

Self-test questions

- 1. Adam is the owner of unregistered freehold land. He transfers it to Bert. Is Bert obliged to register his title to the land? What will happen if he does not do so?**

Answer: Bert is obliged to register his title to the land. Since 1990, the whole of England and Wales has been an area of compulsory registration, which means that land must be registered whenever a relevant event occurs. Relevant events are set out in LRA 2002, s.4(1), and include the transfer of a freehold estate in the land (s.4(1)(a) and (2)(a)).

The duty to register is imposed on Bert by LRA 2002, s.6. If Bert does not register his title within the period for registration (2 months) the legal title will revert to Adam – LRA 2002 s.7. Adam will hold the title on a bare trust for Bert.

Bert would have to pay any costs of putting this right and would be in danger of losing priority over a subsequent purchaser of the land. This would mean that his (unregistered) interest would not be binding on somebody who had subsequently bought an interest in the same land.

See 4.5

- 2. Catherine has a legal easement over the land that is now Bert's. There is no mention of the easement on Bert's new register of title. Is Bert bound by the easement?**

Answer: Assuming that Bert is registered with absolute title, he is subject to the following interests under LRA 2002, s.11 (4):

'The estate is vested in the proprietor subject only to the following interests affecting the estate at the time of registration—

- (a) interests which are the subject of an entry in the register in relation to the estate,
- (b) unregistered interests which fall within any of the paragraphs of Schedule 1, and
- (c) interests acquired under the Limitation Act 1980 (c. 58) of which the proprietor has notice.'

Clearly, this easement is not the subject of an entry in the register, as Bert can find no mention of it. It is also not an interest under the Limitation Act. Therefore, we have to check whether it falls within any of the paragraphs of schedule 1.

Schedule 1 deals with interests which override first registration of land. This means that they are interests which are binding on a purchaser of the land even though they are not registered. One such interest, in sch.1 para 3 is a legal easement.

Therefore Bert is bound by Catherine's easement.

See: 4.5.3.

- 3. Bert sells his registered estate to Dolly. Catherine has still not registered her legal easement. Is Dolly bound by it?**

Answer: When Bert sells his registered estate to Dolly, this is a registrable disposition of the land, which must be registered under LRA 2002 s.27(2)(a). Dolly must register her title to the land, and until she does so, it will not take effect at law – LRA 2002 s.27(1).

Assuming that Dolly has been registered with absolute title, the effect of the registered disposition is that Dolly has priority over all interests in the land that are not protected at the time of the disposition – LRA 2002 s.29. Dolly takes her estate in the land subject only to existing registered charges, interests protected by a notice on the register, and interests which override registered dispositions.

Clearly, the easement does not appear on the register, and it is not a registered charge (a mortgage), so the question is whether it is one of those interests which override a registered disposition. These can be found in LRA 2002 sch 3.

By LRA 2002 sch 3 para 3, overriding interests include:

‘(1) A legal easement or profit a prendre, except for an easement, or a profit a prendre which is not registered under the Commons Registration Act 1965 (c. 64) [Part 1 of the Commons Act 2006], which at the time of the disposition—

(a) is not within the actual knowledge of the person to whom the disposition is made, and
(b) would not have been obvious on a reasonably careful inspection of the land over which the easement or profit is exercisable.

(2) The exception in sub-paragraph (1) does not apply if the person entitled to the easement or profit proves that it has been exercised in the period of one year ending with the day of the disposition.’

Therefore, Catherine’s legal easement will have priority to Dolly’s estate (i.e. be binding on Dolly) unless Dolly did not know about it and it would not have been obvious on a reasonably careful inspection of the land, and it has not been used within the last year before the sale of the land to Dolly. These are questions of fact, and we need to ask what Dolly knew, and whether the easement was either obvious, or had been used in the last year. The policy of the Act is to reduce the number of unused unregistered easements on the title.

If Bert had known about the easement, he should have declared it on the transfer to Dolly, so that it could be registered (LRA 2002 s.71). This is part of a policy to reduce the number of overriding interests, by registering as many interests as possible.

