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Mistakes, mispleading and overreaching: understanding title registration and correcting the register

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Abstract

Purpose – The purpose of this paper is to analyse whether title to land is secure in England and Wales when registered under the Land Registration Act (LRA) 2002, in particular when a title is registered, where there has been a mistake and how that connects with the doctrine of overreaching.

Design/methodology/approach – This paper analyses the reported judgments, with particular emphasis on the decision in *Knight* v *Fernley* (2021).

Findings – This paper explores the concepts of "mistake" and "overreaching" and concludes that LRA 2002 provides a complex, but complete answer to concerns about the application of these doctrines.

Practical implications – This paper will encourage certainty in the judicial decision-making process when "mistakes" occur in the land register. It will contribute to the resolution of difficult, and current, controversies.

Social implications – To enable legal advisers to be clear in their obligations and the advice they give to clients, and to further a better understanding of title registration in England and Wales.

Originality/value – The LRA 2002 replaces registration of title with title by registration. The real force of this is only now being realised and there are few reported judgments, and less consistency, working out what this means in practice. There are no other comments on this critical case, even though it helps elucidate the circumstances in which the title register may be altered.

Keywords Registration, Land, Guarantee, Mistake, Overreaching, Title

Paper type Case study

Imagine finding a dream home, raising the money [1], engaging solicitors and completing the purchase, only to find some time later that, in fact, according to Her Majesty's Land Registry, you were not in fact the owner. Worse still, as a result of an initial error on the part of your solicitors, who had failed to register your title, you discover that your home has been conveyed to, and registered in, the name of your neighbours. For their part, your neighbours thought they were buying a small plot of land for £2,500 but are inadvertently now the registered proprietors of your property, a property many, many times more valuable than the price they paid. They also, of course, still own their actual home. You might think that this was annoying, but not a serious cause for concern. Surely, the neighbours would not contest the "return" [2] of the property to you, and you might buy them a small gift to thank them for their understanding? Alternatively, should the neighbours prove reluctant to surrender their windfall, despite knowing fully well that the property was not meant for them, surely the register of titles could be amended fairly simply, the cost being borne by your lawyers who had made the initial error. However, as *Knight* v *Fernley* [3] demonstrates,

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where land registration is concerned, correcting mistakes may not be straightforward, especially if those acting for you labour under some significant misapprehensions about the nature of title registration under the Land Registration Act (LRA) 2002 and the circumstances in which the register can be corrected.

Mrs Knight did everything necessary to purchase her home (Plot 1) from the entirely professional developers. A standard land registry transfer form (Form TP1) was completed effective to transfer title to her in the normal way [4]. She paid £309,000. Her solicitors failed to register the TP1 for reasons unknown but which, according to Marcus Smith J, raise a strong presumption of negligence. This had three immediate consequences: first, that legal title to Plot 1 remained with the innocent intended sellers, s.27(1) LRA 2002 [5]; second that, as a result, it remained within the title number of the land remaining with the intended sellers; and third, that Mrs Knight acquired an equitable beneficial interest in Plot 1, under a bare trust of land governed by the Trusts of Land and Appointment of Trustees Act 1996 (TOLATA 1996) [6]. She was its equitable owner under the completed contract of sale and the intended sellers were her trustees. A little later, the still registered proprietors of Plot 1 (the trustees and original intended sellers) meant to convey a small parcel of land (Plot A) to Mr and Mrs Fernley for £2,500. They completed the conveyance and the Fernleys were so registered. However, undiscovered by all [7], the title conveyed to the Fernleys by registered disposition mistakenly included Plot 1, because the plot had never been removed from that title. The Fernleys were now the registered proprietors of Plot A (as intended) but also a property worth over £300,000 (Plot 1), in addition to their own home. Mrs Knight was, of course, living on Plot 1. When these errors were discovered, naturally Mrs Knight contacted the Fernleys. The discussions between the parties are not reported in the judgment, but it is of course certain that no one believed that the position recorded in the title register reflected the intended effect of the two transactions. Everyone knew that errors had been made. How then to unpick this entirely avoidable mess given, as it appears, that the Fernleys felt unable simply to agree to the register being corrected by entering Mrs Knight as the registered proprietor of Plot 1 [8].

