

UNIT 2: OWNERSHIP OF LAND

Contents

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- Ownership of legal estates
- Co-ownership
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- Registered and unregistered land

UNIT 2: LEARNING OUTCOMES

- Differentiate between legal and equitable arrangements for sole ownership and co-ownership
- Differentiate between the legal and equitable co-ownership and the types of tenancies
- Explain the formalities for conveying legal and equitable interests
- Define the requirements of a valid deed
- Differentiate between investigation of title for registered and unregistered land



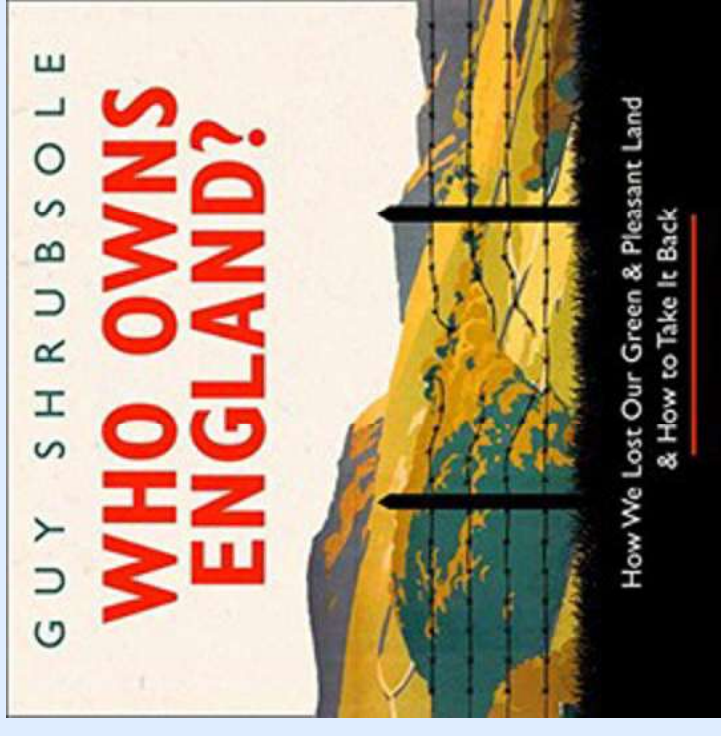
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PART 1: OWNING A LEGAL ESTATE

UNIT 2: OWNERSHIP OF LAND

ICEBREAKER: WHO OWNS ENGLAND?

- Which of the following statements best describes ownership of legal estates in England?
 - a. 30 per cent of land in England belongs to approximately 5 per cent of the population
 - b. 50 per cent of land in England belongs to less than 1 per cent of the population
 - c. 60 per cent of land in England belongs to approximately 10 per cent of the population



1925: A MAGICAL YEAR FOR PROPERTY LAW

- 6 statutes, all concerning property/land, were enacted in 1925:
 - Law of Property Act 1925 (mostly still in force)
 - Trustee Act 1925 (mostly still in force)
 - Administration of Estates Act 1925 (mostly still in force)
 - Land Charges Act 1925 (mostly repealed)
 - Land Registration Act 1925 (repealed)
 - Settled Land Act 1925. (in force)
- Before coming into force buying land was unwieldy and uncertain, and the rights of third parties could be binding on third parties under the notice doctrine
- Biggest risk was confirming that the seller had the right to sell as establishing ownership relied upon investigating title through volumes of paperwork

- The aims of the reforms were to enable a purchaser to discover;
- the owner of the land
- the extent of the land
- to access information on any third-party interests
- to protect third party interests; and
- modernise land law

OWNING LAND: ESTATES IN LAND

- The Crown (King or state) owns all land in E&W
- People and legal entities (including business) can only own an **estate in land**
- LPA 1925, s1(1) simplified to two types:
 - a. **Freehold** (an estate in fee simple absolute in possession) = indefinite interest
 - b. **Leasehold** (a term of years absolute) = time limited interest (up to 999)



