

## Chapter 9: Formal Methods of Acquisition: Contracts, Deeds, and Registration

**These updates are consecutive to the previous updates and cover the period from the posting of the previous updates to 31 August 2010.**

In Chapter 9 part 3.7 we consider whether proprietary estoppel can be invoked by a claimant where a contract has failed for non-compliance with section 2 of the Law of Property (Miscellaneous Provisions) Act 1989. We end with Martin Dixon's suggestion that estoppel should be available in cases in which there is a "double assurance" of rights without compliance with formalities. Dixon has expanded on his argument in **Martin Dixon "Confining and Defining Proprietary Estoppel: The Role of Unconscionability" (2010) 30 Legal Studies 408**. He argues that the constructive trust solution adopted by the courts (explained in part 3.7) does not stand up to scrutiny and is not necessary. Instead, in his view, "all cases of proprietary estoppel share the same rationale ... built around a relatively clear meaning of unconscionability" (p.416); by which he means his "double assurance" theory of a "rights assurance" and a "formality assurance". He suggests that in failed contract cases, the fact the parties attempted to enter into a contract makes it harder to establish a "formality assurance" (p.417) and it is for this reason that claims to estoppel are likely to fail. Where, however, a "formality assurance" can be shown (for example, in *Yaxley v Gotts* [2000] 1 Ch 162 and *Kinane v Mackie-Conteh* [2005] EWCA Civ 545), the estoppel claim should succeed without the need to invoke a constructive trust.

Lord Neuberger has also supported the application of proprietary estoppel within section 2 of the Act without the need to invoke a constructive trust. In doing so, he has signalled his own change of view since he decided *Kinane*. Writing extra-judicially in **Lord Neuberger "The Stuffing of Minerva's Owl? Taxonomy and Taxidermy in Equity" (2009) 68 CLJ 537**, Lord Neuberger suggests that "section 2 offers no bar to a claim based in equity" (p.546).

Part 5 of the chapter introduces the system of registration of title. Key issues for systems of land registration are explored by **Pamela O'Connor "The Top 10 Legal Questions for Registered Title Systems"** in **Lyria Bennett Moses, Brendan Edgeworth and Cathy Sherry (eds), Property and Security: Selected Essays (Lawbook Co, 2010)**.

In part 5.6 we explore the concept of indefeasibility of title and provision for indemnity provided by the LRA 2002. The role of indemnity provisions in land registration is considered by **Simon Cooper "The Versatility of State Indemnity Provisions"** in **Martin Dixon (ed), Modern Studies in Property Law Volume 5 (Hart, 2009)**. Cooper argues that indemnity is not simply a supplement to indefeasibility, but is a "versatile policy instrument" that can be used to influence the attitudes and behaviour of those who deal with land.