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CONVEYANCING **UNIT 3:** INVESTIGATION OF TITLE



UNIT 3: INVESTIGATION OF TITLE

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- Differentiate between how the seller deduces title to the buyer in registered and unregistered land
- Outline how official copies are set out in registered land
- Explain the requirements of a good root of title for unregistered land
- Explain how to analyse the title deeds listed in an epitome of title
- Summarise issues that might be revealed in the investigation of title and the further action required

INVESTIGATION OF TITLE BUYER

- The process of establishing who owns the property and whether there are any rights or rules which could affect the owner's use and enjoyment of it.
- Why is this necessary for buyer/lender?
 - solicitor acting for the buyer will need to check:
 - that the seller owns the property
 - whether there is anything that burdens the seller's i.e a restrictive covenants against the intended use or rights of way in favour of a neighbour.
 - a bank or building society considering lending money and taking security over a property will have similar concerns
 - lender will want to ensure that if the borrower defaults on the loan, the property can be sold on the open market for at least as much as is outstanding on the loan, with minimal issues



INVESTIGATION OF TITLE SELLER

- Why necessary for seller?
 - Seller's solicitor will also need to investigate their client's title:
 - anticipate any problems in advance.
 - to produce the first draft of the contract of sale.
 - Under a sale contract the default position is the seller to sell the property 'free from incumbrances' (ie third party rights that bind the property and may be a problem for the buyer/ lender) unless the seller states otherwise,
- *any incumbrances need to be identified and specified in the contract at the earliest possible stage.