SOLE OWNERSHIP

- Sole owner of a legal estate:
 - Freehold LPA 1925, s1(1)(a)
 - Leasehold LPA 1925, s1(1)(b)
- Evidenced by being named on:
 - Registered land – Proprietorship Register of the Land Register (TR1)
 - Unregistered land – title deeds
- Ownership for his/her benefit unless holding legal title as a trustee (**absolute ownership**)
- Cannot legally own land if under 18 **LPA 1925, s1(6)**

Key sources: Law of Property Act 1925, s1(6)

“A legal estate is not capable of subsisting or of being created in an undivided share in land or of being held by an infant.”

CO-OWNERSHIP

- More than one party owns the same legal estate
- If there is more than one owner: **a trust will always exist** (regardless of whether the parties know this)
- Trust = divided ownership (legal and equitable owners)
- Actual owners may be Legal and/or Equitable owners
- Legal owners hold the property for the benefit of equitable owners (this may be the same parties)
- Law: maximum of **four legal land owners: LPA 1925, s34(2)**
- First 4 parties named in conveyance are legal owners
- In equity, **unlimited number** of co-owners
- Co-owners of legal estate are referred to as tenants (not to be confused with tenants in landlord and tenant/rentals)



**Key source: Law of Property
Act 1925, s34**

CO-OWNERSHIP TENANCIES

- Once identified the legal estate is co-owned, next question is how the co-owners share that estate
- Tenancy describes **how** the estate is shared between co-owners (again not to be confused with the rental tenancy)
- Two types of tenancy exist:
 - Joint tenancy
 - Tenancy in common



JOINT TENANTS

- Co-owners acting as one entity
- Each simultaneously owns the whole estate, not a quantifiable share
- “United in every way possible”: requires the four unities:
 - Possession — each entitled to physically possess all of land and cannot be excluded
 - Interest — each has the same estate
 - Title — each derives title from the same conveyancing document
 - Time — interest of each must vest at the same time
- Right of survivorship (ius accrescendi): When joint tenants die, the others still each own the entirety of the land automatically until there is only one remaining sole owner
- The deceased joint tenants are simply removed from the ownership

TENANTS IN COMMON

- Tenants in common have **divisible** shares in the estate
- Shares can be quantified: can be equal but do not need to be (i.e. any % share)
- Do not need to be 'united in every way possible' — requires only:
 - **Unity of Possession** — each entitled to physically possess all of land and cannot be excluded
 - (does not mean other unities can't apply)
- **NO right of survivorship**: equitable share can be gifted in will or via intestacy



CO-OWNERSHIP IN LAW AND EQUITY

Co-ownership in Law

- Legal estate can only be held as joint tenancy, **LPA 1925, s34**
- Cannot sever (break) a joint tenancy of a legal estate to create a tenancy in common (i.e. with divisible shares) - **LPA 1925, s36**

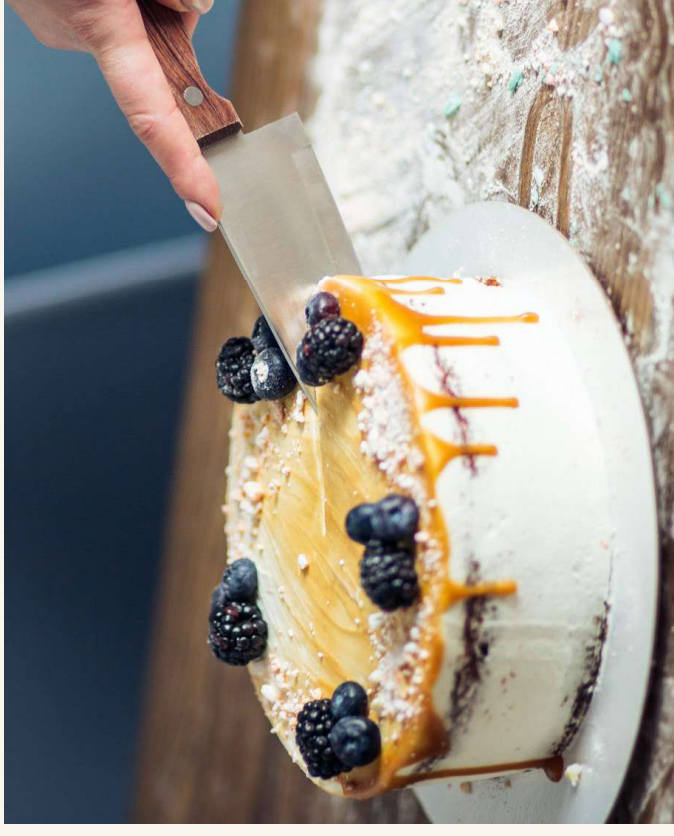
Key source: Law of Property Act 1925, s34 and s36

