quiet streets goes down.

And all this happened because X built an office-block on his half-an-acre. Did he realise what he was doing to the town?

And one last comment:- A Planner reading this book might say, "These figures are from the 1970s: we use different figures now". Quite so. But the office-block and all the houses were built in the 1970s, and we are not going to demolish them or move them round in the 1980s just because the Planners have changed their figures. Good or bad, the development is there for keeps!

SUMMARY

In this chapter, we have seen just a bare outline of certain planning matters, including:-

structure plans	enforcement notices	National Parks
local plans	stop notices	listed buildings
green belts	conservation areas	SSSI, AONB etc.

and certain public health matters, including:-

unfit properties	improvement grants
overcrowding	offensive trades
houses in multiple occupation	Building Regulations.

We have also seen a hypothetical example of what effect the building of a single office-block can have on a town.

TEST QUESTIONS on Chapter 45:-

1. Define the following terms:-
   (a) enforcement notice
   (b) stop notice
   (c) structure plan
   (d) green belt
   (e) improvement grant
   (f) closing order
   (g) listed building
   (h) conservation area
   (i) clearance area
   (j) planning permission
   (k) planning blight
   (l) National Park
   (m) Building Regulations
   (n) Planning.

2. What is the purpose of the 1985 Building Regulations and how do they achieve their purpose?

3. "Planning is negative." To what extent is this true?

P.T.O.

4. (a) Joe has let a four-roomed house between ten students. Does this legally count as overcrowding? How many could be ordered to leave?

(b) Sam, one of the ones ordered to leave, claims to be a protected tenant under the 1977 Rent Act. Can he therefore stay there? *[See page 544.]*

5.

(a) Should a man be allowed to do as he likes on his own land, as long as he does not pollute the environment or commit the tort of Nuisance against neighbours? Give reasons for your answer.

(b) Is a man allowed to do as he likes on his own land, as long as he does not pollute the environment or commit the tort of Nuisance against neighbours? If not, give examples of restrictions imposed on him.

(c) State, giving reasons and examples, how far this is true:- "Question (a) above is a Planning Question, and is concerned with matters of policy and opinion on which conflicting views may validly be held: but question (b) is a Land Law Question, and is concerned with points of precedent and legislation on which only one correct answer can be given: and this is because of the differing natures of Land Law, Planning, and Planning Law."

6. John wants to build a factory to make soap on a piece of land in Bristol. Half the land is freehold and belongs to Tim and his wife Tina (who has left him) subject to a right of way across it for Derek and a covenant dated 1899 to keep the boundary wall in repair; the other half is 999 years leasehold and belonged to Henry until he died last week. None of the land is registered land. The owners are willing to sell it.

Advise John as to:-

(a) who he should buy it from,
(b) what the conveyancing procedure is,
(c) any special land law points to look out for,
(d) the planning requirements,
(e) the likely effect on the environment,
(f) what legal and other expenses may be involved,
(g) any other points.

CHAPTER 46

WATER

OUTLINE OF CHAPTER:-

Rights and duties with regard to water and watercourses

A: fresh water
B: sea water
C: the land under the water

A: FRESH WATER

A man who has a watercourse (e.g. a stream) flowing across his land has rights of taking water from it, though these are now limited by the 1963 Water Resources Act and its various amendments.

At common law he could take water for "ordinary purposes" (e.g. watering his cows) even if this completely exhausted the stream; and he could take water for "extraordinary purposes" (e.g. to cool machinery) provided it was returned to the stream substantially undiminished and unaltered in character. So using it to wash a steam railway-engine, with the water draining back (unpolluted) into the stream, could be permissible, but filling the boiler of the said steam engine was not - see *McCartney v. Londonderry and Lough Swilly Railway (1904)*.

By the 1963 Water Resources Act, however, the above rights of taking water are limited: no-one may take water (other than small amounts - not exceeding 1,000 gallons) without a licence from the Water Authority, except (i) for domestic purposes of the occupier's household, and (ii) for agricultural purposes - but not "spray irrigation".

Percolating water, i.e. water not in any definite channel, may be taken (subject to the restrictions in the Water Resources Act) even if this dries up somebody else's well or spring.

If the watercourse forms the boundary of the person's land, he and the other riparian owner (i.e. the owner of the land on the other bank) each have rights, and own the ground forming the bed of the watercourse, to a point halfway across the stream. If the stream flows *through* the owner's property (so he owns both banks) then he owns the whole bed and the riparian rights of all the course of the stream crossing his land.

The landowner does not own the water, but he owns the sole right to fish in it - which he can grant to someone else, by licence or as a profit à prendre.

We saw on page 610 that he has no right to pollute the water. 1974 Control of Pollution Act.

B: Sea Water

If the watercourse is tidal it belongs to the Crown (unless the Crown has granted it to one of the Crown's subjects) and the riparian owners have no rights over it, except ordinary public rights.

There is a public right to fish in the sea, except where a "free fishery" (see page 384) was granted to individuals in ancient times.

Of course, if you are steaming off in a trawler there are numerous other statutes applicable (1968 Sea Fisheries Act, etc.) and Common Market Quotas on what tonnage of fish can be caught.

C: The Land under the Water

The bed of a stream belongs to the owner of the adjacent land, as we saw above.

