

Land registration act 2002 law land property essay

[Law](#)



**ASSIGN
BUSTER**

Like its predecessor, LRA 2002 is designed to further simplify the process of conveyancing. To achieve this purpose, it aims to reduce the risk of acquiring an unsafe title and introduce electronic conveyancing^[2] to eliminate the ‘ registration gap’.^[3] To put it in words of Breskvar^[4], LRA 2002 is ‘ not a system of registration of title but a system of title by registration’.^[5] It is important, for the sake of clarity, to establish what an ‘ evolution’ and a ‘ revolution’ means. Evolution is the gradual improvement of something into a better form. A recent example of evolution in law is Bribery Act 2010, which started with the recommendations of Woolf’s Committee, followed by Law Commission’s proposals for the reform. The proposals were debated in the Parliament and the Act was passed providing an ‘ improved’ legal order. Revolution, on the other hand, is a momentous change in the legal order that is abrupt and turns something into a state almost completely different. A classic example of a revolution in law is Magna Carta Act. Before we enter into the debate of whether LRA 2002 is an evolution or revolution, it is of paramount importance to have a cursory look at the substance of the Act. Once the changes are discussed and analysed, this paper will reach its conclusion that the LRA 2002 is, for now, an evolution and not a revolution.

The Land Registration Act 2002

To protect the position of a purchaser, LRA 2002 has gone to boundless boundaries. The basic fundamental change is that it has modified the definition of ‘ titles’ indirectly. The logical base of English land law ‘ has finally shifted from empirically defined fact to officially defined entitlement’^[6] LRA 2002 has defined property in terms of registration, i. e. either a title to an estate is registered or unregistered. It is this dichotomy

that transforms the English land law into a systematic organisation. Although the LRA 2002 doesn't repudiate the existence of unregistered land, it has taken every step to eliminate the unregistered title in the near future.[7]It is also possible that in future ' all surviving unregistered titles will be swept compulsorily on to the Land Register'[8]. In the words of Law Commission, the unregistered land ' has had its day'[9]. LRA 2002 operates on three fundamental principles. The mirror principle maintains that the register should ' mirror' the rights and interests in a title. The curtain principle says that the purchaser doesn't need to know the equitable owner because, if the proper formalities are complied with, he will overreach the equitable rights[10]. The insurance principle establishes that the purchaser is ' insured' against any erroneousness in the register.

The Land Registration Act 2002 – The Changes

LRA 2002 has changed a significant portion of law. The 2002 Act has simplified the protection of interests in registered land. The interests are now protected by means of notice (which includes ' cautions' as they were previously) and restrictions (which includes ' inhibitions' as they were previously). It is submitted that the major changes in LRA 2002 are with regards to overriding interests, adverse possession and e-conveyancing. To observe brevity, this paper will discuss these three major changes to decide the character of LRA 2002 to be evolutionary or revolutionary. Overriding interestsLaw commission considered overriding interests as a " major obstacle"[11]They were not completely eliminated from the 2002 Act possibly because, as Cooke puts it, ' they are too deeply entrenched in the law to be dispensed with'[12]The LRA 2002 reduces the number and effect of

these. Unlike in 1925 Act, the consequence of an overriding interest depends on whether it tends to override a first registration of title (dealt with in Sch 1) or a disposition of a registered title (dealt with in Sch 3). A principle example of overriding interests is the interest of a person in actual occupation[13]. Under 1925 Act, ‘difficult cases arose where actual occupation was not readily discoverable’[14], for e. g. *Lloyds Bank Plc v Rosset*[15]. 2002 Act puts a limit on the situations where the rights of those in actual occupation could override a registered disposition.[16]Although subject to some qualifications[17], the fundamental principle in 2002 Act regarding actual occupation is the same as in 1925 Act: the unregistered interest overrides a registered disposition. The old law in *Ferrishurst Ltd*[18]is reversed by paragraph 2 of Schedules 1 & 3 LRA 2002 and the current law is applied in *Thomson v Foy*[19]which decided that someone occupying only a part of the property is protected with respect to that particular part only. However, the rule in *Williams & Glyn Bank v Boland*[20]that the actual occupation of the spouse acts as an overriding interest is still good law as there is nothing contrary in LRA 2002. Adverse possession: LRA 2002 provides better protection than its predecessor with regards to adverse possession. This protection serves as a ‘trigger’ for voluntary registration, resulting in an increase in the registered titles and enabling the registered landowners to be notified about any adverse possession. Under the old rule, an adverse possessor could acquire title to a land if he was in occupation for 12 years. Under LRA 2002, it is harder for the squatters to acquire a title because the Act allows them to be registered after 10 years of occupation, so that the registrar gives an opportunity to the registered proprietor to evict the adverse possessor. The introduction of LRA 2002 was also due to the fact

<https://assignbuster.com/land-registration-act-2002-law-land-property-essay/>

that the adverse possession had become easier. This view is supported by Bogusz who articulates that the change in law is because 'it has become far too easy for a squatter to acquire title to land'[21]Pye v Graham[22]is a principle example of lawful injustice, labelled as 'Britain's biggest ever land grab'[23]. If the case was to be decided under LRA 2002, the claimant would have the right to evict the adverse possessor once he had occupied the property for 10 years. The adverse possession now is less of a thief's charter.