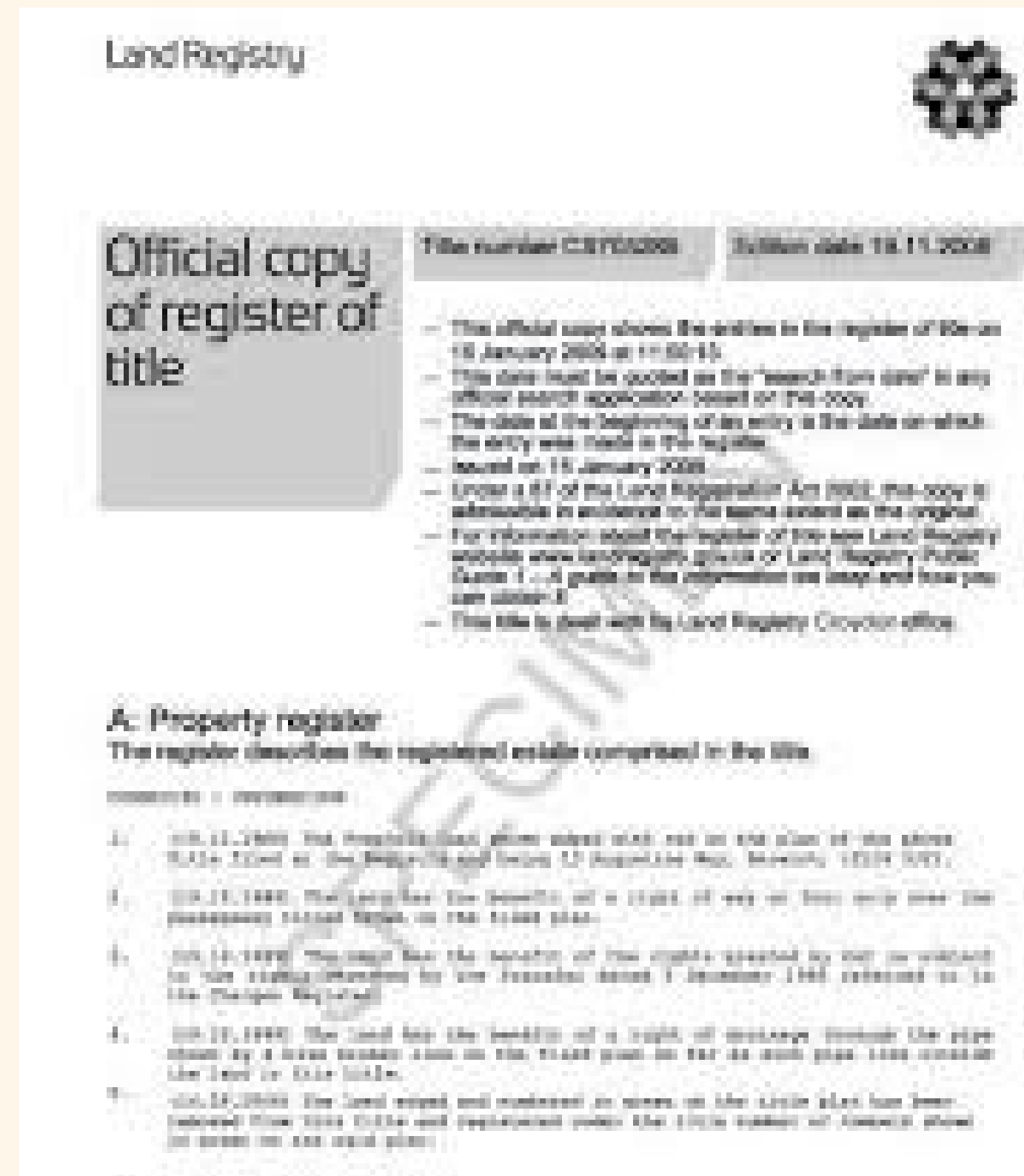
REGISTERED UNREGISTERED AND

- Historically, all title to land was proved by paper title deeds.
- The **Land Registration Act of 1925** introduced a system in England and Wales which was designed to ensure that ownership of land was registered in a central database: [HM Land Registry](#).
- Now compulsory in England and Wales to register an unregistered title when triggered (including change of owner)
- Most land owned by the Crown, aristocracy and Church has not been registered because it has never been sold
- Government aim to have the whole of E&W registered by 2030
- Still need to be aware of process to investigate title for registered and unregistered title



FREEHOLD REGISTERED AND

- Seller's solicitor needs to obtain copies of the **register of title** for the property - called 'official copies'.
- They will also need to get a copy of the **Land Registry plan** for the property, called 'title plan'.
- [Example title register](#)
- [How to read the title plan](#)



DEDUCTION OF TITLE

- ‘Deduction of title’ is the term used for the seller’s obligation to prove their ownership of the property they are trying to sell—i.e by producing documentary evidence of title to the buyer.
- Title to be deduced before exchange of contracts. To ensure the buyer to be prevented from raising any issues after exchange of contracts (once parties are legally bound to buy/sell)
- With registered land, the seller should supply to the buyer, at their own expense, official copies that are less than six months old, and any documents noted on the register.



ACTIVITY 1 REVIEWING HMLR DOCS

- Access the specimen [title register](#) and the specimen [title plan](#) from Land Registry website.
- Summarise what these documents show/contain
 - Tip: follow the guidance indicated by Land registry on the documents