Three things are clear from the outset, if perhaps surprising to those unfamiliar with land registration. Indeed, that they are unfamiliar, and possibly even counter-intuitive, might explain why those advising clients, and sometimes those deciding cases, try to find imaginative, sometimes implausible and even unwarranted, solutions to what they perceive to be "problems" with the land registration system of the 2002 Act. As we shall see, however, simply following the processes found in the Act itself, and giving the statutory provisions their intended effect, usually provides a coherent solution consistent with the policy of the legislation. That *could* have been the result in this case, rather than the unsatisfactory position the parties now find themselves in. Firstly, a registered proprietor is to be regarded as the proper and lawful owner of the legal title to the land under section 58 LRA 2002, following *Swift 1st* v *Chief Land Registrar* [9]. This is so even if, as is obvious in this case, the registration of the current proprietors is clearly an error. This title ownership is guaranteed, within the limited meaning of that term under the LRA 2002 [10]. There is no room in registered land for a previous owner to be regarded as the "true" owner – *nemo dat non habet* does not run in a registered title – deliberately. Secondly, whether a registered proprietor takes the land subject to any prior property interest (such as Mrs Knight's beneficial interest under the bare trust established by her completed purchase) is to be determined by the system of priority established by the LRA 2002 itself and not by any doctrine of notice or equitable fraud or other extraneous principles that are sometimes employed to achieve a "fair result". These provisions are found in sections 28–30 of the LRA 2002, the most commonly deployed being section 29 when a registered title is transferred for

valuable consideration. Thirdly, the Act supplies a system for correcting errors [11] in Schedule 4 to the Act and provides an indemnity in Schedule 8 for those innocently prejudiced by the operation of the registration system. However, a fundamental point, that some find difficult to accept, is that not all errors will be corrected. The system established by the Act, albeit elaborate, especially embraces the idea that some mistakes are to be lived with, with sometimes (but not always) compensating payments to a person innocently prejudiced by this. That is the point of a title guarantee system. Against this backdrop, the manner in which Mrs Knight pursued her claim to be registered as proprietor of Plot A, and the courts' response to it, tells us much about the land registration system and some of the errors that persist in its application. Mrs Knight had two lines of attack.

The curious case of overreaching: explanations matter

The first plea was that Mrs Knight should be entered as the proprietor as this would reflect her unregistered interest that overrides the Fernleys' title to Plot 1 under s.29 LRA and para. 2 Schedule 3 LRA 2002. This overriding interest would, if established, almost certainly [12], compel her registration as proprietor because the change to the register would be a mere "alteration" (rather than a "rectification") and mere alterations "must" be made unless there are exceptional reasons not to do so [13]. It would be a mere alteration because, depending on the nature of the overriding interest, either there would be no mistake at all (thus the register could be "brought up to date" by means of alteration) or if the existence of the overriding interest was the result of a mistake, the alteration would not prejudicially affect the title of a proprietor because they were *already* bound by the overriding interest (hence not a "rectification") [14].

Unfortunately, however, Mrs Knight could not rely on this more straightforward route to proprietorship because of the intersection between her claim to priority via an overriding interest under s.29 LRA 2002 and the purchaser protection concept of overreaching. To have an overriding interest, Mrs Knight would need a property interest (which initially she did have as equitable owner) and be in "actual occupation" under para. 2 of Schedule 3. Her claim to be in "actual occupation" of Plot 1 was manifest and unarguable [15]. Nevertheless, Plot 1 had been sold to the Fernleys by two trustees under a trust of land, and this very clearly operated to overreach any beneficial interest Mrs Knight might have – this is the clear effect of *City of London BS* v *Flegg* [16]. Consequently, the Fernleys as purchasers had priority through overreaching and Mrs Knight could not rely on an overriding interest to generate a change to the title register. Importantly, in reaching this unassailable conclusion, three points of interest arise from the judgment of Marcus Smith J: a point confirming what this author regards as unconvertible; a point of important linguistic and substantive pedantry; and finally, a curious comment about overreaching that, unfortunately, might lead to future confusion.