See: 4.6.

4. If Dolly is bound by Catherine’s easement:

- a) is Catherine entitled to ask for the register to be altered to show her easement?**
- b) is Dolly entitled to an indemnity if the value of her land with the easement over it is less than it would be without such a burden?**

Answer: (a) Yes, Catherine is entitled to ask for the easement to be entered on the register. If Catherine establishes that the easement is valid, it may be registered to bring the register up to date, either by the registrar or by the court – LRA 2002 sch 4 para 2, 5.

(b) Dolly is not entitled to an indemnity. Indemnities (compensation) are payable only if the register is rectified, that is, the alteration is one which is made to correct a mistake, and which prejudicially affects the title of the registered proprietor – LRA 2002 sch. 4 para 1. In this case, Dolly bought the land subject to both registered interests and overriding interests (LRA 2002 s.29).

Therefore, she was always bound by the easement, whether she knew about it or not. It follows that Dolly has suffered no loss, even if that is not how it appears to her. See: 4.7.

Examination questions

1. “Because [overriding interests] subsist and operate outside the register, they are an inevitable source of tension within the land registration system. In making proposals for reform there is often a difficult balance to be struck between, on the one hand, the desire to achieve a fair result in individual cases, and on the other, the goal of making conveyancing simpler, quicker and cheaper, which is the justification for title registration.”

(Law Commission, Land Registration for the 21st Century, Consultative Document).

Discuss.

Answer: Overriding interests are interests that do not need to be registered, but which are nevertheless binding on a purchaser of the estate. The LRA 2002 divides overriding interests into those that override the first registration of land—that is, when unregistered land becomes registered land—and those that override subsequent registrable dispositions of land, for example, when registered land is sold.

Overriding interests include:

- short leases;
- the interests of persons in actual occupation of land;
- easements and profits that are not expressly granted;
- customary and public rights;
- local land charges;
- mineral rights;

Clearly, it would make the register a better ‘mirror’ of the estates and interests in land if overriding interests did not exist, and this was recognised by the Law Commission and Land registry in both *Lc245* (cited in the question) and the follow-up report *Lc271*. That second report paved the way for the LRA 2002, which made substantial reforms with respect to the law on overriding interests, which were indeed intended to make **‘conveyancing simpler, quicker and cheaper’**.

For example, LRA 2002, Sch. 3, para. 2 cuts down the number of interests that will count as overriding interests of persons in actual occupation of land where there has been a registered disposition of that land. Under the old LRA 1925 s.70(1)(g) ‘The rights of every person in actual occupation of the land or in receipt of the rents and profits thereof, save where enquiry is made of such person and the rights are not disclosed;’ were overriding. LRA 2002, Sch. 3, para. 2 a further exception is included which prevents ‘an interest—

- (i) which belongs to a person whose occupation would not have been obvious on a reasonably careful inspection of the land at the time of the disposition, and
- (ii) of which the person to whom the disposition is made does not have actual knowledge at that time;’ from being overriding. This would mean that on facts similar to those in *Kingsnorth Finance v Tizard* [1986] 1 WLR 783, where the husband deliberately hid the wife’s belongings in an attempt to deceive the purchaser into thinking he was the sole beneficial owner, an overriding interest might not be established. This might not be seen as striking a correct balance between the rights of the individual concerned and ease of conveyancing.

Similarly, easements which are overriding interests have been cut down in LRA 2002 Sch 3 para 3 to ones which are within the actual knowledge of the purchaser, or which would be obvious on reasonably careful inspection of the land over which the easement or profit is exercisable, unless the easement has actually been used within the past year. There is also a requirement to notify the registrar of any unregistered (overriding) interests when land is transferred, so that they can be entered onto the register.

