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Property Law in Common Law System

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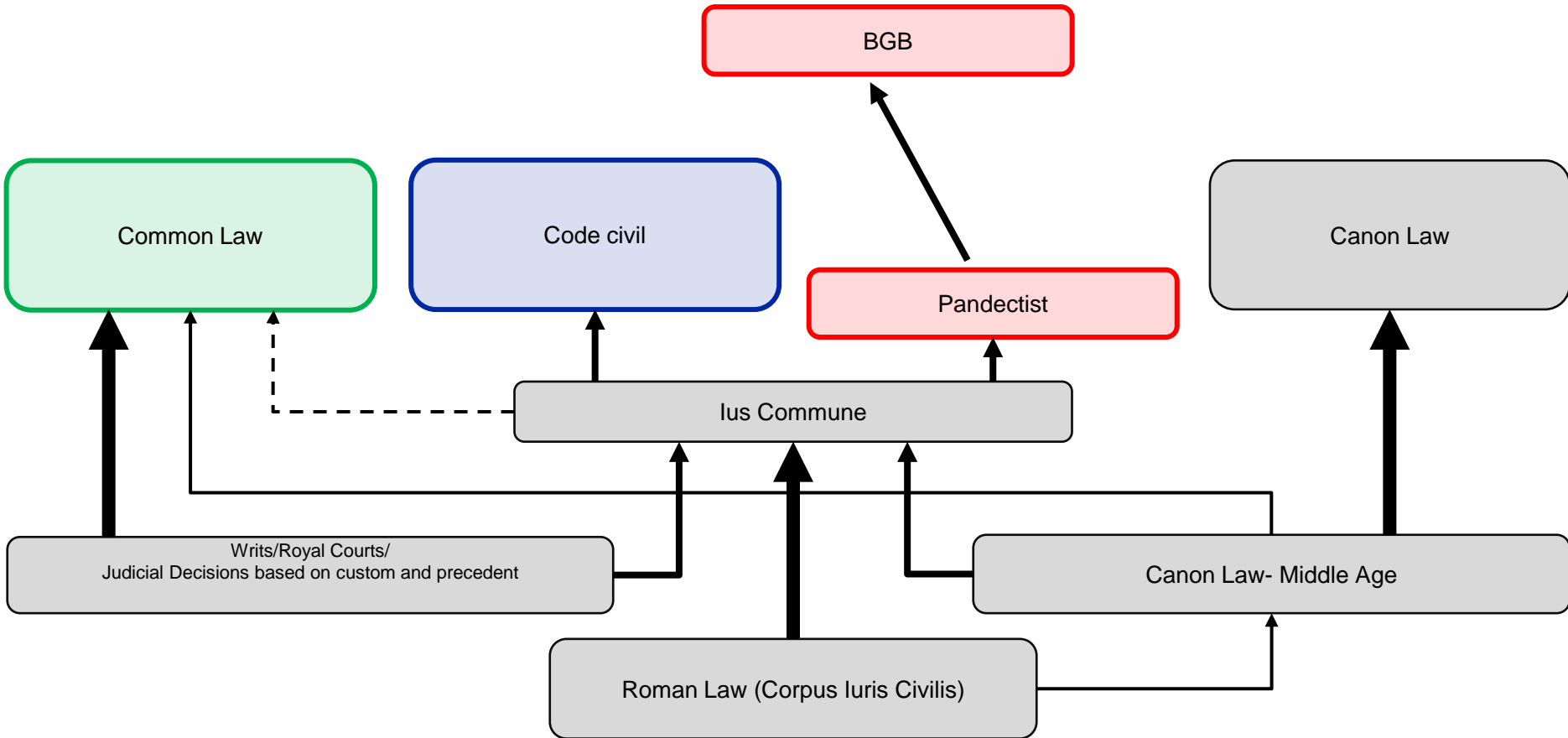


Civil Law

Common Law

Common
Law

Equity





Civil Law – 1789- French Revolution

Déclaration des droits de l'homme et du citoyen

(Declaration of the Rights of Man and the Citizen)

1. Men are born and remain free and equal in rights. Social distinctions may be based only on considerations of the common good.
2. The aim of every political association is the preservation of the natural and imprescriptible rights of Man. These rights are Liberty, Property, Safety and Resistance to Oppression.
17. Since the right to Property is inviolable and sacred, no one may be deprived thereof, unless public necessity, legally ascertained, obviously requires it, and just and prior indemnity has been paid.



Civil Law – 1804 – Code Civil (France)

Art. 544- Property

“the right to enjoy and dispose of things in the most absolute manner, provided they are not used in a way prohibited by statutes or regulations”.



