

Chapter 1: Registered Titles

Nature and Purpose of the System of Registered Land

- 1) To reduce the expense and effort of purchasing land by eliminating the lengthy and formalistic process of investigating 'root of title'
- 2) Reduce dangers facing a purchaser who is buying land from a person whose title is unsafe
- 3) Ensure that a purchaser of land knows about the rights and interests of other persons over that land, ensuring that price paid reflects its true economic and social value
- 4) Enable purchaser to buy land completely free of certain types of interests over that land
- 5) Provide a mechanism whereby third-party rights can be protected

3 Concepts

——> **Mirror Principle** (Title by registration)

——> **Curtain Principle** (Equitable interest not registered)

——> **Indemnity Principle**

1) **Mirror Principle**

The idea that register should reflect totality of the rights and interests concerning a title of registered land. If register reflects the full character of the land, any purchaser or third party can rest assured that they are fully protected. Mirror principle does not operate fully due to the existence of "unregistered interests that override" under **Sch 1** and **3 LRA 2002**. Moreover, not everything can be expected to be entered on a register.

2) **Curtain Principle**

The idea that certain equitable interests in land should be hidden behind the curtain of a special type of trust. Where dealing with land is subjected to a trust, purchaser need be concerned only with legal title to the land, which is held by trustees and reflected on title register. He need not look behind the curtain of trust or worry about any equitable rights of ownership. Reason is that such equitable rights will be overreached if proper formalities of purchase are observed. Interests of equitable owners are not completely destroyed as the process of overreaching operates to transfer rights of equitable owner from land to money that purchaser has just paid for it. Therefore, trustees hold the purchase money for the equitable owners.

Class C (iv) Land Charge

s2(4)(iv) LCA 1972: Estate Contracts (includes a contract for the transfer of the legal estate, options to purchase and contract for a right of pre-emption)

Class D (i) Land Charge

s2(5)(i) LCA 1972: Inland Revenue Charge

Class D (ii) Land Charge

s2(5)(ii) LCA 1972: Restrictive Covenants (only those entered on or after 1st January 1926. Restrictive covenants entered before this date are governed by the doctrine of notice)

Class D (iii) Land Charge

s2(5)(iii) LCA 1972: Equitable Easements (only those entered on or after 1st January 1926)

Class E Land Charge

s2(6) LCA 1972: Annuities created prior to Jan 1st 1926 and not registered in the register of annuities

Class F Land Charge

s2(7) LCA 1972: Right of occupation under Part IV Family Law Act 1996

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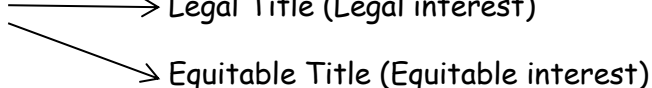
Right of Survivorship (ius accrescendi)

If a joint tenant dies during existence of joint tenancy, his interest will automatically accrue to the remaining joint tenants

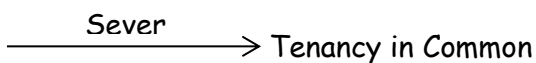
Co-owners Are Entitled to Whole of Co-owned Land

Do not own shares in land. In the eyes of the law, there is only one formal title and this title is jointly owned by all joint tenants

Severance

A property has both a  Legal Title (Legal interest)
Equitable Title (Equitable interest)

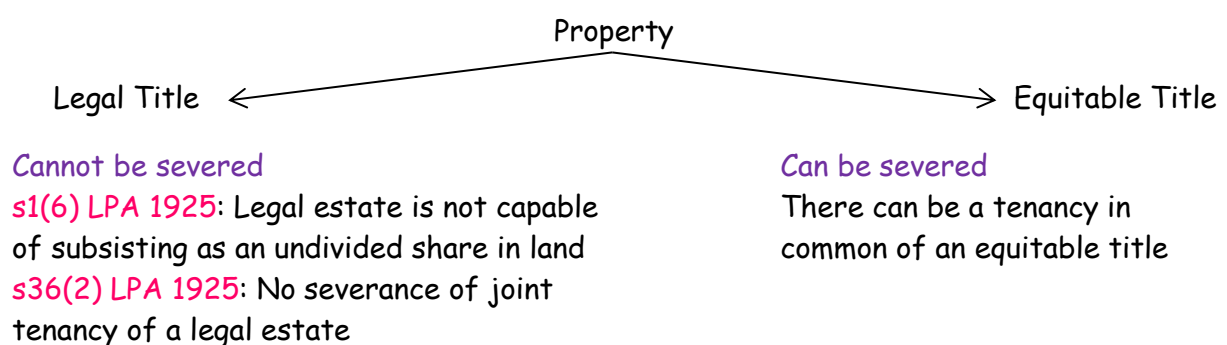
*Severance can only occur at equity. Joint tenancy of a legal estate can no longer be severed

Joint Tenancy  Tenancy in Common

Tenancy in Common

- a) Not necessary for '4 unities' to be present (Only unity of possession must be present)
- b) No right to survivorship
- c) Notional shares in property (Tenant in common entitled to notional shares that are undivided until property is sold or partitioned)
- d) Severance is not possible