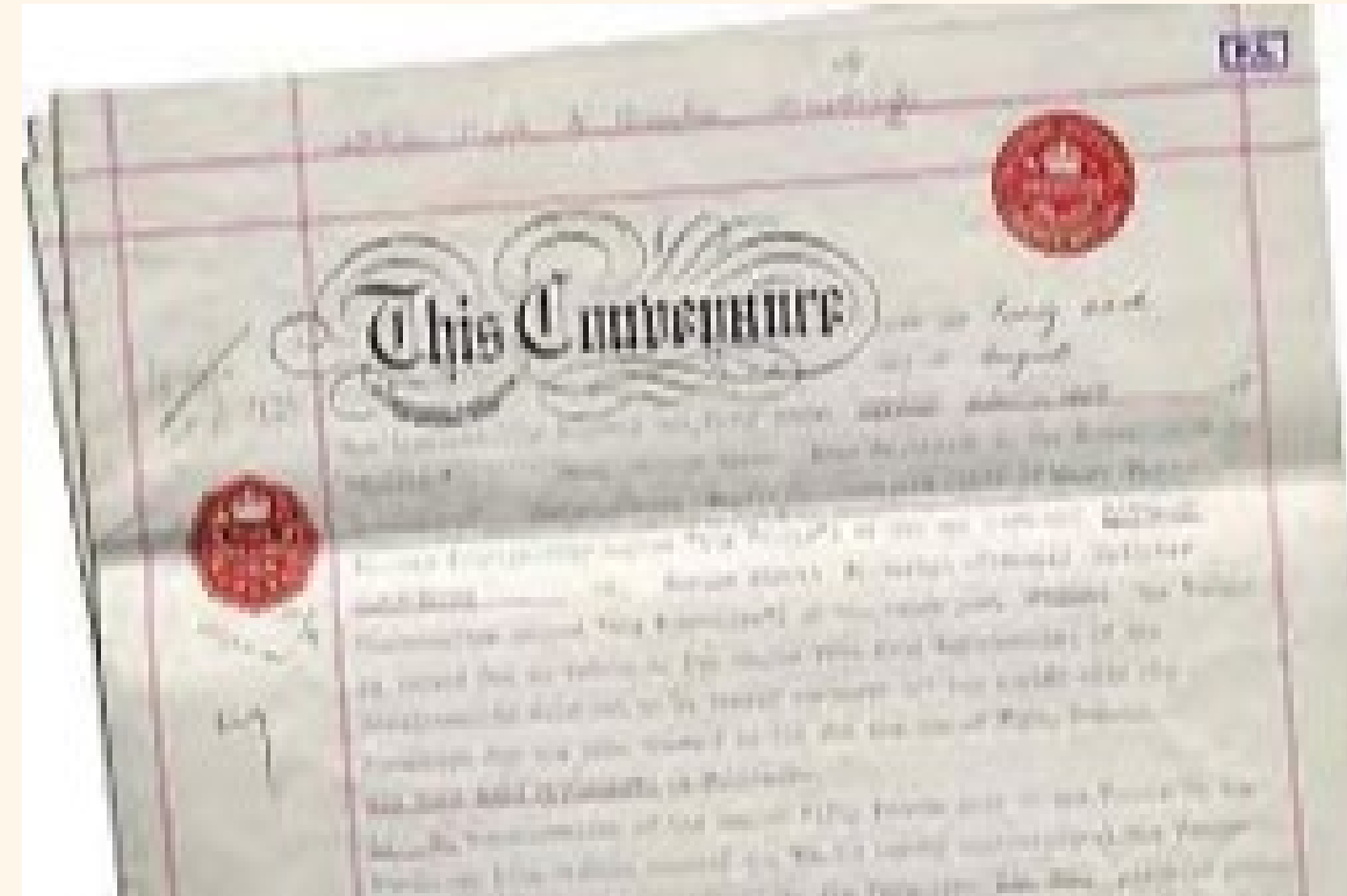
FREEHOLD UNREGISTERED AND

- Check whether the land is already registered or is the subject of a pending application for first registration.
- Possible that a third party has lodged a caution against first registration, warning that they have an interest in the land, such as an easement.
- When first registration is lodged:
 - HMLR will ‘warn off’ the cautioner
 - give them a limited period to establish their rights over the land
 - if they cannot do so, the registration will proceed and the cautioner will lose their rights.
- These checks can be done by an **Index Map search (SIM)** at HMLR, accompanied by a plan of the property

The screenshot displays the Land Registry Business e-services portal. The main heading is 'Land Registry' with a 'Business e-services' tab. A 'Logout | Customer support' link is in the top right. The central form is titled 'Search of the Index Map'. On the left, a sidebar lists services: 'My Portal Home', 'Information Services' (with sub-items like 'Request Official copies', 'Official Search of Whole with Priority', etc.), 'Search of the Index Map' (highlighted with an orange box and number 2), 'Home Rights Search', 'Outline Application', 'Day List Enquiry', 'ENDs Enquiry', 'Search of the Index of Relating Franchises and Manors', 'Enquiry by Property Description - Title View', 'Register View - pdf', 'Register View - html', 'Title Plan View', and 'Document View'. The main form area has a 'Next>' button at the top right. Below it, a section asks 'Want your title number NOW? Try our FREE MapSearch service' with a 'MapSearch' button. The form is divided into sections: 'Property information' (with fields for 'Postcode' containing 'cr02aq' and 'Local Authority'), 'Attachments' (with a checked box 'I wish to attach a plan'), and 'Customer information' (with fields for 'Your reference' and 'Contact telephone number' containing '01752444889'). A 'Next>' button is at the bottom right. Numbered orange boxes 1 through 6 highlight the navigation path: 1 (My Portal Home), 2 (Search of the Index Map in sidebar), 3 (Property information), 4 (Attachments), 5 (Customer information), and 6 (Next button).

DEEDS

- If title unregistered: title is proved by the titled **deeds**.
- Seller provides the buyer with copies of the title deeds and, - sale of the whole of the property, hands the originals to the buyer on completion.
- sale is of part, keep the original title deeds and hand over certified copies on completion.
- On completion, buyer's solicitor examines the original title deeds against the copies they received to check they are the same
 - this process is referred to as '**verification of title**'.
 - a **memorandum of the sale of part** is marked on the original deed.