William Blackstone (1723-1780)

Professor at the Oxford University

*Commentaries on the Laws of
England* (4 volumes)

Key text both in England and the
USA

- «reasoned exposition of the law as
a whole, setting out broad
principles»





William Blackstone (1723-1780)

"There is nothing which so generally strikes the imagination, and engages the affections of mankind, as the right of property; or that sole and despotic dominion which one man claims and exercises over the external things of the world, in total exclusion of the right of any other individual in the universe [...]"



“The third absolute right [personal liberty/personal security], inherent in every Englishman, is that of property: which consists in the free use, enjoyment, and disposal of all his acquisitions, without any control or diminution, save only by the laws of the land [...] The laws of England are [...] extremely watchful in ascertaining and protecting this right. Upon this principle the great charter has declared that no freeman shall be disseised, or divested, of his freehold, or of his liberties, or free customs, but by the judgment of his peers, or by the law of the land.

So great moreover is the regard of the law for private property, that it will not authorize the least violation of it; no, not even for the general good of the whole community. If a new road, for instance, were to be made through the grounds of a private person, it might perhaps be extensively beneficial to the public; but the law permits no man, or set of men, to do this without consent of the owner of the land [...]



... Besides, the public good is in nothing more essentially interested, than in the protection of every individual's private rights, as modelled by the municipal law. In this and similar cases the legislature alone can, and indeed frequently does, interpose, and compel the individual to acquiesce. But how does it interpose and compel? Not by absolutely stripping the subject of his property in an arbitrary manner; but by giving him a full indemnification and equivalent for the injury thereby sustained ... All that the legislature does is to oblige the owner to alienate his possessions for a reasonable price; and even this is an exertion of power, which the legislature indulges with caution, and which nothing but the legislature can perform”.



Concepts – Translation: Common and Civil Law

- Property: «all rights which are capable of being transferred to others, of being available for payment of his debts, or of passing to his representatives on his death»
- Ownership: «it is a right or an aggregate of rights», person who has those rights of use and enjoyment, of destruction, and of disposition
- Possession: «primarily a matter of fact», two elements: some actual power of control over the thing possessed; some intention necessary to maintain that control on the part of the possessor



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Law of Property Act 1925



The 1925 property legislation: Modern land law

Six Acts of Parliament which:

1. **consolidated** earlier piecemeal changes in the law and
2. **brought** it all together as a body of law, and
3. **made** substantial changes to the common law of property.





Two main objectives of the legislation:

1. Land must be freely alienable – that is, it must be possible to transfer it (and interests in it) to others.
2. Land must be capable of fragmentation of ownership, for both family reasons and commercial reasons - that is, it must be possible to create numerous different interests in land in favour of others.



Property Act 1925

Property was divided into two categories:

- **Real property**: «it was recoverable specifically by a real action» (included most of the interests recognised by the law)
- **Personal property** (chattels real) = interests in land for a term of years (leaseholds), contractual rights. Chattels personal consist either of tangible goods, or of intangible rights as patents, stocks or shares

In Civil law: division between immovables and movables



There are now two legal estates in land under Property Act 1925:

- **the fee simple absolute in possession (freehold) and**
- **the term of years absolute (leasehold).**

Freehold

Fee simple: «ownership that is not liable to end upon any person's death, with the expiration of time, or on the failure of a particular line of heirs»

Absolute: «the owner's rights are not conditional or liable to terminate on the occurrence of any event»

Possession: «the owner's rights are immediate, thus future interests do not qualify, but possession need not imply actual physical occupation (for instance, a person in receipt of rents and profits can be said to be in possession)».



Leasehold:

an estate in the land

For a term of years absolute

The period of time can be:

1. fixed or
2. may be periodically extended

“a term of years that may or may not be brought to an end by notice, forfeiture, or any other event except the death of any person. Thus a lease “to X for 25 years if Y shall so long live” is not a valid **term of years absolute**”.



Law of Property Act 1925, s.1

(1) The only estates in land which are capable of subsisting or of being conveyed or created at law are;

- (a) An estate in fee simple absolute in possession;
- (b) A term of years absolute.

(2) The only interests or charges in or over land which are capable of subsisting or of being conveyed or created at law are

- (a) An easement, right, or privilege in or over land for an interest equivalent to an estate in fee simple absolute in possession or a term of years absolute;
- (b) A rentcharge in possession issuing out of or charged on land being either perpetual or for a term of years absolute;
- (c) A charge by way of legal mortgage;





(d) ... and any other similar charge on land which is not created by an instrument:

(e) Rights of entry exercisable over or in respect of a legal term of years absolute, or annexed, for any purpose, to a legal rentcharge.

