



**University of  
Zurich** <sup>UZH</sup>

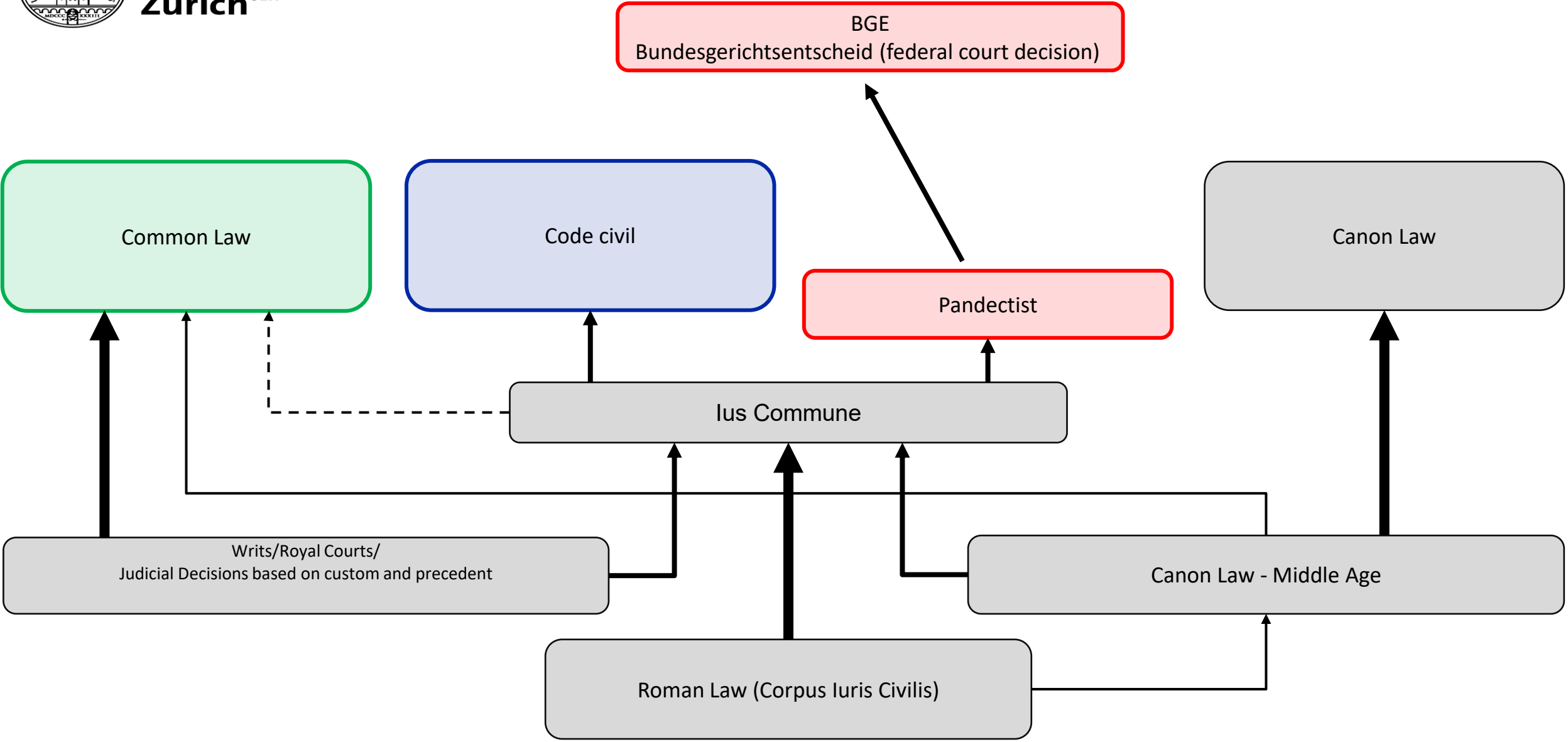
Faculty of Law

# Principles of Common Law Property Law

Principles of Common Law

20 October 2025

Prof. Dr. Kern Alexander





**Civil Law**

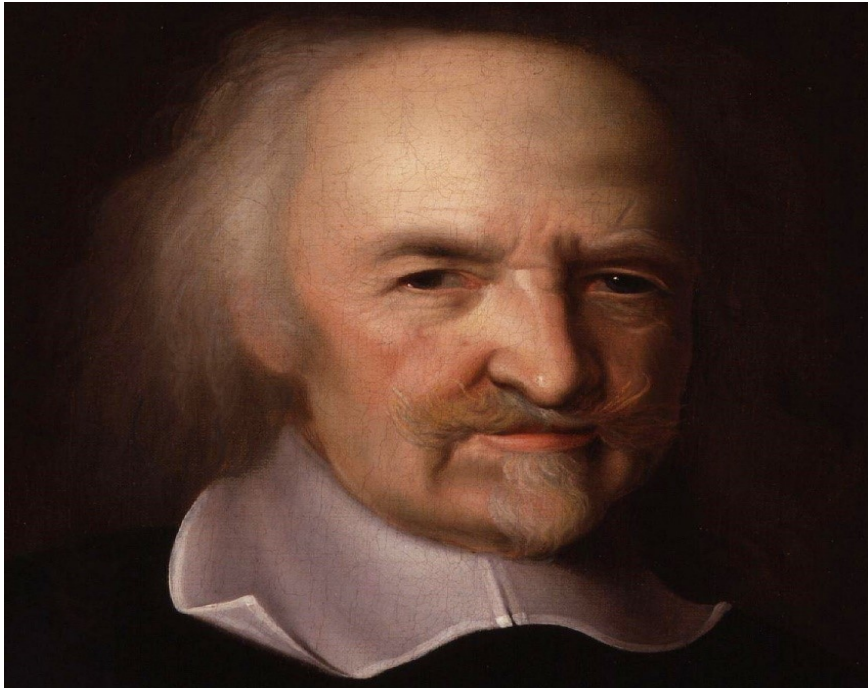
**Common Law**

Common  
Law

Equity



## T. Hobbes vs. J. Locke





## 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 there of, unless public necessity, legally ascertained, obviously requires it, and just and prior indemnity has been paid.



# Civil Law – 1804 – Code Civil (French)

## **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)

"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»
- 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



## Estate

«An estate is a portion of the ownership of the land, more or less in a limited time»

- For the live, live estate
- Equivalent to ownership (full rights of possession and enjoyment), fee simple
- Intermediate between live estate and fee simple: Estate tail «Tenant in tail has full rights of possession and enjoyment without regard to waste. It passes to his heirs, but only to his descendants».



## Historical overview

- real property - writ of right
- Personal property - detinue - trover

*Writ = « a command of the King directed to the relevant person (official, judge), containing a brief indication of a matter under dispute and instructing the addressee to call the defendant into his court and to resolve the dispute in the presence of the parties»*



## Property law in historical context

- Historically the Monarch owned all land property, and it transferred through feudal land tenure or other feudal systems of loyalty and fealty.
- Protection of personal property rights was present in medieval Islamic law and jurisprudence and medieval common law.
- Napoleonic code was among the first government acts (1804) of modern times to introduce the notion of absolute ownership into statute
- A substantial part of English land is still unregistered

