Is the mirror principle an accurate description of the registration scheme under the Land Registration Act 2002?

The **LRA 1925[[1]](#footnote-1)** rendered registration compulsory. It was replaced in its entirety by the **LRA 2002[[2]](#footnote-2)**, which aimed to enforce the mirror principle[[3]](#footnote-3), namely the idea that ownership of title should be accurately and conclusively reflected by the register[[4]](#footnote-4).

This essay intends to outline and evaluate the **LRA 2002[[5]](#footnote-5)**; equally, it seeks to explain the relationship between the mirror principle and the category of overriding interests[[6]](#footnote-6). Finally, it suggests that the **2002 Act[[7]](#footnote-7)** has succeeded in enforcing the aforementioned principle.

While the **1875 Act[[8]](#footnote-8)** was the first to contemplate the idea of a single register [[9]](#footnote-9), the **Land Transfer Act 1897[[10]](#footnote-10)** established that compulsory registration should begin in London[[11]](#footnote-11). Equally, the **1925 Act[[12]](#footnote-12)** set out that it would be obligatory to register a title if a triggering event occurred. In repealing the **1925 Act[[13]](#footnote-13)**, the **LRA 2002[[14]](#footnote-14)** has paved the way to e-conveyancing[[15]](#footnote-15). Thus, some have argued that this system should be referred to as one of *title by registration* rather than *registration of title*[[16]](#footnote-16). This philosophical shift[[17]](#footnote-17) has altered two types of relationships. First, a ‘physical nexus[[18]](#footnote-18)’ between the owner and their land is no longer required. Secondly, the state informs the citizen that he owns the land, not vice versa. Another aim of the **LRA 2002[[19]](#footnote-19)** is to guarantee title, as a result of which the register ought to be treated as conclusive[[20]](#footnote-20). However, as Cooke has maintained, judges still tend to protect sellers rather than purchasers[[21]](#footnote-21), Fitzwilliam[[22]](#footnote-22) being a striking example. The court followed Malory[[23]](#footnote-23) thus promoting deferred as opposed to immediate indefeasibility. Consequently, it has undermined the register’s role and hindered the development of the mirror principle[[24]](#footnote-24), which according to Lord Oliver is the underlying principle of land registration[[25]](#footnote-25). Due to these decisions it is questionable whether the registry can definitely be relied upon[[26]](#footnote-26).

Equally, it is submitted that the category of overriding interests has represented the ‘crack’ in the mirror principle[[27]](#footnote-27), particularly prior to the **2002 Act[[28]](#footnote-28)**. For example, Ruoff described overriding interests as ‘well-recognised burdens’[[29]](#footnote-29). Moreover, Dworkin contended that the mirror principle could never be said to work properly until everything affecting titles was displayed on a register[[30]](#footnote-30). In practice, the purchaser is always at risk of discovering that the title he acquired is subject to an interest that does not appear on the register[[31]](#footnote-31). Since Lord Scarman defined the purchaser’s task of examining title as ‘*wearisome and intricate’*[[32]](#footnote-32), scholars propounded that overriding interests be eliminated or, alternatively, drastically reduced[[33]](#footnote-33).

However, such interests still exist[[34]](#footnote-34). A number of academics have contended that it would be neither possible nor desirable to abolish them altogether. For instance, Dixon maintained that it would be impracticable and unrealistic to expect every title –including, for instance, local land charges- to be registered[[35]](#footnote-35). Similarly, Bogusz argues that overriding interests should exist because they may afford protection to otherwise vulnerable individuals[[36]](#footnote-36). Additionally, Ruoff contended that land law should reflect its citizens; in his opinion, the British public would not tolerate a perfectly organised register[[37]](#footnote-37).

The **LRA 2002**[[38]](#footnote-38) tries to draw a balance between the contrasting views by limiting the scope of overriding interests, particularly when they are not readily ascertainable[[39]](#footnote-39). Consequently, an occupier’s rights[[40]](#footnote-40) will prevail over a purchaser’s only if the latter has knowledge of occupation or if, following a reasonably careful inspection of the land, the occupation was evident[[41]](#footnote-41). While Thompson argues that such provisions actually help disponees[[42]](#footnote-42), Jackson suggested that such requirements would not make a difference[[43]](#footnote-43).

However, the **LRA 2002[[44]](#footnote-44)** incentivizes owners of unregistered titles to register them. Equally, it tightens the requirements for registration. For example, if land that ought to be registered is not registered correctly, the transfer becomes void[[45]](#footnote-45). Furthermore, the register has become the largest in Europe and has enhanced the economy in that it provides a source of data and income[[46]](#footnote-46).