Severance of Joint Tenancy



s34(2) LPA 1925: No more than 4 people can hold/own legal title

*If there are more than 5 people, 4 of them will be holding equitable title as trustees for the 5th on top of their own legal title

Dean v Stout (2005)

Lawrence Collins J outlined what is exceptional circumstances:

- 1) Presence of the circumstances does not debar the court from making an order for sale
- 2) Circumstances can relate to personal circumstances of one of the owners (e.g. Medical/Mental condition)
- 3) Circumstances must be truly exceptional

Equitable Rights in Land

Equitable rights in land stem from trust imposed by law when the circumstances of the case require so after a failure of formalities. Trust allows a property to be split into legal and equitable titles. Trustee will hold legal title of the property on behalf of beneficiaries

Express Creation of Trust

Settlor expressly declares a trust. s53(1) LPA 1925: Express declaration must be manifested and proved by some writing as purely oral declaration alone is not enough

Implied Creation of Trust

Resulting Trust

Law will consider facts of the case and then conclude if there is a resulting trust that can be presumed. Interest in property results back to for example, the person who bought the property. Providing direct contribution to purchase price of house

Burns v Burns (1987)

Cohabitors for 19 years, woman took man's name and she went beyond taking on usual household duties but made no direct financial contribution to the house. Woman brought up their two children and contributed to household bills

Wife did not have beneficial interest in the property since she did not contribute to the purchase price

Curley v Parkes (2004)

Couple cohabited for a few years. Parkes bought the house and Curley contributed nothing to the purchase price. Parkes bought a new property with a mortgage in her sole name and Curley made payments into Parkes' account

Purchase price resulting trust will take effect only at the time when property is purchased. The payments were made by Curley after the property was purchased, hence taken not intended to have legal consequences and Curley had not directly contributed to purchase price

Midland Bank v Cooke (1995)

Matrimonial home was in the sole name of Mr Cooke. Purchase price was funded by a mortgage of £6,450 taken in the name of Mr Cooke, £1,000 as wedding gift from Mr Cooke's parents and the remainder provided out of Mr Cooke's savings. Mrs Cooke did not contribute to purchase price nor mortgage payments but she did discharge household bills. She made improvements and decorated the house. Mr Cooke re-mortgaged the house to secure his business debts and bank asked Mrs Cooke to sign a consent form postponing interest she held to the bank. Mr Cooke failed to keep up with payments and bank sought possession of the property. Mrs Cooke claimed to be entitled to beneficial interest in property and claimed to have signed the consent form under undue influence

Mrs Cooke was entitled to 50% of the beneficial interest

Constructive Trust

Lloyds Bank v Rosset (1989)

Mr Rosset is the sole registered proprietor and only financial contributor to a shared estate, secured a loan against that estate. Mrs Rosset carried out significant work, including decorating on the property. Mr Rosset defaulted on payments and bank sought repossession of the property

Bank's claim was successful. Mrs Rosset's work was not substantial enough to provide her with equitable interest in the house

Lord Bridge: 1) Common intention between parties

2) Detrimental reliance by the claimant

3) Unconscionable to deny claimant of his right

1) Common Intention

a) Express discussions

Arrangement/agreement/understanding that claimant will obtain share in property

Eves v Eves (1975)

Claimant formed relationship with defendant who was married but separated from his wife. Claimant fell pregnant and took on defendant's name. They intended to marry when defendant's divorce came through. They purchased a house in defendant's name alone. He told her she was too young to have her name in the legal title and had she been old enough the house would have been in both their names. Purchase price was contributed by him and a mortgage. Claimant carried out redecoration and renovation works on the property. When divorce came through, they agreed to marry but didn't. He left claimant for another woman

Claimant entitled to one quarter of beneficial interest under a constructive trust

AG Securities v Vaughan (1990)

AG licensed each of 4 rooms in the property to separate individuals under separate agreements

Four unities necessary for a joint tenancy as not satisfied, it was therefore a license

Crancour v De Silva

Agreement described occupation as licenses. Mr Silva retained absolute right to enter at any time to provide cleaning services. Occupants argued agreement was a tenancy

Agreement was license not lease

Facchini v Bryson (1952)

Employer entered into agreement with his assistant which allowed assistant to occupy a house in return for weekly rent. Terms conferred exclusive possession and assistant did not occupy the house for better performance of his duty and was not therefore a service occupancy. Agreement stated it was not a tenancy

Agreement created a lease rather than a license

Aslan v Murphy (1990)

Agreement stated that licensor was unwilling to grant licensee exclusive possession of any part of the room and licensor may permit others to use the room. Licensor was to provide cleaning services. However, in practice no others were permitted to enter the room and no services were actually provided

Held to be a sham license designed to avoid landlord and tenant legislation

Marchant v Wagon Ltd v Smith (1952)

Owner allowed a deceased tenant's daughter to remain in occupation of house. They refused to grant the daughter a lease as they wanted the house for an employee.

