

8.2 There are different writing requirements for different types of property

Writing requirements can be found in the Law of Property Act 1925 and the Law of Property (Miscellaneous Provisions) Act 1989. Technology has developed even since 1989, and nowadays documents would be word processed rather than written or typed. How should the law react to technological change?

***Mercury Tax Group Ltd., Masters v Her Majesty's Commissioners of Revenue and Customs* [2008] EWHC 2721 (Admin)**

Clients signed incomplete drafts of documents. When the final versions were completed, the clients were not asked to sign these documents, but the signature pages from the drafts were detached and stapled to these final versions. Were these documents acceptable as contracts or deeds?

HELD: Underhill J:

The answer was no; the final document must be signed.

At para. 39:

“The parties in the present case must be taken to have regarded signature as an essential element in the effectiveness of the documents: that is to be inferred from their form. In such a case I believe that the common understanding is that the document to be signed exists as a discrete physical entity (whether in a single version or in a series of counterparts) at the moment of signing. The significance of this is not entirely talismanic (though it would not affect my view even if it were): the requirement that a party sign an actual existing authoritative version of the contractual document gives some, albeit not total, protection against fraud or mistake.”

This was particularly the case if the documents were deeds.

Para. 40:

“Section 1(3) of the Law of Property Act (Miscellaneous Provisions) Act 1989 reads as follows:

‘An instrument is validly executed as a deed by an individual if, and only if –

(a) It is signed –

(i) By him in the presence of a witness who attests the signature; ...’

Mr. Bird submitted, and I agree, that that language necessarily involves that the signature and attestation must form part of the same physical document (the ‘it’) referred to at (a) which constitutes the deed.”

The final document must be signed. Signing an earlier draft did not signify acceptance or constitute a deed.