COMPARISON OF JERSEY AND SWEDISH IMMOVABLE PROPERTY LAW, LEGAL PRACTICES AND CUSTOMS IN RELATION TO REAL PROPERTY CONVEYANCE

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2. Introduction

People all over the world must live and reside somewhere and land provides a permanent and fundamental object that historically, as well as currently, has been of great importance for mankind worldwide. By cultivation of land through crops and livestock, and through extractions of minerals and other natural resources, land can produce wealth for its owners and occupiers. As an often used aid to accomplish this purpose real property such as buildings and fixtures are commonly accompanying features of land.

The laws and regulations governing the territory of a jurisdiction vary from country to country and change over time. These changes impact directly on the economic and social structure of the country in question. In a functioning market economy where individuals may own real property in their own right, a balance must be struck between looking after the individual’s rights to land, together with any property in and to do with that land, as well as the needs of society at large to, for the greater good of its people and future generations, manage common necessities such as water and other natural resources, drainage system, sewage system, electricity, public roads and the environment as a whole.

In light of the above it is vital to have a clear understanding of how land, together with property in and to do with land, is legally defined. It is also important to know whom the owners and occupiers of that land are, as well as how land is conveyed, and the legal form that must be upheld for the real property conveyance to remain robust if challenged, not only by the conveying parties, but also toward third party claimants.

In this thesis I present a summary of current laws, legal practices and customs that govern immovable property both in Sweden and Jersey. I have decided to include a very modest element of history that I think is beneficial for a deeper understanding of the subject matter. I have chosen not to differentiate between the two jurisdictions based on their traditional influences from English and/or French law and therefore the fact that Sweden is a civil law jurisdiction and Jersey a mixed law jurisdiction (influenced both by common and civil law) has proven of little relevance. I have chosen the method of initially treating the Swedish perspective followed by a summary of the Jersey perspective. Finally, I compare the two perspectives and conclude my views of strengths and weaknesses of both when compared with each other.

In an attempt not to pervert the languages themselves, I have chosen to cite certain parts, words and principles in the language that they were or originally written. I do however believe it is useful at this stage to know that the Swedish words ‘Lag’ and

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1 The term ‘permanent’ is used here as land cannot normally be stolen or, within certain limits, destroyed.
3 See Allmän Fastighetsrätt, s. 14 f.
4 This thesis will however exclude a review of the provisions in the Jersey Loi (1839) sur l’acquis de propriété foncière par les rectorats. This thesis will also exclude matters relating to conveyance of so called ‘Tomträtt’, ‘Arrenderätt’ and ‘Gruvrätt’ in Sweden, as these rights to the land itself, although appearing at times as a true ownership of it, are regarded as movables.
5 See MacLeod, Rebecca, Voisinage and Nuisance [Voisinage and Nuisance], The Jersey & Guernsey Law Review 2009, p. 276.
‘Lagen’, as well as the Jersey legal French\(^6\) words ‘Loi’ and ‘Lois’, make reference to law(s). I have provided translations where I judge it necessary.

Real property may be conveyed in many different ways both through transfers inter vivos and post-obit (e.g. sale and purchase, gift, property exchange, by execution of a will, intestacy at law etcetera). Immovable property may also be conveyed between different subjects such as between two or more private individuals, between a property developer and consumer(s), through Fideicommissioner’s appointments of trust property to beneficiaries or between companies or other legal entities and/or other third parties. This thesis will concentrate on examining sale and purchase arrangements of immovable property consensually transacted inter vivos between two private individuals in Sweden and in the island of Jersey.

3. The primary functions of Immovable Property Law\(^7\) and Real Property Conveyance

One primary function of immovable property law is to define the real property in question and to establish who the owner of that property is.\(^8\) Another primary function of immovable property law is to establish what restrictions and legal rights are attached to real property.\(^9\)

By fulfilling the primary functions immovable property law provides certainty regarding the legal status of real property to owners as well as to third parties. This certainty leads to greater confidence in the legal system as a whole as well as to the property market. Well written immovable property law, and the correct application of it, leads to reduced investigation and transaction charges in relation to real property, which in turn promotes healthy turnover,\(^10\) the latter having a positive impact on the economy as a whole.

Efficient property conveyance promotes the primary functions of immovable property law. To ensure reliability strict form criteria are applicable to give legal effect to sale and purchase transactions. The reasoning behind these form requirements has varied over time.\(^11\)

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\(^6\) For an explanation of the term Jersey legal French see section 6.1. of this thesis.

\(^7\) Immovable property law concerns real property such as land, buildings and fixtures and anything or any matters connected thereto.

\(^8\) See *Allmän Fastighetsrätt*, s. 15. See also Appendix A for a comparative charter of the Swedish and Jersey immovable property law.

\(^9\) See *Allmän Fastighetsrätt*, s. 19.

\(^10\) Ibid.

\(^11\) For an historic overview of changes in the form criteria of the Swedish system see Sundell, Per-Olof, *Svensk fastighetsrättshistoria* [*Svensk fastighetsrättshistoria*], s. 38 f.
4. Extract summary of relevant Swedish history

To get a greater understanding of why Swedish immovable property is what it is today I have included below a very modest and admittedly simplified summary of part of the history that shaped it.

Real property owner’s or occupier’s rights to transact with immovable property has varied over time in Sweden as well as all other societies depending on the county’s social, economical and political structure and development. Sweden’s latter legal history can be divided into three different periods based on this statement:

- ‘Ståndsamhället’ (from 1200 to mid 1800’s) – Sweden was a traditional class society during this period;

- ‘Det liberala samhället’ (from mid 1800’s to 1930’s) – liberal thoughts shaped society during this period and there was a strive towards equality of all mankind;

- ‘Det blandekonomiska välfärdssamhället’ (from 1930’s to date) – this period is characterised by the driving force towards a healthy market economy that is creating wealth for both individuals and society as a whole. It is also characterised by a common strive towards all subjects having equal opportunities. The interests of individuals, the State and greater society are regarded as equally important and attempts to reach a healthy balance between them are essential.

The most interesting developments in respect of ownership of immovable property and matters related thereto took place during the first period mentioned above and it is that period I have chosen to examine further in this chapter. During this period the social class that an individual belonged to, as well as his relationship to the landowner, ruled his tenant’s rights and obligations. The social classes in declining order of importance and power were Knights, Priests, Town residents and Farmers. The latter were by far the largest group, however, also the least influential in the Swedish Parliament. Slavery was abolished in year 1335 however there were a great number of individuals who did not own land or farm it and were regarded as classless. This group of people were not represented in Parliament and therefore lacked power altogether. During this period there were two kinds of ownership of immovable property; true ownership (dominium directum) and hereditary tenancy (dominium utile). Initially, the King alone owned real property dominium directum, however, this type of title later came to be held by the Catholic Church and Knights. Taxes were payable to the State, or, alternatively, feudal fees were payable either to the landowner for the use of his land, or, to the owner of the right of payment in relation to the land as a type of interest (‘ränta’). Farmers

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12 This chapter is mainly based on the information treated in Svensk fastighetsrättshistoria.
13 Examples of such rights are the right to fruits of the land, the right to make independent decisions in relation to how to govern the land and the right to independently sell, gift or exchange the land.
generally paid a fee to the Crown for the use of the land. The land itself was divided into different types, some which could only be owned or let to individuals of a certain class. There were also regulations as to who could inherit land.

At the beginning of the 1700’s Sweden lost the majority of its territory and with it the majority of its colonies. Following the death of King Karl XII’s in 1718 the power of the Parliament strengthened significantly. The Crown became more or less powerless. Several legal reforms were the result of tensions arising between people of different social classes in light of the new, revolutionary economic, social and political demands and ideas that developed in Europe. This allowed for the establishment of the principles of freedom of speech and the right to information in 1766. Several legal reforms in the area governing ownership of immovable property were undertaken in 1789. By 1810 any Swedish man\textsuperscript{14} could purchase and own whatever type of immovable property he wished and by 1857 the hereditary succession rights, which previously applied to certain types of land, became redundant. The individual’s rights, and amongst them, the right to ownership of immovable property (without interference from other subjects or the State), were established. Newly developed principles allowed for free trade in real property.

5. Swedish Immovable Property Law

The main law regulating Swedish Immovable Property is Jordabalken (1970:994) [JB].

5.1. Immovable property

Swedish immovable property is partially defined in 1:1 JB as follows: -

‘Fast egendom är jord. Denna är indelad i fastigheter. En fastighet avgränsas antingen horisontellt eller både horisontellt och vertikalt. Om fastighetsbildning finns särskilda bestämmelser.’\textsuperscript{15}

(Immovable property is land that in turn is divided into real property units. A real property unit is either defined horizontally or both horizontally and vertically. Special rules govern how real property units are created.)

The provisions regulating fixtures in the second chapter of JB complete the above definition of Swedish immovable property law.

\textsuperscript{14} The majority of Swedish women however still lacked legal capacity. Unmarried women gained legal capacity in 1858 and married women in 1920.

\textsuperscript{15} Consideration is not taken in this thesis to ancient freehold properties mentioned in clause 10 of Lagen (1970:995) om införande av nya Jordabalken.
5.1.1. Land

The term ‘land’ in 1:1 JB includes not only the ground itself but also water forming part of the Swedish territory.\(^{16}\)

5.1.2. Real property units

The special rules regulating how real property units are created are found in the law known as Fastighetsbildningslagen (1970:988). Real property units must be created by the State.\(^{17}\) Private agreements between individual landowners are void ab initio.\(^{18}\)

The law differentiates between real property units that have legally defined boundaries and those that haven’t.

The main rule in 1:3 JB stipulates that boundaries of real property units are decided based on the typography of the land itself and any boundary that may naturally be delineated thereon. A real property unit is therefore generally two-dimensionally defined. Even though the matter is not specifically regulated it is generally accepted that the ownership of the real property unit also includes a certain level directly underneath it, below ground, as well as a certain area directly above it, above ground.\(^{19}\)

In the event that a boundary is not proven to be sufficiently evident based on the typography itself, the boundary of the real property unit is defined on a map.\(^{20}\)

A real property unit may, in very restricted circumstances, be defined three-dimensionally.\(^{21}\) It is hence possible to create a separate real property unit which reaches underneath or alternatively directly above, an adjacent, already defined, real property unit.

In the event that the criteria in JB 1:3 are not fulfilled, 1:4 JB applies. This clause makes reference to a boundary that is not legally defined. Such boundary has the linear that follows markings and signs that over time have been considered to define the boundaries of the real property unit in question.\(^{22}\) Examples of such markings and signs are fences, mountains, historic burial mounds, ditches and hedges.\(^{23}\)

\(^{16}\) Beckman, Lars; Bäärnhielm, Mauritz; Cederlöf, Joakim; Larsson, Nils; Lindberg, Magnus; Millquist, Göran; Nilsson, Leif and Synnergren, Stieg, *Jordabalken – en kommentar till JB och anslutande författningar [Jordabalken – en kommentar]*, s. 15.

\(^{17}\) Lagen (1995:1393) om kommunal lantmätarimyndighet.

\(^{18}\) 1:1 2st JB.