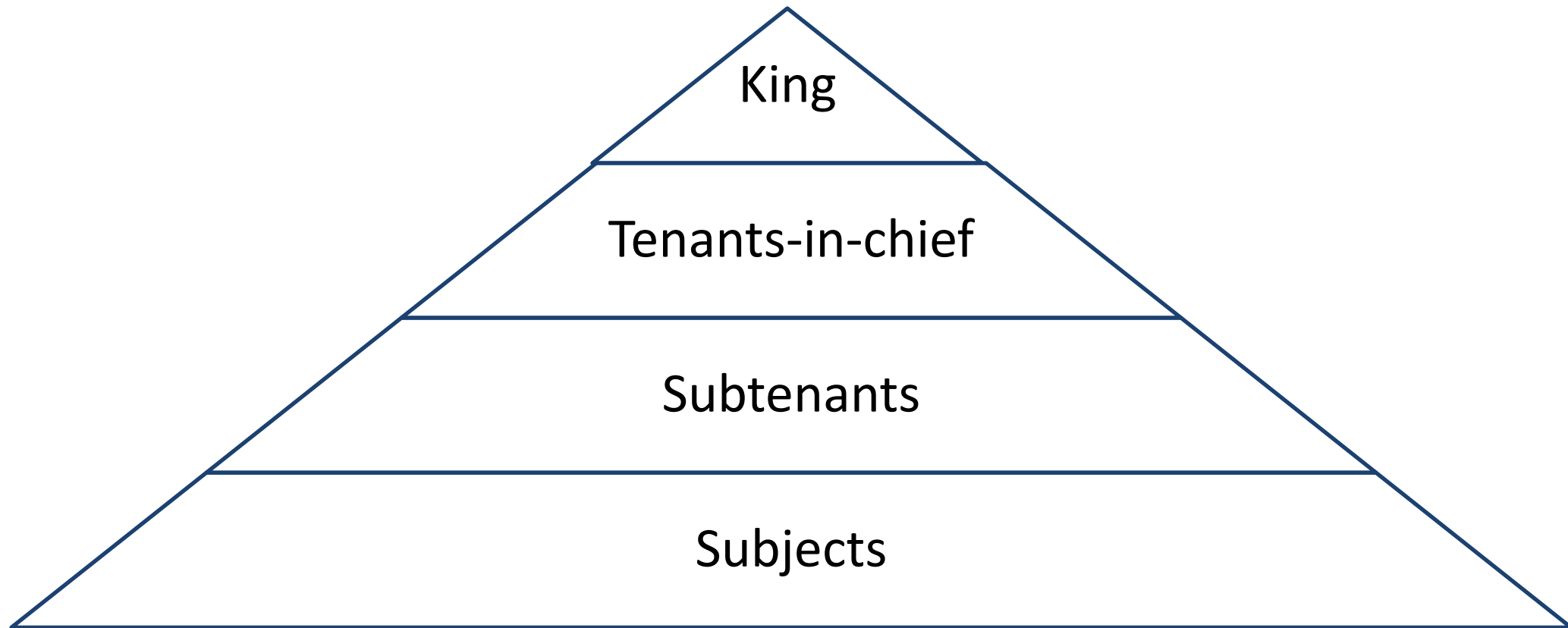


# Tenure

- Medieval period it was very significant legal commonplace that full ownership of land was possible for no person save the King
- «Landowners were regarded as ‘holding’ their land, by various forms of ‘tenure’, of the King»



## Pyramidal Structure: the feudal land law





## History – English Law of the Land

*Quia Emptores 1290 – “Because of the Buyers”*

To prevent tenants from alienating their lands to others by subinfeudation, instead requiring all tenants who wished to alienate their land to do so by substitution. Allowed tenants to sell their interests to other third parties more easily. Facilitated a more rapid decline of feudal tenure rights.

Direct feudal obligations were increasingly being replaced by cash rents and outright sales of land which gave rise to the practice of *livery and maintenance*

House of York v House of Lancaster in mid 15th century (1455-1485 – War of the Roses)



## Statute of Tenures 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.



## Property Act 1926

Property divided in 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



# Part I General Principles as to Legal Estates, Equitable Interests and Powers

## 1 Legal estates and equitable interests

(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 rent charge 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) Land tax, tithe rentcharge, 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.

(4) The estates, interests, and charges which under this section are authorised to subsist or to be conveyed or created at law are (when subsisting or conveyed or created at law) in this Act referred to as "legal estates", and have the same incidents as legal estates subsisting at the commencement of this Act; and the owner of a legal estate is referred to as "an estate owner" and his legal estate is referred to as his estate.

(5) A legal estate may subsist concurrently with or subject to any other legal estate in the same land in like manner as it could have done before the commencement of this Act.



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.

(7) Every power of appointment over, or power to convey or charge land or any interest therein, whether created by a statute or other instrument or implied by law, and whether created before or after the commencement of this Act (not being a power vested in a legal mortgagee or an estate owner in right of his estate and exercisable by him or by another person in his name and on his behalf), operates only in equity.