DEDUCTION OF TITLE

- This is the process of reviewing the paper deeds which have been used to transfer ownership of the property in the past, and establish a timeline from the original Deed the ROOT'
- These typically include conveyances, mortgages, assents (between personal representatives and a beneficiary under a will), deeds of gift and land charges searches.
- Seller's solicitor will usually be able to obtain the title deeds from the client or from their mortgage lender



EPITOME OF TITLE

- The seller's solicitor will then prepare an **'epitome of title'** , i.e a schedule of all the documents from and including the root up until the present day.
- The documents should be numbered and listed in chronological order.
- Attached to the epitome are copies (rather than originals) of each of these documents.

[illegible]

No.	Date	Description of Document including parties and event	Evidence supplied	Original to be handed over at completion?
1	25/05/1955	Conveyance by (1) Mark Philip to (2) Simon Andrew	Photocopy	Yes
2	25/05/1955	Mortgage Deed between (1) Simon Andrew and (2) Mitford Bank Limited	Photocopy	Yes

REQUIREMENTS OF A GOOD ROOT OF TITLE

A valid root of title must:

- Show ownership
- Demonstrates seller's full legal and equitable interest
-
- Identify the land
- Contains a clear description of the property
-
- Be free from doubt
- Does not raise questions about the seller's title
-
- Be at least 15 years old

After identifying the root of title

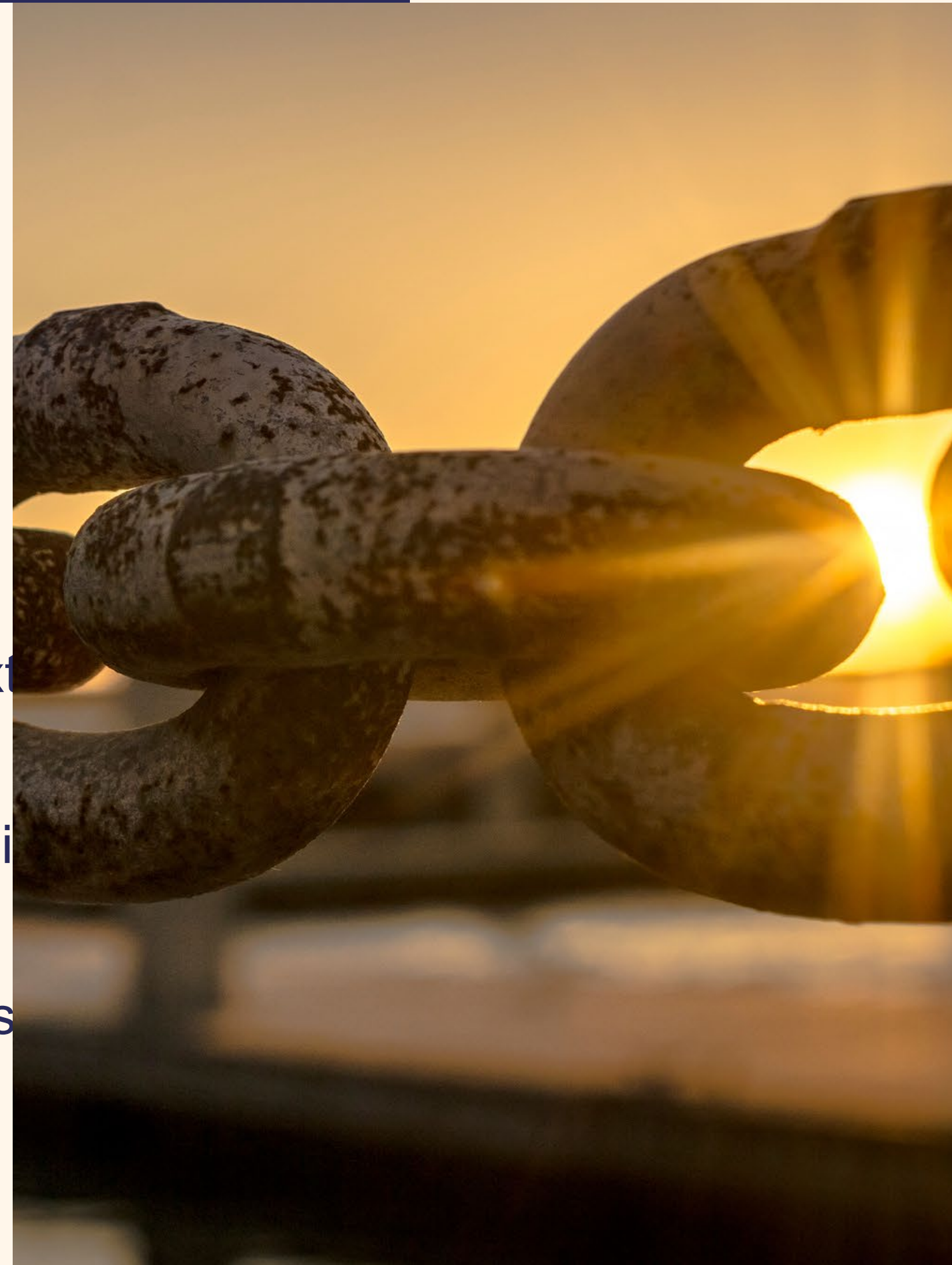
Check the root deed and all subsequent deeds for:

- Chain of ownership
- Description of the land
- Stamp duties
- Incumbrances
- Execution
- Land Charges searches

Key sources:
Law of Property Act 1925, s44

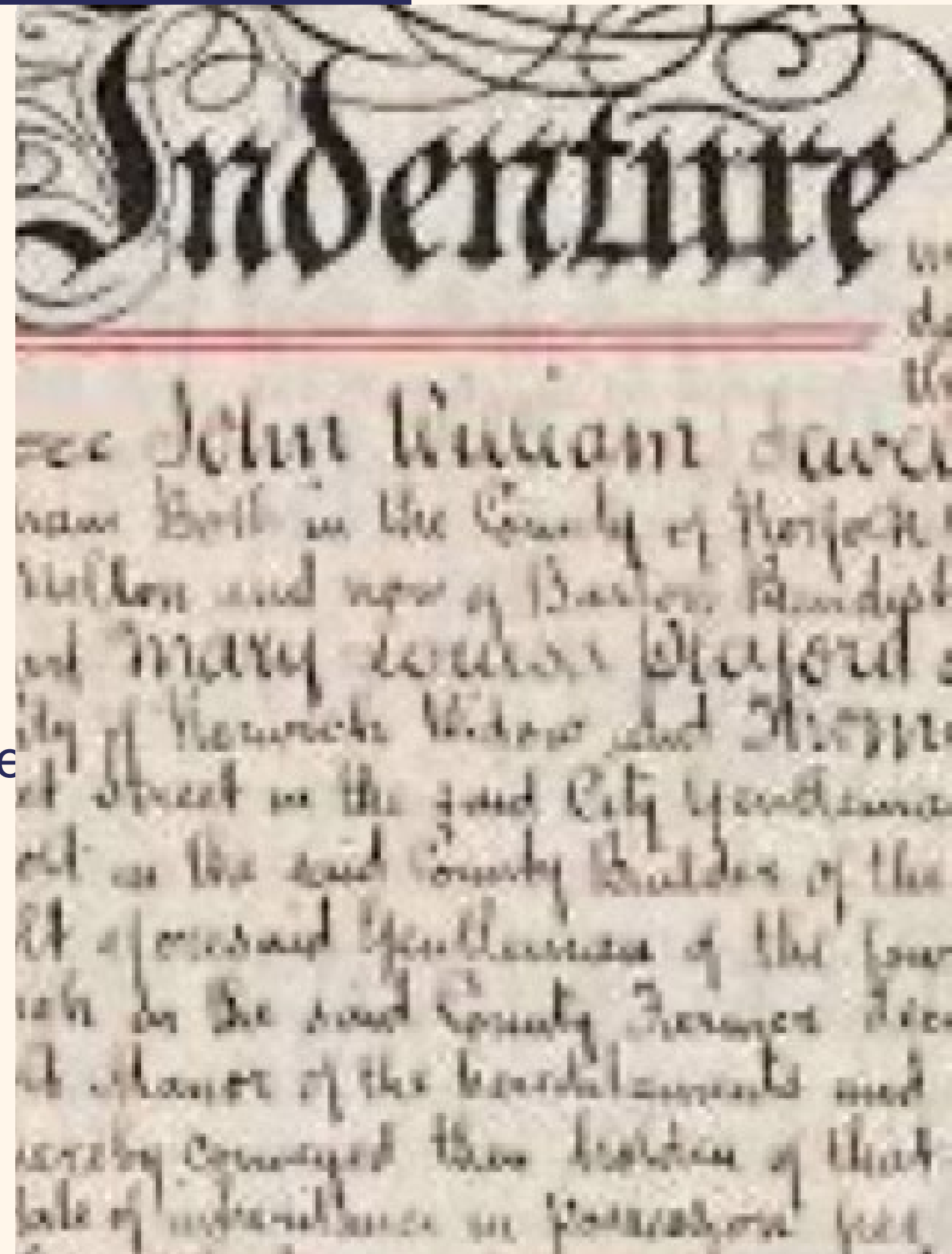
CHAIN OF OWNERSHIP

- There should be an unbroken chain of ownership from the owner in the root to the present seller.
- There should be documentary evidence of every change of ownership.
- The person who acquired the property in the last document should be the same person transferring/selling title in the next document... and so on
- Sometimes if the owner has died, the property will vest in their Personal Representatives (PRs), in which case the grant of probate identifying the PRs must also be produced to establish it was them who transferred title in the next document in the chain.