The beach or foreshore (between high-water mark and low-water mark) belongs to the Crown, but in some areas - particularly holiday resorts - it may be leased to the Local Authority. In such a case, the Local Authority (as both leaseholder and Planning Authority) would be in a strong position to control any proposals for the establishment of Piers, harbours, hovercraft-

terminals and such like, and the holding of public meetings on the beach, and even the licensing of the donkey-rides on the sands! Most seaside resorts also have local by-laws on these matters.

The Crown owns the sea-bed under territorial waters - up to 3 miles out from the shore.

Certain rights (as to fishing etc.) are claimed over the continental shelf, and there are treaties with Scandinavian countries to cover such matters as the siting of North Sea oil rigs. The Law of the Sea-Bed is a large subject outside the scope of this book.

P.S. There are numerous laws on freshwater fishing, outside the scope of this book. For instance, salmon and trout must not be taken without a Water Authority *[see page 436]* licence. There is a close season during which freshwater fish must not be caught: there are restrictions on catching salmon between 31st. August and the following 1st. May; trout must not be caught between 31st. August and the following 1st. March (unless there is a local by-law giving different dates) and all other freshwater fish must generally not be caught between 15th. March and 15th. June. 1975 Salmon and Freshwater Fisheries Act. Maximum fine £500.

Crabs less than 115mm. across, and lobsters with a shell of less than 80mm. must not be landed, by the 1967 Sea Fish (Conservation) Act and 1976 Immature Crabs and Lobsters Order (statutory instrument 1976 no. 305). And there are numerous other such rules.

SUMMARY

In this chapter we have seen:-
rights of riparian owner to take fresh water,
and to fish in it;
1963 Water Resources Act,
the public's rights of fishing in the sea,
ownership of the river bed, sea shore, and sea bed.

TEST QUESTIONS - see page 628.

CHAPTER 47

THE ENGLISHMAN'S HOME IS NOT HIS CASTLE

OUTLINE OF CHAPTER:- *a gathering-together of the main duties and restrictions imposed on the owner of land:*

A. Burdens
B. Benefits

A: BURDENS

Let us confront the man who says he can do what he likes with his own property, and see what the position really is:-

1. First, he owns "up to heaven and down to hell", but "up to heaven" is limited to his ordinary needs and is subject to the 1982 Civil Aviation Act as we saw on page 22, and as for "down to hell", the coal, gold, silver, oil and treasure trove are not his, as we noted on page 22.

2. Next, Planning. We saw in Chapter 45 that he cannot carry out development on his land without Planning Permission. If he does so, he can be ordered to knock it down - or the Planning Authority may even demolish it for him.

3. Covenants, as we saw in Chapter 34, present another restriction on what a man can do on his own land. They are imposed by private individuals, in contrast to Planning restrictions which are imposed by the state; but, like Planning restrictions, they are imposed to prevent what the imposer regards as undesirable use being made of that land. Planning legislation has not replaced covenants: they both have to be obeyed.

4. Rights *in alieno solo* are another obstacle to what a man may do on his own land. His neighbour's right of way and drainage rights (easements) and shooting rights (profits à prendre) over his land are matters with which his own use of the land must not interfere.

5. Statutory Undertakers. It is not only the near neighbours who may have pipes, wires etc. running through the property. As we saw in Chapter 33, the area Gas Board may enter private land on seven days notice (or without notice in an emergency) to repair, alter or replace an existing pipe, but where there is no pipe it seems that it cannot lay one in private property without the consent of the owners and occupiers thereof. The Electricity Board has slightly wider powers, as we saw on pages 434-5.

And there are various other statutory powers whereby statutory undertakers (persons empowered by any enactment to carry on railway, tramway, road, water, canal, inland navigation, dock, harbour, pier or lighthouse undertaking or the supply of gas, electricity, hydraulic power or water) can put gas pipes, water pipes, electricity cables, main sewers and the like across private property, without an easement and (in some cases) without the agreement of the owner.

6. A Public Right of Way crossing one's land cannot be stopped up nor diverted to a different route without observance of the statutory procedure, which involves advertisements of the landowner's proposals in the local press. If there are objections he is likely not to succeed in obtaining a stopping-up order, and a diversion order may be conditional on his providing a new path at his own expense.

7. By the 1936 Public Health Act, Water Authorities have a statutory right to construct Public Sewers through land - see page 437 for details - after giving the landowner and the occupier Notice of their intention to do so.

Sewers are just one aspect of Public Health legislation, which includes requirements as to hygiene and sanitation, the prevention and control of disease, movable dwellings, lodging houses, sewers and drains, statutory nuisances, offensive and dangerous trades etc. We glanced at various aspects of Public Health law in Chapter 45. Our man who says he can do as he likes with his own property may find that the Council places a Closing Order (see page 606) on it under these laws.

8. He may even lose his property altogether through a Compulsory Purchase Order.

9. It is probably unnecessary to remind the reader that the "landowner" does not own the actual land: he holds it from the Crown on freehold tenure, and what he *owns* is an estate. If his estate is less than fee simple absolute in possession for his own benefit, he is subject to restrictions: e.g. if he is a tenant for life the land is Settled Land, and although he can sell it, the trustees will receive the money. And if he is beneficially only a life tenant, he is restricted with regard to committing waste, removing fixtures and so on as we saw on pages 158-162.