\(^{19}\) See Westerlind, Peter, *Kommentar till Jordabalken [Kommentar till Jordabalken]*, s. 50. It is clear that the owner of a freehold property cannot forbid air traffic above the freehold property however the legal position is not clear when it comes to the owners potential right to forbid the building of deep tunnels below the freehold property. See *Allmän Fastighetsrätt*, s. 17 f.

\(^{20}\) See 1:3 JB and chapter 14 FBL. Also see 2§ lagen (1950:595) om gräns mot allmänt vattenområde.

\(^{21}\) Lagen (2003:626), and prop. 2002/03 s. 116.

\(^{22}\) 1:4 JB also makes reference to boundaries that have been defined following expropriation and other forced interventions, however this area of law falls outside the scope of this thesis.

In the event that boundaries in water cannot be determined with the help of 1:1, 2 and/or 5 JB guidance is sought from 2§ lagen (1950:595) om gräns mot allmänt vattenområde for real property units which borders on to an area of water which is partly owned by the public as well as privately owned. Privately owned water belongs to the real property unit which has the beach most adjacent to it. Real property units that consist of islets are ignored for this purpose and special rules guide the event of land movements24. The boundary is generally established at average water level25 however special indicators are stipulated in law for the country’s larger fresh water lakes.

5.1.3. Fixtures

Fixtures may be permanently attached to a real property unit26 and are classed as either physical or legal27 by nature.

Examples of fixtures that are attached to the real property unit directly are the objects referred to in 2:1 JB: -

‘Till en fastighet hör byggnader, ledningar, stängsel och andra anläggningar som har anbragts inom fastigheten för stadigvarande bruk, på rot stående träd och andra växter, naturlig gödsel.

Till en fastighet hör även en sådan byggnad eller annan anläggning som är uppförd utanför fastigheten, om den är avsedd för stadigvarande bruk vid utövandet av ett servitut till förmån för fastigheten och inte hör till den fastighet där den finns. Detsamma gäller i fråga om en ledning eller annan anordning för vilken ledningsrätt har beviljats, om det är fråga om det vid en förrättning enligt ledningsrättslagen (1973:1144) har förordnats att rätten skall höra till fastigheten.’

(Fixtures to a real property unit are buildings28, service connections29, fences and other constructions30 that have been attached to the real property unit31 for permanent use, living trees and other vegetation, natural manure32.

26 See Allmän Fastighetsrätt, s. 19. For items that are not regarded as fixtures see 2:4, 6 and 7 JB. Notice in particular that all fixtures are attached to the ownership of the real property unit in question. Compare SOU 1947:38 s. 106. Matters regulated in lagen (1992:1461) om verkan av vissa förbehåll vid överlätelse av fastighet som tillhör staten, m.m. fall outside of the scope of this thesis.
27 An example of a legal fixture is a servitude, another, a joint property unit.
28 ‘Buildings’, in addition to the general definition of the word, in this instance also include walls, bridges and all other man-made constructions. See Jordabalken – en kommentar, s. 27.
29 Such as water supply, electricity, sewage systems and telecoms. Any such connection however that has been constructed within a building itself is excluded as it is governed by 2:2 JB.
30 An example of this type of construction is a grain warehouse. It was regarded a fixture to a real property unit by the Swedish High Court in NJA 1985 s. 365. What falls within the legal definition is decided on a case-by-case basis.
31 The owner of the immovable property to be regarded as such must attach the fixtures. For example, in the event that a lessee attaches a fridge to a building, it will remain a movable. See SOU 1947:38 s. 106.
Also classed as fixtures is a building or plant which has been constructed outside of the real property unit itself, provided such building or plant is intended to be used under a servitude\(^{33}\) benefiting the real property and does not belong to the real property unit upon where it is situated. The same applies to a service connection or other construction for which a right of way has been approved, provided that the approval was given that the right belongs to that real property unit during an arrangement in accordance with Ledningsrättslagen (1973:1144)).

Examples of further physical fixtures are regulated in 2:2 JB. These are fixtures attached to a building situated on the real property unit (and therefore indirectly attached to it).

'Till byggnad hör fast inredning och annat varmed byggnaden blivit försedda, om det är ägnat för stadigvarande bruk för byggnaden eller del av denna, såsom fast avbalkning, hiss, ledstäng, ledning för vatten, värme, ljus eller annat med kranar, kontakter eller annan sådan utrustning, värmeapparater, element till värmeledning, kamin, kakelugn, innanfönster, markis, brandredskap, civilförsvarsutrustning och nyckel.

I enlighet med vad som sags i första stycket hör därjämte i regel till byggnad, såvitt angår

1. bostad: badkar och annan sanitetsanläggning, spis, värmeskåp och kylskåp samt maskin för tvätt eller mangling,
2. butikslokal: hylla, disk eller skyltfönsteranordning,
3. samlingslokal: estrad och sittplatsanordning,
4. ekonomibyggnad till jordbruk: anordning för utförande av djur och anläggning för maskinsnätet,
5. fabrikslokal: kylsystem och fläktmaskineri.

Reservdel och dublett till föremål som avses i första eller andra stycket hör ej till byggnaden.

Om olika delar av en byggnad hör till skilda fastigheter, hör ett sådant föremål som avses i första eller andra stycket till den del av byggnaden där det finns.'

(Fixtures of a building are fittings and other objects which have been attached to the building, provided it is attached with the intention of becoming a permanent\(^{34}\) feature of the building itself, or part of it, such as a fixed beam, a lift, a balustrade, a service connection for water, heating, lighting or other with taps, connections or other such equipment, a boiler, a radiator, a stove, a cooker, an internal window, an awning, fire safety equipment, civil defence material and a door key\(^{35}\).

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\(^{32}\) Manure may only be regarded as a fixture attached to a real property unit which farms. See NJA II 1966 s. 13.

\(^{33}\) The clause is applicable to any type of servitude no matter how it has been created, see prop. 1970:20 s. B 97.

\(^{34}\) This reference to permanence separates the items that are regarded as fixtures to a building, therefore being classed as immovable property, from movables. See Jordabalken – en kommentar, s. 29. See also NJA 1986 s. 513 regarding the ownership of an external staircase that had been attached to a building. This case also concerns fences and roof tiles which had been attached to a building.

\(^{35}\) Door keys are always regarded as fixtures of a building regardless of whether one or several keys have been cut in direct dispute with the third paragraph of 2:2 JB. See Jordabalken – en kommentar, s. 30.
Hence, in accordance with what is stated in the first paragraph, the following is generally regarded as belonging to a building with regards to:

1. A dwelling: a bath and other sanitary ware, a stove, a boiler room and fridge as well as washing machine or a mangle;
2. A shop: a shelf, a desk or shop windows;
3. An assembly hall: a stage and seating facilities;
4. A building for commercial farming: A feeding stall for animals and mechanic milking equipment;
5. A factory: A cooling plant and fans.

Spare parts and duplicates of any of the items mentioned in the first or the second paragraph are not regarded as fixtures.

In the event that separate parts of a building belong to separate real property units, the items listed in paragraph one and two belong to that part of the building where they are located.)

Examples of a final type of physical fixture are listed in 2:3 JB. These are fixtures attached to business or industrial activity taking place at a real property unit.

(Attached to a real property unit which wholly or in part is utilised for industrial purposes is, beyond what has been mentioned in clauses one and two, machinery and other equipment which has been added to the real property unit for the purposes of being used in the business, mainly at the real property unit. Such property does however not belong to the real property unit, provided that the property owner has made a declaration to this effect and the declaration is registered in the registration part of the real property registry in accordance with chapter 24. Motor vehicles, office equipment and tools are never fixtures of the real property unit.

36 In prop. 1966:24 s. 90 it is argued that what can be regarded as standard fixtures and features in a newly built property should be used as a guideline for what items are to be considered fixtures of a building. Prop. 1966:24 s. 62 also states that an item over time may become a standard fixture or feature of a building due to it having been regarded as a specialist item at the approval of JB in 1970, but following development over time, may become regarded as standard equipment. Following this argument washing machines are now regarded as fixtures of a building in accordance with the ruling of the Swedish High Court in NJA 1996 s. 139. Satellite dishes are nowadays also regarded as fixtures of a building - see NJA 1997 s. 699. The Court makes its decision on a case-by-case basis.
37 All other farming equipment is regarded as moveables, see prop. 1966:24 s.74.
38 The consequence of such registration is that the property that normally would have been regarded as a fixture of the industrial activity, and therefore being treated as immovable property, instead is regarded as moveable property. See Jordabalken – en kommentar, s. 32. Regarding the difference of a fixture attached to a building and a fixture attached to the industrial activity itself see NJA 1985 s. 232.
39 For a definition of vehicles see 2 § Vägtrafikkungörelsen (1972:603).
5.2. The Real Property Register

The real property register in Sweden is de facto consisting of several different registers. The real property register serves as an important tool to uphold the primary functions of the immovable property law and hence provide clarity regarding the object and its ownership. Research has shown that a reliable real property register is fundamental to the economic development of a country.\(^{43}\)

The information maintained in the Swedish real property register is divided into five different parts or separate registers as follows: (i) a general part, (ii) a registration part, (iii) a part which lists the designation, area and location of the real property, (iv) a part where buildings are registered and (v) a tax register.\(^{44}\) The real property register may also hold other relevant miscellaneous information specific to the real property unit in question.

The general part of the real property register is kept and maintained by Lantmäteriverket, the Swedish land survey agency.\(^{45}\) This part of the real property register is open to public inspection and details all real property units and joint property units in Sweden, their coordinates, relevant property plans, their district allocation, and, if relevant, any jointly owned facilities such as bin store and washing facilities. This part of the real property register also includes a register map.\(^{46}\) Any changes to the two-dimensional and/or three-dimensional definition of a real property unit are noted within this general part of the real property register.\(^{47}\)

The registration part of the real property register is also open to public inspection and includes leases, servitudes and mortgages assigned to the real property unit.\(^{48}\) This part of the real property register also states the legal owner, in what way the property was conveyed, the consideration and other relevant information.\(^{49}\) Traditionally the registration part of the real property register was maintained manually in books held for this purpose by the (numerous) Swedish district courts. However, since 1995, the registration process has been modified and this part of the real property register has

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40 Regarded as office equipment are for example, desks, chairs, shelves, cupboards, carpets and armature. See Jordaballen – en kommentar, s. 33. Computers and photocopiers may be regarded as office equipment or fixtures to the industry itself depending on their use, see prop. 1966:24 s. 95.
41 Regarded as tools in this respect are smaller tools which may with ease be carried and transported by the user such as a hammer, a pair of tweezers, a chainsaw, pneumatic drills and welding equipment, see Jordaballen – en kommentar, s. 33.
42 This last sentence makes reference to items that have a very lose connection to the real property unit itself. They are movables that cannot be used as security and basis in relation to any conventional hypothes for the property.
43 See De Soto, Hernando, The mystery of capital, Why capitalism triumphs in the West and fails everywhere else.
44 3 § Lagen (2000:224) om fastighetsregister.
45 Chapter 19 FBL and Lagen (2000:224) om fastighetsregister. Lantmäteriverket was created in 1628, see Svensk Fastighetsrättshistoria, s. 65. See also http://www.fastighetsmateriet.se
46 Förordningen (2000:308) om fastighetsregister.
47 See Allmän Fastighetsrätt, s. 20.
49 44 § Förordning (2000:308) om fastighetsregister. See also Allmän Fastighetsrätt, s. 20.
become an electronic database, as well as being centralised. Nowadays Inskrivningsmyndigheten, a Swedish registration authority based at seven of the Swedish district courts, maintains the registration part of the real property register. A judge in each of the courts supervises this part of the real property register.\textsuperscript{50}