(You can see that there could be much more detail here. If you want to answer such questions in exams, be sure you have read all relevant Law Commission Reports, such as the two detailed above and the new consultation document: Consultation paper No 227, Updating the Land Registration Act 2002 https://www.evernote.com/shard/s121/res/3be1dcbc-4d14-478d-8b35-6fe387343806/cp227_land_registration_web.pdf)

- 2. In 2015, Gerry bought a plot of land from Veronica. It consisted of a small farm and outbuildings with some scrubland. Title to it had not previously been registered, so Gerry applied for and received registration as proprietor with absolute title. Unfortunately, the conveyance of the land mistakenly included a small barn belonging to Tom. Gerry has also discovered that several surrounding landowners have rights to water their animals at the stream running through his land, and there are two rights of way crossing it. This means that it will be difficult to turn the land into a development of holiday cottages, which is what Tom intended. Tom wishes he had never bought the land at all.**

Advise Tom and Gerry.

This is a question about first registration of title. The effects of first registration of title are set out in LRA 2002 s.11. Registration with absolute title vests the estate in the registered proprietor subject only to:

- (a) interests which are the subject of an entry in the register in relation to the estate,
- (b) unregistered interests which fall within any of the paragraphs of Schedule 1, and
- (c) interests acquired under the Limitation Act 1980 (c. 58) of which the proprietor has notice.

The effect of this section is that Gerry is now the legal owner of the farm, including the small barn belonging to Tom, because he is the registered proprietor. This is reinforced by LRA 2002 s.58(1), which provides 'If, on the entry of a person in the register as the proprietor of a legal estate, the legal estate would not otherwise be vested in him, it shall be deemed to be vested in him as a result of the registration.' A similar situation occurred in *Re 139 Deptford High Street* [1951] Ch 884, in which a small annexe was conveyed to the Registered Proprietor of a shop by mistake.

In order to correct this mistake, Tom should apply to the Registrar for alteration or rectification of the register. The Registrar may alter the register for a number of reasons set out in LRA 2002 sch. 4 para 5, but the one applicable here is for the purposes of correcting a mistake. If however, an alteration to correct a mistake affects the title of the proprietor of a registered estate in land in relation to land in his possession, then this constitutes a 'rectification' under LRA sch. 4 para 3. No rectification is possible without the proprietor's consent unless:

- (a) he has by fraud or lack of proper care caused or substantially contributed to the mistake, or
- (b) it would for any other reason be unjust for the alteration not to be made.

This would appear to apply here as Gerry is physically in possession of the land (LRA 2002 s.131), so unless Gerry consents to the rectification, it can only occur if one of the two conditions above is met.

Fraud or lack of proper care goes beyond submitting a transfer for registration that turns out not to be accurate. The land may have been wrongly described in the transfer, and Gerry simply may not have realised this. Older cases, such as *Re 139 Deptford High Street*, had found that proprietors who put forward an inaccurate conveyance for registration were guilty of contributing to the mistake, even where they were acting completely innocently. Only if Gerry has been guilty of fraud or a real lack of proper care can this ground be used.

Most of the cases under LRA 2002 have been on the second ground: that of it being unjust not to rectify the register. This would depend on all the circumstances of the case, but decided cases have looked to prevent unjust enrichment of someone who actually knew there was some kind of mistake about registering an easement or covenant etc., or knew of the true extent of the property. A relevant case here may be *Parshall v. Hackney* [2013] EWCA (Civ) 240, in which it was held unjust not to rectify the register where a series of mistakes by the land registry had moved a slip of land from one title to another, even though the (mistakenly) registered proprietor was using the land for parking. If the register is not rectified, Tom may receive an indemnity from the registry to compensate him: Land Registration Act 2002, Sch. 8, para. 1.

In respect of the rights to water animals at a stream and the two rights of way, these are easements. Legal easements and profits override first registration of title (LRA 2002 s.1 para 3), so if the dominant owners can prove the existence of the claimed easements, Gerry must allow the uses to continue. There will be no indemnity in respect of the overriding interests, even if the register is rectified to record them, because they fall within LRA s.11 (b) 'unregistered interests which fall within any of the paragraphs of Schedule 1' – i.e. overriding interests - and were therefore always a burden on Gerry's title: *Re Chowood's Registered Land* [1933] Ch 574.