10. Other Equitable rights besides those mentioned in 9. above may affect our landowner - e.g. the land may be charged with the payment of an annuity to some person. If this is not paid, that person has certain rights to protect his or her interests.

11. A rentcharge - see page 342 - may be payable on the property.

12. Much more expensive than the rentcharge, Rates will normally be payable on the property. (Rates are a payment which has to be made each April to the Local Authority. This is the Authority's main source of income, and provides finance for housing, education, roads, libraries, dustcarts, snowploughs, fire brigade, police, etc.)

For non-payment of rates (as also for non-payment of a rentcharge) there is a right to distrain upon goods which are on the property.

13. Let us not forget such matters as the water rates; and also drainage rates are payable in many low-lying areas.

14. And what about the Mortgage, without which the majority of owner-occupiers could not have bought their houses? We saw in Chapter 39 how the mortgagee has the powers of suing, selling the legal estate, etc., if the mortgage payments are not regularly paid. The mortgagee will also usually impose covenants as to

repair, and as to insurance (sometimes with a particular company) which the landowner may not like, but which he must observe.

15. The owner's wife may have rights: we saw on page 293 that on a divorce the Court has the power to order the property to be transferred to her, if it thinks it should do so. On page 312 we saw that a wife can register a Land Charge so that she cannot be put out of the matrimonial home. Indeed, if she has left, the Court can put her back in! - a circumstance which can make the property unsaleable (as in *Wroth v. Tyler* on page 313) if she will not co-operate. And in *Eves v. Eves* (page 307) we saw an example of the rights a mistress may have. Note also "ouster" orders and all the other things we saw in Chapter 23 with regard to the Matrimonial Home.

16. And where does the owner stand who has let his house to a tenant? Gone are the days when a landlord could tell a tenant to go merely because he had taken a dislike to him or could get a higher rent from someone else. We saw a little of the 1977 Rent Act and similar legislation, in Chapter 40.

17. The man who has entered into a contract to sell his property must remember that he cannot treat it (or ill-treat it) just as he likes, for in Equity it already belongs to the purchaser: the vendor holds it on trust for him. If the vendor tries to break his contract he can find himself liable for damages or may find the Equitable remedy of specific performance (see page 56) enforced against him.

18. So far in this chapter we have not mentioned Tort: but if the owner allows his property to deteriorate into such a state that his neighbour is afraid to go into her own garden, or the public is upset in its ordinary use of the highway (e.g. there is a risk of falling tiles) the landowner will be liable for the Tort of Nuisance.

If he deliberately throws the broken tiles into his neighbour's garden it is the Tort of Trespass, and if he is throwing the tiles into a heap in his own

garden and one of them skims over the fence and breaks the neighbour's window it is the Tort of Negligence.

19. If our friend uses his land for any non-natural purpose he will find that under the rule in *Rylands v. Fletcher (1868)* any person who for his own purposes brings onto his land and keeps there anything likely to do mischief if it escapes, must keep it in, at his peril; and if it escapes he is *prima facie [i.e. on the face of it]* liable for all damage which is the natural consequence of its escape. So he is responsible even if he was not in any way negligent. The rule amounts to this:- "If you bring it onto your land and it gets out, you pay." Things "escaping" in various cases have included gas, explosions, a flagpole, and rusty wire from a fence.

20. And obviously, he must not use his land for any criminal activity.

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In items 16-19 above, we have seen links joining Real Property Law to (item 16) Landlord and Tenant Law, (17) Conveyancing and the Law of Contract, and (18) the Law of Tort. We have also seen links with Planning Law (item 2), Revenue Law (12), the Law of Mortgages (14), Divorce Law (15), Public Health Law (7), etc.

So do not think of Real Property Law as a watertight subject: it is part of Land Law (which is Real Property Law plus Landlord and Tenant Law plus the Law of Conveyancing and Mortgages) which in turn is part of English Law as a whole. And what can be done legally must be considered with what can be done physically (which introduces science and technology, especially Building Technology - and Surveying of course) and what can be done financially (which brings in economics).

In short, all this forms part of what we may call the English way of life - and in these days even that is part of something larger.

B: Benefits

Social legislation (i.e. Public Health Law etc.) is

for the good of the public, but the landowner is a member of that public and the 1973 Land Compensation Act is a piece of social legislation for his benefit.

The Act provides compensation for:-

depreciation of an interest in land by physical factors *[noise, vibrations, smell, fumes, smoke and artificial lighting, and the discharge onto the land of any solid or liquid substance]*

caused by use of *[not building of]*

public works

[i.e. a highway or an aerodrome, or any other works on land which is not a highway or an aerodrome, provided or used in exercise of statutory powers].

So, if a motorway is to be built on land adjoining his, he may be unable to prevent its construction, and he may have no remedy against the noise made during construction *(though if it is really bad a payment may be available towards the expenses of moving away to temporary accommodation)* but when the motorway is open this Act gives him a claim for compensation because of the noise resulting from the use of the motorway. He also has certain rights to be shielded from loud traffic-noise by double glazing etc., at the Authority's expense. *(The Noise Insulation Regulations 1973.)*

Remedies for Planning Blight ("My house is unsaleable because they say a new road may go through it in four years time") are also in the 1973 Land Compensation Act.

