

# Where are we with Land Reform?



# Current position:

1. problems with dual registration s.4 (5) and s.120  
identification of benefited and burdened properties
2. Deeds of Real Burdens
  - 1874 Act, s32 and 1979 Act s.17 are repealed
3. title updating process post 2014 2003 Act, s.58
  - transparency of Title Sheet
  - “Bonfire of Burdens”



# Topical issues:

- real burdens are alive and well!
- Facility and Service Burdens
  - preserved by 2000 Act, s.23 (now 2003 Act, s.56)
  - eg common parts of tenement
  - real burdens in former feudal title  
eg mutual boundary wall



# Ius Quaesitum Tertio:

- *Hislop v MacRitchie's Trs* (1881)
- express and implied rights
- Now – which existing burdens are enforceable and by whom?
- 2003 Act, s. 49 – extinction of implied rights



# Ius Quaesitum Tertio:

- Notice of Preservation (2003 Act, s.50)
- 10 year period
- 17 notices registered to date



# Community Burdens:

- 2003, Act ss 52 and 53
- S.52 - reiterates common law
  - common scheme/same burdens/mutual enforcement rights
  - not if original Superior reserved right to waive or discharge burdens



# 2003 Act, s.53:

- difficult section – transitional only
- new concept of “related properties”
- definition?
- mutual enforcement even if reserved power
- net effect
- “see it/smell it” test?



# Interest to Enforce:

- 2003 Act, s8
- title and interest
- cases tend to be fact specific
- “material detriment to the value or enjoyment of the benefited property”



# How material is “material”?

- 2007 Edin Law Review Vol II pp 440-443
- no single and precise meaning
- “of serious or substantial import” or “significant” or “of consequence”?



# ***Barker v Lewis* 2007 SLT (ShCT) 48**

- development of 5 houses at Cauldside Farm Steadings
- Deed of Conditions – “domestic dwelling house with relative offices ... use by one family only .... no other purpose whatsoever”.
- Bed and Breakfast business
- title to enforce but interest ...
- interdict refused
- too much detail?



# 3 propositions:

1. “material” means “substantial”
  - “plain meaning” of word?
  - “substantial” loss or disadvantage test in Lands Tribunal
2. The law of nuisance
  - problematic linkage
  - materiality is only one of a number of factors
3. What detriment if full compliance?
  - eg use by large family
  - flawed reasoning



# ***Barker v Lewis:***

- appeal to Sheriff Principal
- bar for interest to enforce raised too high
- common law position
- role of Lands Tribunal – but expenses



# Other issues:

- (1) Acquiescence - 2003 Act, s.16  
- 12 week period
  
- (2) The missing superior  
- neighbours (ss 52/53)  
- pro non scripto? (2000 Act, s.73 (2)(A))
  
- (3) And more?



# Conclusion:

- considerable settling-in period
- concern and uncertainty
- Pre-Registration Enquiries
- what do I do now?

