8 Deduction of Unregistered Title

8.1 Form of Evidence

In the case of an unregistered title, a seller deduces his title by providing evidence of what his title deeds say. At one time, he would have sent the purchaser an abstract of the deeds. This amounted to a précis of their contents, prepared in a stylised form. Nowadays, the simplest method of letting a purchaser know the contents of deeds is by sending him photocopies of them. The photocopy deeds must be accompanied by an epitome i.e. a chronological index of the accompanying deeds. The epitome should state whether each original deed will itself be available on completion, and whether it will be handed over then to the purchaser. In this book, ‘abstract’ is used to mean both the traditional abstract and the epitome.

8.2 What Deeds and Other Documents Should be Abstracted?

The abstract will start with the deed that the purchaser is entitled to see as the root of title. Usually there will have been a term in the contract specifying what deed this is to be. If not, the document must be one that is a good root of title at least 15 years old (see section 5.8(e)). The abstract may start with an earlier document in circumstances in which the purchaser is entitled to see a pre-root deed (see section 8.3(e)). Having started with the root, the abstract must then give details of every deed, document or event that passes the legal estate from owner to owner, and eventually to the seller. Notice again that he must establish either that he owns the legal estate, or that it is owned by someone who can be compelled by him to convey it to the purchaser. This has been discussed in the context of registered title in section 7.4(b).

8.3 Which are Not Abstracted?

(a) An abstract should not contain information about equitable or other interests that will be overreached by the sale, and so will not affect the purchaser. So, for example, on a sale by trustees for sale the purchaser need not be given information about the interests of the beneficiaries. On a sale by a mortgagee, the purchaser need not be given details of mortgages later in priority than that of the seller’s.
(b) *A lease that has expired by effluxion of time* For example, if a lease was granted in 1975 for ten years, and the tenant left at the end of the term in 1985, the purchaser need not be given a copy of that lease. If the lease ended by any other means, the purchaser should be given whatever information is available to prove its termination, so if the tenant surrendered the lease in 1980, the purchaser should see a copy of the lease, and of the deed of surrender.

(c) *Birth, death or marriage certificates* These are matters of public record, and the strict rule is that if a purchaser wants a copy he can get one for himself. What the purchaser must be given is the information he needs to do this, e.g. the date of the marriage. In fact, if the seller has these certificates, it would be churlish of him to refuse the purchaser a copy.

(d) Strictly, *equitable mortgages should be abstracted*, so that the purchaser can check on their redemption. Remember though, that an equitable mortgage can be created with little formality. So equitable mortgages are not usually abstracted. If however, an equitable mortgage is protected by the registration of a C(iii) land charge, the registration should be cancelled, otherwise the purchaser is alerted to the existence of the mortgage, and will need evidence of repayment of the loan.

Any legal mortgage created after the root of title should be abstracted, together with any relevant vacating receipt.

A legal mortgage created before the root of title, but discharged at a date after the date of the root of title should be abstracted, together with any vacating receipt. If it was not redeemed or otherwise discharged until after the date of the root of title, it is part of the post-root title, no matter when it was created.

A legal mortgage created and discharged earlier than the date of the root of title need not be abstracted.

(e) *Pre-root deeds and documents* Generally, a purchase has no right to see any deeds or documents that are dated earlier than the root of title.

Section 45 of the Law of Property Act provides that 'a purchaser shall not:

(i) require the production, or any abstract or copy of any deed, will or other document, dated or made before the time prescribed by law, or stipulated, for the commencement of the title, . . . ;

(ii) require any information or make any requisition, objection or enquiry, with respect to any such deed, will or document, or the title prior to that time . . . .'.

This section prohibits the purchaser from making any objection to the soundness of the pre-root title. It is as if there were an express term in the contract itself preventing the purchaser from raising requisitions on title. We have seen that any such contractual stipulation is valid only if the seller has shown good faith, i.e. has revealed to the