\subsection*{5.2.1. Relying on information in the Real Property Register}

Official certificates known as ‘gravitationsbevis’ and ‘fastighetsbevis’ listing the information in the parts of the real property register which are available to the general public may be issued by the Swedish registration authority upon request by the owner of a real property unit.\textsuperscript{51}

The general part of the real property register always provides a true picture of the legal circumstances in relation to a real property unit.\textsuperscript{52}

Matters are different with regard to the registration part of the real property register. The execution of the sale and purchase agreement in relation to a real property unit changes the ownership of the property. Therefore the registered data reflected in the real property register in relation to ownership is potentially non-reliable.\textsuperscript{53} There is however an obligation for new owners to register property purchases with the Swedish registration authority. Without doing so the new owner cannot register other relevant matters such as mortgages and charges secured on the property.\textsuperscript{54} In light of the above it is possible for a bona fide purchaser to purchase a real property unit from a vendor who de facto is not the lawful owner. Provided that the true owner loses his right through such an event he or she will be compensated by the State.\textsuperscript{55}

Care must also be taken in relation to rights of enjoyment, as there are no legal requirements for these types of rights to be listed in the real property register. Similar compensation rules apply to leases, servitudes and secured charges as in relation to ownership.\textsuperscript{56}

Occupation of real property can override another party’s better right to that property. The relevant prescriptive period of occupation is 20 consecutive years in relation to a property purchase registered with the Swedish registration authority in the registration part of the real property register. The period of occupation is restricted to ten consecutive years in the event that the immovable property was transferred\textsuperscript{57} to a receiving party who acted in good faith.\textsuperscript{58} A rightful owner, which has been wronged by the rules in relation to occupation of immovable property, may choose to bring civil proceedings against the new registered owner.\textsuperscript{59} The party that loses its real property to another party with a better right to it can, as a general rule, claim compensation from the

\textsuperscript{50} Chapter 19 JB and Förordning (1999:1385) om inskrivningsmyndigheternas verksamhetsområden.

\textsuperscript{51} For further details see Allmän Fastighetsrätt, s. 20.

\textsuperscript{52} Ibid.

\textsuperscript{53} Compare NJA 1982 s. 773 and NJA 1997 s. 110.

\textsuperscript{54} Allmän Fastighetsrätt, s. 20 f.

\textsuperscript{55} A.a. s. 21. See further section 4.4.2.5.2 below.

\textsuperscript{56} Chapter 18 JB.

\textsuperscript{57} The term here indicates purchase, gift or property exchange.

\textsuperscript{58} Chapter 16 JB.

\textsuperscript{59} See Chapter 5 JB and 4:21 JB.
vendor. The vendor generally has a responsibility known as ‘hemulsansvar’. This means that the vendor, unless it has otherwise been explicitly agreed in the written sale and purchase agreement, provides a guarantee that he or she is the rightful owner of the real property in question.  

5.3. The Property Owner

As in the case of any agreement, for it to become legally binding, the contracting parties must be sui juris. In the event that a party lacking legal capacity has signed a sale and purchase agreement, the agreement is considered null and void ab initio in accordance with general legal principles.

In the event that a third party is acting for and on behalf of a contracting party, the representative must hold a valid written power of attorney for the agreement to be legally binding upon both parties.  

In accordance with the principles of free movement of capital and non-discrimination, any citizen of the EU or EEC may purchase real property in Sweden.

5.4. Real property conveyance and due legal form

As previously stated, real property conveyance requires the fulfilment of a certain minimum legal form to give full legal effect to a sale and purchase transaction in Sweden. A sale and purchase agreement that does not fulfil the legal form is, as a general rule, void ab initio. Ultimately, a 20-year period of occupancy puts an end to the term when a sale and purchase agreement may be challenged based on its incomplete form.

Sale and purchase of a part of a real property unit (rather than the whole unit) is generally invalid.

5.4.1. One or two Sale and Purchase Agreements

It is usual for two agreements known as Köpekontrakt and Köpebrev to be used in real property sale and purchase transactions rather than one sale and purchase agreement alone, however one agreement alone may be used. The reason for this practice is mainly

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60 4:21 JB.
61 27 § 2 st. lagen (1915:218) om avtal och andra rättshandlingar på förmögenhetsrättens område.
63 4:1 JB.
64 See Allmän Fastighetsrätt, s. 24.
65 A.a. s. 90.
66 4:7 JB. See also Svensk fastighetshistoria, s. 36.
67 Köpekontrakt is also known as Köpeavtal.
however, the practice also allows for certain conditions listed in the first contract to remain conditional until such time that they are established and finalised in the second and final agreement.

In the event that two agreements are used, the document known as Köpebrev contains the minimum information required by law in relation to real property conveyance. The document is filed with the Swedish registration authority and provides the basis for registration of ownership in the real property register. The document also evidences receipt of consideration in full and is therefore not presented to the purchaser until such time that consideration has exchanged hands; hence completion of the property transfer is conditional. Köpebrev may reinforce or erase certain conditions regulated in the previous first contract, i.e. the Köpekontrakt. The Köpekontrakt regulates additional matters beyond the legal minimum information required, i.e. any matters that the contracting parties wish to regulate in accordance with the principle pacta sunt servanda. The Köpekontrakt tends to be confidential. Privacy regarding the sale and purchase arrangements can therefore be ensured to some extent. In the event that two agreements are used, the Köpekontrakt should state that the issuing of Köpebrev is required for completion of the sale and purchase transaction.

In the event that one sale and purchase agreement is used, any reference to a specific term is counted from the date of the signing of the Köpekontrakt itself. If two agreements are used terms will instead be counted from the latter agreement, i.e. the Köpebrev, unless otherwise explicitly stated.

In the event that a purchase has been completed and the consideration has changed hands, but the vendor refuses to issue the second document known as Köpebrev, the purchaser may request the Court to issue an order for the vendor to produce the document. Alternatively, the purchaser may wish to declare the sale and purchase agreement void and sue the vendor for damages incurred by his or her non-compliance.

### 5.4.2. Written form and content of sale and purchase agreement(s)

On the one hand the current requirement of written form provides the Swedish registration authority with reliable source documentation, hence offers greater certainty to third parties and the public. Taking into consideration the significant economical value that a real property purchase tend to involve, it is also generally accepted that the written form focuses the parties to properly consider the transaction at hand, and in particular, any onerous clauses within the agreement. On the other hand the Legislator also aims not to over regulate agreements and related transactions and risk putting obstacles in the way of a functioning market economy, a matter that may prevent healthy turnover.
The minimum written requirements of a legally binding and enforceable sale and purchase agreement are listed in 4:1 JB. A sale and purchase agreement must:

- detail the real property itself
- make note of the consideration
- include a declaration confirming the intent of the conveyance by sale (rather than gift, property exchange etcetera)
- be signed by (or for and on behalf of) both vendor and purchaser.

In the event that two sale and purchase agreements are used for the sale and purchase transaction, both agreements must fulfil the minimum form criteria.\textsuperscript{77}

In reality it is fairly unusual that a sale and purchase agreement only contains the minimal legal requirements. Instead contracting parties tend to regulate a number of matters on a case-by-case basis, in the event that any problems regarding the real property itself may come to light at a later date, or, any disagreement as to what was in fact agreed between the parties at the date of the sale, may arise.\textsuperscript{78} Breach of a matter regulated in the sale and purchase agreement is considered ground for termination of the agreement and gives the purchaser a right to have the consideration returned.\textsuperscript{79}

Once the relevant minimum form criteria have been completed the result is a legally binding and enforceable agreement.\textsuperscript{80} In the event that the contract is signed in counterpart an additional requirement for the agreement to become legally binding and enforceable is that a copy of the signed document in full has been provided to both vendor and purchaser, or, to a party which is authorised to represent either of them.\textsuperscript{81}

In the event that the contracting parties agree that the written sale and purchase agreement shall be considered null and void for whatever reason, the latter agreement does not need to be in written form. Further, such an agreement only appears possible if the purchaser has yet to be entered into the real property register as owner of the real property in question based on the initial sale and purchase agreement.\textsuperscript{82}

5.4.2.1. Promise to sell or purchase real property and agreement of deposit

The specific form requirements listed in the law have the effect that a promise to sell or purchase real property in the future is (in principle) non-binding.\textsuperscript{83} Such a promise is, in

\textsuperscript{77} 4:2 JB.
\textsuperscript{78} Compare Jordabalken – en kommentar, s. 55.
\textsuperscript{79} 1:3 JB.
\textsuperscript{80} See Allmän Fastighetsrätt, s. 85.
\textsuperscript{81} Such a party may be a real estate agent. See NJA 2000 s. 747 (I and II).
\textsuperscript{82} Compare NJA 1986 s. 205 and prop. 1970:20 B1 s. 186.
\textsuperscript{83} See 1 § 3 st Lagen (1915:218) om avtal och andra rättshandlingar på förmögensrättens område, SOU 1947:38 s. 158, NJA 1977 s. 509, NJA 1981 s. 897, NJA 1984 s. 673, NJA 1987 s. 726 and NJA 1990 s. 18.
addition, not automatically providing a contracting party with a right to compensation in the event that a sale or purchase does not take place in accordance with it.\textsuperscript{84}

An oral or written agreement may however oblige the potential purchaser to compensate the vendor for any damage caused by the ‘breach’ should the real property transfer not go ahead as promised. The most common variation of such agreement is a written deposit agreement. The purchaser presents the vendor with a deposit and in return the vendor agrees not to sell the real property to other interested parties for a certain period of time. During the term the purchaser considers whether he or she wishes to go ahead with the real property purchase or not. If a sale and purchase transaction does not take place, the vendor generally reserves himself or herself the right to settle out of the deposit any reasonable expenses that he or she may have incurred in the interim period. These expenses must be caused by the fact that the expected transaction did not come to fruition.\textsuperscript{85} Examples of reclaimable expenses are advertising costs and estate agent fees as well as any costs in relation to a turned down (better) offer from a third party.\textsuperscript{86} It is further possible that a vendor may be due to compensate a potential purchaser in the event that the vendor sells the relevant real property to another party during the interim period; however, such event must be specifically regulated in the agreement itself to become enforceable. In that event the deposit must be returned in full to the potential purchaser.\textsuperscript{87}

The sale and purchase agreement is, by default, voidable in very limited circumstances mainly motivated to protect third party interests.