(3) All other estates, interests, and charges in or over land take effect as equitable interests



Law of Property Act 1925, s.205(1)(xxvii)

205. General definitions.

(xxvii) “Term of years absolute” means a term of years. (taking effect either in possession or in reversion whether or not at a rent) with or without impeachment for waste, subject or not to another legal estate, and either certain or liable to , determination by notice, re-entry, operation of law, or by a provision for cesser on redemption, or in any other event (other than the dropping of a life, or the determination of a determinable life interest); but does not include any term of years determinable with. life or lives or with the cesser of a determinable life interest, nor, if created after the commencement of this Act, a term of years which is not expressed to take effect in possession within twenty-one years after the creation thereof where required by this Act to take effect within that period; and in this definition the expression “term of years” includes a term for less than a year, or for a year or years and a fraction of a year or from year to year”.



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The Historical Context



Period	Development
1066 (Norman Conquest) - c. 1300	The doctrines of tenure and estates were established 1290: statute Quia Emptores was passed, which began to end the feudal system.
1300-1650	Development of equity law (Court of Chancery) One of the most important developments of equity was the 'use', which later developed into the so called trust .
c.1650-c. 1800	- In 1660, the Tenures Abolition Act was passed, which further reduced the effect of the feudal system of tenure. - Trusts were developed.



Period	Development
1800-1925	<ul style="list-style-type: none">- A series of statutory reforms of land law.- Culminated in the 1925 property legislation
1926 -	<ul style="list-style-type: none">- Since the 1925 property legislation, there have been further developments in equity, such as 'new model' constructive trusts and proprietary estoppel.- Statutory reforms (Significantly: the Trusts of Land and Appointment of Trustees Act 1996, the Land Registration Act 2002).



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Tenures and estates



Earliest developments:

- The structure of land law traditionally dates from 1066: the date of the Norman Conquest.
- Normans brought with them their own system of landholding: the feudal system
- Under the feudal system, only the King was able to own land outright. All others were granted land by the King, to hold from him for a certain period of time.
- This holding of land is known as **tenure** and the period of time for which it is held is known as an **estate**.

Tenures

- When William I became King of England, he became the 'paramount lord' of all the land in England.
- This gave him the power to make grants of that land to anyone he wished.

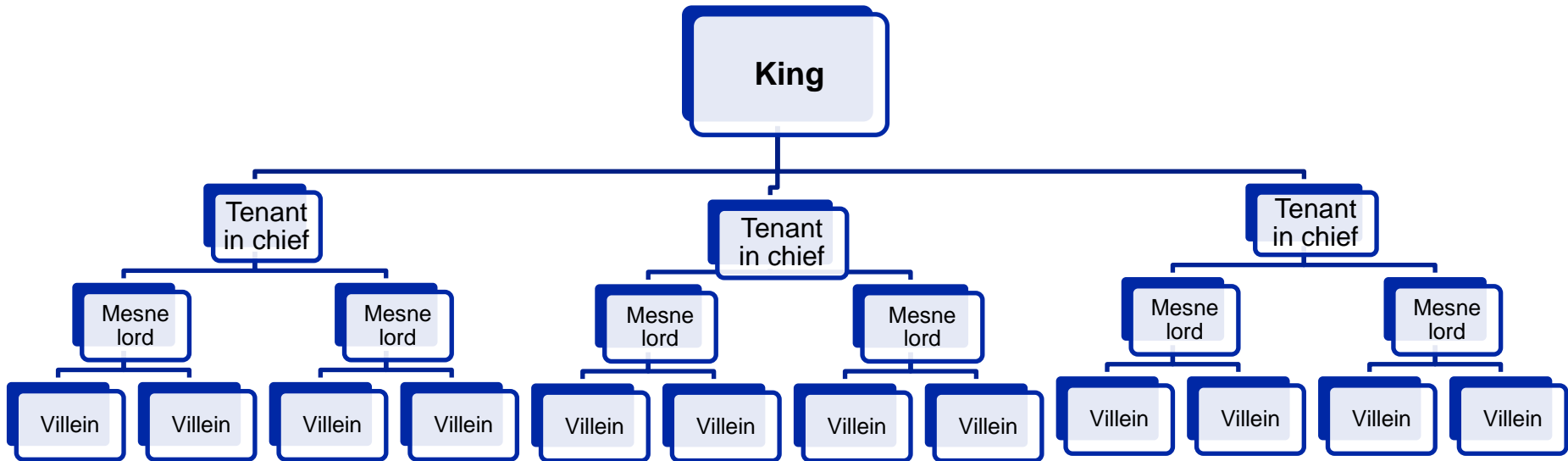




- In return for the grant of the estate, the new tenant would be obliged to perform services for his new lord.
- Tenure also carried with it certain 'incidents', which meant payments to the lord or rights that the lord could exercise.
- **The granting of estates in land in return for services and incidents led to the development of the feudal pyramid.**