DESCRIPTION OF LAND

- The title deeds need to be checked to ensure the description of the property is consistent throughout.
- Frustratingly, plans in different title deeds do not always tally with each other.
- This is particularly likely where the deeds include one or more conveyances of part, indicating the land was once part of a larger estate



STAMP DUTY

Before December 2003



- Most conveyancing documents required stamp duty
- Payment evidenced by an embossed stamp on the deed
- Ad valorem duty depended on the purchase price
- Low-value transactions could qualify for exemption or reduced rates with a certificate of value
- Exemptions included mortgages after 1971 and some gifts/assents after 30 Apr 1987

STAMP DUTY

Additional Historical Requirements

- From 1931, some conveyances had to be sent to Inland Revenue
- These received a Particulars Delivered (PD) stamp
- Missing PD stamps could indicate completion problems and penalties

Why It Matters

- Check the correct duty was paid at the time

Modern Position

- SDLT replaced most stamp duty on property transactions on 3 Dec 2003



INCUMBRANCES

- Each title deed should be checked for incumbrances i.e **easements** and **covenants**
- Easements will often begin with the words 'EXCEPTING AND RESERVING'

This indicates in an earlier sale, the seller reserved an easement over the land being sold, such as a right of way.

- The words 'SUBJECT TO' are used to introduce an incumbrance, such as an obligation to pay towards the maintenance of a road.
- You may also find restrictive and positive covenants the buyers entered into on previous sales



EXECUTION AS A DEED

- Each document should be checked to ensure that it was properly executed.
- Most documents in a conveyancing transaction will need to be executed as a deed (s 52 Law of Property Act 1925), so the formalities for execution as a deed must have been complied with.
- A deed is defined in s 1(2) **Law of Property (Miscellaneous Provisions) Act 1925** and must:
 - (a) be in writing
 - (b) make it clear on the face of it that it is a deed
 - (c) be signed by the person granting the interest in the presence of a witness who 'attests' the signature (ie provides evidence of it)
 - (d) be delivered as a deed.



LANDCHARGESSEARCHES

- Some incumbrances, notably restrictive covenants, will only bind unregistered land if they are correctly registered as a land charge at the central Land Charges Department
- Immediately after an incumbrance was created, the solicitor acting for the benefitting land should have registered the land charge.
- The registration should have been against the name of the person (the ‘estate owner’) who owned the legal estate in the land bound by the incumbrance.

Class of land charge	Interest portected
C(iv)	an estate contract
D(ii)	a restrictive covenant
D(iii)	an equitable easement
F	a Home Right

LANDCHARGE WHAT TO DO?

- As part of an investigation of an unregistered title, a solicitor must ensure that valid searches have been made against the names of all the estate owners revealed in the epitome of title and the attached documents, even if their period of ownership predates the root of title.
- The search, on form K15, should be against each estate owner for the period that they owned the land.
- Only the years need be entered onto the K15 form, not the precise dates.
- If there is uncertainty about the exact years someone owned the land, then the search should be for any years that the individual might have done so. So, if in doubt, the solicitor should search back to 1926, when the land charges system was introduced. It is possible to rely on valid searches done by others in the past, on previous sales.

ACTIVITY 2: UNDERTAKING SEARCHES

- You act for the buyer of this unregistered property in Essex. The seller is Katie Chambers. You have established that the 1975 Conveyance is a good root of title, but you have been provided with the 1948 Conveyance as it grants a right of way that is referred to, but not reproduced in the 1975 Conveyance.
- To determine potential charges, who's title should you undertake searches against?

