

The history of english land law law land property essay

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However, the main reason why feudal system is no longer apply because sometimes it would depends on the Mesne character which will be able to lead to a good impression or bad where it depend on how greedy the lord was, the peasant or so called tenant will lived reasonably well or barely got by.[4]Due to the problem of feudal system for the achievement of parliament over the king in the civil war is where the parliament made several kind of law to curtail the monarchy power such as Magna Carta 1215 and to ensuring its supremacy by abolishing any independent source of income of the Crown.[5]Parliament in 1646 also abolished all forms of tenure except freehold and tenancy and remove most of the feudal incidents which was confirmed by The Tenures Abolition Act 1660. Then, during the Land Registry Act 1862 act was created as a first attempt as a system of land registration but had proved to be ineffective. In addition, before the involvement of purchase of land had become problematic where the person intended to purchase the land is require to bound by legal estates and interests in land. [6]If it was treated in a different way the legal right affected the land, then any purchaser who purchased that land are require to oblige on the right without taking into account if he had notice of it before make payment for the land. It was very important for the cautious purchaser to investigate the title deed as to whether the vender actually possessed the land what it was trying to sell to him. Due to that, the concerning on equitable interests implanted to the land on sale, where the purchase was not bound by them if he had acted as a bona fide purchaser for value without notice on equitable rights.[7]Similarly, the reliance on title deeds need proved ownership title where the result was choking the property market at a time when the free

movement of capital was priority for economic development.[8]Due to the above 1862 have proven ineffective, the existence of the Land Registration Act 1925, the Law of Property Act 1925 and the Settled Land Act 1925 take effect as soon as it was codified and even it extended the system of land registration.[9]The existence of the 1925 act had aimed to bring certainty where there was unclear and to bring equity where there was often inequality and to adopt as far as possible the rules relating to real property and personal property but of course aim to reduce of the legal estates and interest.[10]From the basic principle of the LRA 1925 and now the Land Registration Act 2002 is that title of land should be recorded in a register and guaranteed by the state which the registration of title replace deeds of title. [11]The 1925 act called for full registration of all titles and it is a matter of some regret that on 1990 all England and Wales become subject to compulsory registration of title where the act meant to encourage a universal registration of title to be achieved but currently over 80% of all potentially titles are registered[12]and the LRA 2002 also encourage voluntary first registration by owners of unregistered land for example local authority.[13]In addition, the Land Registration Act 1925 also established three other instruments for protecting other people's rights in that land and this continued under LRA 2002.[14]By using this procedure correctly, it will ensure that rights in the land are not destroyed by a transfer of a registered title to a new owner but first of all, there are mortgages which must be registered before they can be regarded as legal mortgages under the S25, 27 and Schedule 2 of the LRA 2002.[15]Once registered, these will bind on transferees of the mortgaged land unless, the mortgage is paid off by the

proceeds of that sale.[16]If not registered, the mortgages take as equitable interests only and will not have priority over a purchaser of the registered title unless it was protected by the land registration system in some other way.[17]Then, there are unregistered interests which override where it was defined under S70 (1) LRA 1925 and now found in Schedules 1 and 3 to the LRA 2002, that take effect automatically against a first registered proprietor or an existing registered title which they are required to register[18]and the old pre-1925 doctrine of notice is irrelevant which is stated under ss11, 12, 29, and 30 of the LRA 2002.[19]Since, it is not important whether such interests are legal or equitable as long as they fall within one of the categories which are defined in a suitable Schedule to the 2002 act.[20]The reason behind the automatic effect of such interests is that they give such rights as should be transparent to a purchaser on physical critical viewing of the property or they are benefiting the community as a whole without seriously restricting a purchaser's enjoyment on the land.[21]Thirdly, there are registered protected interests, once called minor interests under the LRA 1925, but no longer called under the LRA 2002. This category essentially compromises all other interests that may maintain in or over land.[22]In order to have priority over a first registered proprietor or a transferee of a registered title, such interests or whether legal or equitable must be protected by entry on the Register or other way is a unilateral or agreed notice.[23]Under the LRA 2002 meant to make a settlement of vast majority of third party right in the land, the point of goal is to ensure that as many third party rights as possible are entered on the register of the land had affected.[24]However, failure to make such an entry means that the right