Firstly, the trial judge confirms that overreaching still occurs even though the Fernleys paid only £2,500 to the trustees and the land conveyed was not at all what the parties thought it was. The transaction was regular in form, properly executed and properly registered and the title conveyed did, as a matter of fact, comprise the land conveyed. The trustees had the power to convey that land – being legal owners – and did convey it. That both seller and purchaser did not realise that the land comprised in the title was more extensive than they thought did not have an impact on the validity of the transaction [17]. Neither, as Marcus Smith J rightly notes, does overreaching depend on the adequacy or otherwise of the consideration. For this author, this is unproblematic. If the transaction is regular in all formal respects, any mistake as to its contents can be challenged (I do not *presume* successfully [18]) either through the alteration provisions of the LRA 2002 [19] or

perhaps (perhaps even with less hope of success) through rectification of the document for common mistake. Interestingly, however, Mrs Knight did not suggest that the sale to the Fernleys by the trustees/developers was a breach of trust – surely a plausible plea? Had she done so, that would have raised the interesting, and largely unresolved, question of whether a formally proper disposition by two trustees *in breach of trust* nevertheless still overreaches the interests of the equitable owners in favour of the purchaser [20]. The current author would argue that a transfer by trustees in breach of trust does *not* prevent the transaction overreaching the equitable interests and giving the purchaser priority, albeit that it would make the trustees liable personally, but it is clear that this is open to argument and might be wrong. It is moot in this case because there was no such plea.

Secondly, throughout the case, it is said that Mrs Knight's overriding interest is overreached. With the greatest respect, while this appears to be the case, it is inaccurate. Mrs Knight's interest is *capable* of being an overriding interest, but it never is. The time for assessing whether there is an unregistered interest that is overriding is the moment of the registration of the disposition to the Fernleys [21]. However, at that point, it is overreached. The pedantic, but important, point is that overreaching *prevents* Mrs Knight's interest from being overriding. This is not a contest between an existing overriding interest and overreaching: overreaching ensures Mrs Knight's interest is not an interest in land at the time of disposition, and so it cannot override. There are many reasons why an interest potentially capable of overriding may not do so: it may be time limited, it may be inherently subject to the interest conveyed to a purchaser, it may have been consented away [22] or it may have been overreached so as to destroy its proprietary status. Respectfully, to say that overreaching takes precedence over an overriding interest is to mis-explain what is going on. It is not that overreaching is somehow more powerful than an overriding interest: it is that overreaching means that it is not possible for there to be an overriding interest in the first place [23].

Thirdly, there is a curious puzzle in the judgment in this case [24]. In a normal situation, overreaching occurs via section 2 LPA 1925, and this makes it clear that only certain types of property interests are overreachable [25]. They clearly include beneficial interests under a trust of land; however, the trust is created. In discussing this, Marcus Smith J notes that section 2(1)(ii) LPA 1925 provides that overreaching occurs where the conveyance is:

> [...] made by trustees of land and the equitable interest or power is [...] capable of being overreached by such trustees under the provisions of subsection (2) or independently of that section.

He then concludes that overreaching in this case does **not** occur under section 2 but "independently of that subsection" and that overreaching in this case occurs because of the provisions of the TOLATA 1996. This is novel and, respectfully, quite odd. First, there is no overreaching power in any provision of TOLATA 1996. A trust operating under TOLATA triggers the overreaching power in section 2 LPA. There is no "independent" power of overreaching in TOLATA 1996. Secondly, surely the reference to "independently of that subsection" refers to *the equitable interest* that is being overreached, not the power of overreaching? So section 2(1)(ii) means that equitable interests in section 2 may be overreached and (just in case) so might other types of interest found overreachable under the general law. Does not the phrase "independently of that subsection" refer to the interest that is overreachable, not the power of overreaching. Thirdly, what is the point of making this alleged distinction? There is no doubt that an interest under a bare trust of land (as here) is now overreachable in the same way as an equitable interest under any other trust of land. It was once the case that bare trustees could not overreach, for that was probably a power reserved to trustees *for sale* of land. But that is no longer the case because overreaching now

