

# 'Cash in the Attic'

## Boundary Disputes and Adverse Possession of Loft Space

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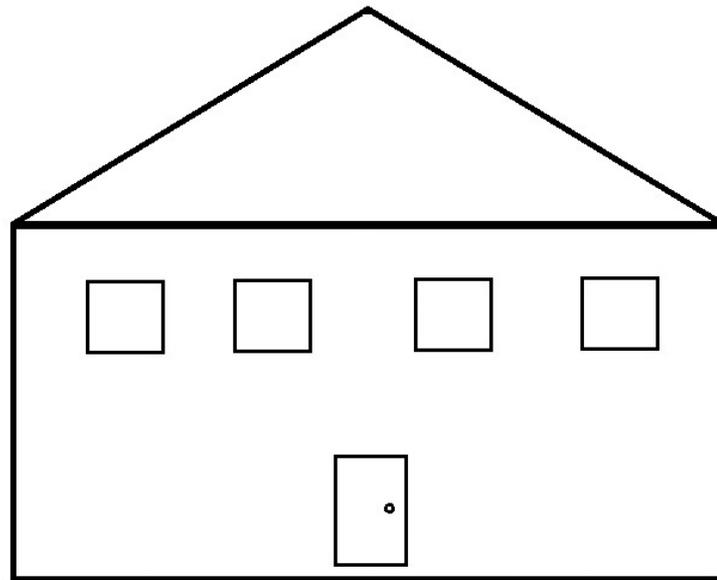
## Cash in the Attic

Availability of housing – building up vs. building out

- Utilising existing buildings to create new homes or increase size of existing homes
- Relaxation of planning laws
- Extension of permitted development rights

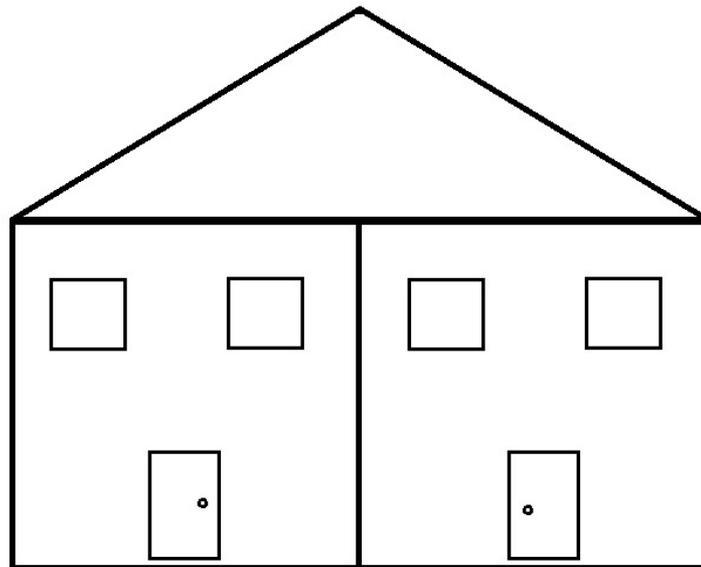
## Division of Land

‘Typical’ construction of a house:



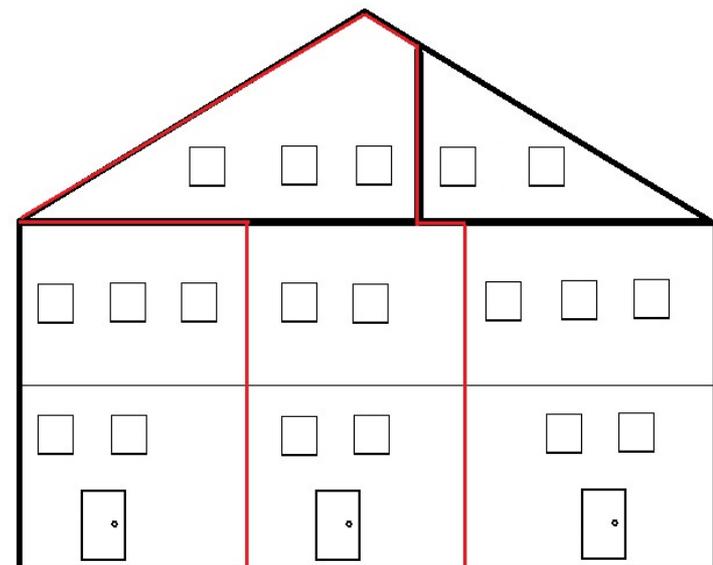
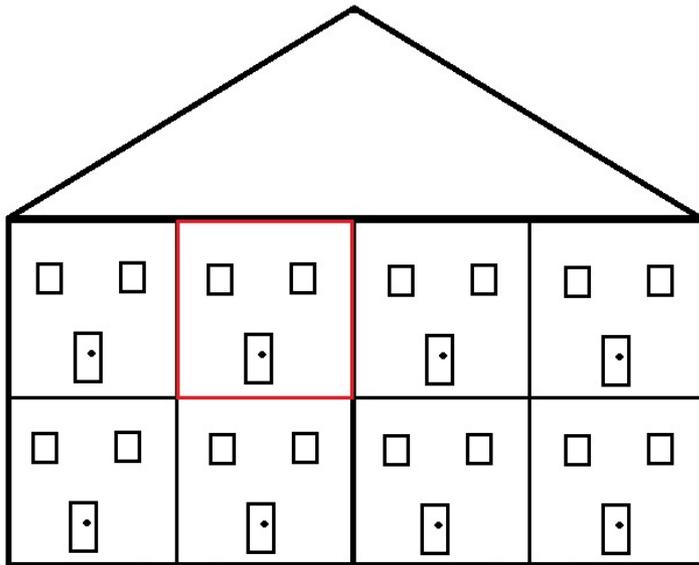
## Division of Land

‘Typical’ construction of a house:



# Division of Land

## Flats or conversions



## Division of Land

Land can be divided vertically and/or horizontally

## Horizontal Division

- Normally seen with leases of flats or maisonettes
- Dispute normally between landlord & tenant
- What is the extent of the demise?
  
- Consider the Lease

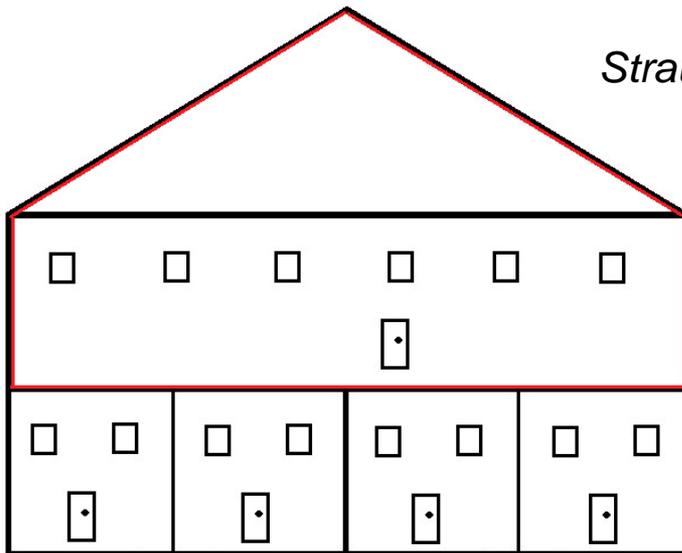
# Horizontal Division

## 'Rule of Thumb'

- Horizontal division of the entirety of one floor = the roofspace will form part of the demise