<i>Epitome of Title</i> <i>relating to freehold property known as:</i> <i>132, North Street, Rochford, Essex RM1 1TE</i>				
No.	Date	Description of Document including parties and event	Evidence supplied	Original to be handed over at completion?
	15/06/1948	Conveyance by (1) Eileen Fowler to (2) James Wright	Photocopy	Yes
1	23/04/1975	Conveyance by (1) James Wright to (2) Frederick Bunhill	Photocopy	Yes
2	23/04/1975	Mortgage Deed between (1) Frederick Bunhill and (2) National Midland Bank Limited	Photocopy	No
	05/05/1979	Death certificate of Frederick Bunhill	Photocopy	No
3	09/08/1979	Grant of Probate to Julian Andrewes and Thomas Taverner	Photocopy	No
4	06/09/1979	Assent made by (1) Julian Andrewes and Thomas Taverner to (2) Kate Chambers	Photocopy	No

ISSUES THAT MAY BE UNCOVERED (REG AND UNREG)

Easement

Covenants

Mines and minerals

Co-ownership

Unkown covenants

Mortgages

Leases

Notices

Home Rights

EASEMENTS

- Most common easements are rights of way , rights of drainage and rights of support .

- **Registered land:** easements that burden the property should appear in the Charges register, but they may also appear in the Property register

Also in the Property register will be financial obligations to contribute attached to easements that benefit the property, such as ‘a right to use a driveway on a neighbour’s property subject to paying one half of the maintenance costs’

- **Unregistered land,** easements are usually granted or reserved immediately in the first operative paragraph of the conveyance, just after the words that convey the property to the buyer

Easement

*The right to use
another person's land
for a specific purpose.*

**Tom is allowed
to go through
Mary's land to
get to the
road.**

**He has an
easement.**

Mary's Land

Tom's
Land

Easement

ROAD

MINES AND MINERAL RESERVATIONS

- Sellers may reserve mines and minerals when selling land, preventing transfer to buyers.
- In **registered land** , noted in the Property Register.
- In **unregistered land** , included in the conveyance.
- Coal interests are vested in the Coal Authority (Coal Industry Act 1994) → Coal mining search required.
- Solicitor should conduct an Index Map search to check separate mineral ownership.



CO-OWNERSHIP

When two or more people co-own a property:

- the **legal interest** can only be held under joint tenancy;
- **equitable interest** in a property can be held as joint tenants or tenants in common
- **Joint tenants** have an equal interest in the property (interest not share - they all own the whole).
 - If 1 of 2 joint tenants dies, the other will automatically become the sole owner of the whole property
 - It will **not** be possible for either of them to leave their share of the property to anyone else by will.
- **Tenancy in common** can own either equal or unequal shares.
 - If one dies, share will be inherited by will or intestacy and will not pass automatically to the survivor.
 - It can be left by will to anyone the tenant in common chooses (no right to survivorship)
- **Registered land:** assume equitable interest is joint tenants unless a standard FORM A restriction appears in the Proprietary register : *“RESTRICTION: No disposition by a sole proprietor of the registered estate (except a trust corporation) under which capital money arises is to be registered unless authorised by an order of the Registrar or the court”*
- **Unregistered** : conveyance will state how equitable interest held

COVENANTS

- Covenant is a promise to do or not to do something (positive or restrictive)
- Covenants are an important way to control land use.
- A property lawyer must ensure that they establish whether any covenants affect the land that a client is buying.
- If there is a covenant preventing the buyer from doing what they want at the property, this could result in the buyer withdrawing from the transaction.
- Covenants are also contained in leases but in this unit we will focus on freehold covenants.

C: Charges register

This register contains any charges and other matters that affect the land.

1. (19.12.1989) A Conveyance of the land tinted yellow on the filed plan and other land dated 19 May 1924 made between (1) Allan Ansell (Vendor) and (2) Frances Amelia Moss (Purchaser) contains covenants details of which are set out in the schedule of restrictive covenants hereto.
2. (19.12.1989) A Conveyance of the land tinted pink of the filed plan and other land dated 16 August 1926 made between (1) Edward Philip Green (Vendor) and (2) Peter John Brown and Hannah Sarah Brown contains covenants details of which are set out in the schedule of restrictive covenants hereto.
3. (19.12.1989) A Transfer of the land in this title dated 5 December 1989 made between (1) Freeman Builders Limited and (2) James Michael Pritchard and Molly Carol Pritchard contains restrictive covenants.

NOTE: Copy filed
4. (19.12.1989) The land is subject to rights of way on foot only over the passageway tinted blue on the filed plan.
5. (19.11.2008) REGISTERED CHARGE dated 12 November 2008.
6. (19.11.2008) PROPRIETOR: WEYFORD BUILDING SOCIETY of Society House, The Avenue, Weyford, Cornshire CN12 4BD.