loses its priority over a purchaser of the registered title unless the right unexpectedly falls within the category of overriding interests.[25] Aside from that, the category of land law rights within the land registration system obviously places much more attention on the statutory definition than it does on the legal or equitable quality of a right and also in registered land stated it is cleared that the pre-1925 doctrine of notice is irrelevant which has some impact on the definition of overriding interests within Schedule 3. Such a radical situation in 1925 was designed to ensure there is certainty and stability for persons with interests in land. Moreover, the difference between 1925 and 2002 Acts is that under the land registration is operating on three principles which is the mirror principle, curtain principle and the insurance principle. From the mirror principle shown that the register is an accurate and a reflection of relevant interests affecting the land which mean that if register able to reflect the picture of land then, any purchaser and third party can feel safe since they are protected. However, the reason behind why 1925 Act was altered by 2002 Act was because the situation on overriding interests seems to deny the mirror principle.[26] Although, it wasn't a serious criticism because the overriding interest were not an expected event to happen in 1925 legislation but it was redefined and limited in the 2002 Act, as they remain important to ensure proper functioning of the system.[27] At the same time, they were altered by parliaments and given an automatic effect because they should be obvious to any potential purchaser or their enforcement is too important to rely on registration. However, the problem arise from the social and judicial development have increase the opportunity for the existence of overriding

interests with the result that there is a higher possibility that a purchaser might not be able to determine whether such interests exist by checking on the land.[28]There are some examples of cases relate to right of equitable co-ownership effect under the s70 (1)(g) of the LRA 1925 shown in *Pettitt v Pettitt* (1970) and *Gissing v Gissing* (1971) stated that the co-habitee may entitle a beneficial interest in the property held of legal title by another.

[29]Then, in *Williams and Glyn's Bank v Boland* (1981) was having the same effect as above cases where the wife had an overriding interest of actual occupation which the bank's interest was subject where the wife's actual occupation based on her beneficial interest more than just a minor interest.

[30]However, this problem in overriding interest was a major reason why the Law Commission Report No. 271 recommended to reduction the scope and effect and this has now been achieved in Schedule 3 of the LRA 2002 where under the Schedule 3,[31]the actual occupation increase the overriding interest only where the purchaser can find out the occupation and then it could be achieves priority to the extent that the land was actually occupied.

[32]However, before the existence of Law Report No. 271 take place, there are several cases like *Burns v Burns* (1984)[33]stated that the couples were never married the provision of the Matrimonial Causes Act 1973[34]and the problem lies on the absent of a financial contribution which related to the acquisition of property even if she just did domestic chores and used own earning to contribute the household expenses that doesn't amount to the direct contribution.[35]In addition, *Lloyds Bank v Rosset* (1991) affirmed the *Burn's* case where although in the Court of Appeal of *Rosset's* won the case as Mrs Rosset was in actual occupation when the charge was created in

order to rely on the s70 (1)(g).[36]However, the bank went on and appeal to the House of Lords held by avoid all the discussion of the S70,[37]by stating that the wife had no beneficial interest since there was no evidence of any agreement under the first category but her contribution were regarded as de minimis under the second category and therefore, didn't achieve any beneficial interest.[38]Moreover, in the curtain principle is the clearest view behind the 1925 Act and it remains a keys principle under the 2002 Act. The main aim is to keep well-defined types of equitable interests from the register where the equitable rights usually take effect behind a trust of land and will not affect the purchaser in his land because of overreaching. In principle, usually a purchaser will not be concerned with such equitable rights since they are behind the curtain of a trust as long as the he or she makes payment to two trustees.[39]Once, the payment had been made then the equitable interests will then take effect so that, instead of having a right in the land, the equitable owner has a share in money which shown that this system works well with the statutory requirement of two trustees exists. However, by referring in Stack and Pettitt is that sometime there will only have one trustee of land and so overreaching will be impossible to apply. In such situation, the purchaser must look behind the curtain to determine whether any equitable interest exist as the above situation reflex to Boland if the curtain is not raised, the purchase can easily be bound by such equitable interests.[40]With this problem clearly shown a striking a balance between protection of the purchaser and protection of the owner of land and it arose from social and judicial changes. However, from the Pettitt, Gissing, Burns until Rosset shown that as long as there is no direct contribution then there