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And what if our landowner (the one who said he could do as he liked with his own land) finds that his neighbour's cows have strayed in and are doing as they like on his land?

The owner of livestock must keep it on his land, and if it strays over someone else's land the livestock-owner is liable for damage caused, unless the escape was due to the plaintiff's own fault (e.g. a boundary-fence which was plaintiff's responsibility was in disrepair).

If cattle being lawfully driven along a road stray

onto land, the cattle-owner is not liable unless he was negligent: landowners must take their own precautions.

As to animals straying onto the highway, the normal law of Negligence applies. So if my dog runs into the road, causing an accident, if I was negligent I am liable.

The above points are under 1971 Animals Act, but separately, since 1959 Highways Act, it has been a criminal offence to let any horse, sheep, goat, pig or cattle stray onto the highway (except highways over unenclosed commons etc.).

SUMMARY

In this chapter we have tried to bring together various ways in which an owner may not be left alone to do as he likes on his own land.

TEST QUESTIONS on Chapters 46 and 47:-

1. Ab, an immigrant who knows nothing of English Law, has taken a lease of a fourth floor flat in a six storey block, and proposes to employ twelve people there in a business which makes metal buttons and badges by stamping them out of sheets of metal.

(a) List the laws which this enterprise is likely to be in breach of.

(b) Draft a letter explaining to Ab, as tactfully as possible, why he can't do it.

2. Explain what is meant by:-
(a) fishing rights by profit à prendre appurtenant,
(b) fishing rights by profit à prendre in gross,
(c) fishing rights by licence,
(d) public fishing rights,
(e) freshwater fisheries,
(f) sea fisheries,
(g) free fisheries.

3. What is the purpose of:-
(a) 1963 Water Resources Act,
(b) 1983 Derelict Land Act,
(c) 1983 National Heritage Act?

CHAPTER 48

LAND NATIONALISATION?

OUTLINE OF CHAPTER:-

A: Why should that man get rich?
B: 1947 - the Development Charge
C: 1967 - the Land Commission Act
D: 1975 - the Community Land Act
E: 1985 - still trying

A: WHY SHOULD THAT MAN GET RICH?

Old farmer Jim (Florrie Smith's cousin) has for many years been rearing cows on the farm he inherited from his father. The farm is on the outskirts of a town. One day a builder bought one of Jim's fields. As agricultural land the field at that time had a value of about £200, but as Planning Permission was granted for the erection of houses, its value as development land (which the builder paid Jim) was £2,000.

Today's prices are far higher but the point we are making is the same: a field worth a few thousand pounds as agricultural land is worth several thousand pounds *per plot* as building land, even if they are only little plots on which the builder is packing the houses in at a density of sixteen to the acre.

From time to time the builder comes back to Jim and buys another field. Today the builder is on Phase 8 of his development, and the children in the new houses laugh at old Jim as he still drives his cows down the lane, because the children do not realise that Jim is worth over a million pounds...

Some people would say to Jim, "Good luck to you". Others would ask why this man should have such wealth without having to work for it, and would suggest that his fortune should be taxed or even taken from him. Labour governments have made three attempts to see that unearned wealth of this nature shall go (at least in part) to the community as a whole rather than to an individual.

The first attempt was in 1947 and was abolished by the Conservative government in 1953. The second was by the 1967 Land Commision Act which the Conservatives abolished in 1970. The third attempt was by the 1975 Community Land Act. The Conservatives abolished it in 1980. In 1985 Tony Benn M.P. put forward a proposal for a fourth attempt, which he would like to see made law by a future Labour government.

There are three basic ways of stopping farmer Jim from making money in this way:-

1) tell him he can't build *(this is Planning)*
2) let him build but charge him *(taxation)*
3) take the land from him and let the community build *(nationalisation)*.

The first alternative is of no use here because we need the houses in this particular district. The second alternative was used (in two different ways) in the 1947 and 1967 legislation, and the third was the basis of the 1975 Community Land Act.

B: 1947 - THE DEVELOPMENT CHARGE

(nationalisation of the development-value of land)

By a provision in the 1947 Town and Country Planning Act, the price of land was fixed with reference to its "existing use" value. Take our friend Jim. In 1948 his land was agricultural. When Planning Permission was granted, a piece which had been worth £200 shot up in value overnight to £2,000. [That was more or less right in those days: but today scarcity of building land is such that land with an agricultural value of £200 could have a value of £20,000 as development land.] But after the 1947 Act, Jim was expected to sell this to the builder for £200.

The builder is not making £1,800 profit, for he has to pay £1,800 Development Charge to the Government.

Nor is Jim making £1,800 loss if he has followed the correct procedure within the Government's time-limit:- as long as he applied for compensation before 30th. June 1949 he was to receive at least part of this sum back from a government fund. But not everyone applied; and naturally if Jim had not thought of his farm as potential building land back in 1948, he would not have applied.

It was intended to pay "established" claims on this fund in 1953.

The provisions were not a great success: many men like Jim refused to sell land at such low figures. Sometimes land changed hands at as much as seven times the agricultural value, and the builder added this to the price of the houses.

In 1953 the Conservatives abolished the Development Charge for all development begun after 18th. November 1952, and suspended the distribution of the compensation fund - for now that Jim could again ask the builder to pay building-land value, there was nothing to compensate Jim for.