applies to *all* trustees of land however the trust arises, and bare trustees are trustees of land – section 1(2) TOLATA 1996. There is, perhaps, a clue to why Marcus Smith J thinks that overreaching in this case arises outside of section 2 in the brief reference to the argument that Mrs Knight might be the beneficiary of an "estate contract" rather than a beneficial equitable interest under a trust of land. As is well known, estate contracts are not overreachable under section 2 LPA – section 2(3)(iv) – and perhaps this generates a worry about overreaching under section 2 LPA 1925. Thus, Marcus Smith J does not feel obliged to consider this argument (that there is an estate contract) because he has already decided that Mrs Knight's interest is not overreached under section 2, but "independently of this subsection". This is also challenging. There is no case where an estate contract has been overreached under section 2 (of course) or indeed any other provision. Up to this point, estate contracts have been regarded as non-overreachable and in so far as Marcus Smith J is suggesting that they are overreachable under some other statute, it is very novel and would represent a sea change in the law [26]. As to the substance of the point, we might note that it is controversial to suppose that Mrs Knight has an estate contract in the first place. This suggestion – that the interest of a person in Mrs Knight's position was not a beneficial interest behind a trust but an estate contract – is the same argument put forward in *Baker* v *Craggs* at the first instance [27]. It relies on the claim that the contractual right of Mrs Knight (her estate contract) persisted until the contract was completed, when it merges with the grant, but that this merger does not take place in the registered land until the title is registered and is complete, rather than the date on which, in pre-registration language, the contract was completed by payment of the money and execution of the deed of transfer. In fact, the argument was rejected in *Baker* by Newey J on the ground that completion of the contract was separate from registration of the title that arose from the contract (and so the estate contract ceased to exist at completion rather than the later registration) [28], and this finds support in both *Abbey National* v *Cann* and *Southern Pacific Mortgages* v *Scott* [29]. It is, of course, still open to the Court of Appeal to find a non-overreachable estate contract instead of an overreachable beneficial interest in those cases where a transaction has been completed but not registered, but that would be a significant blow to the efficacy of overreaching, itself involving a reversal of current attitudes to purchaser protection.

Correcting the register

Returning then to the main event – could the register be corrected to install Mrs Knight as the registered proprietor? Much to the regret of Marcus Smith J, he was forced to conclude that she should not be so registered, largely, in his view and that of the trial judge, because of the way that she chose to argue her case. The circumstances in which the register may be changed are material here, as are the fundamentals of title registration referred to above. The key, I would suggest, is to apply the statute free from preconceptions about what the answer "should" be, or what it "would have been" in an unregistered title. Thus, the system deliberately allows the protection of what many might regard as the undeserving proprietor because that is the nature of a system that focuses on "title by registration" rather than "registration of title", but it mitigates this by a system of indemnities. Most importantly of all, the LRA 2002 is premised on the fact that not all errors or mistakes will be corrected, even if they would have been had the title not been registered.

Crucially, the title register may be "altered" to correct a mistake that does not prejudicially affect the title of an existing proprietor *or* to bring the register up to date when there is no mistake – Schedule 4 para.2 [30]. When one of these grounds for an alteration is made out, the register "must" be changed to deal with the situation unless the circumstances are exceptional [31]. However, if there is a "mistake" that "prejudicially affects" the title of a

proprietor, then this is a rectification, and a rectification does not always result in a change to the register despite the mistake, especially if the current proprietor is in possession [32]. Moreover, cases of rectification (but only rectification) can trigger the payment of an indemnity out of land registry funds in favour of the innocent person who loses his/her title (if a rectification is made) or the innocent claimant (if a potential rectification is not made) [33]. The Registry is the insurer of the system and the payment of the indemnity is not dependent on the Registry being at fault: it is an indemnity, not a compensation.