Co-ownership in Equity

- Can be held either as joint tenancy or tenancy in common
- Equity favours tenancies in common: BUT (rebuttable) presumption that equity follows the Law, i.e. presume if intended a different arrangement would have set out at time of acquiring legal interest ***Stack v Dowden* [2007] UKHL 17, [54]**
- If created at time of conveyance, must be made via express declaration of trust, LPA 1925, s53
- joint tenants in equity, any co-owner can sever the joint tenancy

SEVERANCE OF JOINT TENANCY

- Not a method of terminating co-ownership
- Converts joint tenancy into tenancy in common
- Destroys right of survivorship
- Operates only in equity LPA 1925, s36(2)
- Person severing becomes a tenant in common but the others *remain* as joint tenants
- Person severing acquires proportionate share unless the contrary is expressed: *Bedson v Bedson* [1965] 2 QB 666
- Must be done during lifetime, cannot sever via will: *Gould v Kemp* (1834) 2 My & K 304



SEVERANCE METHODS: COMMON LAW

- Common law: *Williams v Hensman* (1861) 1J & H 546 3 methods:
 - Operating on one's own share
 - Mortgage their share: *Bedson v Bedson* [1965] 2 QB 666
 - Fraudulent sale of their share: *First National Security v Hegarty* [1985] Q.B. 850
 - Initiating legal proceedings: *Re Draper* [1969] 1Ch 486
 - Bankruptcy: *Re Pavlou* [1993] 1WLR 1046
 - Mutual agreement: *Burgess v Rawnsley* [1975] 1Ch 42
 - All the joint tenants must agree
 - Doesn't have to be in writing
 - Doesn't have to be a legally binding agreement like a contract
 - But must be a completed agreement
 - Mutual conduct: *Gore & Snell v Carpenter* [1975] 1Ch 429

SEVERANCE METHODS: STATUTE

- Can be severed with notice, s36(2)

- Any notice must be:

- in writing: **s196(1)**

- served to last known abode or place of business: **s196(3)**

- sufficiently served if sent by post via registered letter to the person served by name.

Service shall be deemed to be made at the time at which the registered letter would in the ordinary course be delivered: **s196(4)**

- Notice of severance need not have been received: *Re 88 Berkeley Road* [1971] Ch 648
- Valid severance despite not being read: *Kinch v Bullard* [1999] 1WLR 423

Key source: Law of Property
Act 1925, s36(2) and s196

SEVERANCE METHODS: OPERATION OF LAW

- **Forfeiture Act 1982, s1:**
 - In this Act, the “forfeiture rule” means the rule of public policy which in certain circumstances precludes a person who has unlawfully killed another from acquiring a benefit in consequence of the killing.
- But the court has a discretion to modify under **section 2: *Re K* [1985] Ch 85**
- In context of joint tenants, if a property was co-owned by two joint tenants

Key source: Forfeiture Act, 1982

Activity 1; Summary

True or False? Explain your answer.