*(Hatfield v Moss [1988] 2 EGLR 58;*

*Straudley Investments v. Barpress [1987] 1 EGLR 69)*

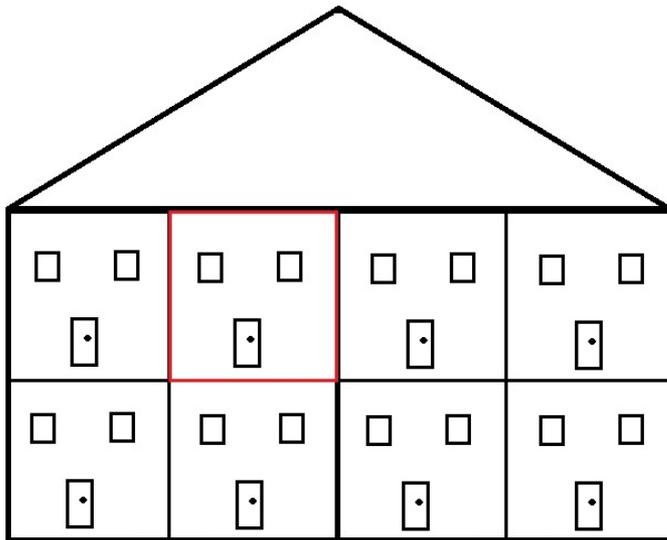


## Horizontal Division

### 'Rule of Thumb'

- If flat is one unit in a larger block = the demise will not include the roofspace above the individual flat

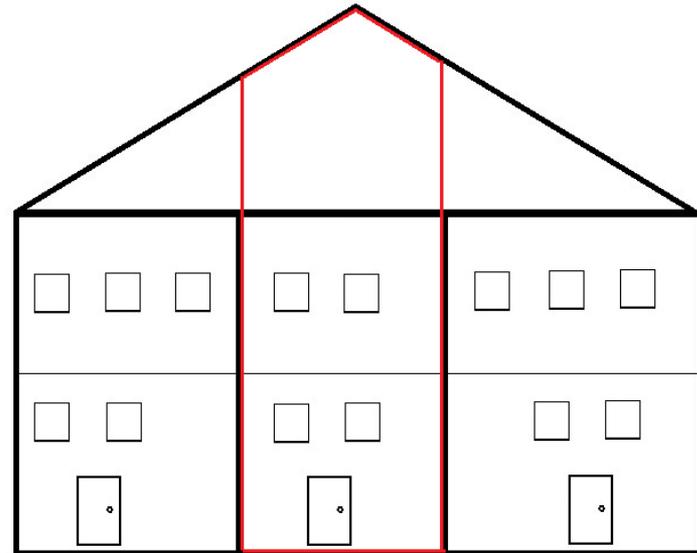
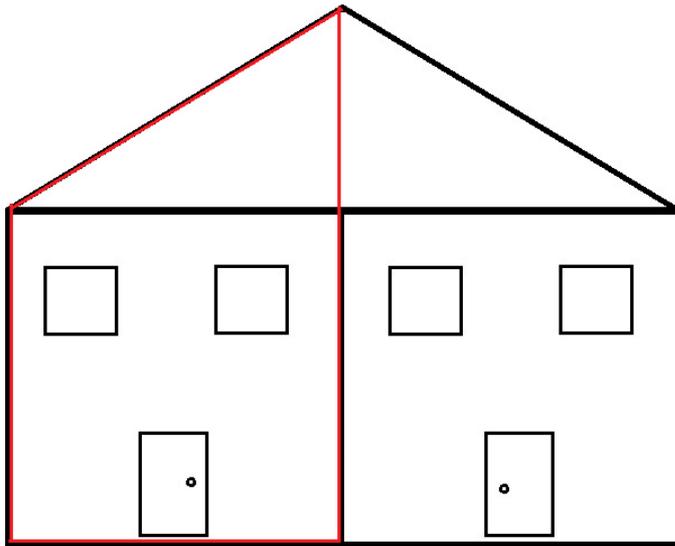
*(Cockburn v Smith [1924] 2 KB 119)*