\textbf{5.4.2.2. Detail of the real property itself}

In practice the real property tends to be described in the sale and purchase agreement(s) by its official name and number.\textsuperscript{88} Real property may also be acceptably described in other ways provided sufficient clarity of the object to be conveyed is ensured.\textsuperscript{89}

\textbf{5.4.2.3. Consideration}

The consideration may be reflected in the sale and purchase agreement as a specified amount. It may also be described in a formula, such as ‘X SEK per square metre’ in instances when the agreement also defines the area of the real property itself.\textsuperscript{90}

In the event that other property is included in the real property sale (such as furniture or other movable property) one accumulated amount suffices.\textsuperscript{91}

\begin{footnotes}
\item[84] Without an agreement to this effect no compensation is duly payable, see NJA 1973 s. 175.
\item[85] Compare NJA 1974 s. 526.
\item[86] SOU 1991:81 s. 84.
\item[87] See \textit{Allmän Fastighetsrätt}, s. 99 f.
\item[88] A.a. p. 88.
\item[89] Compare Svea Hovrätt 1975-08-27 (12 Ö 45).
\item[90] See RH 1997:39.
\item[91] This is an anomaly in the law. It is clear that in most instances the value of the additional property in comparison with the value of the real property itself will be insignificant, however, the consideration referred to in the sale and purchase agreement will be the basis for stamp duty in accordance with lagen
\end{footnotes}
In the event that, in error, the consideration is misrepresented in the sale and purchase agreement, the contract is not automatically void. The written price becomes the amount duly payable by the purchaser, i.e. the legally enforceable consideration. The true circumstances of the agreement are therefore ignored.  

It is unusual from a practical point of view that a sale and purchase transaction is effected until such time that the financing of the real property purchase has been secured by the purchaser. This may also be a condition set out in the Köpekontrakt. See chapter 5.4.2.6.1. below.

The consideration forms the basis for stamp duty in accordance with Lagen (1984:404) om stämpelskatt.

5.4.2.4. Declaration confirming the intent of conveyance by sale

A standard phrase often used to declare the vendor’s intent of sale (rather than gift, property exchange or other transaction) of the real property is ‘försäljer och överlåter’ (‘sell and convey’) however any phrase may suffice as long as it clearly reflects the absolute transfer of ownership and the clear intent of the vendor.

5.4.2.4.1. Consent by spouse or cohabiter

It is important to request and record in writing the consent to the sale or the real property by the spouse of the vendor, or, alternatively, by any cohabitant residing with the vendor as his or her husband or wife. A spouse or cohabitant is not entitled to sell the permanent residence of the married or cohabiting couple without consent of the other spouse or cohabitant. Also, he or she may not sell any other real property that may be classed as ‘joint’ property. Should an agreement have been made without the required written consent, it is voidable by the Court, unless the Court provides its blessing to the sale. The party who has been wronged must sue within three months of having received knowledge of the sale and purchase transaction for the matter to be considered by the Court.

(1984:404) om stämpelskatt and hence not separating the two amounts would appear a fairly unlikely scenario.

92 See Allmän Fastighetsrätt, s. 24 & 90 f. See also SOU (1988:66) and prop. 1991/92:110 s. 14 f. In the event that the consequence promotes an unjust result, the clause in the sale and purchase agreement may be amended by the Court in accordance with 4:1 2 st. JB, however this clause is interpreted restrictively to uphold third party interest and certainty. Compare NJA 1982 s. 691.

93 See however NJA 1975 s. 635, compare NJA 1984 s. 482 and NJA 1984 s. 673.

94 7:5 ÅktB.


5.4.2.5. Signed by vendor and purchaser

The sale and purchase agreement must be signed by, or for and on behalf of, all sellers and purchasers.\(^{97}\)

There appears to be a wide conception that the requirement of the signatures also means that the names of the vendor and purchaser must be clearly decipherable. In practise, in relation to Swedish individuals, civic registration numbers are often used for identification purposes.\(^ {98}\) International passport numbers may be used in relation to foreign nationals.

5.4.2.5.1. Witnesses

There is no legal requirement per se to have the contracting parties signatures witnessed for the sale and purchase agreement(s) to be legally binding upon them. In the event, however, that the vendor’s signature has not been witnessed by two suitable individuals\(^ {99}\), the transaction will remain pending with the Swedish registration authority for a certain period of time prior to the new ownership being entered in the real property register. During this interim period the vendor can sue to have the agreement declared void by the Court.\(^ {100}\)

5.4.2.6. Additional matters which must be entered into the sale and purchase agreement(s) to become legally binding

In addition to the minimum written requirements certain matters have been regarded so fundamental that they, if they are to be applicable to the agreement in question, must be clearly regulated in writing in the sale and purchase agreement itself to be valid and to become legally binding upon the parties.\(^ {101}\) These matters are listed in 4:3 JB as: -

- the circumstances surrounding conditional sale and purchase of a real property
- the event that the vendor exonerates himself or herself from hemulsansvar, i.e. he or she does not provide a guarantee of being the rightful owner of the real property unit which is to be conveyed
- certain restrictions in a purchaser’s right to transact with the real property as he or she sees fit following the sale

\(^{97}\) Allmän Fastighetsrätt, s. 99.
\(^{98}\) A.a. s. 23, footnote 15 and s. 87.
\(^{99}\) See Lagen (1946:805) med särskilda bestämmelser angående vittne vid vissa rättshandlingar for directions of who is considered a suitable witness.
\(^{100}\) 20:7 & 8 JB.
\(^{101}\) Kommentar till Jordabalken, s. 258 & 284.
5.4.2.6.1. Conditional sale and purchase agreement

In some circumstances a vendor may wish to make a sale and purchase agreement conditional and dependent on a future event. By law such event must not take place longer than two years from the date of the execution of the agreement. In the event that a longer period has been agreed the sale and purchase agreement is considered void ab initio. If the time period has not been specified in the agreement itself it is assumed to be two years.

The time restriction is not applicable to a condition that concerns consideration being paid over a longer term. In this event, however, the disadvantage to the purchaser is that he or she will not become the registered owner of the real property in the interim. Hence the matter remains pending until such time that the consideration has been settled in full. A more efficient way of treating this type of situation, which effectively can be considered a long outstanding loan, may be that the purchaser provides the vendor with a formal document known as a ‘pantbrev’. This document is issued on behalf of the Swedish registration authority by the Swedish land survey authority and it evidences the vendor’s interest in the real property itself. A certain amount of care is required as no

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102 One example is when the sale and purchase agreement is made conditional depending on whether the purchaser will be accepted by the vendor’s mortgage provider as the new debtor of the loan or not.

103 Compare 4:4 JB. Exemptions to this time restriction are conditions set out in law. The time restriction is for example not applicable in the event that the creation of a new real property unit is required following the sale however this matter falls outside the scope of this thesis.

104 Sale and lease back transactions in relation to real property purchases will not be treated in this thesis. Neither will arrangements whereby the real property is owned by a company who’s main asset is the real property.

105 It may be beneficial in this instance to very briefly, and admittedly in a fairly simplistic manner, consider the Swedish system in relation to charges on real property units. In accordance with 6:1 JB an owner of a real property unit has a right to request the Swedish real property authority to issue one or several official document(s) known as a ‘pantbrev’ (physical document) or ‘datapantbrev’ (electronic document in accordance with lagen (1994:448) om pantbrevsregister) for an (accumulated) amount covered by the value of the real property itself. The documents are issued by the Swedish land survey agency on behalf of the Swedish real property authority in accordance with 9 § inskrivningsförordningen. An owner is in this instance, in accordance with 22:2 JB, the party for whom legal title was last applied for in the real property register. The documents, if several, are listed in the real property register in accordance with 19:19 JB in the order that they were applied for, see chapter 17 JB. The order in which the documents are issued have relevance in relation to prioritised debtors in the event of a forced sale. A physical document once issued is posted to the owner of the real property. The owner may thereafter take up a loan or a mortgage for the relevant amount listed in the document by transferring a ‘pantbrev’ to the mortgage provider as security, alternatively, in the event that an electronic listing has been made, by registering the creditor and the amount in the real property register in accordance with 6:3 JB. The physical document/electronic listing is not valuable in itself. It only represents a right to receiving payment in relation to the debt, ultimately out of the consideration of the real property itself, in the event that the borrower is unable to settle the loan or mortgage outstanding at the agreed payment date. Once the debt has been repaid in full together with any interest due the ‘pantbrev’ is returned to the real property owner and may be used again in relation to a new loan or mortgage. In respect of a ‘datapantbrev’, once it has been evidenced that the borrowed amount together with any interest due has been settled in full, the creditor is removed from the register and a new lender may be entered therein in due course. The right to settlement by the creditor in the event of a forced sale includes not only the consideration of the real property unit but also that of its fixtures. A property owner may realise fixtures on an ad hoc basis however the sale will only have legal effect in the event that
condition(s) in addition to the time period over which the consideration is payable may be
given in connection to the sale and purchase agreement.\textsuperscript{106}

In the event that two sale and purchase agreements are used for the conveyance,
the conditions guiding the sale and purchase transaction must be repeated in both
documents for the condition to remain legally binding upon the contracting parties.\textsuperscript{107}

Once the purchaser has advised the Swedish registration authority of the purchase
and forwarded the documentation supporting it to the authority, the latter will treat the
purchaser’s ownership as a pending matter. Full title of ownership will not be registered
until such time that either the matter is again brought to the attention of the authority by
the purchaser, who evidences that the condition has been fulfilled, or, at the end of the
two year period when the matter is brought up by the authority ex officio.\textsuperscript{108} In the latter
event, provided that the condition has not been fulfilled within the term, the sale and
purchase transaction is considered void ab initio and the previously intended seller
remains the owner of the real property.

5.4.2.6.2. Vendor exonerating himself or herself of ‘hemulsansvar’

In the event that a vendor wishes to exonerate him- or herself of hemulsansvar, i.e. does
not wish to provide the purchaser with a guarantee that he or she is the rightful owner of
the property subject to sale, the purchaser must be made fully aware of the matter in
writing to be able to adequately assess the risk of entering into such an agreement.

Should it transpire at a later date that a third party, being the rightful owner, sues
the purchaser claiming better right to the real property (for example in the event that the
vendor’s initial sale and purchase agreement with the rightful owner is declared void for
some reason such as it not having fulfilled the minimum form criteria) the rightful owner
may reclaim the real property from the purchaser.\textsuperscript{109} The consequence is the sale and
purchase agreement between the vendor and purchaser be declared void by the Court
together with any other previous sale and purchase agreement that misrepresented the
true ownership of the real property. The only defence for the purchaser in such scenario is
that he or she in turn may sue the vendor, in the first instance, to oblige him or her to
return the consideration.\textsuperscript{110} Further, in the event that the purchaser is a bona fide
purchaser, he or she may oblige the vendor to pay compensation for any damage caused
by the misconception. The vendor may in turn sue his or her vendor and so on, until such
time that the true owner is traced back. If it should turn out that the vendor is insolvent,
the purchaser, who has lost the real property to its rightful owner, may sue the vendor’s
vendor, and if he or she is insolvent, the vendor’s vendor’s vendor and so on, provided

the fixture has been removed from the real property unit itself on a not merely temporarily basis, see 2:7
JB, see also prop. 1966:24 s. 98 f.
\textsuperscript{106} Compare NJA 1977 s. 509.
\textsuperscript{107} 4:6 JB.
\textsuperscript{108} 19:18 JB.
\textsuperscript{109} 4:21 JB.
\textsuperscript{110} The purchase price should be remitted back to the purchaser even in the event that he or she was in bad
faith at the time of the purchase. Only a bona fide purchaser would however have right to claim
compensation from the vendor, see 4:21 JB. If only part of the purchase price has been remitted to the
vendor the purchaser may withhold the remaining funds, see 4:23 JB.
that these parties have not exonerated themselves from ‘hemulsansvar’ (in which case the vendor sue the party that sold the real property to the exonerated party).\textsuperscript{111} This right to sue the previous vendors in turn is what is truly meant by the term ‘hemulsansvar’.\textsuperscript{112}

In the event that a vendor wishes to be exonerated from ‘hemulsansvar’ it is predicted that the price of the real property in question be significantly reduced.