In this case, Mrs Knight chose to argue for "alteration" of the register rather than "rectification", and this coloured the whole process, possibly to her detriment [34]. It is not clear why she chose to eschew a rectification claim [35], because clearly any removal of the Fernleys as proprietors would "prejudicially affect" them and amount to a rectification within Schedule 4 *if* there was a "mistake". Two reasons spring to mind, although one cannot be certain if either were the motivating factor, especially as both betray a misunderstanding of how alteration and rectification work. Firstly, and it is mere speculation, perhaps Mrs Knight did not want to argue rectification because this might have generated an indemnity in favour of the Fernleys had the register been rectified [36]. That would be strange because not only does the Registry pays indemnity out of its own funds and the cost would not fall on Mrs Knight, but a rectification claim could generate an indemnity for Mrs Knight if grounds were made out and the register was not ultimately changed. Secondly, perhaps Mrs Knight thought it would be easier to have the register changed by reason of a mere alteration (because it "must" be changed, absent exceptional circumstances), rather than establishing a change via the more complex provisions on rectification. Again, however, this is faulty reasoning. Even a mere alteration requires there to be a mistake unless the register is being brought up to date (not relevant here when she had no overriding interest [37]) and that "mistake" is established in the same way whether it is case of alteration/mistake or rectification/mistake. In so far as both the trial judge and Marcus Smith J suggest that "mistake" is to be defined *differently* for alteration and rectification cases, that is without authority and, respectfully, misunderstands the concept of mistake under the LRA 2002. Secondly, if there was a mistake, generating a rectification claim, it almost certainly would have succeeded because the Fernleys were not in possession of Plot 1 and so it is not substantively easier for Mrs Knight to plead mere alteration. Perhaps this is why Marcus Smith J, after having denied the alteration claim, very unusually gives leave for Mrs Knight to amend her Particulars of Claim to plead rectification of the register [38].

In the light of this confusion and mispleading, I would suggest that key to this case – as with all such cases – lies in a proper understanding of the concept of mistake in the alteration/rectification scheme of the LRA 2002. This seems to have evaded the parties in this case. The reason why Mrs Knight's alteration claim is rejected by the trial judge and Marcus Smith J is that there was no "common mistake" in the transaction between the sellers of Plot1/Plot A and the Fernleys sufficient to make the transaction void. If it was, say both judges, no title would have passed to the Fernleys and so it *could* have been an alteration because the Fernleys would not have been prejudicially affected by a change in the register because they would have owned nothing under the void transaction. With respect, this is wrong for two important reasons. First, the concept of "mistake" under the LRA 2002 is not linked to ideas of "mistake" in the law of contract or any other branch of the law. It is *sui generis* and a mistake means cases where the land registry would not have made the disputed entry in the register, or would have refused to make the entry they did make, had the true position been known [39]. It is not defined in the Act precisely because whether there has been a mistake is to be judged in the light of the facts that persist, rather

than under some accepted definition found elsewhere [40]. Secondly, both judges appear to suggest that they are looking for a void transaction because this would mean that the proprietor under the void transaction did not get a title at all and so could not be prejudicially affected by a change in the register (hence an alteration) [41]. This is profoundly wrong because the whole point of title by registration is that the registered proprietor is the owner *even if* he/she obtained the title by a void transaction or by reason of some other mistake [42]. In fact, following *NRAM* v *Evans* [43], a title acquired under a void disposition is one that is capable of being rectified because the registration is a mistake (subject to Schedule 4), whereas one obtained under a voidable disposition is not, because when the voidable transaction is entered, it is valid and is not actually mistaken [44]. In other words, the reasoning in this case is back to front. The Fernleys obtained title under s.58 LRA 2002 irrespective of whether the transaction was void, and the key question is not whether they did. They key question is whether there was a mistake, which led to their registration.

That said, then, is there a mistake here that could generate a rectification should Mrs Knight amend her claim? On one view, there was nothing mistaken about the transfer from the sellers to the Fernleys because it was valid on its face, meant to convey the title number that was conveyed and there was no fraud or forgery. If anything, the "mistake" was that of Mrs Knight's lawyers, and this was not a mistake in the registration of the Fernleys' title. If this is accurate, then there can be no rectification or alteration – because there is no relevant mistake in the registration of the Fernleys' title. Indeed, Marcus Smith J seems to accept this, and this would make a rectification plea pointless [45]. On the other hand, it is clear from *Baxter* v *Mannion [46]* and *Walker* v *Burton [47]* that a mistake in the background facts of a transaction that leads to a registration entry can count as a "mistake" leading to a faulty registration for the purposes of Schedule 4 and it is now well established that a mistake in an initial transaction taints all subsequent transactions [48]. For the current author, the test is whether, had the true facts been known, the Registry would not have made the registry entry they did make, or would have refused to make the register entry they did make – *NRAM* v *Evans [49]*.

