

The land registration act 2002 law land property essay

Law



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Introduction

The purchase of land has historically been problematic. Abbey and Richards express that the introduction of LRA 2002 took place to overcome ' lack of certainty, simplicity and ability to be economic in 1925 Act.'^[1]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]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 a debate on Law Commission's proposals for the reform. Revolution, on the other hand, is a momentous change that is abrupt and turns something into a state almost completely different. A

classic example of a revolution in law is Magna Carta Act. To determine whether LRA 2002 signifies revolution or evolution, it is of paramount importance to analyse the significance of the changes. Once the changes are analysed, this essay will reach its conclusion that the LRA 2002 represents, for now, an evolution and not a revolution.

The Land Registration Act 2002 – An Analysis

LRA 2002 has defined title in terms of registration, i. e. 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.[4]It is also possible that in future ' all surviving unregistered titles will be swept compulsorily on to the Land Register'[5]. In the words of Law Commission, the unregistered land ' has had its day'[6]. Within the confines of this essay, only some of the major changes can be discussed to decide the character of LRA 2002 to be evolutionary or revolutionary. To observe brevity, I will discuss changes with regards to adverse possession, interests that override and e-conveyancing.

Adverse possession

Under LRA 2002, it is harder for the squatters to acquire a title because the Act allows them to be registered after 10 years (instead of 12 years) of occupation, so that the registrar gives an opportunity to the registered proprietor to evict the adverse possessor. This 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. One of the reasons of introduction of LRA 2002 was the fact that the adverse possession had become easier. This view is supported by Bogusz who articulates that the change in law is because it had ' become far too easy for a squatter to acquire title to land'[7]Pye v Graham[8]is a principle example of lawful injustice, labelled as ' Britain's biggest ever land grab'[9]. 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.

Interests that override

Law Commission considered overriding interests as a " major obstacle". [10]Although they could not be completely eliminated as they were ' too deeply entrenched in the law to be dispensed with',[11]the LRA 2002 reduced them in number and in effect. Dixon holds:' There is nothing inherently wrong with a category of non-registerable 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'[12]Although Dixon believes that the existence of a non-registerable binding right is justified, it is argued that the 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'. There seems to be a diminutive point in having a system of title registration wherein the registered entry is not conclusive. A principle example of overriding interests is the interest of a person in actual occupation.[13]2002 Act puts a limit on the situations where the rights of those in actual occupation could override a registered disposition.[14]An <https://assignbuster.com/the-land-registration-act-2002-law-land-property-essay/>

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'[15]. What if an equitable owner, having sold his furniture, has moved out of the house on a long vacation in good faith? At first instance, the pendulum looks heavier on the purchaser's side. But it is submitted that it is a perfect example of striking 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.

E-conveyancing:

The primary aim of LRA 2002 is to make electronic conveyancing universal and compulsory[16]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".[17]Kenny described this Act as having 'no effect at all for the time being'.[18]It is submitted that estoppel will have the capability to bypass e-conveyancing. This view is supported by Dixon who believes that on the operation of e-conveyancing, we will have 'an estoppel boom' undermining e-conveyancing[19]. LRA 2002's provisions of e-conveyancing are criticized as 'too costly and over ambitious'[20]. Others have considered the problems of electronic signatures to be a major downfall of the provisions.[21]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'[22]

Conclusion

LRA 2002 is a colossal effort, but it ' shares much with its 1925 counterpart'[23]. 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). 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.[24]On the other hand, Abbey and Richards are of the view that the wide-ranging and complex reforming provisions point towards a ' genuine revolution'.[25]The English land law and the registration system in particular have 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. Until atleast it is fully operational, it is principally evolutionary as it deals largely with the deficiencies of its predecessor. Hence, LRA 2002, as it now stands, represents an evolution and not a revolution. It will be for the future students of law to decide whether LRA 2002, in its complete operational form, is an evolution or revolution.