In the event that two sale and purchase agreements are being drafted it is sufficient that the exoneration is listed in the document known as Köpekontakt.\textsuperscript{113}

\textbf{5.4.2.6.3. Restrictions in purchaser’s right to transact with the real property}

Generally an owner of a real property may make whatever dispositions he or she considers fit in connection with it. In certain instances, however, the owner’s discretion to transact may be restricted. This is perhaps most common in situations where real property has been gifted or inherited, situations which, as previously stated, fall outside the scope of this thesis. Nonetheless, in the event that certain onerous restrictions are to become legally binding upon the purchaser, they must be listed in the sale and purchase agreement. These restrictions are mentioned in 4:3 JB as the purchaser’s restricted right to:

- buy, sell or exchange the real property\textsuperscript{114}
- take out a conventional hypothec based on ownership of the real property
- create leases, servitudes or other rights of enjoyment in the real property

In the event that two sale and purchase agreements are being used it is sufficient that the purchaser’s restrictions to transact with the real property as he or she sees fit are listed in the document known as Köpekontakt.\textsuperscript{115}

Such purchaser’s restriction(s) must be entered into the real property register and will therefore also bind future owners of the real property. It is possible that the Swedish registration authority is unaware of certain restrictions as the authority, in the event of two sale and purchase agreements, generally receives the document known as Köpebrev only. Entries should however be made in the real property register either ex officio by the authority when a real property transaction is registered by the purchaser, or, in the event that the restriction(s) were not disclosed at such time, as soon as knowledge of the restriction(s) are thereafter gained by the authority.\textsuperscript{116}

\textsuperscript{111} 4:22 JB. In any case it is also important that the purchaser sue his vendor as well as any other transacting parties, compare 14:5 RB.
\textsuperscript{112} See Allmän Fastighetsrätt, s. 92.
\textsuperscript{113} A.a. s. 94.
\textsuperscript{114} SOU 1960:25 and prop. 1970:20 B1 s 145. It was established in NJA 1974 s. 376 that this type of restriction is invalid in relation to the purchaser’s debtors in the event that the restriction was created in the vendor’s interest. It is unclear whether the restriction also lacks effect in other situations; see Allmän Fastighetsrätt, s. 94.
\textsuperscript{115} Allmän Fastighetsrätt, s. 94.
\textsuperscript{116} 20:14 JB.
5.4.3. Main obligations of the contracting parties and additional agreements

As previously stated, although the legal requirements in relation to what has to be included in a sale and purchase agreement are limited, the contracting parties tend to regulate a whole range of matters on a case by case basis within the written agreement itself.

In respect of the law, chapter 4 JB lists the vendor and purchaser’s rights and corresponding obligations. Clauses 1 to 9 of JB are obligatory by nature as these ultimately affect third parties. These are the clauses that have been discussed above. The matters regulated in clauses 10 to 27, however, are applicable only by default, i.e. unless otherwise agreed between the contracting parties, either orally or in writing. These default clauses will be discussed in the following.

5.4.3.1. The purchaser’s main obligation

The purchaser’s main obligation is to settle, on the agreed date, the agreed consideration to the vendor or as per his instructions. One would therefore expect that the relevant date for settlement be specified in the sale and purchase agreement itself; however, this is not a legal requirement.

5.4.3.2. The vendors main obligations

One of the vendor’s main obligations is to, in accordance with what has been agreed between the parties; hand over the real property to the purchaser, in the agreed state, on the agreed date. It can therefore be expected that the date, as well as the condition of the property itself, be regulated in the sale and purchase agreement. This is however not a legal requirement.

The vendor is also obliged to assist with the drafting and completion of Köpebrev (or other similar documentation) in accordance with what has been agreed between the parties. This documentation is required so the purchaser can become a registered owner of the real property.

The vendor is further obliged to assist the purchaser with any other act that is required for the purchaser to be entered as owner in the real property register.

117 See Allmän Fastighetsrätt, s. 103.
118 A.a. s. 104 and 4:14 JB.
119 See 20:4 and 7 JB stipulating that a purchaser’s application to be entered into the real property register as owner of a real property will be declared pending in the event that the vendor was not yet the registered owner of the property in question. The two applications may be presented at the same time. This event is perhaps most common when the vendor has recently inherited the real property.
5.4.3.3. Fees and taxes

A matter also regulated in 4:10 JB, applicable in the event that nothing contrary has been agreed between the parties, is relating to fees incurred on the real property (such as council-, water and electricity rates). These fees are allocated pro rata between the vendor and purchaser, the reference date being when the purchaser takes charge of the property.

Stamp duty is as a rule duly payable by the purchaser; however, in the event that the purchaser does not settle the tax, both vendor and purchaser are ultimately jointly and severely liable for payment of the tax.

5.4.3.4. Faults in Swedish real property

In respect of a real property purchase what in law is described as a fault in real property is generally not a physical imperfection in the real property itself, which would have been easily noticeable upon inspection, such as a hole in a wall, but rather a discrepancy from what had been agreed between the contracting parties or from what is stipulated in law and what can be reasonably expected. Such contractual and legal faults may take many forms and faults in real property can be classified in many different ways. In this thesis I have chosen to distinguish faults in the real property in three categories: ‘Rättsliga fel’ (Legal faults), ‘Rådighetsfel’ (Faults relating to authority to transact) and ‘Faktiska fel’ (Actual faults).

The general date of reference in relation to all faults in real property is the date the contract became legally binding upon the contracting parties. The law provides rules, applicable in the event that nothing else has been agreed between the contracting parties, not only for the moment that the contract becomes legally binding upon the parties, but also for the interim period between the date that the contract became legally binding upon the parties and the date when the purchaser took charge of the real property itself.

Exoneration clauses are generally acceptable provided that they can withstand the scrutiny of general legal interpretation principles.

5.4.3.4.1. Legal faults

Legal faults are regulated in 4:15-17 JB.

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120 See NJA 1988 s. 555 and Allmän Fastighetsrätt, s. 105. Compare also NJA 1985 s. 368.
122 See Allmän Fastighetsrätt, s. 107.
123 Prop. 1989:77 s. 61.
124 See Hellner, Hager and Persson, Speciell avtalsrätt II. s. 47 f.
125 The vendor can exonerate himself or herself from responsibilities of faults in real property (both in relation to different characteristics of the real property itself or in relation to what remedies may be used if a fault is discovered however the exoneration must be precise and clear. See NJA 1975 s. 545 and prop. 1970:20 B2 s. 212. See also NJA 1976 s. 217, NJA 1983 s. 808 and NJA 1986 s. 670 I. See however NJA 1980 s. 398.
The main principle is that real property is considered conveyed without any charges or other indefeasible rights of third parties in the real property itself or its ownership. In the event that the principle is ignored a legal fault is present. An example of such fault is when the real property is encumbered with charges that exceed the amount that the vendor stated at the time of execution of the contract (i.e. a ‘pantbrev’ (see footnote 105 above) in the property was issued or encumbered for a larger amount than the purchaser had reason to believe at the time). Another example is any matter beyond the purchaser’s control that prevents the new owner from being registered as owner in the real property register.

The vendor must declare charges and indefeasible rights of third parties to the purchaser prior to the execution of the sale and purchase agreement. There is no legal obligation per se imposed upon the purchaser to investigate the presence of these circumstances. A bona fide purchaser is therefore protected. Should the purchaser however at any point have had reason to investigate a matter further (due to information emerging which indicated that indefeasible third party rights may encumber the real property in question) the purchaser cannot rely on his or her bona fide position in the event that an investigation did not take place when it should have been undertaken by a prudent purchaser. The burden of proof regarding alleged bad faith of the purchaser lies on the vendor.

In the event that the purchaser cannot be entered as a new owner in the real property register due to a legal fault, the purchaser may sue the vendor and request the Court to order the sale and purchase transaction null and void. The Court will only order a sale and purchase transaction void if the legal fault is considered essential. In addition the purchaser has a right to compensation for the loss he or she has suffered due to the legal fault. The right to compensation is independent of whether the sale and purchase transaction is subsequently declared void or not by the Court. If the vendor is to sue he or she must do so within one year and a day from when registration in the real property register should have been made, or alternatively, from when the request for registration of new ownership was made to the registration authority and the authority’s decision could no longer be appealed. The time limit is not applicable if the vendor was grossly negligent or acted dishonourably.

Perhaps the most important legal fault is the situation when a new owner is prevented from being registered in the real property register because the vendor was not the rightful owner of the real property conveyed. In the event that the purchaser would like to take advantage of the regulations in relation to ‘hemulsansvar’ (see above under chapters 5.2.1. and 5.4.2.6.2.) he or she must, in addition to the fact of not being allowed

126 See Allmän Fastighetsrätt, s. 116.
127 See Jordabalken – en kommentar, s. 80.
128 See NJA 1990 s. 331.
129 See NJA II 1972 s. 99.
130 This requirement also applies if the vendor has acted dishonourably. See Allmän Fastighetsrätt s. 149.
131 See Allmän Fastighetsrätt, s. 116.
132 Registration of new ownership should be made as soon as practically possible. See Allmän Fastighetsrätt, s. 117.
133 See 4:15 JB.
134 See 4:15 JB and Allmän Fastighetsrätt, s. 116.
to register as the new owner of the real property, prove that somebody else rather than the vendor is in fact the true owner of the real property.\footnote{Prop. 1970:20 B1 s. 219.}

In the event that a ‘pantbrev’ has been issued in the real property and the amount encumbered is larger than the vendor has declared, and/or the charges encumbering the property are higher than the vendor stated at the time of the execution of the sale and purchase agreement, the purchaser may choose to withhold the equivalent amount of the consideration as may become payable in future. If the purchase price has already been settled in full by the purchaser, or if the amount that can be withheld is less than what may become payable in future, the purchaser may request the court to order the sale and purchase agreement null and void. As a consequence of this, the consideration should be returned in full to the purchaser.\footnote{In practice it is often the case that a mortgage is taken over by the purchaser from the vendor and therefore the transaction will be a reduction in the purchase price rather than a repayment to the purchaser as such. Prop. 1970:20 B1 s. 198 f confirms that an over-compensation to the purchaser is possible.} The purchaser may, however, only request the Court to issue an order to this effect if the vendor has been notified of the inaccuracy and has not paid the purchaser an equivalent amount of what may become payable in future, or alternatively, arranged to cancelled the ‘pantbrev’ or hand it to the purchaser (if he or she is in possession of it).\footnote{See 4:16 JB and Allmän Fastighetsrätt, s. 117. See however NJA 1980 s. 624. See also Jordabalken – en kommentar, s. 83.}

