



Law
Commission
Reforming the law

Land Registration

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The Law Commission for England and Wales

- Section 3 Law Commissions Act 1965:

It shall be the duty of each of the Commissions to take and keep under review all the law with which they are respectively concerned with a view to its systematic development and reform, including in particular the codification of such law, the elimination of anomalies, the repeal of obsolete and unnecessary enactments, the reduction of the number of separate enactments and generally the simplification and modernisation of the law...

Background to Land Registration project

- Land Registration Act 2002 – outcome of a joint project between the Law Commission and Land Registry
- Law Commission proposed the project in its consultation on the 12th Programme of Law Reform and responses raised a number of issues
- Update / review of LRA 2002 – not reinventing the wheel

Scope of the Consultation Paper

- Stakeholder submissions, bearing in mind
 - What law reform can achieve
 - Terms of reference
 - Realistic / achievable
- Wide range of issues / topics

Project timetable

- Consultation closes on 30 June 2016
- Analysis of responses
- May conduct further meetings with stakeholders
- Formulation of policy
- Impact Assessment
- Instructing Parliamentary Counsel to prepare draft Bill
- Publication of final report and draft Bill late 2017

Registration of Title

- Enlargement of leases and LPA 1925, s 153
- Registration of mines and minerals
 - Caution against first registration
 - Notification of applications to register
 - First registration
- Protection of dispositions which take place in the “twilight period”

Registration of Title

- Length of registrable leases
- Common law, equitable and statutory limitations (inc nemo dat) should not limit the exercise of owner's powers
 - The Ferris / Battersby argument

Priorities

- Expansion of section 29 protection and the availability of priority searches to include a number of “unregistrable” interests which are noted on the register
- Clarification of the “valuable consideration” requirement
- Clarification of the meaning and effects of “postponing” in section 29

Notices

- Two-tier system of notices
- Unilateral notice procedure
- Stakeholder concerns
 - Significance of manorial rights / chancel repairs
- Confidentiality
- Preferred option
 - Others canvassed in Consultation Paper
 - Point at which dispute is referred to the Tribunal

Restrictions

- Should restrictions continue to be used to protect contractual obligations including:
 - obligations in registered charges?
 - obligations in registered leases?
- Use of restrictions to protect interests derived from a beneficial interest under a trust

Overriding Interests

- Types of interests which are capable of being overriding interests when coupled with actual occupation
 - Estate contracts
- Should an interest continue to be incapable of being an overriding interest if it is noted on the register and that notice is subsequently removed?

Lease Variations

- Section 3(6) of the LT(C)A 1995 only applies to covenants which, if granted other than in a landlord and tenant context, would have to be protected on the register in order to bind successors in title e.g. restrictive covenants, easements and estate contracts
- Lease variations should be capable of being recorded on the register
 - Noting ancillary documents?
- Problems with the LT(C)A 1995

Mistake/rectification/indemnity

- To what extent is a registered title indefeasible?
 - Relationship between LRA s 58 and sch 4
- Alteration, rectification and the significance of mistake
- Current protection of the proprietor in possession
 - “Qualified indefeasibility”

- Problems with the current law
 - The AB and ABC scenarios and the definition of “mistake”
 - The *Malory* arguments
- Response to these problems
- Position of mortgagees

Indefeasibility: objectives

- Clarity
- Finality
- Fact sensitivity
- Reliability

The position of A, B and C

- A should be reinstated if A remains in possession
- B or C a proprietor in possession
 - Initial 10 years
 - Long stop
- Neither A, B nor C in possession
 - Initial 10 years
 - Long stop

Rectification – other scenarios

- Double registration
- Derivative interests
 - X has the benefit of a restrictive covenant over A's land. X had entered a notice in respect of the covenant, but by mistake the notice was removed from the register. A transfers title by registered disposition to B
- *MacLeod v Gold Harp*

Indemnity

- Why review the indemnity scheme?
 - The need to address registration fraud
 - Not questioning fundamental basis of the indemnity
- Questions are open – not taking a view
- Provisional proposals only on two freestanding issues:
 - Limitations
 - Valuation

Indemnity

- Questions cover:
 - Indemnity cap
 - Possible duties of care owed by conveyancers to Land Registry
 - Rationalisation of identity checks requirements
 - Availability of indemnity – mortgagees

General Boundaries

- Not considering abolition of the general boundaries rule
- Statutory list of factors that could be used to distinguish boundary and property disputes:
 - relative size of contested land in comparison to other land
 - importance of the land to the registered proprietor
 - application of common law presumptions
 - manner in which the error on the title plan came about

Easements

- Easements benefiting leases for a term not exceeding seven years, where the easement is granted in the same document as the lease, should not be required to be completed by registration in order to operate at law
- Easements benefiting leases not exceeding three years, including equitable easements, should be capable of being overriding interests

Adverse Possession

- The Schedule 6 procedure
 - Schedule 6, para 1: number of applications
 - The first two “conditions”
 - The third condition and *Zarb v Parry*
- Schedule 6 and the general law
 - Registration of an extinguished title
 - Registration of a possessory title
 - Adverse possession and encroachment

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- Use and scope of section 49 (further advances) of the LRA 2002
- Land registration treatment of sub-charges
- Call for evidence on a potential project examining mortgage law

Electronic Conveyancing

- Relax the current legislative framework for electronic conveyancing so that alternative models can be taken forward
- Adjust the process for setting the timetable for electronic conveyancing
- Clarify operation of overreaching where two trustees delegate to a single conveyancer the power to authenticate conveyances by an electronic signature

Tribunal jurisdiction

- Express statutory power to determine where a boundary lies when an application is referred under s 60(3)
- Should there be an express statutory jurisdiction for the Tribunal to:
 - Determine the remedy in an estoppel case
 - Determine the extent of a beneficial interest

Looking Ahead to Potential Projects

- 13th Programme of Law Reform
 - Consultation in summer
- Possible areas of interest
 - Landlord and Tenant (Covenants) Act 1995
 - Landlord and Tenant Act 1954, Part II
 - Mortgages
- Other areas of law?

Questions/Contact

Thank you!

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