Daughter paid a fee in return for the occupation and claimed to have a lease as she had exclusive possession

There was no lease. The arrangement was the fruit of an act of kindness

Norris v Checksfield (1991)

Norris employed Checksfield as a mechanic. He offered him accommodation and extended his employment to coach driver. Occupation of the accommodation allows him to be readily available to drive the coach

Checksfield occupied the accommodation under a service occupation and not a tenancy

Marchant v Charter (1977)

A bedsitting room was occupied on terms that landlord cleans the rooms daily

Occupier was a licensee and not a tenant

s18 LTCA 1995: No distinction made between legal and equitable leases and, legal and equitable assignments

Original Parties

s5 LTCA 1995: Releases a tenant from the covenants after they have assigned

s6 LTCA 1995: Upon assignment, landlord may apply to be released from landlord covenants of tenancy in accordance with s8

s8(1) LTCA 1995: Landlord must serve a notice to tenant informing him of

(a): Proposed assignment or assignment that has taken place AND

(b): Request for covenant to be released to that extent

*General scheme is that tenant is released from the covenants when they assign their lease, except where landlord extracts an 'authorized guarantee agreement'

Authorized Guarantee Agreements

Where landlord's consent is required to an assignment, landlord will try to make tenant sign this agreement by which tenant acts as guarantee for the person to whom tenant assigns. This is because the release of the original tenant from liability on assignment deprives landlord of an effective remedy if tenant currently in possession defaults on the lease

s16 LTCA 1995: Where on assignment a tenant is released from a tenant covenant, nothing in this Act shall preclude him from entering into an authorized guarantee agreement with respect to the performance of that covenant by the assignee

s25(1)(a) LTCA 1995: Any clause in a lease seeking to exclude, modify or frustrate the operation of the Act is invalidated

Assignee of Lease and Reversion

s3 LTCA 1995: Benefits and burdens of all tenant and landlord covenants of a tenancy will automatically pass with an assignment of either the reversion or the lease (No need for covenant to touch and concern land, unless it is personal in nature)

s3(6) LTCA 1995: Automatic transfer does not apply to personal covenants

*Assignee has no rights or liability in relation to pre-assignment breaches

Grigsby v Melville (1974)

Claimant owned semi-detached house. House originally had been part of a larger detached house with single ownership which had been divided in two. Claimant purchased half the property and defendant purchased the other half. Entrance to cellar in the house was on defendant's property and cellar ran under claimant's property. Defendant had been using the cellar and now claimant sought injunction to prevent him from using it

Cellar belonged to the claimant

Copeland v Greenhalf (1952)

Copeland owned an orchard and adjoining house. Access to orchard from road was via a strip of land. Copeland brought action against neighbour who owned property against the road and parked on the strip of land. Greenhalf claimed he had easement to park his car over the strip

The right claimed was not capable of being an easement as it would effectively deprive the servient owner of the area of land

London & Blenheim Estates v Ladbroke Retail Parks (1994)

London & Blenheim Estates were owners of land over which the local co-op store had an easement for car parking. Easement provided for additional rights of car parking if servient owner acquired more adjoining land. Co-op sold their dominant land to Ladbroke, who claimed additional parking rights once London & Blenheim Estates acquired more land

Ladbroke was not entitled to more parking rights as such a claim would undermine the certainty of easement, potentially depriving the servient landowner of reasonable use of unidentified land in the future

Batchelor v Marlow (2001)

Batchelor owned a car parking area, which was the servient land to an easement granting Marlow the right to park up to 6 cars on the land between certain hours on weekdays

It is irrelevant what other land the servient owner owns, exclusive possession is to be judged on the area of land subject to the easement only. Given that claimant's land could not be used during important periods, Batchelor was deprived of any reasonable use of land. Easement was not enforceable

Chapter 9: Mortgages

Position of Mortgagor

1) Equity of Redemption

Mortgagor's interest in the land (e.g. value of land after debt attached to it has been paid), gives mortgagor right to redeem the mortgage

Part of a set of wider rights that a mortgagor has (collectively known as 'equity of redemption')

Preventing the Removal of Right to Redeem

a. Rule Against Irredeemability

General Rule: Mortgage cannot be made irredeemable (Impossible for a mortgage to be constructed in a way that it is legally impossible to pay back the loan)

Re Wells (1933)

Right to redeem cannot be limited to certain people or certain periods of time

b. Postponing Right to Redeem

Provision postponing date of redemption may be valid where mortgage was negotiated between commercial parties at arm's length

Knightsbridge Estates Trust Ltd v Byrne (1940)

Contractual date for redemption set 40 years in future

Postponement term was enforceable since parties were commercial and of equal bargaining power

c. Mortgagee and Attempts to Purchase the Mortgaged Property

If there is an attempt to place restriction on mortgagor's right to redeem the property free from the mortgage (e.g. option to purchase, provision that property is to become the mortgagee's), it is viewed as an attempt to alter the fundamental nature of the mortgage. Such a provision will be void

Jones v Morgan (2001)

Nursing home threatened with repossession but an agreement reached to prevent this and give lender the right to buy a half share in the mortgaged land

Such term is repugnant to the very nature of the mortgage, offensive to both legal and equitable right to redeem and will be void both at law and at equity