But if Jim had made an established claim which had not been paid, this was an *"unexpended balance of established development value" [or "UXB"]* - which is a particularly ghastly scheme, of which the name is the easiest part. And it is still with us today.

Basically, UXB is like this. Jim sold a piece of land to the builder in 1948 for £200 and made an established claim for £1,800 before 30th. June 1949 as we saw at the foot of page 630. And in 1951 he sold another piece for £200.

1953: system abolished: land values back as they had been. But what about Jim, who sold two fields at £200 each? - On the 1951 sale he gets no compensation: if he chose to sell while prices were at that level, that is his affair. On the 1948 sale he has an established claim for £1,800: he may get some or all of that back.

Meanwhile before 1952 the builder received Planning Permission to do rather less than what he wanted, and paid a Development Charge of (say) £1,100 on the 1948 field. *This* was eventually paid to Jim. So Jim got back £1,100 of his £1,800.

The other £700 (plus one seventh, in lieu of interest 1948-55, making a total of £800) is a UXB.

If the builder had got permission to do all he had wanted, he would have paid £1,800 which Jim would have received and there would be no UXB on the property. So because (i) Jim had an established claim by 1949, and

(ii) the builder before 1952 did not get all he wanted, there is a UXB. This attaches to the land: i.e. it passes to any new landowner.

So if the owner of that land *today* receives a Planning Refusal or only a Conditional Permission for what he wants to do on the land, he can apply for compensation from the UXB.

(Look at UXB this way: Jim's property wasn't really worth £2,000 to him, it was only worth £1,300 because the Planning Authority would only give limited permission. But Jim sold it for £200: so he receives £1,100.

But after 1952, when a man could allegedly sell at full price, the value of the land is reduced - so the price is not really a full price - by any refusal or condition imposed by the Planners. So, for that reduction, there can be compensation [the UXB] for the present owner.)

Land with UXB is rare (I'm pleased to say!) but apart from UXB there are (with minor exceptions) no provisions for payment of any compensation to a man whose planning application is met with a refusal, or a permission subject to conditions.

On the other hand, if Planning Permission is granted and then revoked, there *is* compensation.

Where UXB is paid, if Planning Permission is later granted it must in some cases be paid back.

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From 18th. November 1952 to 6th. April 1967, Jim could ask the builder to pay building-land price. It was during this period that Jim first became a rich man.

C: 1967 - THE LAND COMMISSION ACT

(taxation of the development-value of land)

The 1967 Land Commission Act was intended to limit the profits of such men as Jim. By this Act, Jim could still sell

his land to the builder at development-land value (say £20,000 by that time) but Jim then had to pay a tax, "betterment levy", at 40% on the difference between the sale figure and the value of the land without Planning Permission. (So if the value of the land without Planning Permission was £200, Jim was taxed 40% on £19,800, i.e. £7,920.) The intention was that in stages the rate of 40% would be raised - eventually to 100%.

If land was in an area ripe for development - i.e. the Planners saw it as land which ought to be developed - but the owner would not develop it or sell it, the Land Commission (a government body set up under the Act) could acquire it compulsorily and grant it to a developer on terms whereby the Land Commission retained the right to any development value which might attach to it thereafter. This was known as crownhold tenure: we saw it briefly on page 40.

In 1970, before the Land Commission had had time to acquire any appreciable amount of land, the newly-elected Conservative government fixed betterment levy at 0% [n.b. 0% of any price is always £0!] and abolished the Land Commission.

So from 1970 onwards, Jim could once again sell to the builder (as he can today) without fear of the tax-man - except that part of his profit would now be taken from him in Capital Gains Tax or (later) Development Gains Tax. (But at least there were no longer any plans for the tax-man to be able to take *all* of it.)

D: 1975 - THE COMMUNITY LAND ACT

(nationalisation of development land)

Both the 1947 and 1967 schemes were hampered by the many landowners who were determined to hold on to their land and await a change of government. Under the 1975 Act (if it had ever become fully effective, which it did not) they would not have been able to do so. It introduced something new: the nationalisation of development land.

The Act decreed that a "material interest" (i.e. the fee simple or a lease of at least seven years) in all development land would pass through ownership of Local Authorities (or in Wales a special body, the Welsh Land Authority) before the land is developed.

In other words, the intention was that, once the Act became fully functional, Jim would not be allowed to sell his land to the builder. Jim would sell the land to the District Council, which would sell it to a builder chosen by the Council.

(The Act also made provision for office buildings of over 5,000 sq. metres floor space to be taken over by the Secretary of State if they had been empty for two years, but this point is not further dealt with in this book.)

The objects of the Act were threefold:- (i) to see that the large profits from development land would go to the community and not to the individual (ii) to stop landowners from holding on to land which in the Planners' opinion ought to be developed (iii) to bring about "positive planning".

As to (i) above, Jim was to find that most (and in due course, all) of the £19,800 in our example on page 633 would go to the Local Authority as we shall see below. As to (ii), the intention was that Jim would not be able to do nothing and wait for a change of government: the land was to be taken from him.

And as to (iii), one difficulty in the past has been that Planning Control has been negative: the Planning Authority could refuse permission for bad development but could not tell a private developer, "Build so-and-so here". If the Local Authority owned all the development land, it would be in a more powerful position: if a builder refused to "build so-and-so here", he would not get the land - it would be granted to another builder who was willing to do what the Authority wanted.