will no interest entitle however starting from the Oxley v Hiscock (2004) [41]the court started to consider the whole cause of conduct to determine the fair share of the party although there is a slightly different between the above cases where in this cases the both cohabitee did contribute the purchase price and other contribution such as household expenditure which Oxley's case was later adopted to applied in Stack v Dowden (2005).[42]In Stack held by Lord Hope obiter departing from Rosset in deciding whether a constructive trust exist since indirect contribution by both party where involve with making improvement which added value to the property in both timely and money did not matter who paid for what during their in relation but should be taken in account who make direct contribution towards the purchase of the property therefore, Lord Hope reasoned that the appeal should be dismissed since the couple maintain their financial independence from each other.[43]However, from Stake case shown that in order to achieve the ingredient of proprietary estoppels is that there must have assurance, reliance, detriment and unconscionability as defined from the Gillett v Holt (2002).[44]In Cobbe v Yeoman's Row Management Ltd (2008) The House of Lords made it clear there is no proprietary estoppels for claimant to the formal requirements of s2 of the 1989 Act and the reason behind this cases failed to claim because both party knew that they should have entered into enforceable contract if they want create legal obligation but they choose not to.[45]Then, in the following case of Thorner v Major (2009) shown that the domestic or family condition, even though it may be fair to say that it has seal in the commercial context where the court distinguished Yeoman as this case was no doubt on the physical identity of

the property.[46]However, there was an unclear as to the nature of any benefit of either freehold leasehold or charge to give Mr Cobbe.[47]The above case had extent the farm might change, but there was no doubt as to what was the subject of the assurance was namely the farm as it existed from time to time. Accordingly, the nature of the interest to be received by the nephew was clear as the farm existed on the uncle's death. Even though, the House of Lord ruled in favor on the nephew position in Thoner's case but his Lordship Lord Scott did not expressly resile from the views he had expressed in Cobbe and in fact, made certain observations on the relationship between proprietary estoppels and the remedial of constructive trust which might create further confusion.[48]Furthermore, in Kernott v Jones (2011) Judge Dedman after considering Oxley and Stack decision and held the property should be split jointly although, the intentions had changed over the years where the above Judge considered the correct test was to ensure fair and just between the parties and while looking at the whole course of dealing therefore the cases was ruled in favor of Ms. Jones since she contributed over 80%.[49]Even though, Mr. Kernott appeal further to the Court of Appeal where the court rule that the share should be split equality however in further appeal the Supreme Court overturn the Court of Appeal decision as where the decision should follow make by the High Court as in favor on Ms. Jones.[50]In conclusion, as a present candidate believed that the current land registration system now found in the 2002 Act is success where the success was come from the 1925 Act and has been improved by the 2002 Act. The introduction of the system of land registration brought certainty, fairness and the pre-1925 system conveyancing was completely

unsuited to the modern age. Indeed, there are problems of detail and the question of the interpretation of Schedule 3 of the 2002 Act may cause problems in the future.[51] However, the inspection of the law by the LRA 2002 has been beneficial which the 2002 Act have goes further than repairing the system and bring update to the systems,[52] though whether the system of electronic conveyancing becomes a reality in the nearest future is less certain. Currently, there is a conflict between the purchaser of land and the occupier of it, but in generally speaking the provision on overreaching can deal with this if the statutory mechanisms are satisfy.[53] It is no fault of the LRA 1925 or the 2002 that the degree of single trustee co-ownership in Pettitt has increased, may continue to do so after Stack. This does produce problems, but the way to counter this is to establish clear rules on when joint ownership of property can arise rather than to alter the system which merely regulates it.[54] However, it was said that the Australian title of registration statute was well-known as the Torrens System. As Whalan pointed out 50 years ago, the relative success of the Australian statute could be attributed to its functional superiority over its English Land Registration Act.[55] It was not surprising that in England there were persistent calls to reform the 1925 Act. As a result, as a candidate believe that now the Land Registration Act 2002 and Torrens system is equal footing.