Lessons?

The particular facts of *Knight* v *Fernley* should serve as a warning to all conveyancers. Whatever happens to the alteration/rectification claim in the end, there seems little doubt that Mrs Knight's solicitors will be claiming on their professional negligence insurance. For Mrs Knight, this might be cold comfort if she does not get to keep her home. Taking a wider view, the case demonstrates how pre-conceived ideas about "mistake" in land registration and a failure to understand the true effect of title guarantee, and the alteration and rectification provisions of the LRA 2002, can lead to an expensive and unhappy mess. If we come to land registration shorn of our pre-conceptions about what would have happened if title had not been registered, or had the old law of the 1925 LRA applied, or what is happening in other areas of the law unrelated to real property, there is a really good chance that simple application of the statute will resolve most disputes. There are other troubling aspects to this case – the identification of an hitherto unknown overreaching power, the nature of estate contract versus a beneficial interest, the simple failure of lawyers – but most of all, the real lesson is that we need to understand what the LRA 2002 is seeking to achieve and to accept that the words in the statute mean what they say.

Notes

1. I imagine that, in this case, no mortgage was necessary; else the catastrophic errors outlined below would have been discovered when the lender attempted to register their charge.
2. Technically, but importantly, you had never been the owner of the legal title, so it was not a "return" you want, but a transfer for the first time.
3. [2021] EWHC 1343 (Ch)
4. The developed land was held originally under one title number, and this was the transfer of Plot 1, carved out of the larger plot. Hence, a Transfer of Part was needed (TP1) and, on registration (had it occurred), a new title number would have been allotted to Plot 1 in the name of Mrs Knight.
5. Pedantically, we cannot call the intended sellers simply "sellers" because the whole point of land registration is that legal title does not pass until registration: they were the intended sellers.
6. S.27(10) LRA 2002.
7. The full facts are not revealed in the judgment and perhaps neither the trustees nor the Fernleys engaged professional conveyancers, the land being small and relatively inexpensive. If they did, it is a surprise that no one realised that the land about to be conveyed was significantly larger than the intended parcel. This might – just might – impact on the Fernleys' claim for an indemnity, should it come to that – Schedule 8 para.5 LRA 2002 limiting indemnity in cases of fraud or lack of care. There is no suggestion of fraud in this case.
8. The Fernleys' reluctance may surprise some, but without knowing the facts, it would be unsafe to draw any conclusions. Very often, a land dispute is merely the tip of an iceberg of difficult neighbour relations, so it is wisest not to speculate.
9. [2015] 1 Ch 602.
10. It is often assumed that "title guarantee" means that the current registered owner cannot be divested of their title, or that if they are (and being innocent), they must get financial compensation. Neither are true. A registered title is heavily protected, but not immutable. The state provided indemnity is generous, but not always payable. It all turns on the provisions of the statute, rather than our deduction from a pre-existing policy position.
11. A "mistake" is a term of importance in land registration, albeit not defined in the LRA 2002. For this author, the lack of a definition is a boon, not a point of failure. It allows corrections to the register to be made in a wide variety of circumstances, not preconceived ones. See, generally, (2013); Goymour (2013); Cooper (2018).
12. Not absolutely certainly, because of the discretion found in Schedule 4 to the Act – below.
13. Schedule 4, para. 6(3). LRA 2002. On the face of it, there are no exceptional reasons so as to justify a refusal to alter. Also, this is why the claim that the so-called "right to rectify" is a property right callable of overriding is so damaging to the integrity of the land registration system for it distorts the alteration/rectification provisions of the Act. See Dixon, *Rectifying the Register Under the LRA 2002: The Malory 2 Non-Problem*. [2016] Conv. 382; Lees and Cooper (2017).
14. In other words, the title of the proprietor is prejudiced by the overriding interest, not the alteration, as in Re Chowood's Registered Land [1933] 1 Ch. 574. See the judgment of Judge Owen Rhys in *Northern Powergrid v Leatham Estates* REF 2019/0649 (FTT), which while not creating precedent, is a clear and sharp analysis of the relevant provisions.
15. See *Rock Ferry Waterfront Trust v Pennistone* [2021] EWCA Civ 1029 for a recent discussion of the meaning of "actual occupation" in under-used land. In *Pennistone,* both the trial judge and the Court of Appeal found that the claimant was not in actual occupation; M. Dixon, *Equitable interests, actual occupation, land registration and a slice of feudalism,* [2021] 85 Conv. 239.