E-conveyancing: E-conveyancing will not mean that the creation of a title should occur at the time of registration, but that the 'act of registration is the act of creation'.[24]The primary aim, as stated above, is to establish a legal structure that allows conveyancing to be done electronically. This significant part of LRA 2002 has not come into practice as yet. Kenny described this Act as having 'no effect at all for the time being'[25]Capps is of the view that electronic conveyancing should make the procedure speedier and should remove the 'registration gap'[26]Lloyd[27]decided that a right created by estoppel could bind a successor in title under s70(1)(g). LRA 2002 has endorsed this view under s116 LRA 2002. However, caution should be exercised here as s93(2) LRA 2002 requires the disposition to be done electronically. It is argued that estoppel will have the capability to bypass e-conveyancing. This view is supported by Dixon who holds that on the realisation of e-conveyancing, we will have 'an estoppel boom' undermining e-conveyancing[28]. He further suggests that people will tend to convey land by written deed but s93 will not let them do so.[29]LRA 2002's provisions of e-conveyancing are criticized as 'too costly and over ambitious'[30]. Others have considered the problems of electronic signatures to be a major downfall of the provisions.[31]The primary aim of LRA 2002 is <https://assignbuster.com/land-registration-act-2002-law-land-property-essay/>

to make electronic conveyancing universal and compulsory[32]so that the system can move from ‘ registration of title’ to ‘ title by registration’ where it " will be the fact of registration and registration alone that confers title"[33]

The Land Registration Act 2002 – An Analysis

Although the LRA 2002 replaces the LRA 1925 in its entirety, it stands on the same structure and differs only in detail [reference]. This system was intended to advance the efficiency of conveyancing by making it easier and hassle-free to conduct transactions with the land. Overriding interestsThe meaning of ‘ actual occupation’ has been debated in recent times. Lord Wilberforce in *Williams & Glyn’s Bank v Boland* (1981) A. C. 487, at 504 maintained that the words ‘ actual occupation’ should be interpreted in plain English and that the word ‘ actual’ emphasises that the physical presence is required. Case law provides guidance to interpret this term[34]but there is no single test to establish actual occupation as ‘ the courts are reluctant to lay down, or even suggest, a single legal test for determining whether a person is in actual occupation’.[35]Martin Dixon believes no creation of LRA 1925 other than ‘ infamous section 70(1) and its list of overriding interests’ has aroused a ‘ fierce comment’[36]. He holds:‘ There is nothing inherently wrong with a category of non-registrable binding right... policy might dictate that there should be a class of right that binds a registered title despite the fact of its non-registration’[37]Overriding interests represent a crack in the mirror principle. the Act recognises some ‘ off the register’ interests that can override the interests on the register. This deprives LRA 2002 from the full operation of the mirror principle. What is the point of having a system of title registration where the registered entry is not conclusive? Moreover, although

LRA 2002 attempts to minimize overriding interests, it does little to solve the difficulty faced by the purchaser when overreaching fails to occur. Therefore, the curtain principle is also prone to failure of operation. An overriding interest will not be protected if the occupation would not have been 'obvious on a reasonably careful inspection of the land at the time of the disposition'[38]. It is submitted that this exception travels too far in producing a bias in favour of the purchaser. At first instance, it seems impractical to say that the occupation will not be obvious unless one tries to conceal it. But what if an equitable owner has moved out of the house on a long vacation and sold his furniture? The occupation will not be obvious, and the overriding interest will not be protected. This makes the pendulum heavier on one side. But it is submitted that it is actually not. It is a perfect example of a balance because the LRA 2002 has to favour the purchaser in these circumstances, so that the interest holder is encouraged to register his interest in the first place. Adverse Possession LRA 2002 has also improved upon the area of rights of adverse possession as they are hard to prove now. The old rules, were were involved in a 'wearisome and intricate task of examining title'.[39] LRA 2002, by recording transactions on register, enables a purchaser to have access to all the needed information on the register[40].

E-Conveyancing

Conclusion

The English land law and the registration system in particular, has not completed its orbit and started a new age altogether, although it has rotated on its already-established axis set since 1862. Therefore, it is undoubtedly safe to say that the LRA 2002 is a 'reform' of LRA 1925, since it stands on the

same structure with a different design, and has not overthrown the foundations of the LRA 1925 and come up with an entirely new system. Although LRA 2002 is a monumental effort, it ' shares much with its 1925 counterpart'[41]. It was born, like its predecessor, on the recognition that the current system is no longer appropriate. LRA 1925 reflected technology of its age (use of registers) whereas LRA 2002 reflected technology of its own (e-commerce). It will not be wrong to say that ' it was just as uncertain whether the system of the 1925 Act would work as it is now uncertain whether electronic conveyancing will actually deliver all the anticipated benefits'[42]It will be too quick to judge a system that is not yet with us in its complete form. Many of the concepts of unregistered land, the doctrine of notice for instance, will be ' incompatible with the successful operation of electronic conveyancing' [reference: gray & gray pp99)Although there is still a wide room for improvements, the LRA 2002 is undoubtedly a ' veritable masterpiece of legal scholarship and draughtsmanship'[43]According to Cooke, " the Act is a classic instance of law reform that repeals an unsatisfactory statute, and substitutes a better one, making the law more consistent and more workable."(provide reference)Howell is of the opinion that LRA 2002 is unrevolutionary and that it just tidies up the law as it stood under the LRA 1925.[44]On the other hand, Abbey and Richards are of the view that the wide-ranging and complex reforming provisions point towards a ' genuine revolution'.[45]Hence, LRA 2002, as it now stands, represents an evolution and not a revolution.