MORTGAGES

- A mortgage is rarely a problem because the seller usually intends to discharge it using the proceeds of sale immediately after completion.
- Buyer will not commit to buying unless satisfied that the seller's mortgage will be discharged on completion of the sale.
- It is possible to tell if a registered property is subject to a mortgage as there will be two entries in the Charges register, one giving the date and purpose of the charge and the other stating the identity of the lender.
- In unregistered land, a mortgage will appear as one of the title deeds listed in the epitome of title. A buyer will only be concerned with a mortgage that has not been discharged (paid off): a mortgage that has been discharged will have, usually on the back page, a 'vacating receipt' in the following terms: RECEIPT: [THE BANK] hereby acknowledges to have received from [THE BORROWER] all monies intended to be secured by the written deed.



LEASES

- The existence of a lease affecting a freehold property will not be a problem if the buyer is expecting it.
- For example, the buyer may be purchasing the property as an investment and is relying on the rental income payable by the tenant of the lease.
- The existence of a lease will be a problem to a buyer who is expecting the property to be sold with vacant possession, as the tenant will have possession and control of the property for as long as the lease lasts.



NOTICES(REGISTEREDONLY)

- A notice is an entry in the Charges register in respect of the burden of an interest affecting a registered estate or charge.
- Notices can be agreed or unilateral: agreed notices are put on the register with the agreement of the registered proprietor, unilateral notices are used without the registered proprietor's consent
- The entry of a notice does not guarantee that the interest it is valid or that it even exists.
- The notice itself does not give the person who registers it any rights over the property as such. It merely serves to ensure that the priority of the interest in the notice is protected against any subsequent interests.

EXAMPLE

- You act for the buyer of a freehold registered property. The seller has provided you with official copies and the following entries appear in the Charges register:
- 1. (22.01.2015) UNILATERAL NOTICE in respect of an agreement dated 15 October 2014 made between (1) AnneMarie Jones and (2) Jackson Darcey.
- 2. (22.01.2015) BENEFICIARY: Jackson Leslie Darcey of 56 High Street, Dorking, Surrey RH4 2DH.
- The first step is to ask the seller's solicitor to ascertain to what the unilateral notice relates and then report to your client.
- You should require the seller to cancel the notice at the Land Registry before an exchange of contracts.
- If Mr Darcey agrees to the cancellation or the unilateral notice was lodged in relation to an option that has now expired, this should not be much of a problem. However, if the notice is in respect of a valid interest such as a contract for sale, covenants or a lease over the property, this will be of greater concern and will need to be investigated appropriately.

HOME RIGHTS

- A home right is a statutory right created under the Family Law Act 1996 for a nonowning spouse or civil partner to occupy the matrimonial home.
- A home right does not create an interest in land.
- In registered land, a home right will bind a buyer if it is protected by a notice in the Charges register by the date when the transfer of the property to the buyer is registered.
- In unregistered land a home right must be protected as a Class F land charge in order to be binding on a buyer.
- If the title investigation reveals a home right, the seller should be required to obtain from the non-owning occupier a release of all rights in the property and agreement to vacate on or prior to completion.
- This is usually dealt with in the contract.



OVERRIDING INTERESTS

- Interests that do not appear on the register, but **are binding** on future purchasers or others requiring interests
- May appear unfair to purchasers who might appear unaware of their existence but are bound by them.
- Some examples of third party overriding interests are (see IRA Sch 1+3):
 - short leases (landlord and tenant)
 - informal agreements, e.g. contributions to purchase price
 - easements binding through implications
- *Williams & Glyn's Bank Ltd v Boland* [1981] AC 487
Established a spouse with a beneficial interest under a trust who is in actual occupation can have an overriding interest that binds a purchaser or mortgagee, even though the interest is not registered

Key sources: Law Property Act 1925, s2 and s27
Land Registration Act 2002, schedules 1 and 3

UNIT 3: LEARNING OUTCOMES

- Differentiate between registered and unregistered land
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- Outline how official copies are set out in registered land
- Explain the requirements of a good root of title for unregistered land
- Explain how to analyse the title deeds listed in an epitome of title
- Summarise issues that might be revealed in the investigation of title and the further action required

How confident are you that you can demonstrate these Learning Outcomes in your assessments?

Probably not fully after today alone. As you plan your independent study for this week, focus on these learning outcomes. Plan your reading and notes against these and work on building your confidence in achieving them before we start the next unit.

RECAP

UNIT 3: READING

- You should draw on the following materials to deepen your understanding of the topics discussed in this unit.
- Harris *et al.* (2024) chapters 15-17
- Use Lexis Practical Law to understand practical issues