

A NEW LAND LAW SECOND EDITION 2003

Peter Sparkes' path-breaking text on land law has been rewritten almost sentence by sentence partly to incorporate the seismic changes introduced by the Land Registration Act 2002, along with commonholds, the explosion of human rights jurisprudence, and the unremitting advance of judicial exposition. Partly also, to accommodate the author's developing thinking on the structural aspects of the subject, jolted by the new clearer structure for land registration with its much greater clarity of function behind the means of protecting third party interests.

The book opens with a series of shorter chapters each exploring a fundamental building block—registration, houses, flats and commonholds, land, ownership and its transactional powers, social controls balanced by human rights to property, fragmentation by time (the doctrine of estates), divisions of ownership and proprietary rights. In terms of substantive chapters the book opens with discussion of the new transfer system—paper-based transfer alongside the evolution towards electronic conveyancing—and the consequent changes to the proof of registered titles and to the registration curtain. The new approach to adverse possession against registered titles has called for extended discussion, as has the authoritative elucidation of the concept of adverse possession in *Pye*, enlightenment provided, as is so typical of our judicial system, just as the concept itself has become practically redundant. In terms of proprietary interests the fundamentals are seen as rights to transfer, beneficial interests under trusts which are overreachable, burdens which are enduring, leases, money charges such as mortgages which are redeemable, and the obligations enforceable within the neighbour principle—easements covenants and positive covenants being treated as a semi-coherent whole. An attempt has been made to assist students by moving some of the more arcane learning later into the book or into separate chapters where these matters might be more readily ignored by a candidate concerned primarily to prepare for an examination.

The premise of the first edition was that changes to the land registration scheme made in 1997 and the steady march towards a universal register meant that it was opportune to abandon the unregistered/registered dichotomy in favour of a division between registered and registrable land, and that this in turn required an integrated treatment highlighting how the registered system was intended to dovetail with the unregistered. So this edition continues to see one set of principles with two mechanistic implementations, an approach which has on balance, adverse possession apart, been vindicated by the Land Registration Act 2002.

FROM THE REVIEWS OF THE FIRST EDITION

“A massive amount of research and scholarship has gone into the book, with impressive citation of cases, articles and case-notes, and of other textbooks . . . This newcomer on the scene is a considerable addition to the ranks of serious textbooks on land law and the author is to be congratulated.”

The New Law Journal

“The scope of this work is ambitious . . . it is a bold attempt to take the study of land law forward . . . much more than a basic land law textbook . . . it would be a pleasure to be able to teach a course requiring students to cover the substance or the bulk of it whether in one or more modules . . . a difficult blend of background and history, massive referencing, discussion of statute and case law, all wrapped up in a text that is not too difficult to absorb.”

The Law Teacher

“A most interesting and ground-breaking book.”

Michael Cardwell, University of Leeds

“At last, a brilliant law book! I think the approach is marvellous and will strongly recommend it to my students.”

Keith Gompertz, University of Central England

“. . . takes a more modern approach to the area . . . I am very impressed with the style, layout and format. It will be a good teaching tool and I am looking forward to using it.”

Alison Dunn, Newcastle Law School

“. . . not battling in the way land law texts tend to be . . .”

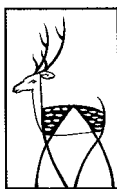
Helen Taylor, University of Teesside

“Excellent.”