How the scheme was to work is best described by reference to three "days" specified in the Act. There was a First Appointed Day, a Relevant Date and a Second Appointed Day.

The First Appointed Day was 6th. April 1976, when the Act came into effect. From that date, Local Authorities were required to "have regard to the desirability of bringing development land into public ownership..." - i.e. they had the power to acquire, and they were told it was desirable to do so, but no duty was placed on them to do so.

Development land was "land which, in the opinion of the Authority concerned, is land suitable for relevant development". It could be acquired by agreement or compulsorily.

There was one exception: namely building a single house

for the owner's own residence on land which was already his in 1974.

The Relevant Date. Up to this date an Authority may acquire; from this day on it must. The date could be different for different classes of development, and for different areas. But, as from that date, the Local Authority's power to acquire was to become a duty to acquire.

For instance, if the Secretary of State had made an order under this provision in respect of all residential development in a certain city, the Council would have been under a duty to acquire (by agreement or compulsorily) all land which was needed for all residential development (private as well as council development) in its area.

How would it know what land was needed? By referring to the Structure Plan and Local Plans (see page 605) in its own Planning Department.

It was intended that Councils should build up "Land Banks" of land for future needs looking five years ahead.

And after the Relevant Date there was to be no development on the land (and any Planning Permission already granted was suspended) until a material interest in the land had been acquired by the Authority.

So the developer would develop on land in which a material interest (freehold or at least seven years leasehold) belonged or had belonged to the Authority. In other words he would develop on land which the Authority had sold to him or leased to him at an agreed figure (and there was scope here for the Authority to inflate or depress local prices, knowing it had the monopoly of all development land) or he would develop under licence on Authority land (e.g. building Council houses or a Polytechnic) - or else he would not develop at all, because no other land could be available.

The Second Appointed Day. Up to the Second Appointed Day, all purchases of development land were to be at development value (i.e. the £20,000 in our example) though Jim was to find himself paying back 80% of this in tax (Development Land Tax) - which was to be raised in due course to 100%.

But after the Second Appointed Day (which was not to be until all development in Great Britain had been designated as being

included in the above "Relevant Date" provisions - so in fact it never happened) the basis of compensation was to change from development value to current use value. In other words, instead of the land being sold (voluntarily or compulsorily) by Jim at £20,000, after which he pays back 80% or 100% of £19,800 in tax, the land was to be acquired from Jim at £200. That was intended to be the permanent system under this Act.

After acquiring the land the Authority could employ a builder to develop it for the Authority, or could sell or lease it to the builder (and he could not get land anywhere else) to develop with whatever development the Authority has given permission for.

So, in our example, if Gerry wanted to buy Jim's land for building, he could not. Jim had to sell it to the Authority (even if he wanted to sell to Gerry, or even if he did not want to sell at all) for £200, and the Authority could grant it to Gerry or to some other developer, on agreed terms (which would include a price decided by the Authority - but basically something around £20,000 or perhaps more, or less, for the land in our example) to build what the Authority had decided upon.

The profit thus made was to go 30% to the Authority, 30% to a pool intended to help Authorities who have little development land in their areas, and 40% to the government.

So this would have given the Authority the finance to buy further land. But some authorities did not have the money to make the initial purchases to set the scheme rolling. It is said that in the first two years of the Act's operation, only about 2,300 acres were actually acquired by Local Authorities in England and Wales - but this is a better record than that of the 1967 Land Commission which is said to have acquired only seven acres in the first year of its existence!

If houses were built, they could then be sold by the builder (or by the Authority if it still owned the land) to private individuals. De-nationalisation once the land had been developed.

When the Conservatives came to power in 1980 they abolished the whole Act. Development Land Tax continued in a reduced form for a time, but this too has now been abolished, by the 1985 Finance Act.

So Jim is again free to sell his land to the builder at development-land value. Development Land Tax has gone (so has Development Gains Tax which was a

forerunner - 1974-76 - of Development Land Tax) but Capital Gains Tax, which has been with us since 1965, will apply. If a capital profit is made on the sale of *any* major asset (other than one's own residence or private car etc.) Capital Gains Tax on the profit applies at 30%.

And of course Capital Transfer Tax is payable once every generation, as we saw on page 287, whether the land is sold or not.

E: 1985 - Still Trying

In 1985 the Labour M.P. Mr. Tony Benn put forward a further proposal (which, as he knows, has no hope whatever of becoming law while the present Conservative government remains in office) for a form of land nationalisation. His idea is a scheme by which the freehold of all properties worth more than £250,000 would be taken by the government, and the owner would be granted a leasehold.

Space is left below for the reader to write a note of any such proposals that become law.

Student's Notes

SUMMARY

In this chapter we have seen:-

nationalisation of the development-value of land by the 1947 Town and Country Planning Act (provisions abolished in 1952)

taxation of the development-value of land at time of development, by 1967 Land Commission Act (provisions abolished in 1970)

nationalisation of development land by 1975 Community Land Act (provisions abolished in 1980)

possibility of future legislation with same aim in view.

TEST QUESTIONS on Chapter 48:-

1. (a) Compare and contrast the attempts made by the government of the day to obtain revenue from development land in (1) 1947 (2) 1967 (3) 1975.
   (b) Compare these with the method of obtaining revenue from land known as Capital Gains Tax.
   (c) What is Capital Transfer Tax?