(8) Estates, interests, and charges in or over land which are not legal estates are in this Act referred to as "equitable interests", and powers which by this Act are to operate in equity only are in this Act referred to as "equitable powers".



## Real property and personal property

- Real property includes all immovables, with exception of leaseholds
- Personal property includes almost all movables, with the addition of leaseholds



## Property law – main areas

- Various forms of ownership and tenancy in real property (land as distinct from personal or movable possessions)
- Common law - personal property, real property
- Civil law system - movable and immovable property.
  - Movable property roughly corresponds to personal property (chattels)
  - Immovable property roughly corresponds to real estate or real property, and the associated rights and obligations (lightbulbs doorhandles, fixtures?)
- Property law rights often referred to as a 'bundle of sticks'
- Property law rights are much more strongly linked to the thing itself, as opposed to contract law which focuses on personal obligations and rights



## Types of proprietary interests

- Ownership (freehold, or ‘fee simple absolute possession’)
- Lease / rentcharge
- License to use
- Security (eg: mortgage)
- Easement
- Freehold covenant
  - All of those legal or equitable
  - Registered or unregistered land
  - Temporal priorities (who came first)



# 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 online. 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 online, with the absolute minimum of additional inquiries and inspections.



## **Electronic conveyancing**

11. The Act creates a framework in which it will be possible to transfer and create interests in registered land by electronic means. It does so by enabling the formal documents to be executed electronically; and providing for a secure electronic communications network. Because it is envisaged that the execution of those documents and their registration will be simultaneous, and the process of registration will be initiated by conveyancers, permitting access to the network is to be controlled by the Land Registry, which will also exercise control over the changes which can be made to the register. The Land Registry will be obliged to make arrangements for access to the network by those who wish to undertake their own conveyancing. Establishment of the system will require new ways of working by the Registry, and by conveyancing practitioners. It will, therefore, best be introduced in stages, starting with the simplest transactions and progressing to the more complex. The Act therefore provides for the Lord Chancellor to regulate by rules transactions that can be carried out electronically.



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.



## Land Registration Act 2002

Section 4 stipulates that registration of an estate in land is compulsory when one of the following events occurs:

- 1) Freehold estate is transferred, whether under a sale, gift or other circumstances;
- 2) Legal lease for more than seven years is granted;
- 3) Legal lease with more than seven years to run is transferred; or
- 4) Grant of a first legal charge (mortgage).

Failure to register when required, means that the purchaser or transferee gains only an **equitable title** to the land and the seller or transferor remains as the registered proprietor. A person with an equitable title, *i.e.* who has failed to register, cannot take advantage of the priority rules found and may be vulnerable if the (still) registered proprietor attempts another dealing with the land.



## Property law v contract law

- Property rights are rights over things enforceable against all other persons (rights *in rem* = against the thing itself)
- By contrast, contractual rights are rights enforceable against specific persons (rights *in personam* = against the person)
- Property rights may, however, arise from a contract; the two systems of rights overlap.
  - For example, sale of land involves two sets of legal relationships: the contractual right to sue for damages, and the property right exercisable over the land.
- Other property rights may be created by contract: *easements, covenants, and equitable servitudes*.
- *Even minor rights, such as Licences* created by a binding contract, do not give rise to property rights.



## Property rights v personal rights

- Historical context: disenfranchised people not allowed property – women and Jews in 19th century England.
- People could become ‘objects’ of property or chattels – ‘things’ ie., slavery.
- Difficult to draw distinction between ‘property’ and ‘personal’ rights. Eg: A right in one’s reputation?
  - Right *in rem*: right to the thing itself (right to the actual house)
  - Right *in personam*: right against the person, usually under the contract, to give you either the thing or its value in money (damages)



## Property Law also applies to...

- Commercial law and insolvency.
- Trusts affects everything in **English property law**
- Legal interest/right
  - Equitable interest/right
- Intellectual property also important branch of the law of property:  
copyright, trademarks, registered designs



# Trust

“A trust is an equitable obligation, binding a person (who is called a trustee) to deal with property over which he has control (which is called the trust property), for the benefit of persons (who are called the beneficiaries or cestuis que trust), of whom he may himself be one, and any one of whom may enforce the obligation.”



# Trust