To conclude, it seems reasonable to contend that the **LRA 2002[[47]](#footnote-47)** has been successful in reducing the scope of overriding interests,[[48]](#footnote-48) therefore making the reflection of the mirror more accurate[[49]](#footnote-49), particularly if compared with **1925 Act**[[50]](#footnote-50). Yet, the essay propounds that some issues remain. Indeed, the existence of overriding interests -though it appears to be a necessary evil- and the lack of clarity[[51]](#footnote-51) suggest that the crack still exists. The question as to whether total registration is a possible goal[[52]](#footnote-52) or mere utopia appears yet to be resolved.

Bibliography:

**Primary sources:**

Legislation:

**Land Transfer act 1875**

**Land Transfer Act 1897**

**Land Registration Act 1925**

**Land Registration Act 2002**

**Law Commission (2001) paper 271: “Land Registration for the 21st Century: A Conveyancing Revolution”**

**Law Commission (2001) paper (254)**

Cases:

*Abbey National Building Society v Cann* [1991] AC 56

*Fitzwilliam v Richall Holdings Services. Ltd* [2013] EWHC 86 (Ch)

*Lloyds Bank plc v Rosset* [1990] UKHL 14

*Malory Enterprises Ltd v Cheshire Homes (UK). Ltd* [2002] EWCA Civ 151

*Williams & Glyn's Bank v Boland* [1980] UKHL 4

**Secondary sources:**

Textbooks:

J Bray, *Unlocking Land Law* (3rd edition, Routledge, London, 2010)

D Cowan and others, *Great Debates in Property Law (*1st edition, Palgrave, London, 2012)

MJ Dixon, *Modern Land Law* (3rd edition, Routledge, London, 2010)

K Gray and SF Gray, *Land Law* (7th edition, OUP, Oxford, 2011)

B McFarlane and others, *Land Law: Textbooks, Cases and Materials* (2nd edition, OUP; Oxford, 2012)

T Ruoff, *An Englishman Looks at the Torrens System* (Law Book Co of Australasia, 1957)

MP Thompson, *Modern Land Law* (5th edition, OUP, Oxford, 2012)

Journals:

B Bogusz, “Bringing Land Registration into the Twenty–First Century – The Land Registration Act 2002” (2002) 65 MLR 556

F Burns, “The Future of Prescriptive Easements in Australia and England” (2007) Melbourne Law Review 4

E Cooke, ‘The Register’s Guarantee of Title’ (2013) Convenyancer 344

M Dixon, ‘A not so conclusive title register?’ (2013) 129 Law Quarterly Review 320

G Dworkin, “Registered Land Reform” (1961) 24 MLR 135

N Jackson, “Title By Registration and Concealed Overriding Interests: The Cause and Effect of Antipathy to Documentary Proof” (2003) 119 Law Quarterly Review 660