The feudal pyramid under William I





- in 1290, the statute **Quia Emptores** (which is still in force) began the dismantling of the feudal system, because it prohibited subinfeudation. From the passing of that statute to present times, estates in land can be transferred only by substitution—that is, one owner taking the place of another.
- This flattening process was accelerated by the Tenures Abolition Act 1660 and completed by the Law of Property Act 1925 (LPA 1925).





Before 1290

- a the chief lord
 - b a mesne tenant
 - c a sub-tenant
- by a new grant - subinfeudation
- d sub-tenant
- subinfeudation

After 1290

- a the chief lord
 - b a mesne tenant
- c displaced by d- substitution
- d subtenant
- substitution



Tenures Abolition Act 1660

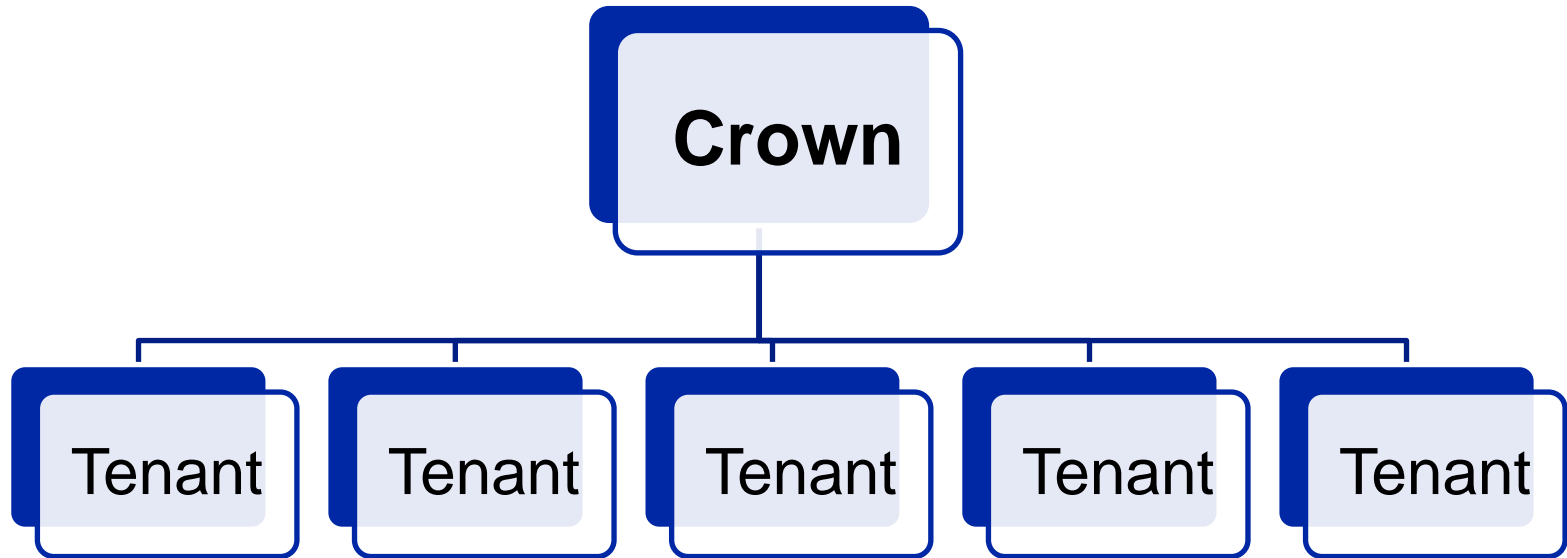
- All free tenures were converted into socage
- socage = “form of land tenure in which the tenant lived on his lord’s land and in return rendered to the lord a certain agricultural service or money rent”
- 1660 marked the end of feudalism in its political aspect.