2. If the 1975 Community Land Act were made law again today, which of the following do you think it would provide? (Give reasons!)

(a) more houses (b) cheaper houses
(c) better-designed houses (d) faster development
(e) more council houses (f) better planned cities
(g) more cash for government (h) more work for builders
(i) more popularity for govt. (j) more-efficient building
(k) more inner-city renewal (l) more profit for builder
(m) more power for planners (n) more job satisfaction
(o) more freedom of individual (p) more case-law
(q) higher national standard of living and/or quality of life (r) more protection of the environment
(s) more industrial growth (t) easier valuations
(u) more work for surveyors (v) more risk of corruption
(w) more work for estate agents (x) more jobs
(y) more work for solicitors (z) more city car parks.

3. Should all land be nationalised? Why? Or, why not?

CHAPTER 49

AND STILL MORE RULES

OUTLINE OF CHAPTER:- A selection of matters not covered in this book is listed here - because students cannot look them up elsewhere unless they know they exist!

Agricultural land (arable - e.g. cornfield - and pasture - grassland) is in five Grades

1. Top Grade (deep soil, well drained, no steep slopes)
2. Land with minor limitations
3. Land with moderate limitations
4. Land with severe limitations due to poor soil, hills or climate (or wet or stony) (mostly grassland)
5. Land of little agricultural value (mountain, bog etc.)

[graded in Ministry of Agriculture Survey 1967-74].

Allodial land is land not held from the Crown. There is none in England and Wales, but some in Scotland.

Cemeteries and Burial Grounds: there are numerous rules. There is provision in the 1971 Town and Country Planning Act for disused burial grounds to be built on: usually the consent of the Bishop is required (if the land is consecrated) and the bodies must be removed.

Chancery Division of the High Court. This Division, which deals with most Real Property Law cases (other than those in which the County Court has jurisdiction) sits in London, Manchester, Liverpool, Newcastle-on-Tyne, Leeds, Preston, Birmingham, Cardiff and Bristol.

Any litigant must remember that *he might lose*. The loser is normally ordered to pay both sides' costs. A High Court case in which the costs came to less than £5,000 would today be unusual.

Church lands. Land which goes with a Parish Church (e.g. a plot which the Vicar has a right to cultivate) is *glebe* land. There is an 1888 Glebe Lands Act.

Alteration of a Church building (including converting a redundant one to another use) normally requires a

"Faculty" from the ecclesiastical Consistory Court. There is a 1969 Redundant Churches and Other Religious Buildings Act, and over 200 other Acts on Church Law.

Nonconformist Church buildings are usually held in the names of trustees. The Methodist Church has a standard form of Conveyance deed for all its churches, and there are 1976 and earlier Methodist Church Acts.

Civil Aviation: there are powers to cut down trees and demolish buildings, in the 1982 Civil Aviation Act.

National Coal Board is liable under the 1946 Coal Industry Nationalisation Act for coal-mining subsidence - there is a procedure for claiming compensation.

Crown Lands. There are Crown Lands Acts 1623-1936, and various other relevant Acts.

British Rail land. By s.57 of 1949 British Transport Commission Act, no right of way by prescription can now be acquired over roads, footpaths, yards, car-parks etc. belonging to British Rail.

And so we could go on. There are Military Lands Acts (1892 onwards) - and Defence Acts (1842 onwards) which give powers of taking land and stopping up footpaths etc. There are National Trust Acts (1907 onwards). There are laws for mines and quarries, and for fencing abandoned ones. And laws for many other special situations concerning land.

Land cannot be stolen. (So squatting is not theft.) But fixtures which can be unfixed can be stolen - as some of my students found out when they took all the signs from a ladies' toilet as "souvenirs" after winning a football match! (Fined £40 each under s.4 of the 1968 Theft Act.)

And that seems a suitable point at which to end this chapter.

For TEST QUESTION see page 642.

Section F (Chapter 50)

To wrap up the subject:-

CHAPTER 50

CONCLUSION

OUTLINE OF CHAPTER:- Summing up what rights Fred Smith really has over "Magpie Cottage"; and summing up generally.

This book began with Fred Smith saying, "We own our house". We have now seen that it is held from the Crown on freehold tenure: what he and his wife Florrie actually own is a legal estate (fee simple absolute in possession) as legal joint tenants on trust for sale, and as Equitable joint tenants.

Their estate includes a couple of legal rights of way and a right of drainage. (Easements.) The adjoining garden which they bought from David is subject to an easement (the footpath) and also to a restrictive covenant not to do anything thereon which may be a nuisance or annoyance to David's property.

The property is registered at the Land Registry; but if it had been unregistered land, David would have registered this covenant against Fred and Florrie in the Land Charges Registry.

The garage is or has been subject to a tenancy for Shylock. There is a £5 yearly rentcharge payable to Gigi. There is a Tree Preservation Order, and a Conditional Planning Permission for building a large extension at the side of the house. The property is mortgaged to the Lesser Troutville Building Society. There are also various other rights and duties, to do with water and other matters.

THIS is the bundle of rights and duties that Fred and Florrie own: this is what Fred is referring to (though he does not know it!) when he says, "We own our house".