Similar rules apply when the real property has been sold without notice of it being encumbered jointly with another real property.\footnote{Prop. 1970:20 B1 s. 198 f.}

In the event that the real property is encumbered with an indefeasible right of a third party which has not been mentioned above, e.g. an interest such as a lease, or a right to electricity, a servitude, a right of way, mining rights or a right to a grave plot, and the purchaser has not been notified by the vendor of such right, he or she may sue the vendor and request the Court to order that the sale and purchase transaction be declared null and void, or alternatively, that the consideration be reduced.\footnote{4:16 2 st JB.} The purchaser may also seek compensation for any damages caused by the misrepresentation.\footnote{See 4:17 JB and prop. 1970:20 B1 s. 203. See also NJA II 1972 s. 95 ff.} The same applies in the event that fixtures of a real property emerge to belong to a third party.\footnote{See 7:17 2 st JB and NJA II 1972 s. 100.}

\section*{5.4.3.4.2. Faults relating to authority to transact}

4:18 JB applies in the event that a governmental body makes a decision which causes the purchaser’s right to transact freely over the real property to become restricted in any way. As with legal faults in a real property there is no de facto obligation imposed on the purchaser to investigate whether faults relating to authority to transact exist. However, if
matters are raised which indicate to the purchaser that this type of fault is at hand, the purchaser must enquire further into the matter to satisfy himself or herself, that the fault does not apply to the real property in question.\textsuperscript{142}

4:18 JB does not cover every decision made by a governmental body. It is restricted to a decision that specifically relates to the real property in question, e.g. a decision that, as a general rule, planning permissions are not granted for properties in the area where the real property in question is situated.\textsuperscript{143} The scope of the application of the clause is determined by case law.\textsuperscript{144}

The remedies for a bona fide purchaser are to request the Court to declare the sale and purchase agreement void, alternatively to request a reduction in the purchase price and sue for compensation in relation to damages caused. It is irrelevant whether the vendor was in good or bad faith in relation to the governmental body’s decision, however a vendor who is aware of such decision may avoid responsibility (and hence avoid a challenge to the conveyance with reference to 4:18 JB) if he or she advises the purchaser of such decision prior to the completion of the sale.\textsuperscript{145}

5.4.3.4.3. Actual faults

Actual faults in the real property are regulated in 4:19 JB. They represent, for example, physical imperfections and defects in the real property itself\textsuperscript{146} which differ from what was agreed\textsuperscript{147} between the parties or diversions from what the purchaser could have reasons to expect\textsuperscript{148} as well as matters which do not fall into the other two categories of faults discussed above under sections 5.4.3.4.1. and 5.4.3.4.2. such as culpa in contrahendo.

Real property is sold as seen (‘i befintligt skick’) unless otherwise agreed.\textsuperscript{149} This means, to some extent rather unsatisfactory, that the state of the real property is not exactly defined. On the one hand, unless an agreement has been entered into between the parties to the contrary, the purchaser has a rather onerous obligation to view the real property and investigate matters in relation to it such as planning prospects, licensing rules, and other relevant future plans in relation to the surrounding area and its

\textsuperscript{142} See Allmän Fastighetsrätt, s. 123.
\textsuperscript{143} Prop. 1970:20 B1 s. 205. See also NJA 1933 s. 253 and NJA 1947 s. 1.
\textsuperscript{144} See for example NJA 1982 s. 36, NJA 1994 s. 85 and NJA 1997 s. 629. The High Court stated in the last case that 4:18 JB only is applicable if the decision by the governmental body was made prior to the execution of the sale and purchase agreement. A challenge may however be available in accordance with other laws and regulations such as in the case in question 10:25 PBL. See also prop. 1970:20 A. s. 218.
\textsuperscript{145} See further Allmän Fastighetsrätt, s. 122 f.
\textsuperscript{146} See NJA 1983 s. 865 (rotten beams), NJA 1978 s. 307 (structural fault), NJA 1986 s. 670 (radon gas), NJA 1978 s. 301 (undrinkable water in well), NJA 1981 s. 894 and NJA 2007 s. 86 (regarding the surrounding environment). See however RH 2001:36 (in relation to scratched window surfaces).
\textsuperscript{147} In general what was agreed is stipulated in the sale and purchase agreement(s) however the Court may also interpret that other circumstances, such as what was guaranteed or stated during communications between the parties prior and at the time of the signing of the sale and purchase agreement(s), be relevant. See Allmän Fastighetsrätt, s. 130 ff and NJA 1981 s. 1255 and NJA 1978 s. 307.
\textsuperscript{149} Prop. 1989/90:77 s. 39.
environment as well as the real property itself. The purchaser must also generally enquire into a circumstance or matter that during the purchaser’s investigation has brought uncertainty to the sale and purchase transaction of some sort. On the other hand, the vendor is responsible for any hidden fault in the real property that the purchaser has not discovered, and could not have been expected to discover during his viewing and investigation of the real property. The purchaser’s expectation in relation to the state of the real property will significantly vary depending on what the vendor has expressly promised or stated. The vendor must advise the purchaser of any matters or events which the vendor is aware of that he or she can reasonably expect would impact on the real property and therefore also on the purchaser’s decision to buy the real property or not. The vendor’s advice, in particular if it is sufficiently specific, is a guarantee limiting and sometimes completely extinguishing the obligation of the purchaser to view and investigate parts of the real property. The purchaser’s expectation will also depend on the age of the real property, the type of real property, the state the real property, as well as depending on the purchase price and the presence of an exoneration clause, the latter being common in agreements between private individuals.

The purchaser may presume that the real property can be used for a purpose for which the type of property in question is reasonably expected to be utilised, e.g. a private dwelling should be fit as living accommodation.

Culpa in contrahendo only becomes relevant in the event that the vendor has acted dishonourably or with gross negligence whereupon there is a right for the purchaser to sue the vendor and claim compensation as well as reduction in price or request the Court to declare the sale and purchase agreement void.

5.4.3.4.4. Damage during interim period

In the event that the state of the real property physically deteriorates between the moment when the sale and purchase agreement became legally binding between the parties and the time the purchaser takes possession of the real property, 4:11 and 12 JB provides rules which are applicable if nothing else has been agreed between the contracting parties.

According to 4:11 JB the vendor is responsible for any damage caused to the real property in the interim period. Normal wear and tear is ignored. As previously stated the law does not stipulate the date the purchaser is to take charge of the real property. Instead such date is to be agreed between the contracting parties. The law takes into account the
event that the purchaser has, without due excuse, delayed taking possession of the
property, as long as the delay is not due to any action caused by the vendor and in such
circumstances, the purchaser cannot avoid responsibility for damages caused.\textsuperscript{156}

If, however, the damage has been caused during the agreed interim period through
an event for which culpa cannot be applied to either of the contracting parties, i.e. natural
disasters, outbreak of fire or insect infestations etcetera, the purchaser may request a
reduction of the consideration.\textsuperscript{157} If the damage is substantial he or she may wish to
withdraw from the purchase altogether. The purchaser in that instance does not have a
right to compensation. The purchaser is further obliged to raise his or her wish to either,
reduce the purchase price, or void the sale and purchase transaction altogether, within a
reasonable time period from when he or she could have been reasonably expected to have
discovered the physical fault.\textsuperscript{158} The relevant period for the latter is stated in 4:19 (b) JB
and it initiates at the time when the purchaser takes possession of the real property in
question. In the event that a reduction of the sale and purchase price is chosen as a
remedy, the value of the real property at the time when the purchaser took possession of
the property is relevant.\textsuperscript{159}

4:12 JB applies in the event that culpa is established on behalf of the vendor. For
example when the vendor has felled trees at the real property without prior agreement
with the purchaser, other examples are when the vendor has negligently or intently
caused flooding of the real property, made it catch fire or similar,\textsuperscript{160} or, when the vendor
has not vacated the property at the agreed time.\textsuperscript{161}

In practice it is fairly rare that a dispute arises in relation to physical faults in real
property as these circumstances are generally covered through a fully comprehensive
insurance cover and banks and other mortgage providers generally require this type of
insurance cover.\textsuperscript{162}

\section*{5.4.4. Conveying expectations of future ownership rights}

In accordance with Swedish law it is not possible to convey an expectation to become the
future owner of real property. This arrangement refers to the concept known as ‘dold
äganderätt’ (hidden right of ownership) and it can perhaps best be compared to the rights
of a beneficial class of a common law discretionary trust with a mere power to benefit,
i.e. a mere expectation rather than a legal right per se. The concept is primarily related to
spouses and any cohabitants living together with the real property owner as his or her

\begin{footnotes}
\footnotetext{156}{\textit{Allmän Fastighetsrätt}, s. 110.}
\footnotetext{157}{4:19 c JB.}
\footnotetext{158}{4:19 a JB.}
\footnotetext{159}{4:19 c JB.}
\footnotetext{160}{SOU 1947:38 s. 198.}
\footnotetext{161}{See \textit{Allmän Fastighetsrätt}, s. 109 f. In the event the purchaser has caused a delay in this respect, rather
than the vendor, a certain duty to care for the real property appears to remain on the vendor however it is
unclear how far this duty stretches. For a discussion regarding this matter see SOU 1947:38 s. 198 f.}
\footnotetext{162}{See \textit{Allmän Fastighetsrätt}, s. 106 and 109.}
\end{footnotes}
The expectation may be justified and as such may create legal obligations between the spouses/cohabitants/other themselves, however, it is not an expectation protected in a third party setting. Hence 4:1 JB is not applicable to such an expectation.

