

Answers to end of chapter Q&A

Question 1: What were the aims of the Land Registration Act 2002?

The specific aims of the 2002 Act are discussed on pp 528-530. It is useful to see these specific aims within the wider context of registration systems as a whole, as discussed on pp 523-528. In particular, the 2002 Act aims to further the chief goal of a land registration system: to protect C, a third party acquiring a right in land, from the risk of being bound by a pre-existing but hidden property right of B. To meet that goal, the 2002 Act has, as its 'fundamental objective', the desire to establish a register that is a 'complete and accurate reflection of the state of the title of the land at any given time' (see the extract from Law Commission Report No 271, set out on pp 528-529). In turn, that fundamental objective leads to more specific aims, such as the reduction of the list of overriding interests. A particularly important tactic of the 2002 Act, in its drive for a 'complete and accurate' register, is the use of electronic conveyancing.

Question 2: Following the enactment of the 2002 Act, is it true to say that the register is now 'complete and accurate'? If not, will it be so once e-conveyancing rules have been introduced?

As noted in the answer to Question 1 above, the 2002 Act aims to establish a 'complete and accurate' register: such a register would record all pre-existing property rights that exist in relation to land. It should be noted that, at the start of the extract set out on pp 528-529, the Law Commission states that such a complete and accurate register will exist 'under the system of electronic dealing with land' that the 2002 Act seeks to create. It is certainly the case that the 2002 Act itself, coming into effect before the full adoption of e-conveyancing, has not created a complete and accurate register. For example, it is noted on pp 532-534 that it is still possible, in certain cases, for B to acquire a legal estate or interest in registered land without having registered that right. In such a case, as noted on pp 534-535, B's right will almost always count as an overriding interest and so be capable of binding C, even if C later acquires for value, and registers, a legal property right in the registered land. Further, as discussed on p 534, registration is never necessary for the acquisition of an equitable interest in registered land. Moreover, an equitable interest in land, even if not protected by the entry of a notice on the register, will count as an overriding interest (and so be immune to the lack of registration defence) if its holder is in actual occupation of the registered land at the relevant time: see p 535. Although the 2002 Act came into force in October 2003, the e-conveyancing system is still not fully operational. Even when such a system does exist, the register will not be complete and accurate. As discussed on pp 535-537, there are certain to be cases in which B will be able to acquire a legal estate or interest in land, or an equitable interest in land, despite failing to register that right. Moreover, as discussed on pp 537-544, even under an e-conveyancing system, the possibility of rectification and the continued existence of overriding interests will demonstrate that a register can never be complete and accurate.

Question 3: Do you agree with the Law Commission that overriding interests are an inherently 'unsatisfactory' aspect of a registration system?

In the extract from Law Commission Report No 271, set out on p 542, overriding interests are described as an 'unsatisfactory feature of the system of registered conveyancing'. The problem, according to the Law Commission, is that such rights 'bind any person who acquires any interest in registered land'. Of course, that is not quite right: if a pre-existing property right is an overriding interest, that does not mean that it will bind all third parties: it simply means that a third party will not be able to use the lack of registration defence against the pre-existing property right (see Chapter 6, section 3.3). The Law Commission's concern is therefore that overriding interests are immune to the lack of registration defence.

Certainly, from the point of view of C, a third party acquiring a right in registered land, it will be frustrating if B has a pre-existing property right which, despite its lack of registration, can still bind C. In that way, the existence of overriding interests may be unsatisfactory to C. In particular, as noted by Dixon in the extract set out on pp 544-545, the courts' willingness to recognise that B has informally acquired an equitable interest, for example by means of proprietary estoppel or a constructive trust, may cause problems to C where B is in actual occupation of the registered land.

However, it can be argued that we need to take a more general view when considering the appropriateness of overriding interests: we cannot take only C's views into account. It may be argued, contrary to the Law Commission's view, that overriding interests are necessary precisely because there may be situations in which, despite B's failure to register a pre-existing property right, B deserves protection; or in which, despite the fact that B's right is not recorded on the register, C does not deserve to be free from that right. That argument is made in the extract from McFarlane set out on pp 545-546.

Question 4: What impact will the full scale introduction of e-conveyancing have on land law?