## Vertical Division

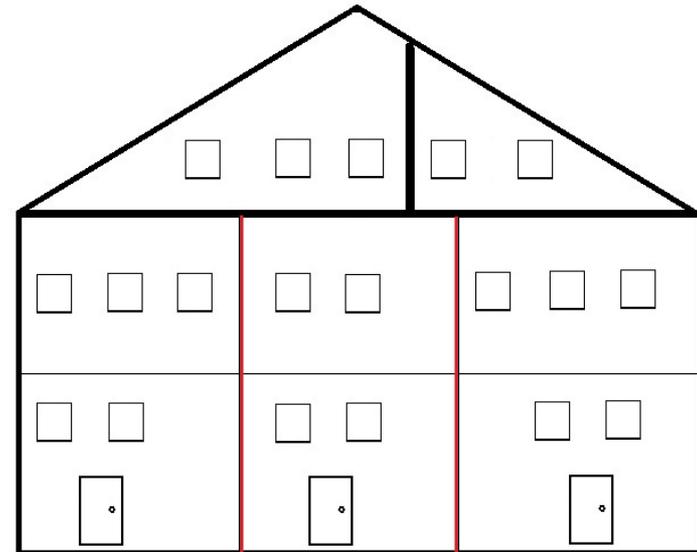
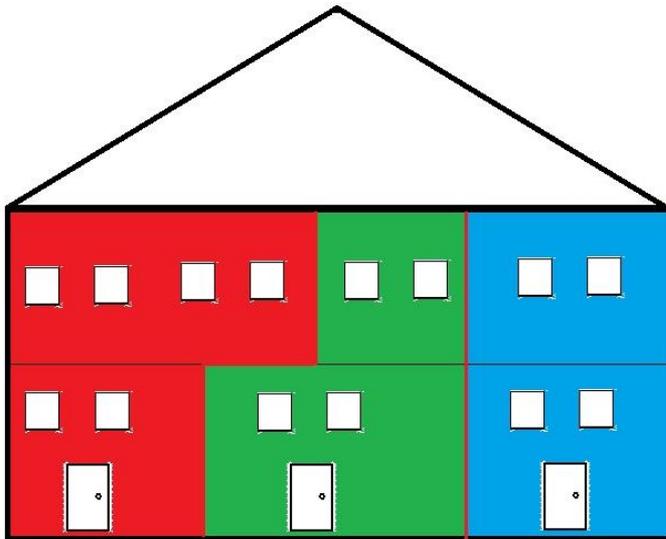
- *'cuius est solam eius est usque as coelum at ad infero'*
- “He who owns the soil owns up to the heavens and down to hell”
- *Lewison on the Interpretation of Contracts (6th Ed - 11.12):*  
*"...a conveyance of land upon which a building stands will normally carry with it the whole of the building. Thus a conveyance of property carried with it a room which projected above ground level into the property conveyed and a cellar below which was only accessible from next door"*

# Vertical Division



# Vertical Division

Flying freeholds...