1. A tenant in common can benefit from survivorship.
2. Legal title can be held as a tenancy in common.
3. A joint tenancy may be severed by written notice under s.36(2) LPA 1925.
4. A notice of severance must actually be read to be effective.
5. Forfeiture can result in severance by operation of law.



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PART 2: FORMALITIES

UNIT 2: OWNERSHIP OF LAND

TRANSFERRING LEGAL ESTATES OR INTERESTS

- Formalities for creating or transferring legal estates or interests
- A deed is required to create or transfer a legal estate or interest in land (otherwise void) **LPA 1925, s52(1)**
- Some exceptions:
 - short-term (parol) leases (rental) require no formalities for creation. **LPA 1925 s54(2)**
 - Occupation contract in Wales (must be in writing but not deed) **Renting Homes (Wales) Act 2016, s31**
 - Certain easements



Key source: Law of Property
Act 1925, s52(1)

CREATING A DEED

- A deed is a written instrument which is executed with the necessary formality and by which an interest, right or property passes or is confirmed, or an obligation binding on some person is created or confirmed. Deeds are different from contracts which have no formality requirements
- Four requirements:
 - In writing: cannot be made verbally
 - Face value: clear from document that is a deed, e.g. expressing itself as a deed (s1(2))
 - Executed: signed in presence of witness who attests signature (s1(3))
 - Delivered: give clear intention to be bound (words or conduct)
- No consideration required to enforce
 - *Davis v Mason* (1793) 101 ER 69

Key source: Law of Property
(Miscellaneous Provisions) Act
1989, s 1

CONTRACTS FOR SALE OF LAND

- Land transactions are usually in two distinct stages:
 - **Stage 1:** investigation of title leading to exchange of contract (due diligence)
 - up to exchange of contract, non-legally binding stage (can withdraw)
 -
 - **Stage 2:** Completion when legal estate is created and transferred.
- Examples of where compliance with LPMPA, s2 required for validity:
 - the sale of a freehold or lease;
 - the grant of a lease;
 - the creation of an option;
 - the creation of an easement.
 - Any variation to a contract

Contract for sale of land must be in writing, incorporate all express terms in single document, and signed.

Key source: Law of Property (Miscellaneous Provisions) Act 1989, s 2

CREATION/TRANSFER OF EQUITABLE RIGHTS

- The most significant ways in which Equitable property rights can be created are:
 - By grant of an estate or interest which can only exist in equity;
 - some rights have no legal equivalents, e.g. restrictive covenants
 - even if created by deed - only equitable (e.g. those not listed in s1 LPA 1925
 - must be created by signed written document LPA 1925, s53
 - By grant of an estate or interest by a person who owns only an equitable right;
 - person cannot grant greater interest than they own
 - person with equitable only interest cannot grant legal interest
 - must be created by signed written document LPA 1925, s53
 - By contract to create or transfer a legal estate or interest (LPMPA, 1989, s2);
 - By trying to grant a legal estate or interest but failing to use a valid deed;
 - Must be a contract which complies with LPMPA s2, clean hands: *Parker v Taswell* (1858) 119 ER 230
 - By express trust: LPA 1925, s53

EXPRESS DECLARATION OF TRUST

- Express declaration of trust
- **MUST** be in **writing**
- “[A] declaration of trust respecting any land or any interest therein must be manifested and proved by some **writing** signed by some person who is able to declare such trust or by his will” LPA 1925, s53(1)(b)
- [TR1 Form Box 10](#)

Key source: Law of Property
Act 1925, s52(1)

SPECIFIC PERFORMANCE

- Specific performance is an equitable remedy, therefore the courts will only grant it if the person seeking it has behaved justly and fairly: 'He who seeks equity must do so with clean hands.'
- The person seeking the remedy must not be in breach of the terms of the contract.
- For equity to recognise the arrangement there must be:
 - a contract;
 - complying with s 2 LPMPA 1989; and
 - clean hands

Key source: *Walsh v Lonsdale*
(1882) 21 Ch D 9

Activity 2: Legal or Equitable interest

Scenario 1

A grants a 10-year lease to B by a valid deed.