1. Land Registration Act 1925 [↑](#footnote-ref-1)
2. Land Registration Act 2002 [↑](#footnote-ref-2)
3. T Ruoff, *An Englishman Looks at the Torrens System* (Law Book Co of Australasia, 1957) [↑](#footnote-ref-3)
4. (ibid) Such a concept is strictly related to the curtain and insurance principles as well [↑](#footnote-ref-4)
5. Land Registration Act 2002 [↑](#footnote-ref-5)
6. The LRA 2002 renamed overriding interests and distinguishes between rights which override first registration and those that affect registered dispositions [↑](#footnote-ref-6)
7. Land Registration Act 2002 [↑](#footnote-ref-7)
8. Land Transfer Act 1875 (registration used to be voluntary) [↑](#footnote-ref-8)
9. J Bray, *Unlocking Land Law* (3rd edition, Routledge, London, 2010) [↑](#footnote-ref-9)
10. Land Transfer Act 1897 [↑](#footnote-ref-10)
11. M B McFarlane and others, *Land Law: Textbooks, Cases and Materials* (2nd edition, OUP; Oxford, 2012) [↑](#footnote-ref-11)
12. Land Registration Act 1925 [↑](#footnote-ref-12)
13. (Ibid) [↑](#footnote-ref-13)
14. Land Registration Act 2002 [↑](#footnote-ref-14)
15. MJ Dixon, *Modern Land Law* (3rd edition, Routledge, London, 2010) [↑](#footnote-ref-15)
16. M B McFarlane and others, *Land Law: Textbooks, Cases and Materials* (2nd edition, OUP; Oxford, 2012) [↑](#footnote-ref-16)
17. K Gray and SF Gray, *Land Law* (7th edition, OUP, Oxford, 2011) [↑](#footnote-ref-17)
18. F Burns, “The Future of Prescriptive Easements in Australia and England” (2007) Melbourne Law Review 4 [↑](#footnote-ref-18)
19. see 2 [↑](#footnote-ref-19)
20. This proves that the Torrens System, is successful only if the mirror, insurance and curtain principle work together [↑](#footnote-ref-20)
21. E Cooke, ‘The Register’s Guarantee of Title’ (2013) Convenyancer 344 [↑](#footnote-ref-21)
22. *Fitzwilliam v Richall Holdings Services. Ltd* [2013] EWHC 86 (Ch) [↑](#footnote-ref-22)
23. *Malory Enterprises Ltd v Cheshire Homes (UK). Ltd* [2002] EWCA Civ 151. Some academics, including Dixon and Cooke claim that *Fitzwilliam* should have distinguished Malory [↑](#footnote-ref-23)
24. *Abbey National Building Society v Cann* [1991] AC 56 [↑](#footnote-ref-24)
25. (ibid) [↑](#footnote-ref-25)
26. D Cowan and others, *Great Debates in Property Law (*1st edition, Palgrave, London, 2012) [↑](#footnote-ref-26)
27. MP Thompson, *Modern Land Law* (5th edition, OUP, Oxford, 2012) [↑](#footnote-ref-27)
28. Land Registration Act 2002 [↑](#footnote-ref-28)
29. T Ruoff, *An Englishman Looks at the Torrens System* (Law Book Co of Australasia, 1957), that are a matter of common knowledge [↑](#footnote-ref-29)
30. G Dworkin, “Registered Land Reform” (1961) 24 MLR 135 [↑](#footnote-ref-30)
31. B McFarlane and others, *Land Law: Textbooks, Cases and Materials* (2nd edition, OUP; Oxford, 2012) [↑](#footnote-ref-31)
32. *Williams & Glyn's Bank v Boland* [1980] UKHL 4 [↑](#footnote-ref-32)
33. G Dworkin, “Registered Land Reform” (1961) 24 MLR 135 [↑](#footnote-ref-33)
34. MP Thompson, *Modern Land Law* (5th edition, OUP, Oxford, 2012) Even though the Law Commission discussed the abolishment of overriding interests, [↑](#footnote-ref-34)
35. MJ Dixon, *Modern Land Law* (3rd edition, Routledge, London, 2010) [↑](#footnote-ref-35)
36. B Bogusz, “Bringing Land Registration into the Twenty–First Century – The Land Registration Act 2002” (2002) 65 MLR 556. For example, when rights have been created informally. [↑](#footnote-ref-36)
37. T Ruoff, *An Englishman Looks at the Torrens System* (Law Book Co of Australasia, 1957) [↑](#footnote-ref-37)
38. Land Registration Act 2002 [↑](#footnote-ref-38)
39. Law Com. 271, para 8.62 [↑](#footnote-ref-39)
40. Law Comm no 254 para 5.75 Schedule 3(2); means ‘actual’ [↑](#footnote-ref-40)
41. (Ibid) [↑](#footnote-ref-41)
42. MP Thompson, *Modern Land Law* (5th edition, OUP, Oxford, 2012) [↑](#footnote-ref-42)
43. N Jackson, “Title By Registration and Concealed Overriding Interests: The Cause and Effect of Antipathy to Documentary Proof” (2003) 119 Law Quarterly Review 660. He argues that such requirements were considered prior to the enactment of the LRA 2002 and that courts would nonetheless favour occupiers rather than purchasers, *Lloyds Bank plc v Rosset* [1990] UKHL 14 being an example [↑](#footnote-ref-43)
44. Land Registration Act 2002 [↑](#footnote-ref-44)
45. (Ibid) In fact, under s 6(4) has placed them in three different schedules and treats them differently. [↑](#footnote-ref-45)
46. The certainty that the registration brings about ensures that people pay taxes [↑](#footnote-ref-46)
47. Land Registration Act 2002 [↑](#footnote-ref-47)
48. MJ Dixon, *Modern Land Law* (3rd edition, Routledge, London, 2010) [↑](#footnote-ref-48)
49. B Bogusz, “Bringing Land Registration into the Twenty–First Century – The Land Registration Act 2002” (2002) 65 MLR 556 [↑](#footnote-ref-49)
50. Land Registration Act 1925 [↑](#footnote-ref-50)
51. Which has resulted in judicial (mis)interpretation, such as in the *Fitzwilliam* case [↑](#footnote-ref-51)
52. Law Commission (2001) 271 [↑](#footnote-ref-52)