## Boundary Disputes (a recap...)

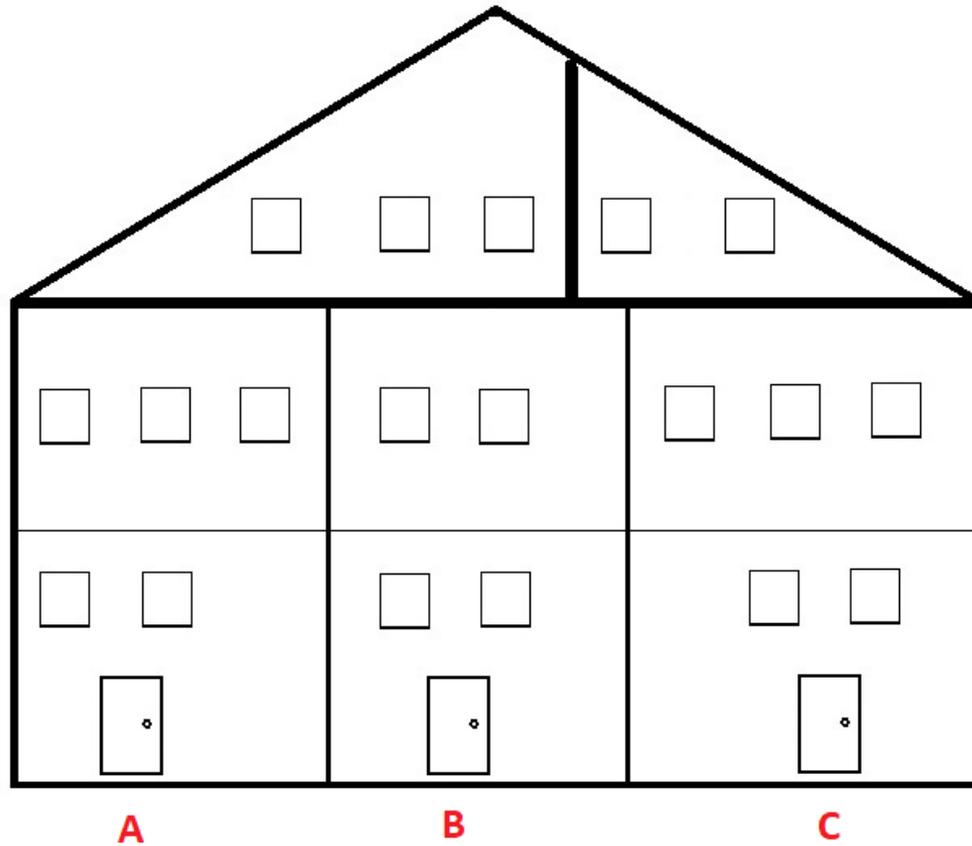
*Pennock v Hodgson* [2010] EWCA Civ 873

- (1) The construction process starts with the conveyance which first divided up the land
- (2) Only in very limited circumstances will evidence post-dating the conveyance be admissible
- (3) The parties' subjective beliefs about the position of the boundary are inadmissible
- (4) The court must consider what 'a reasonable person, standing in the position of the parties with the relevant objective factual background knowledge, would have reasonably understood the conveyance to mean'
- (5) Topographical features of the land at the time of the conveyance are often determinative of the position of the boundary. As courts frequently state: "*having the conveyance plan in your hand*" to identify the features at the date of the conveyance is an appropriate method to ascertain the boundary

## Boundary Disputes (applied to Attics...)

- What does the conveyance say
- What does the plan show
- Position of internal walls in the loft
  - How do these correlate with position of walls on lower floors
- Location of stairs / other access to loft
- Is the loft already 'physically occupied'

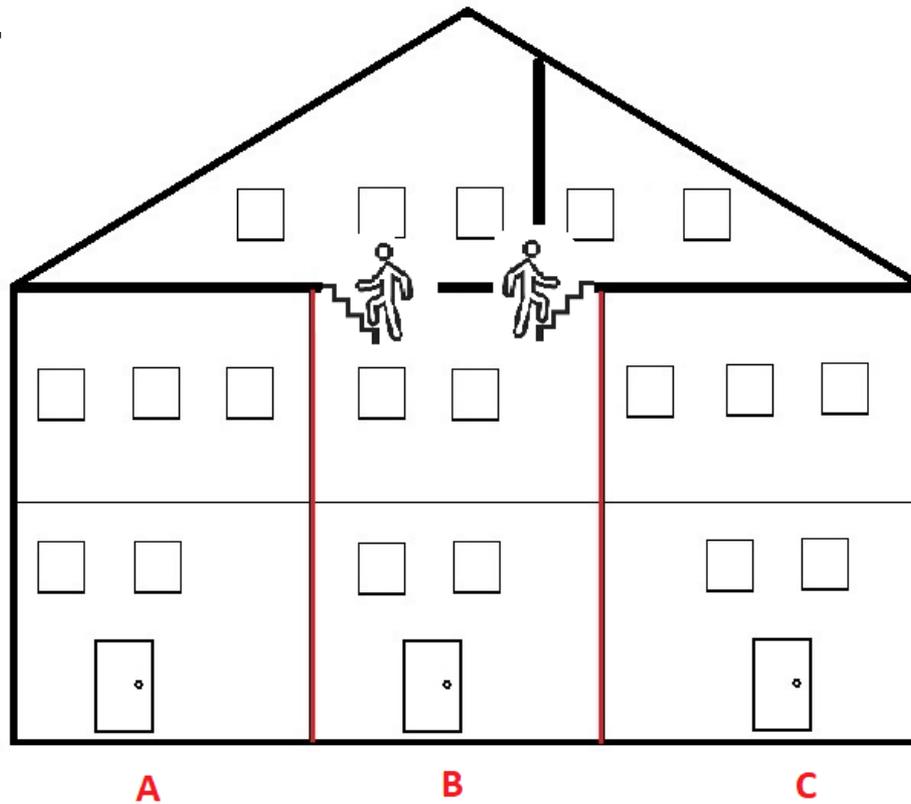
# Illustrations:





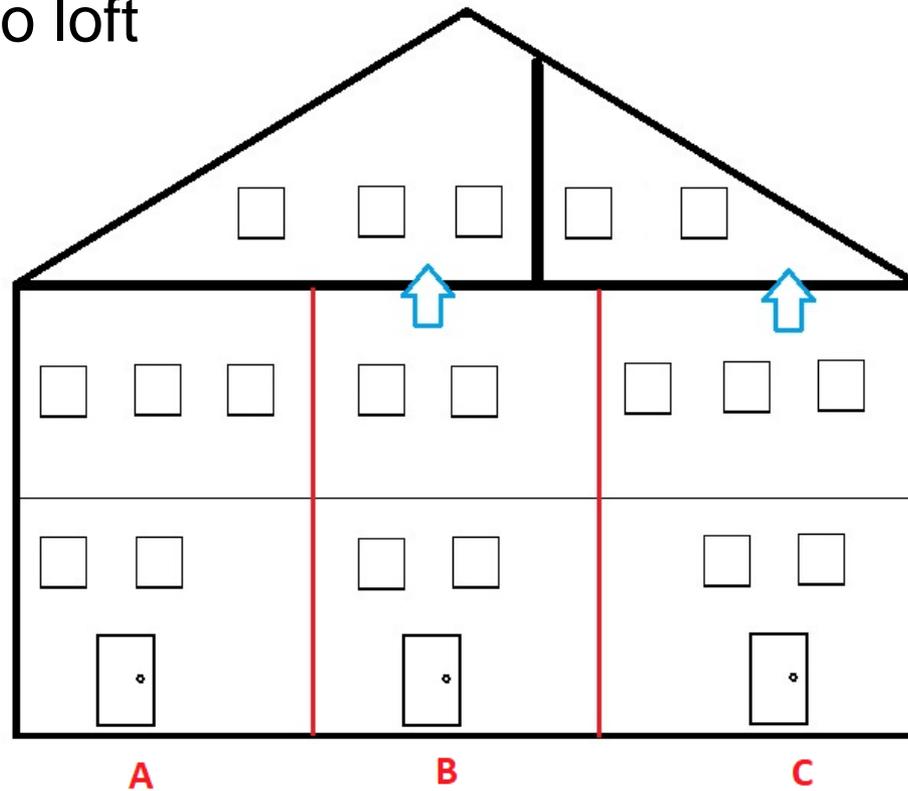
## Illustrations:

- Stairs...



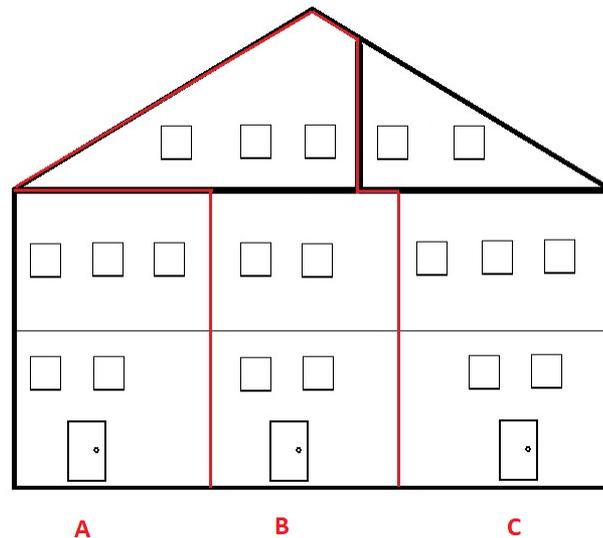
## Illustrations:

- Access to loft



# Adverse Possession

- Factual Possession
- Intention to Possess



# Adverse Possession

- **Factual Possession**

*“Factual possession signifies an appropriate degree of physical control... The question what acts constitute a sufficient degree of exclusive physical control must depend on the circumstances, in particular the nature of the land and the manner in which land of that nature is commonly used or enjoyed ... Everything must depend on the particular circumstances, but broadly, I think what must be shown as constituting factual possession is that the alleged possessor has been dealing with the land in question as an occupying owner might have been expected to deal with it and that no-one else has done so.”*

- **Intention to Possess**

*“an intention, in one’s own name and on one’s own behalf to exclude the world at large, including the owner with the paper title if he be not himself the possessor, so far as reasonably practicable and do far as the process of the law will allow”*

*Powell v McFarlane (1979) 38 P&CR 452*

# Adverse Possession

## Possession in the context of Attics:

- Living there!
- Storing luggage, etc
- Repairs to the attic, treatment of woodwork, etc
- Access for inspection?

## Complication in respect of Registered title

### **LRA 2002, Sch.6:**

#### Paragraph 1

*“...a person may apply to the registrar to be registered as the proprietor of a registered estate in land if he has been in adverse possession of the estate for the period of ten years ending on the date of the application.”*

#### Paragraph 5

*(1) If an application under paragraph 1 is required to be dealt with under this paragraph, the applicant is only entitled to be registered as the new proprietor of the estate if any of the following conditions is met*

*(2) The first condition is that—*

- (a) it would be unconscionable because of an equity by estoppel for the registered proprietor to seek to dispossess the applicant, and*
- (b) the circumstances are such that the applicant ought to be registered as the proprietor.*

*(3) The second condition is that the applicant is for some other reason entitled to be registered as the proprietor of the estate...*

## Complication in respect of Registered title

### LRA 2002, Sch.6:

#### Paragraph 5

...

(4) *The third condition is that—*

- (a) *the land to which the application relates is adjacent to land belonging to the applicant,*
- (b) *the exact line of the boundary between the two has not been determined under rules under section 60,*
- (c) *for at least ten years of the period of adverse possession ending on the date of the application, the applicant (or any predecessor in title) reasonably believed that the land to which the application relates belonged to him, and*
- (d) *the estate to which the application relates was registered more than one year prior to the date of the application.*

# Adverse Possession

## Third Condition - (c)... *'Reasonably believed'*

### Zarb v Parry [2012] 1 WLR 1240

The owner argued that the 'squatters' ought to have realised that the boundary was inaccurate when they received a letter from the solicitors for the paper owner claiming ownership of the disputed area.

The 'squatters' argued that they had the benefit of a surveyor's report which supported their (erroneous) belief of the position of the boundary.

Arden LJ said:

*"It does not follow that she (the adverse possessors) ought to have accepted (the paper owner's) claim at face value".*

# Adverse Possession

## Third Condition - (c)... ‘Reasonably believed’

IAM v Chowdrey [2012] EWCA Civ 505

*“The question was whether, in all the circumstances, C was reasonable in holding his belief in ownership and whether he should have made enquiries as to whether the disputed land belonged to him...”*

*The mere fact that the paper title owner challenged asserted ownership by adverse possession was not always sufficient to make the adverse possessor's belief unreasonable, Zarb v Parry applied...*

*By the time C had received the owner's letters, he had been enjoying unchallenged, exclusive occupation for 18 years... the judge was correct to conclude that the correspondence did not mean that C's belief in ownership ceased to be reasonable”*

# Thank you! Any questions?

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