The possible effect of e-conveyancing on the content, acquisition and defences questions is considered on pp 535-537. Of course, we cannot yet know precisely what rules may be introduced if a full scale e-conveyancing system is implemented. Nonetheless, the chief change is likely to be the elimination of the 'registration gap' (see Chapter 9, section 6): if a disposition is caught by rules introduced under section 93(2) of the 2002 Act, that disposition will have no effect unless and until it has been electronically registered. The possible impact of this change is considered in Chapter 9, on pp 313-315, as well as on pp 535-537.

Perhaps the most important feature of any rules introduced under section 93(2) is that they will apply not only to a particular disposition (e.g. to a transfer of a registered freehold) but also to any *contract* to make such a disposition. For example, as we saw in Chapter 12, if A makes a contract to transfer his or her freehold to B, that contract, by itself, can give B an equitable interest in A's land. Even if B fails to protect that right by entering a notice on the register, it may still be an overriding interest if B goes into

occupation of A's land. However, if a rule were introduced under section 93(2), B's failure to register his *contract* with A would ensure that the contract has no effect: as a result, B cannot rely on the principle discussed in Chapter 12 to acquire an equitable property right. Instead, to acquire such a right, B will have to try to rely on a different principle, such as proprietary estoppel. This is why, as seen in the extract on p 314, Dixon has suggested the introduction of rules under section 93(2) may lead to an 'estoppel boom'.

Question 5: Does the success or failure of the 2002 Act lie in the hands of the judges who will interpret it?

This question is raised by the Court of Appeal's decision in *Malory Enterprises Ltd v Cheshire Homes (UK) Ltd*, discussed on pp 538-542. That decision concerned the interpretation of the Land Registration Act 1925, but it provides a useful example of the importance of the judicial response to a registration statute. In that case, the Court of Appeal had a choice as to the interpretation of section 69 of the 1925 Act. On one view, that section had the role now played by section 58 of the 2002 Act: it ensured that if A were registered as holding a legal estate, then the register was conclusive and no other party should be regarded as having a claim to the benefit of that land. According to Harpum's view, set out in the extracts on pp 540-542, that was the correct view to take of section 69 of the 1925 Act.

However, the Court of Appeal adopted a different interpretation of section 69 of the 1925 Act. It was held that the section dealt only with the location of the *legal* estate; and that A's holding of the legal estate did not prevent B's having an equitable interest in the land, arising under a trust. In *Malory Enterprises*, B's right counted as an overriding interest, as B was in actual occupation of the land. In this way, the Court of Appeal chose an interpretation which limited the effect of section 69, and impeded the conclusiveness of the register. The decision therefore provides a good example of the fact that, even if a statutory provision may seem to favour protection of a registered party, the judicial interpretation of that section may instead give some weight to the interests of unregistered parties (see too the answer to Question 6 below). This may have an important effect in determining the effect of the 2002 Act.

Question 6: Is it possible or desirable for the principles of a land registration system to be wholly separate from the general principles of land law?

This is clearly a very general question, which demands reflection on both the detail of the 2002 Act, as discussed in Chapter 16, and the general aims of the Act, as discussed in Chapter 17. One way to focus the question is to consider a case such as *Malory Enterprises Ltd v Cheshire Homes (UK) Ltd*, discussed on pp 538-542. As discussed in the answer to Question 5 above, the Court of Appeal there had a choice to make when interpreting section 69 of the Land Registration Act 1925. On the one hand, as argued by Harpum in the extracts on pp 540-542, the Act could be seen as establishing a wholly new set of principles so that, even if A acted fraudulently in order to become registered as a freehold owner of land, A should hold that right free from any adverse claims of the former, 'true' owner of the land. On the other hand, as accepted by the Court of Appeal in

its interpretation of section 69, general principles of land law, favouring the pre-existing property right of the former owner, should be used to limit the effect of the registration provisions.

The tension between these two views is evident in a number of cases, and the courts are not always consistent in their decisions. For example, when examining *Midland Bank Trust Co Ltd v Green* in Chapter 6, section 3.1, we saw that the House of Lords allowed Evelyne Green to rely on the lack of registration defence provided by the Land Charges Act 1925, even though, when acquiring her freehold, she had full knowledge of Geoffrey's pre-existing equitable interest. Such a result clearly varies from the standard rules of property law. In contrast, in *Peffer v Rigg* (discussed on pp 515-516), Graham J gave a somewhat strained interpretation of section 59 of the Land Registration Act 1925 to hold that, where C knew of B's pre-existing equitable interest, C should not be able to use the lack of registration defence against that right.