16. [1988] AC 54. Judgment at para. 17.
17. Judgment para. 22.
18. See below.
19. i.e. Schedule 4 LRA 2002.
20. Cases where this is a possibility have either not, in the end, involved a breach of trust (*N3 Living* v *Burgess Property*, [2020] EWHC 1711 (Ch)), or discussion has focused on the liability of the purchaser personally, rather than the validity of the transaction (*Byers Samba Financial Group* [2021] EWHC 60 (Ch) and see Conaglen and Goymour (2010). See also Cooke and O'Connor (2004).
21. *Mortgage Express* v *Lambert* [2017] Ch 93; s.29 LRA 2002.
22. See *Ali* v *Dinc* [2020] EWHC 3055 (Ch).
23. This is not *mere* pedantry. If overreaching and overriding are seen as in competition, it is but a small step to argue that overreaching should not always prevail (see the attempt in *Haque* v *Raja* [2016] EWHC 1950 (Ch)); and sometimes it is easy to ignore overreaching in favour of a potential overriding interest (*AIB Group* v *Turner* [2015] EWHC 2994 (Ch)).
24. I am grateful to Alan Riley for his observations on this point during our discussion of *Knight*.
25. See on this point, *Mortgage Express* where Lewison LJ analyses section 2 LPA and notes that overreachable interests may well reach beyond interests behind the trust of land.
26. Note also, that beneficial interests under a trust of land are not protectable by means of a notice against the title, whereas estate contracts are, s.33 LRA 2002. Is it because one is overreachable and the other is not?
27. [2017] Ch 295. The point was not pursued in the Court of Appeal, where it was held that overreaching had not occurred because the grant of an easement was not a relevant conveyance of a legal estate within section 2LPA 1925.
28. *Baker,* at first instance at para. 40.
29. See also, M. Dixon *The Registration Gap and Overreaching* [2017] Conv 1.
30. Schedule 4, para. 2. An alteration may also be in respect of an interest excepted from the effect of registration, but that is not relevant here.
31. Schedule 4 para. 6(3).
32. Schedule 4 para. 3.
33. Schedule 8 LRA 2002.
34. See below.
35. See Judgment para. 27.
36. See Schedule 8 LRA 2002.
37. It is not clear that Mrs Knight thought her claim to alteration depended on establishing an overriding interest.
38. That is where the case stands at the time of writing.
39. *NRAM v Evans* [2017] EWCA Civ 1013.
40. This is recognised by Marcus Smith J, judgment para. 29.
41. I am not certain that this is the view of both judges. It could be that they are commenting on the argument presented by Mrs Knight, and how this has hamstrung their ability to decide the case.

42. See below.
43. [2017] EWCA Civ 1013.
44. Any change necessary to reflect the fact that the transaction is avoided at a later date would be an alteration on the ground of bringing the register up to date. Personally, and aware that authority is against me, I do not find the difference between a void and voidable transaction persuasive in a system of title by registration, though it may have been when the system was one of registration *of* title under the LRA 1925. The distinction also makes indemnity unavailable for those prejudiced by a voidable transaction, which is avoided as it can never be a rectification. This just seems plain wrong. See also *Emmet and Farrand on Title*, paragraph 9.028.
45. Judgment para. 31.
46. [2010] EWCA Civ 1013.
47. [2013] EWCA Civ 1228.
48. *MacLeod v Gold Harp Properties Ltd* [2014] EWCA 1084.
49. [2017] EWCA Civ 1013.

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