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It will never be possible for a man to buy a house the way he buys a kettle. There are several reasons for this:-

(1) Land is fixed: the buyer of a kettle can take it away or stick a name-tag on it, but the buyer of land needs some means (registration, or a deed or *something*) to show that it is his.

(2) A kettle is *owned*: with land only an estate is owned.

(3) Land, unlike the kettle, can be held for life or for some other limited period.

(4) Land can be subject to rights *in alieno solo* and covenants, and Planning and all sorts of other things.

So there are various complications applying to land which do not apply to chattels such as the kettle.

But Real Property Law does not *have* to be as complicated as it is: in some respects there is scope for simplification.

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This book ends with the words with which it began:- "This book is intended as a stepping-stone". Now you have enough basic knowledge to begin a *real* study of Real Property Law!

TEST QUESTIONS on Chapters 49 and 50:-

1. A victorian Parish Church, unsafe through mining subsidence, has now closed: and the congregation has moved to another building. The site is for sale and a firm which wants to buy it would like to demolish the unsafe part of the building, and build a new extension at the side - where there are a number of gravestones, the most recent of which is dated 1899. Advise the Parochial Church Council on what points may arise. - A scrap-metal dealer has just been caught removing lead from the roof. Advise the Parochial Church Council.

2. In what ways could Real Property Law be simplified and/or improved?

THE END.

ALPHABETICAL TABLE OF CASES

Note:-
For explanation of abbreviations used in this Table, see page 649.

Alphabetical Table of Cases

Alphabetical Table of Cases

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List of Abbreviations

AC	Law Reports: Appeal Cases (House of Lords and Privy Council cases only: other Appeals are included under QB, Ch and F below)
QB (or KB)	Law Reports: Queen's (or King's) Bench Division
Ch	Law Reports: Chancery Division
F	Law Reports: Family Division
All ER	All England Law Reports
EGD	Estates Gazette Digest
ER	English Reports (reports of pre-1865 cases, collected into 176 volumes)
M&B	Maudsley and Burn's "Land Law Cases and Materials", 1981 edition
P&CR	Property and Compensation Reports
WLR	Weekly Law Reports

For other abbreviations, see 1 Halsbury's Statutes page [17].

Alphabetical Table of Statutes

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ALPHABETICAL TABLE OF STATUTORY INSTRUMENTS ETC.

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the Author

After being educated at Taunton School, and at Bristol University where he was awarded the degree of LL.B. with honours, John Greed was admitted as a Solicitor in 1963. After working in private practice in Somerset, Wilts and Birmingham, and in the legal department of the Bristol & West Building Society, he became a law lecturer in the School of Surveying (now Department of Surveying) at Bristol Polytechnic in 1970 and senior lecturer in 1976.

As well as lecturing in the Surveying Department he teaches in the Department of Construction and Environmental Health, and assisted as a tutor in the Department of Law for two years. He is also a Returning Officer for the Polytechnic Students' Union elections.

He lives at Portishead, near Bristol, with his wife Clara who is a senior lecturer in town planning in the Surveying Department at Bristol Polytechnic.

He is also the author of "Glastonbury Tales" (on the legends of Glastonbury) and "The Next Twenty Years" (an attempt to look at prophecies and forecasts for the rest of this century from a born-again Christian point of view) and is at present preparing notes on his family history.

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note for page 549: Agricultural Holdings Bill, to amend and consolidate law on agricultural holdings, received its Second Reading in House of Lords on 17 December 1985.

LAND REGISTRATION: more compulsory areas. After 1 Nov. 1986 there will be no counties without any compulsory registration areas in them, and the following counties will be entirely compulsory registration areas:-

Avon	Gwent	Oxfordshire
Bedfordshire	Hertfordshire	South Glamorgan
Berkshire	Humberside	South Yorkshire
Buckinghamshire	Isle of Wight	Surrey
Cheshire	Kent	Tyne and Wear
Cleveland	Leicestershire	Warwickshire
East Sussex	Merseyside	West Glamorgan
Gloucestershire	Mid Glamorgan	West Midlands
Greater London	Northamptonshire	West Sussex
Greater Manchester	Nottinghamshire	West Yorkshire.

Dec. 1985: two more "Boland" cases in Court of Appeal:-

Winkworth v. Edward Baron Development Co. Ltd.: House registered in name of a company controlled by H and W, who paid £8,600 from sale of their previous house (which had been in joint names) into company bank account. H fraudulently without W's knowledge mortgaged the house to Baron Ltd., who later wanted to sell as mortgagee. Held: the £8,600 gave W an overriding Equitable interest under s.70 LRA as in "Boland", so Baron could not sell.

City of London Building Society v. Flegg: Home in joint names of H and W, but W's parents who lived with them had contributed. Mortgage fell into arrears. Parents had overriding interest as in "Boland", but could this be overreached under the trust-for-sale rules if H and W sold as trustees? Held: it could not be overreached.

December 1985: Law Commission proposed creation of (i) new type of trust, with power (not duty) to sell, to replace both settled land and trust for sale; or alternatively (ii) new form of co-ownership without a trust.

note for page 547: Leasehold Reform Bill, to add further provisions to 1967 Leasehold Reform Act and to phase out specified long residential leaseholds, received its First Reading in House of Commons on 14 January 1986.