Scenario 2

A agrees in a signed written contract to sell Blackacre to B. Completion has not yet occurred.

Scenario 3

A grants B a restrictive covenant by deed.

Scenario 4

A orally grants B a one-year tenancy at market rent, taking effect immediately.

Scenario 5

A attempts to grant B a legal easement by a signed letter, not a deed.

Scenario 6

A and B purchase a house and sign a TR1 stating they hold as tenants in common in equal shares.



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PART 3: REGISTRATION

UNIT 2: OWNERSHIP OF LAND



ACTIVITY 3: WHY REGISTER LAND?

- Unit 1 introduced the concept of land registration. Why do you think it is advantageous to register land?

ANSWER: WHY REGISTER LAND?

- You may have identified:
 - provides better certainty to have accurate records as to who owns legal estates, and has rights in relation to them
 - aids trade between people and business - good for economy
 - addresses some of challenges presented by system of unregistered land:
 - title deeds can be lost
 - conveying unregistered property takes considerable time
 - there is a risk of fraud, e.g. creating false deeds
 - difficult to ascertain rights which affect the land
 - land registration provides a standardised model, which clarifies and improves conveyancing process
 - conclusiveness: ensures ownership of land is guaranteed by state: LRA 2002, s58

UNREGISTERED AND REGISTERED LAND

Unregistered land

- Any land not recorded with the Land Registry is termed unregistered land
- Government database cannot be relied upon to establish ownership: must use paper system, e.g. deeds and associated documents to investigate ownership
- c13-15% of land in E&W is unregistered
- Lack of registration does not mean the land is not owned: it just means that ownership has not been recorded in the government database

Registered land

- c85% of land in E&W is registered with land registry
- Registration is not a new concept: Roman Empire held regular censuses to record land ownership (tax purposes only)
- Long history: Land Registry Act 1892; Land Transfers Act 1875 (London); Land Registration Act 1925 (nationwide)
- Introduced in phases, registration became compulsory over time: different regions different timeframes

LAND REGISTRATION REFORMS

- Law Commission (2001) recommended significant reforms to LRA 1925 regime. These were captured in LRA 2002. Three reasons for reforming the law were given:
 - The need to create the legal environment in which it was possible to conduct conveyancing in electronic form and which reflected the possibilities that electronic conveyancing could offer.
 - The unsatisfactory nature of the legislation that governs land registration.
 - The need to create principles that reflected the fact that registered land was different from unregistered land and rested on different principles.
- Overarching aim: reduced volume of unregistered land
- Some key features of the LRA 2002 are:
 - irrelevance of the doctrine of notice
 - categorisation of proprietary rights
 - registration triggers
 - notices and restrictions
 - overreaching and overriding.

Key source: Land Registration Act 2002

NOTICE DOCTRINE

- Pre-2002, common law doctrine of notice directed that a good faith purchaser) took the land free from any unregistered equitable interests **provided that** they did not have notice of those interests. (if notice - were bound)
- No longer relevant for transactions conveyed under LRA 2002
- The register is now taken as the complete and accurate record of rights and interests in relation to that land.
 - Mirror principle: land register reflects the rights and interests of land
 - Curtain principle: purchasers should not be required to look behind the curtain
 - Insurance principle: once title is registered, guaranteed by state
- As you will discover this in this module, this position is perhaps a little aspirational, as there are circumstances where unrecorded rights and interests may be recognised

Title number
Property register: type of estate
(freehold or leasehold)
(A)

Proprietorship register
(B)

Charges register
(C)

Key source: Land Registration
Act 2002

REGISTRATION TRIGGERS

- Can voluntarily register any previously unregistered interests including freeholds and leases (more than 7 years long): **LRA 2002, s3**
- Most registration occur because **compulsory** first registration is triggered: **LRA 2002, s4:**
 - transfer of freehold or leasehold (in excess of seven years) ownership
 - grant of lease in excess of seven years
 - grant of a protected first mortgage.