Professor Edward Burn, City University

A NEW LAND LAW SECOND EDITION

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• H A R T •
PUBLISHING

OXFORD AND PORTLAND, OREGON
2003

Published in North America (US and Canada) by
Hart Publishing
c/o International Specialized Book Services
5804 NE Hassalo Street
Portland, Oregon
97213-3644
USA

© Peter Sparkes 1999, 2003
First edition published 1999
Reprinted 1999
Second edition 2003

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Hart Publishing is a specialist legal publisher based in Oxford, England.
To order further copies of this book or to request a list of other publications
please write to:

Hart Publishing, Salter's Boatyard, Folly Bridge,
Abingdon Road, Oxford OX1 4LB
Telephone: +44 (0)1865 245533 or Fax: +44 (0)1865 794882
e-mail: mail@hartpub.co.uk
WEBSITE: <http://www.hartpub.co.uk>

British Library Cataloguing in Publication Data
Data Available
ISBN 1-84113-380-9 (paperback)

Typeset by Hope Services (Abingdon) Ltd.
Printed and bound in Great Britain on acid-free paper by
Biddles Ltd, www.biddles.co.uk

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PREFACE TO THE SECOND EDITION

What Paul Sinclair liked when he first encountered the Provençal utopia of Eden Olympia was that

“There’s no ground already staked out, no title deeds going back to bloody Magna Carta. You feel anything could happen.”¹

I hope to have captured some of that spirit in the *New Land Law*. Most students today know little of *1066 and All That*² and view even 1925 as a form of prehistory. So my aim is to rid land law of its feudal roots and its history and to modernise the badly dated statutory language—eschewing Latin,³ terms lacking gender neutrality, and most of the baffling “ees” and “ors” of conventional land law. In Cornwall “a man who has lost his language has also lost his land”, but not I hope, his land law.

This new edition comes after only four years but it is not a case of “the paper never refusing the ink”. A sentence by sentence rewriting has been required to accommodate the seismic changes of the Land Registration Act 2002,⁴ not to mention commonholds, the explosion of human rights jurisprudence and the remorseless grind of the case law up to the end of 2002. I have taken the opportunity thus presented to reflect the development of my thinking on the structural aspects of the subject, jolted by the new functional structure for protecting third party interests against registered land. Hence the completely new shape to this edition.

A series of shorter opening chapters each explores one fundamental building block—registration, land, fragmentation by time (the doctrine of estates), ownership and its transactional powers, titles to houses flats and commonholds, social controls balanced by the human rights to property, and finally proprietary rights.

The premise of the first edition was that the changes to the land registration scheme made in 1997 meant it was opportune to abandon the unregistered-registered dichotomy in favour of a division between registered and registrable land, and that this in turn required an integrated treatment highlighting how the substantive principles of the two systems dovetail.⁵ We are now four years closer to a universal register. The linkage of the substantive principles of the two systems has been greatly strengthened as from the October 2003 implementation date of the Land Registration Act 2002 even as the mechanics are diverging ever more widely. Electronic conveyancing has important consequences for the proof of title and the registration curtain.

¹ JG Ballard, *Super Cannes* (Flamingo, 2001), 79.

² WC Sellar & RJ Yeatman (Methuen).

³ *Fryer v. Pearson* [2000] Times April 4th.

⁴ The implementation date is October 13th 2003.

⁵ *City of London BS v. Flegg* [1988] AC 54, 84G, Lord Oliver.

Adverse possession against registered titles will be reduced to a shell giving the register a much greater degree of finality. I only hope that my doubts prove to be misplaced. Extended treatment has also been required of the authoritative elucidation of the concept of adverse possession in *Pye*,⁶ enlightenment provided by the courts so typically just as the concept itself has become practically redundant. The chapters on adverse possession and the registration curtain appeared at the end of the first edition for no better reason than I came to write them last and they now move forward to a proper and prominent position. The mystery of the new system of alteration of the register is how it links to the old case law on rectification, a topic on which I have provided some educated guesses.

The new machinery enacted for trusts of land in 1996 implied the need for wider changes than most teachers of land law were prepared to countenance when this book first appeared in 1999, but the task of consolidation of all aspects of trusts is now completed, with beneficial co-ownership now fully integrated into the main treatment. Ownership rights remain separated from occupation rights. A warm welcome is given to the closer alignment of notice through occupation and the new form of the occupation-based overriding interest.⁷ An attempt has been made to assist students by moving some of the more arcane learning into a separate chapter on management trusts where examination candidates may be able to ignore this material more readily.