- Today, there is only one form of tenure left and only one lord.
- Everyone holds their land directly from the Crown on 'freehold tenure in socage'
- So, the feudal pyramid has flattened completely



The feudal pyramid today





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Estates



The doctrine of estates

- The doctrine of estates follows on directly from the doctrine of tenure and is a consequence of it.
- If land is to be 'held of' a lord, then the parties must specify the length of time for which it is to be held. This length of time is the estate in land.
- 'An estate in the land is a time in the land, or land for a time.'
(Walsingham's Case (1573) 2 Plowd 547).
- Before 1926, there were **three common freehold estates**



Estate	Duration
Fee simple	For as long as there were heirs to inherit. The estate would not end unless all possible heirs (blood relations of the grantee or any of his heirs, etc.) were dead. The estate could therefore potentially last forever. It would come to an end only if the present tenant were to die without leaving an heir.
Fee tail	For as long as the grantee's lineal descendants (children, grandchildren, etc.) lasted. A variant of the fee tail was the fee tail male, under which only male lineal descendants could inherit. (Note that these estates could, in later times, be 'barred' to create a fee simple.)
Life estate	For as long as the life of the grantee or the life of a named person. Note that this is not a fee, because it is not inheritable.



Crown land

- The Crown can own land outright (allodial land) and not as an estate held of a lord. This includes demesne land.

Land Registration Act 2002, s. 132

‘demesne land’ means land belonging to Her Majesty in right of the Crown which is not held for an estate in fee simple absolute in possession;



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Legal and equitable estates and interests



The difference between legal and equitable interests

Legal estates and interests	Enforceable against everyone—that is, ‘good against the whole world’ Common law acts in rem .
Equitable estates and interest	Enforceable against everyone except the ‘bona fide purchaser of the legal estate for value without notice’ Equity acts in personam .



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Registration



Systems of land registration in the Law of Property Act 1925

- Registration of title

The nationwide, compulsory system started in 1925 by the Land Registration Act 1925.

Main points:

title to the land should be registered;

the register should reflect all of the estates and interests affecting the land.



Land Registration Act (LRA) 2002- explanatory notes

Background

Origins of the Act

3. In 1996, the Law Commission and HM Land Registry began a joint programme to update and reform the statute law relating to land registration. Their initial proposals were published in *Land Registration for the Twenty-First Century: A Consultative Document* in September 1998. Revised recommendations, amended in the light of the consultation response, were published in *Land Registration for the Twenty-First Century: A Conveyancing Revolution* on 10 July. The Act implements most of those recommendations. The joint report contains a detailed discussion of the policy behind the recommendations, and full explanatory notes on each clause of the draft Bill contained in the report.



Title to land

4. The Crown is the only absolute owner of land in England and Wales: all others hold an estate in land. Estates, which derive from feudal terms of tenure, originally took many forms but were reduced by the Law of Property Act 1925 to two, an estate in fee simple absolute in possession, generally known as “freehold”; and an estate for a term of years absolute generally known as “leasehold”. Apart from an estate, land may have the benefit of or be subject to other interests, which are rights and obligations relating to the land, belonging to the owner or to a third party.



The current legislation

9. The principal legislation was provided by the Land Registration Act 1925, as amended by Land Registration Acts in 1936, 1986, 1988, and 1997, and by the Land Registration and Land Charges Act 1971. That legislation provides an improved machinery of conveyancing, rather than changing the underlying law, which applies to both unregistered and registered conveyancing. Its principles and definitions have sometimes been found obscure and confusing, and its language not easy for even professional users.



The objectives of the Act

10. The joint project undertaken by the Law Commission and the Land Registry therefore faced a complex, and in many respects, out-dated piece of legislation. As work proceeded an additional factor had to be considered. The Land Registry has now automated many of its functions, which can now be accessed on line. It became clear during the Commission's work that there was wide support within the property industry and from many legal practitioners for the introduction of a system of dealing with land electronically. The Law Commission and Land Registry therefore recommend that the new legislation should aim to create the necessary legal framework in which all registered conveyancing can be conducted electronically. The Act establishes such a system. The Law Commission and the Land Registry recommend a fundamental objective. To enable an effective system of electronic dealing with land, the register should be a complete and accurate reflection of the state of the title of the land at any given time, so that it is possible to investigate title to land on line, with the absolute minimum of additional inquiries and inspections.



12. Some of the benefits of electronic conveyancing can only be maximised if it is used universally. The Act, therefore gives the Lord Chancellor power to make the use of electronic means for conveyancing compulsory, subject to appropriate consultation. The use of this power will become feasible only when electronic conveyancing has become much the most usual way of effecting transactions.



Conclusions

1. Land law has ancient origins and some of those ancient concepts – such as estates – survive into the modern day.
2. Land law has been influenced by common law and equity, with the development of the trust
3. Legal and equitable estates and interests differed in their effects on purchasers of the land, because common law acts *in rem* and equity *in personam*.
4. There are now two legal estates in land under Property Act 1925: **the fee simple absolute in possession (freehold) and the term of years absolute (leasehold).**



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Literature

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