5.4.5. The roles of legal advisers and other professionals

In Sweden there is nothing stopping two individuals with full legal capacity to enter into legally binding sale and purchase agreement(s) in relation to real property without the aide of professional advisers such as lawyers, real estate agents, conveyors or other professionals. Private individuals may also submit documentation to the Swedish land survey agency without representation. Taking into account the often significant values of real property transactions, as well as the complexities that the transaction and the legal form requirements, however, it is generally considered advisable to at least engage a reputable estate agent to assist with the transaction. Estate agents in Sweden must be registered with Förvaltningsmäklarnämnden, a governmental body, and must be adequately educated in their field, as well as required to hold indemnity insurance against the event of the agent’s acts of culpa or negligence cause harm to a client. An estate agent must act in accordance with what is considered good practice. It is a legal obligation for the estate agent to remain neutral in his or her actions, i.e. he or she may not act favourably toward the client(s), i.e. the vendor and/or the purchaser (or indeed also toward himself or herself). As an example the estate agent must encourage the vendor to disclose information regarding defects, faults and any hidden defects that he or she is aware of, or suspect may exist in the real property. An estate agent must also, in addition to what the vendor has declared, advise a potential purchaser of any defects which the estate agent suspects may become present in the real property in future based on his or her previous experience of defects in similar types of properties. The estate agent must further encourage the purchaser to properly investigate the real property prior to the purchase and explain the consequences of a vendor refusing to guarantee he or she is the rightful owner of the property, i.e. excluding his or her hemulsansvar. The estate agent is required to ensure the contracting parties come to an agreement regarding matters that benefit from being regulated between the parties and, unless something else has been agreed, the estate agent is expected to assist his or her clients with drafting of the relevant sale and purchase agreement(s). The law obliges the estate agent to review

\[163\] The Swedish High Court has stated that in exceptional circumstances the legal obligation between the parties themselves may stretch as far as other relationships such as between siblings and close friends, however, never exist between legal entities. See NJA 2002 s. 142.

\[164\] Allmän Fastighetsrätt, s. 89.


\[166\] See 20 § Fastighetsmäklarlagen (1995:400).


\[170\] See Brodin, Lotte Myrebris, Fastighetsmäklarens roll i husköpet – rätten till provision, p. 21. [Fastighetsmäklarens roll]

\[171\] A.a. s. 23 f.

\[172\] A.a. s. 23.

and confirm the vendor is authorised to sell the real property in question as well as review and confirm any charges, servitudes and other third party rights that may burden the property\textsuperscript{174} and this requires a site visit by the estate agent or somebody that he or she has appointed for this purpose.\textsuperscript{175} Due to the requirement of looking after the interests of both the vendor and the purchaser, irrespective of which party has appointed the estate agent, some clients prefer to engage a legal adviser to act on their behalf instead of an estate agent.\textsuperscript{176} The legal adviser is bound by a fiduciary duty toward his or her client and undertakes similar acts in relation to the conveyancing transaction as is undertaken by the estate agent.

\section*{6. Extract summary of relevant Jersey history\textsuperscript{177}}

To truly understand the peculiar legal system in Jersey and its practices and customs concerning immovable property, it is beneficial in my view, if not necessary, to have at least some knowledge of the Island’s history. This chapter aims to modestly provide a much-simplified introduction Jersey’s history from the ninth to the thirteenth century. It partially provides an understanding as to the reason Jersey is neither French, English, part of the United Kingdom, nor has it ever been a Crown colony. The Bailiwick of Jersey is a Crown dependency, loyal to the Monarch.\textsuperscript{178} The Islanders are not represented in the Westminster Parliament in the UK but have their own government and legislative body, \textit{Les États} (the States).

In the ninth century Vikings (also known as Northmen/Normans) from Scandinavia invaded and began to settle in northwest France in what was to be known as Normandy. The Bretons created a more or less independent kingdom to which the Cotentin was annexed in 867. The Cotentin and the Channel Islands\textsuperscript{179} did not become part of a united Norman polity until 966 under Duke Richard I (the Fearless).

In the eleventh century the \textit{Vicomtes} of Normandy were the Duke’s local representatives in each district. Later the office of \textit{Vicomte} was reduced in dignity and he became the executive officer of the Royal Court.\textsuperscript{180} Judges visiting Jersey from Normandy from time to time enforced the laws of the Duke of Normandy.\textsuperscript{181} The land in

\begin{flushright}
\textsuperscript{174} 17 § Fastighetsmäklarlagen (1995:400).
\textsuperscript{175} See \textit{Fastighetsmäklaren\textsc{e} roll}, p. 24.
\textsuperscript{176} Prop. 1994/95:14 s. 42.
\textsuperscript{177} The information in this chapter has been composed from the book by Ford, Doug, \textit{Jersey 1204 a peculiar situation [Jersey 1204]. Peter Bisson, the Former Registrar of Deeds in Jersey, provided additional information on 24 May 2011 [Comments by Peter Bisson]. Where the information from the two sources has been contradictory I have chosen to represent in this thesis the view of Peter Bisson.}
\textsuperscript{178} H.M. Elizabeth II has a representative in Jersey, the Lieutenant Governor. He has no power in Jersey but he is the official channel of communication with H.M. Government in the UK. See introductory vocabulary of the Law of Property.
\textsuperscript{179} The Channel Islands consist of the Bailiwicks of Jersey and Guernsey and the islands of Sark, Alderney, Herm, Jethou, Brecqhou, Lihou, Minquiers, Écréhou, let Dirouilles, Les Pierres de Lecq (Paternostres), Burhou and the Casquets. See \url{http://wikipedia.org/wiki/Channel_Islands}
\textsuperscript{180} This remains his role today.
\textsuperscript{181} Norman custom held that assizes, i.e. trials, had to be held by visiting justices every three years. See \textit{Jersey 1204}, p. 41.
\end{flushright}
Jersey was divided up and held in return for feudal services. Local land holders/tenants held the land from landholders/tenants in Normandy who in turn held it from the Duke of Normandy.

Around year 1027 William the Conqueror was born in Normandy. He became the seventh Duke of Normandy in year 1035. At that time the English Crown was elective. William, however, thought he had a right to be King of England and following the Battle of Hastings in year 1066 he was crowned William I, King of England. He continued to be Duke of Normandy and governed the two lands as separate jurisdictions with separate practices and customs.

William had a granddaughter, Matilda, who was married to Geoffrey of Anjou. When civil war broke out in both England and Normandy, Geoffrey captured Normandy and in 1144 he declared himself Duke of Normandy. William’s grandson Stephen remained on the throne in England. Geoffrey confiscated land from those who remained loyal to Stephen. So that the Islanders were loyal to Geoffrey he gave them certain privileges under local law such as the right to a trial in the Island’s courts. Jersey was also granted the privilege of having its own Vicomte. Taxes were, however, still collected in the Islands and sent to the Exchequer in Caen, France.

During Richard ‘the Lionheart’s’ reign his brother John was made Count of Mortain and Lord of the Islands and the Channel Islands officially became a separate administrative centre to that of England. John was in charge of government and defence of the Channel Islands and he received its tax revenues. In the year 1200 Pierre de Préaux, a nobleman, became the Lord of the Isles as John inherited the positions as King of England and Duke of Normandy following his brother’s death.

In 1204 the French King Philip II Augustus forced Pierre to surrender John’s main town in Normandy, Rouen, to the French. Pierre had to pay homage to the French King for his lands in Normandy including the Channel Islands. King John recaptured the Channel Islands a year later and Hasculf de Suligny, a lord, was appointed to rule in Jersey. King John took hostages from all leading families in Jersey to ensure the Islanders loyalty to the English Crown. No attempts were, however, made to introduce English laws on the island and the old laws remained. The role of Jurats began to develop in Jersey during this time.

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182 In England feudal services were mainly military services (also known as Knight services). See Hudson, John, The Formation of the English Common Law – Law and Society in England From the Norman Conquest to Magna Carta [the Formation of English Common Law], p. 241. In Jersey, however, feudal services seldom included military services. See Comments by Peter Bisson.

183 The Channel Islands were the possession of the English King however they did not form part of his kingdom. The King was represented in the Islands by his wardens who were either given the title ‘Lord of the Isles’ if appointed for life, or ‘Warden’, if appointed for a limited period. Both the Lords and Wardens were responsible for exercising the King’s authority at military, administrational and judicial level, collected taxes on the King’s behalf as well as being responsible for the maintenance of the defenses and castle’s in the Islands. See Jersey 1204, p. 41.

184 The ceremony of becoming a lord’s vassal, see the Formation of English Common Law, p. 244.

185 In Jersey there are twelve elected jurats affiliated with the Royal Court. They are elected in accordance with the Royal Court (Jersey) Law, 1948. The jurats are the judges of fact whilst the Bailiff is the judge of the law. The jurats assess damages when required. In its simplest form the Royal Court in is constituted by the Bailiff (or the presiding judge) and two jurats. A superior number of jurats, generally not less than seven, may be prescribed by statute. See the introductory vocabulary part of the Law of Property. The
In 1219 Philip d’Aubigny, the Warden of the Channel Islands, loyal to King John, ordered an inquest into the loyalty to the Crown of the most influential Islanders. He also ordered the redistribution of lands in Jersey from disloyal to loyal tenants. Any landowner who spent a week or more in Normandy per year had his estate confiscated.

The years that followed were characterised by the French and the English occupying the Channel Islands in turn. The Islands were lucrative, with flourishing fishing industry and high tax revenues, and presented a strategic position between England and France.

The Lords and Wardens of the Isles were only present in Jersey for limited periods of time, being royal servants but not Islanders, and they therefore appointed deputies, so called Ballivi, who were residents of Jersey, to act in their place.

In 1248 a Guernsey inquiry into the laws of the Channel Islands was held. The material from this inquiry, together with material collected from various medieval sources, was put together in the 17th century to what today is known as the eight Constitutions of King John. These constitutions set out the customs and rights that the Islanders enjoyed. The first constitution refers to the Islander’s rights to be judged by jurats in their own island (unless they appealed to the King). Fines and penalties were also decided by the jurats. The second constitution ensured that the Islanders could initiate an action in the Royal Court without having to obtain the King’s prior permission. The Ballivus (Bailiff) heard all cases. He was described as the King’s Coroner and President of the Royal Court. The remaining six constitutions concerned regulation of commerce and fishing as well as the security of the Islands.

In 1259 Henry III of England and Louis IX of France signed the Treaty of Paris in which the King of England gave up his claim to the title of Duke of Normandy. This treaty recognised that the parts of France that were occupied by the Capetian kings on the continent were to be considered French. The Channel Islands did not belong to this category and local landowners lost their old feudal superiors in Normandy and gained higher political, social and legal status as tenants-in-chief, i.e. they now held their land directly from the Crown. The Islanders were also excluded from financial obligations, the burden of which tenants of the Crown generally carried.

6.1. Language of Jersey Real Property Conveyance

The historic language of real property conveyance in Jersey is French. It contains words that stem from Old Norse, an inheritance from the Island’s past. English and French are the official languages of Jersey and Jèrrais, the traditional French patois still spoken.

jurats were originally elected by the magnates of the Island and later by the people generally. Until 1948 the jurats were judges of law as well as fact. See Comments of Peter Bisson.

King John died in 1216 and it is doubtful if he issued the so-called ‘Constitutions’.

The Bailiff is the civic head of Jersey. He is also the President of the Royal Court where he is the judge of the law (whilst the jurats are the judges of fact). The Bailiff is also the Head of the States (the Government), however he has no right to vote. A Deputy Bailiff or a Lieutenant Bailiff of Commissioner may discharge the Bailiff’s judicial functions. See the introductory list of vocabulary in the Law of Property.

See http://www.societe-jersiaise.org/la-langue-jerriaise (as at 2 February 2009)
by a small number of the population, is a recognised regional language. The formal French that is used in drafting of legal documents is essentially correct modern French with a few local archaisms, often referred to as Jersey legal French. There are modern equivalents in both English and French of more or less all words represented in Jersey legal French, however, a direct translation may be misleading and Jersey conveyancers are therefore trained in the specific use and meaning of the words in question. I have attached to this thesis a simple list of example vocabulary frequently used in Appendix B. Until October 2006 French was the language of conveyancing in Jersey, however, thereafter it became mandatory to draft the hereditary sale and purchase contract in English.