The Land Registration Act 2002 has greatly improved the law of burdens. Priority is simpler—and fits better into my four headings—protected interests, value, diligence and honesty. Burdens are classified in a new way to draw out the parallels between the two systems, the fundamentals being rights to transfer, beneficial interests under trusts that are not overreached, leases, money charges such as mortgages which are redeemable, and the obligations enforceable within the neighbour principle—easements covenants and positive covenants being treated as one semi-coherent whole. This mess should be slightly less confusing in this form.

The chapters on leases have been rewritten to link better to the structure of *A New Landlord and Tenant*,⁸ where security of tenure and enfranchisement schemes are considered in detail. Mortgages are integrated with other money charges but kept separate from the domestic borrower protection—carved out of the existing administrative controls, statutory protection against repossession, and the case-law developments in the field of undue influence. *Etridge* seems a mere footnote in a sea of change.⁹ Emphasis is placed on the crucial importance of physical division of land, and the integrated treatment of the obligations enforceable between neighbours is continued even if the law has to be forced into shape. Surely there is an urgent case for reform here? Sadly there is no longer space for any serious consideration of planning law or compulsory purchase.

Readers can be left to judge the opinion of one Regius professor that land law is complex but not in the end very difficult.¹⁰ My own view is that the subject is running out of control—changing too fast to too little purpose—but that may simply be the

⁶ *JA Pye (Oxford) v. Lambert* [2002] UKHL 30, [2002] 3 All ER 865.

⁷ LRA 2002 sch 3 para 2.

⁸ Hart, 2001.

⁹ *Royal Bank of Scotland v. Etridge (No 2)* [2001] UKHL 44, [2002] 2 AC 773.

¹⁰ PBH Birks “Before We Begin: Five Keys to Land Law” ch 18 in Bright & Dewar, 457.

advance of middle age. One could scarcely imagine a monarch of the twenty-first century devoting time to the exposition of land law to his nobles, as Edward IV is said to have done, but still teaching and writing in the subject remains a noble occupation. This book continues to be dedicated to Helen. Whilst engaged in my calling over the past four years my debt to her has increased very considerably.

New Forest
February 2003

ABBREVIATIONS

[]	Paragraph number
AEA	Administration of Estates Act
Applic	Application
BS	Building Society
C	Contract
CCR	County Court Rules
CD	Consulation Document
Chold and L Ref A	Commonhold and Leasehold Reform Act
CLR	Chief Land Registrar
COA	Charging Orders Act
Corp	Corporation
CP	Consultation Paper
CPR	Civil Procedure Rules
Div Ct	Divisional Court
DLRR	Draft Land Registration Rules
E	Estate(s)
EN	Explanatory Note
EuCtJ	European Court of Justice
FLA	Family Law Act
HA	Housing Act
HRA	Human Rights Act
H Ass	Housing Association
IA	Insolvency Act
Law Com CP	Law Commission Consultation Paper
Law Com	Law Commission (Report)
LCA	Land Charges Act
LP (MP) A	Law of Property (Miscellaneous Provisions) Act
LPA	Law of Property Act
LR	Land Registry
LRA	Land Registration Act
L Ref A	Leasehold Reform Act
LRR	Land Registration Rules
LTA	Landlord and Tenant Act
L Tr	Land Tribunal
MBS	Mutual Building Society
MCA	Matrimonial Causes Act
MHA	Matrimonial Homes Act
O	Order

PAA	Powers of Attorney Act
PBS	Permanent Building Society
PCA	Planning and Compensation Act
prs	Personal representatives
Reg	Regulations
RSC	Rules of the Supreme Court
S	Settlement(s)
SCS	Standard Conditions of Sale (3rd ed)
SLA	Settled Land Act
SS	Secretary of State
T	Trust(s)
TA	Trustee Act
TCPA	Town and Country Planning Act
TLATA	Trusts of Land and Appointment of Trustees Act
WP	Law Commission Working Paper