- If a triggering even occurs on unregistered land, registration must occur **within 2 months**. Failure to register renders the transaction void: **LRA 2002, s7**

- Third party interests can be protected via two ways in Land Registration.

Notices and restrictions (LRA 2002, s29)

- Notices protect priority rights when sale occurs
- Restrictions limit circumstances in which sale can be made

HM Land Registry



Official copy
of register of
title

Title number CS1234

Edition date 26.07.2019

- This official copy shows the entries in the register of title on 10 December 2019 at 09:20:59.
- This date must be quoted as the "search from date" in any official search application based on this copy.
- The date at the beginning of an entry is the date on which the entry was made in the register.
- Issued on 10 December 2019.
- Under s.67 of the Land Registration Act 2002, this copy is admissible in evidence to the same extent as the original.
- For information about the register of title, see www.gov.uk/land-registry
- This title is dealt with by HM Land Registry Marston Office.

A: Property register

This register describes the land and estate comprised in the title.

STILLTON 1 MOUSEHOLE

- 1 (26.02.2010) The Freehold land shown edged with red on the plan of the above title filed at the Registry and being 1 Trant Way, Mousehole, Stillton ST16 3ZF.

B: Proprietorship register

This register specifies the class of title and identifies the owner. It contains any entries that affect the right of disposal.

Title absolute

Key source: Land Registration Act 2002

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 LRA Sch 1 + 3):
 - short leases (landlord and tenant)
 - informal agreements, e.g. contributions to purchase price
 - easements binding through implications
- Law Commission (2001) identified the following as reasons for overriding interests continuing to bind purchasers:
 - Most overriding interests share a commonality of it being unrealistic to expect the person with the benefit to register it.
 - Most arise informally, meaning it would be ‘overly burdensome and inconvenient to expect registration’.

- *Williams & Glyn’s Bank Ltd v Boland* [1981] AC 487

Notice here how overriding interests do not address primary purpose of land register.

Operate counter to: mirror and curtain principles

AND purpose of land register in providing full information about state of land by omitting overriding interests

Does not alert purchasers to certain burdens attached to

Key sources: Law Property Act 1925, s2 and s27

Land Registration Act 2002, schedules 1 and 3

OVERREACHING INTERESTS

- Opposite of overriding interests: Interests that do not appear on the Land Register which do not bind successive purchasers.
- Overreached interests are detached from the land.
- Allows purchasers to buy land free from certain equitable interests - they are 'overreached' (detached)
- The purchaser buys the land without them, and monetary compensation is given as substitute for the equitable interest
- Two elements needed for overreaching to happen:
 - The equitable interest is capable of being overreached (listed in LPA 1925, s2)
 - The statutory conditions for overreaching are met (laid down in LPA 1925s2 and s27).
 - There must be a conveyance to a purchaser for a legal estate in land under LPA 1925 s 2(1).
 - Purchase monies must be paid to at least two trustees or to a trust corporation under LPA 1925 s 27.
- *City of London Building Society v Flegg* [1988] AC 54

**Key source: Land Registration
Act 2002**

ACTIVITY 4: OVERREACHING AND OVERRIDING

- In the following scenarios, would the interest be overreached, or would it be overriding, and what would the impact of that designation be?

Phinsh and Frinde are the registered owners of a property. Frinde's sister, Naila, contributed 30% towards the purchase of the property. Phinsh and Frinde borrow money and secure the loan against the property. They fall behind with their payments, and the bank seeks repossession of the property.

Guyanda and Hibern live in a property, with only Hibern as the registered owner. Guyanda contributed 30% towards the purchase of the property. Guyanda and Hibern borrow money and secure it against the property. They fall behind with their payments, and the bank seeks repossession of the property.

