

## Commentary

Those of you who have acquired a sound and thorough knowledge of the land registration system and how it operates should relish this question and see it as an opportunity for good marks. Those of you whose feel for the subject is unsure should try to avoid it (although you may be in crisis if all questions are compulsory!) If you attempt it, you must remember to answer the questions as written, not the question you wished had been written. Resist the temptation to write everything you know about registered land.

The subject matter is fundamental to a proper understanding of conveyancing practice in England and Wales and consequently this type of question could arise quite often. If you learn the relevant material thoroughly and structure your answer carefully, we can assure you it will pay dividends.

The question is in three sections and you will note that more marks are given for part (b) so naturally you should apportion your time to allow longer for this part. When explaining the present law concerning registration of title remember to refer to the Land Registration Act 2002. The Land Registration Act 1925 was repealed by the 2002 Act and thus is of historic interest only!

Lastly, note that you are asked to prepare a briefing paper to a client so remember to produce your answer in this format.

## Suggested answer

### Briefing Paper for Mr Vijay Rajindernath

#### a) An outline of the main differences between the registered and unregistered land systems

The present system of land registration was introduced by the Land Registration Act 1925 in order to simplify conveyancing. The 1925 Act was repealed on 13 October 2003 by the Land Registration Act 2002 ('the 2002 Act'). The detailed rules of the registered land system are to be found in the Land Registration Rules 2003.

The general aim of the registered land system is to record details of the ownership and enjoyment of land (other than those discoverable on physical inspection of the land) on a central land register. A prospective purchaser of the land is then able to discover from an examination of the register the nature of the existing interests affecting the land to be acquired. The state provides a guarantee as to the accuracy of the registered title and indemnifies those prejudiced by the operation of the system.

The principal objective of the 2002 Act is to facilitate a future system of electronic dealing with land by making the register a complete and accurate reflection of the state of the title of the land at any given time. The intention is that it should be possible to investigate title to land on-line, with the minimum of additional searches, inspection, and enquiry.

By contrast, title to unregistered land is not entered in a central register, but is contained in the title deeds of the land in question. These are held by the owner (or mortgagee if the land is mortgaged). A separate investigation of the title by the buyer's conveyancer is therefore

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required upon each occasion the land is purchased. The seller must supply the buyer with an abstract or epitome of the title, which shows that the estate has been correctly conveyed during at least the last 15 years (Law of Property Act 1969 s.23).

In unregistered conveyancing the legal estate passes to the buyer when the deeds are handed over on completion. In registered conveyancing, the legal estate passes to the buyer upon completion of the post-completion registration of the buyer as registered proprietor.

b) The nature and effect of registration of title

Strictly speaking it is not the land that is registered but the estate in the land, so there may be more than one title registered in respect of the same piece of land. Thus, for example, a freehold, a headlease, and a sublease could all exist in respect of the same land.

The titles capable of substantive registration in their own right are set out in s.3(1) of the 2002 Act. They are freehold and leasehold estates in land, rent charges, franchises, and profits *a prendre* in gross.

Unregistered titles are required to be substantively registered ('first registration') within two months of a 'qualifying event' (s.6(4) of the 2002 Act). This is known as compulsory registration. The events inducing first registration are laid down in s.4(1) of the 2002 Act. The principal events are:

- i) a transfer of a qualifying estate (a qualifying estate is either a legal freehold estate or a legal leasehold estate which has more than seven years left to run);
- ii) a grant of a lease for a term of more than seven years; and
- iii) a protected first legal mortgage of a qualifying estate.

It should be noted that a reversionary lease of any term granted to take effect in possession more than three months after the date of grant must also be registered (s.4(1)(d)). A reversionary lease is where the tenant has a right to take possession at a future date.

As well as compulsory registration it is possible for an owner of unregistered land to apply for voluntary first registration. This is often done by developers of unregistered land wishing to sell each plot as registered land, or by owners of particularly complex unregistered titles who wish to simplify the job of proving title when they come to sell.

Upon receiving the application for first registration the Land Registry will investigate the unregistered title and allocate one of the following classes of title:

- i) Absolute  
This is recognised as being the most reliable and marketable title that exists. Section 9(2) of the 2002 Act provides that a person may be registered with absolute freehold title if the registrar considers that the title is such as a willing buyer could properly be advised by a competent professional adviser to accept. The legal estate is vested in the proprietor together with all the interests subsisting for the benefit of the estate, for example, easements. As far as burdens are concerned,

the proprietor takes subject only to the interests set out in s.11(4) affecting the estate at the time of first registration. These are:

- (a) interests which are the subject of an entry in the register in relation to the estate (these can only be registered charges, notices and restrictions because cautions and inhibitions are prospectively abolished under the 2002 Act).
- (b) unregistered interests which fall within any of the paragraphs of Schedule 1 (that is interests which override first registration).
- (c) interests acquired under the Limitation Act 1980 of which the proprietor has notice.

ii) Possessory

This class of title will be registered where the registrar is not satisfied with the documentary proof of ownership and consequently the proprietor will be subject to any adverse interests in existence at the date of first registration. Typically, a possessory title is granted where the title deeds have been lost or the applicant's title is based on adverse possession.

iii) Qualified

This is very rare. It has the same effect as registration with absolute title save that the state guarantee does not apply to some specified defect.

iv) Good leasehold

This too has the same effect as absolute title save that the proprietor is subject to any estate right or interest affecting the right of the landlord to grant the lease. Thus, unlike absolute leasehold title, the state guarantee does not extend to the freehold and any superior leasehold titles. Typically, this class of title will be granted where the superior title is neither registered nor deduced to the registrar's satisfaction.

There is provision in s.62 of the 2002 Act for possessory, qualified and good leasehold titles to be upgraded in certain circumstances. Examples of these are the conversion of good leasehold to absolute where the superior titles are deduced to the registrar's satisfaction, and possessory to absolute where the proprietor has been registered with possessory title for 12 years and is still in possession.

c) The form of a registered title

Each registered title is allocated a unique title number. The register for each title is divided into three parts:

i) Property Register

This states whether the title is freehold or leasehold and, if the latter, it will give brief lease details. It also gives a short verbal description and refers to the Registry's filed plan. This plan is prepared by the Land Registry (based on the Ordnance Survey map) for use with the title in question. The land within the title is edged red and matters peculiar to the title may also be shown for example by blue tinting for a right of way.

ii) Proprietorship Register

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This records the class of title (such as absolute) and the name and address of the registered proprietor. It may also contain entries protecting third party rights and restricting the power of the owner to deal with the land (for example; a notice, restriction, or pre-13 October 2003 caution).

iii) Charges Register

This sets out all encumbrances subsisting at the date of first registration (sometimes by reference to a later schedule) together with all subsequent charges or encumbrances. Examples of these would be restrictive covenants, mortgages, and leases.