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Places of publication are in England unless otherwise stated

Birks' <i>English Private Law</i>	PBH Birks <i>English Private Law</i> (Oxford UP, 2002)
Blackstone's <i>Commentaries</i>	Sir W Blackstone <i>Commentaries on the Laws of England</i> (Oxford, 1st ed, 1766); page references are to RM Kerr (Murray, 3rd ed, 1862)
Bright & Dewar	S Bright & J Dewar <i>Land Law – Themes and Perspectives</i> (Oxford, 1998)
Cheshire & Burn	GC Cheshire and EB Burn <i>The Modern Law of Real Property</i> (Butterworths, 16th ed, 2000)
Chappelle <i>Land Law</i>	D Chappelle <i>Land Law</i> (Longman, 5th ed, 2001)
Coke on <i>Littleton</i>	Sir E Coke <i>Commentaries on Littleton's Tenures</i> (1st ed, 1628); paras are common to all editions
Dixon's <i>Principles</i>	Martin Dixon <i>Principles of Land Law</i> (Cavendish, 3rd ed, 2000)
<i>Encyclopædia FP</i>	Lord Millett <i>Encyclopædia of Forms and Precedents</i> (Butterworths, 5th ed, 1993 and reissues)
Goo's <i>Sourcebook</i>	SH Goo <i>Sourcebook on Land Law</i> (Cavendish, 3rd ed, 2002)
Gravells, <i>LL – Text and Materials</i>	NP Gravells <i>Land Law – Text and Materials</i> (Sweet & Maxwell, 2nd ed, 1999)
Grays' <i>Elements</i> (3rd ed)	K Gray & SF Gray <i>Elements of Land Law</i> (Butterworths, 3rd ed, 2000)
Hayton's <i>Registered Land</i>	DJ Hayton <i>Registered Land</i> (Sweet & Maxwell, 3rd ed, 1981)
Holdsworth's <i>History</i>	WS Holdsworth <i>History of English Law</i> (15 vols, Stevens), page references are to (Methuen, 3rd ed)
Hopkins <i>Informal Acquisition</i>	N Hopkins <i>Informal Acquisition of Rights in Land</i> (Sweet & Maxwell, 2000)
Jackson & Wilde	P Jackson & DC Wilde <i>Property Law – Current Issues and Debates</i> (Dartmouth Ashgate, 1999)
Littleton's <i>Tenures</i>	Littleton's <i>Tenures</i> (1st ed, c 1481); references are to paras common to all editions
Maitland's <i>Equity</i>	FW Maitland <i>Equity</i> (Cambridge UP, 2nd ed by J Brunyate, 1936)
Maudsley & Burn <i>LL – Cases and Materials</i>	Maudsley & Burn <i>Land Law – Cases and Materials</i> (Butterworths, 7th ed by EH Burn, 1998)
Megarry & Wade	Sir RE Megarry & Sir HWR Wade & C Harpum, <i>The Law of Real Property</i> (Stevens, 6th ed by C Harpum, 2000)

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<i>Barclays Bank v. Estates & Commercial</i> [1997] 1 WLR 415, CA	[15.53]	[15.55] [21.12] [28.30]
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<i>Barclays Bank v. Harris</i> reported with <i>Royal Bank of Scotland v. Etridge (No 2)</i>	[30.48]	[30.50] [30.77]

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	[30.57]	[30.60]
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	[30.66]	[30.71]
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	[24.06]	
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	[16.46]	
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	[23.19]	[23.28]
	[23.29]	[23.40]
	[23.42]	
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	[11.45]	
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	[10.45]	
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.....	[30.48] [30.50] [30.58] [30.63] [30.64] [30.75]
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	[17.11]	[17.13] [17.14] [17.15] [17.39] [19.12] [19.22] [19.23] [19.24]
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	[19.22] [19.56] [23.28] [23.38] [23.40]
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