INVESTIGATING TITLE (REGISTERED)

- In theory registration should make investigating title easy! Should just be able to check the register. LRA doesn't identify core steps: However, suggested steps:

- examine the official copies of the register, title plan and documents provided by the seller's solicitor;
 - official copies of the register of title for the property;
 - official copy of the title plan; and
 - copies of documents referred to on the register and kept by the Registrar (there are limited and specified exceptions).

Check for any discrepancies, e.g. in title names, number, estate details, the title plan or land description

- exceptionally, search at the Land Charges Department of the Land Registry for matters on which the register is not conclusive, e.g. if defect described in register (rare), or qualified title
- where the property is an existing leasehold, check that the lease is capable of being assigned and mortgaged—it is for this reason if no other that the lease must be inspected before exchange of contracts
- use Map Search and google earth at the Land Registry to inspect the property (e.g. to identify potential overriding interests).

INVESTIGATING TITLE (UNREGISTERED) 1

- Evidence basis - to be satisfied that the seller has the ability to sell the land (checking chain)
- examine the abstract of title or epitome and copy title documents received from the seller's solicitor to ensure that the seller can convey what the seller is contracting to convey and that the seller has title to any easements which benefit the land or are to be granted to the buyer;
- before or at completion, when the original documents are handed over verify the abstract or epitome against the original deeds or their certified copies;
- check that the description of the property is correct;
- check that all easements and covenants that have already been disclosed are accurately worded and described;
- check the chain of title is unbroken and starts with the good root of title specified in the contract;
- check that all documents have been properly executed;

Continued.....

INVESTIGATING TITLE (UNREGISTERED) 2

- check that all is in order if the powers of the seller or a predecessor are or were limited in any way (for example, if there is or has been a settlement, a trust for sale or a trust of land, or a sale by lenders, minors or personal representatives);
- check that all documents that attracted stamp duty are properly stamped and marked with the appropriate particulars delivered ('PD') stamp;
- check for any memoranda endorsed on deeds;
- make a search in the Land Charges Department of the Land Registry against previous owners;
- where the property is an existing leasehold, check that the lease is capable of being assigned and mortgaged—it is for this reason if no other that the lease must be inspected before exchange of contracts;
- if necessary, visit and inspect the property to investigate any problems which may not be apparent from the title deeds

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RECAP

UNIT 2: READING MATERIALS

- You can draw on the following chapters of your textbooks to deepen your understanding of the topics discussed in this unit.
- Bevan (2022) chapter 2-3 and 5
- Dixon (2024), chapters 2-4

EXPLORING FURTHER

- You may find the following sources of interest to you in exploring the topics discussed in this unit further. You are not expected to read these to pass the module, they are provided should you wish to explore the topics further.
 - Bogusz, B. (2002) 'Bringing land registration into the twenty-first century. The Land Registration Act 2002', The Modern Law Review, 65(4), pp. 556-567.
 - Conway, L. (2022) Tracing ownership of property or land. Available at: <https://researchbriefings.files.parliament.uk/documents/CBP-8567/CBP-8567.pdf> (Accessed: 20 April 2023).
 - Dixon, M. (2013) 'Title by registration or conquest: interpreting the Land Registration Act 2002 in England and Wales', International Journal of Law in the Built Environment, 5(3), pp. 194-206.
 - Gardner, S. (2014) 'The Land Registration Act 2002: the show on the road', Modern Law Review, 77(5), pp. 763-779.
 - Moss, D. and Beck, A. (2022) 'What is the issue with land registration?', Land Journal, 18 February. Available at: <https://www3.rics.org/uk/en/journals/land-journal/what-is-the-issue-with-land-registration-.html> (Accessed: 19 April 2023).
 - Tee, L. (1999) 'For sale: caveat emptor!', Cambridge Law Journal, 58(3), pp. 483-485.