7. Jersey Immovable Property Law

Due to its history Jersey is a mixed law jurisdiction. The Island’s laws and regulations, as well as its references in case law, draw from principles established in common law jurisdictions as well as in civil law jurisdictions. In the case known as Kwanza Hotels Limited v. Sogeo Company Limited the Court established that when deciding the relevant Law of Jersey in questions affecting real property in the Island, the law of Jersey follows the custom of the Duchy of Normandy, and if that is silent, the civil law, i.e. the French legal authorities.

The main law defining Jersey immovable property is Loi (1880) sur la propriété foncière [Loi 1880].

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189 In 2001 3% of the population in Jersey spoke Jèrriais and 15% had some understanding of it according to the information on the website http://wikipedia.org/wiki/J%c3%A8rriais
190 See http://www.wikipedia.org/wiki/Jersey
191 Comments by Peter Bisson.
192 See the Jersey Law Review June 2005, Trotter, David, ‘Commentary on Jersey Conveyance’ at 2: ‘To an English-speaker who is not a Jersey lawyer, it must surely come as something of a surprise that such a document should be in French. But to a French-speaker, what would be striking is the distance between the language of this document and anything that he or she would now recognize’; and at 3: ‘...a number of words (above all) demonstrate not so much old-fashioned terminology (often hard to establish in formulaic texts of this sort) but the regional provenance of the text. The terminology to describe the property being transferred is strikingly different from what a “French” (or an earlier Anglo-Norman) document would have contained: becquet, côtil, laize, rât, all are specific to Jersey.’
194 See Royal Court (Amendment No. 2) Rules 2006: ‘All contracts passed before the Royal Court shall henceforth be in English but in the form that was customary when they were drafted in French.’
195 See Voisinage et Nuisance, p. 276.
196 See Kwanza Hotels Limited v. Sogeo Company Limited 1981 JLR 59 at p. 76 and 1983 JLR 105 CA at 114. The court stated that there are instances when the law of England are followed (such as in certain commercial law matters), however the Court advised that this is the case due to the Norman and French legal authorities being silent, or that there is no significant difference between them, and therefore the Law of England has been used out of convenience. The principles of the civil law are followed when the Duchy of Normandy is silent as established in Scarfe v. Walton 1964 J.J. 387 at p. 388. For a review of the theory of the conflict of laws governing Jersey, see The Jersey Law Review June 2005, Matthews, Paul, ‘Choice of law in property transactions in Jersey law’.
7.1. Propriété foncière (property in or to do with land in Jersey)

The legal terminology in Jersey for property in or to do with land, i.e. immovable property, is ‘propriété foncière’. The wording does not translate directly to the English language. 197

In 1878 Sir Robert Pipon Marett\(^{198}\) defined propriété foncière for purposes of Jersey law as follows: -

‘La propriété foncière dans cette île se compose de deux espèces d’immeubles; les bien-fonds, c’est-à-dire le sol et ce qui y est adhérent, et les rentes’.\(^ {199}\)

(Propriété foncière, in this island comprises two kinds of immovables; bien-fonds i.e. the ground/soil and everything affixed to it, and rentes.)

This definition is however not all encompassing\(^ {200}\) as it does not account for simple conventional hypothecs, fiefs or contract leases, all of which are considered immovables and will be treated below in chapters 7.1.1 and 7.1.3 to 7.1.5.

Historically transfers of perpetual rights in propriété foncière were transfers of the lease and sale of feudal tenancies, i.e. land held by the tenant on a fief from the Lord, and ultimately from the Crown, however, following the passing of the Seignorial Rights (Abolition)(Jersey) Law in 1966, this is no longer the case. In general, nowadays, tenancies are indefeasible and freely alienable and this is stressed in the contract héréditaire (see below under chapter 7.3.4.) where the purchaser and vendor transact not only for themselves but also for their heirs (pour lui et ses hoirs) for a term which can perhaps best be described as ‘in perpetuity’ (à fin d’héritage).\(^ {201}\)

\(^{197}\) The Law of Property, p. 1 at 1.2.


\(^{199}\) Pipon Marett, Sir Robert, Lettre Explicative du Projet De Loi Amandé sur la Propriété Foncière, lodged with the Greffe on 23 Janvier 1878. This was a letter which Sir Robert Pipon Marett wrote to the Nouvelle Cronique de Jersey in which he explained the reasons for Loi 1880 and the letter serves as a guide to the interpretation of Loi 1880. See also the Jersey Law Review February 1999, Nicolle, Stéphanie, ‘Lettre Explicative du Projet De Loi Amandé sur la Propriété Foncière, logé au Greffe le 23 Janvier 1878, et rédigé par R. P. Marett, ECR’

\(^{200}\) See the Law of Property, p. 1 at 1.3.

\(^{201}\) These hereditary, indefeasible, perpetual and freely alienable tenancies are equivalent to the English fee simple absolute (popularly known as Freehold). See Pro forma Jersey conveyance, clause 10 and the Law of Property, p. 4 at 1.15. The brief meaning of the English fee simple absolute/freehold is; All land in England and Wales are owned by the Crown. All other persons own an estate in the land, i.e. a right to control and use the land in question. A fee simple is restricted in time for the duration of the life of the grantee and that of his or her heirs and successors (as well as their heirs and successors). A freehold is alienable both inter vivos and post-obit and in most respects it is therefore equivalent to true, permanent ownership and the paramount ownership of the Crown is irrelevant. However, if the fee simple estate owner has not alienated the land during his life or upon death and if he or she has no next of kin to inherit
Properties in Jersey are divided into categories and there are restrictions governing who may own, lease and/or occupy different types of property.\(^{202}\)

### 7.1.1. Biens-fonds (corporeal hereditament or corpus fundi)

As stated above, biens-fonds consist of soil and everything affixed to it, i.e. tangible and physical property. The word bien-fonds (biens-fonds in plural) has no exact English equivalent.\(^{203}\) Following the introduction of the Loi 1880 only biens-fonds can be hypothecated.\(^{204}\)

#### 7.1.1.1. Soil

The ‘sol’ or ground/soil that Sir Robert Pipon Marett refers to in his definition comprises land. It also includes ‘fonds’. This term is impossible to translate directly to the English language. It means the landed or freehold basis of all (immovable) property, and is contrary to the term ‘fond’ which means bottom (of a pool or a stream).\(^{205}\) The latter term is, however, included in the concept of fonds. It is further generally accepted that ownership of propriété foncière includes the air space that is above it, as well as the ground underneath the plot itself. This conclusion is supported by the Jersey customary law maxim ‘qui a le sol a le dessus et le dessous’ (the one who owns the ground has what is above it and what is below it).\(^{206}\) It is however unclear how strong this principle remains today due to scientific advances such as air travel and undersea oil exploration.\(^{207}\) There are examples of real property conveyed in Jersey where the real property of the overhanging fonds is conveyed and owned separately to that of the underlying fonds.\(^{208}\) A special case is also the flying freehold unit.\(^{209}\)

Certain Jersey statutes have given an extended definition of the term ‘land’ however it is specific to the relevant laws only and the extended definition does not have general application.\(^{210}\)

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\(^{202}\) Certain properties are designated for social housing, first time buyers or over 55:s only. The State also provides certain affordable housing schemes however the treatment of these falls outside the scope of this thesis.

\(^{203}\) Article 3 Loi 1880.

\(^{204}\) Study guide immovable property, section 2.9. [Study guide immovable property]

\(^{205}\) Comments of Peter Bisson.

\(^{206}\) Study guide immovable property, section 2.8.


\(^{208}\) A.a. p. 1 at 1.4 f.

\(^{209}\) See Loi (1991) sur la Copropriété des Immeubles Bâties (as amended). I will not treat the conveyance of a flying freehold unit in this thesis even though it is regarded as Jersey real property (contrary to share transfer conveyance which is considered a transfer of a movable).

\(^{210}\) E.g. in the Compulsory Purchase of Land (Procedure) (Jersey) Law 1961 and the Housing (Jersey) Law 1949 (as amended) the term land has been given an extended definition to include servitudes and/or other rights.
7.1.1.1. Fixtures

In the absence of any contrary intention, the term ‘land’ in Jersey statutes includes permanent tangible fixtures such as ‘houses or other buildings’. These are considered affixed to the ground (adhérent au sol). Certain temporary structures such as sheds and chalets are however defined as movables. What is to be considered fixed to the ground is considered and decided by the Court on a case-by-case basis and what is considered affixed to the soil is as much a question of fact as of law. It depends on the degree of permanency of the objects attachment.

An object may further change its character from movable to immovable if it is affixed to an immovable with the intention of becoming a fixture (mis pour perpetuelle demeure).

7.1.2. Rente (annual payment charged on land)

Rente is a propriété foncière, separate to bien-fonds, consisting of an annual payment charged on land. As it is created by agreement between the parties, it is de facto a conventional hypothec. In Jersey, until 1880, there was a system of universal guarantee that meant that cash purchases were risky. A real property purchased with cash could be lost if the seller became bankrupt, so, to safeguard ownership of the property, the purchaser paid in rente instead.

There are two types of rente concerning immovable property in Jersey, rente ancienne and rente nouvelle. The former was created prior to Loi 1880 coming into force, the latter post. There are two ways of creating a rente, either:

1) by contract (a rente crée); or,
2) by a vendor of a real property, rather than accepting an outright capital sum as settlement, accepting either part, or all, of the consideration as an annual payment charged on the land itself for a certain term (a rente constituée).

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211 Interpretation (Jersey) Law 1954, article 4(1)(i).
212 See Godfray v. Baudains (1889) 10 CR 416 where the Court held that some constructions en bois (constructions in wood) were regarded as movables whilst a wooden hut which was firmly attached to its foundations could be regarded as immovable property. The case was upheld by Ardbaugh v. Leyland (1967) 1 J.J. 745.
213 See Study guide immovable property, section 2.13.
215 See the Law of Property, p. 2 at 1.6.
216 See Study guide immovable property, section 11.115.
217 Comments by Peter Bisson.
218 See article 1 Loi 1880. A rente publique, a type of movable created under Loi (1887) sur la conversions de la dette publique, falls beyond the scope of this treatment.
219 See the Law of Property, p. 2 at 1.6.
The party responsible for settlement of any type of rente, both current amounts due as well as payments due in arrears, even if they occurred before his or her entry in possession,\textsuperscript{220} is the actual holder of the charged land.\textsuperscript{221} The holder of the land may claim a former occupier to recover amounts of arrears paid.\textsuperscript{222} In the event that the current tenant decides to sue a previous occupier the action should be brought up in front of the \textit{Cour de Samedi}.\textsuperscript{223} Rente may be extinguished by prescription in the event that it is not claimed for a period of 40 years.\textsuperscript{224} Events that may interrupt prescription are for example an act of the Court registered in the Public Registry,\textsuperscript{225} or, an acknowledgement of rente due in a contract passed before the Court.\textsuperscript{226} Rentes could be hypothecated before 1880.\textsuperscript{227}

\textbf{7.1.2.1. Rente ancienne}

This type of rente still exists in Jersey however it was the intent of the Legislator that rente ancienne gradually disappears.\textsuperscript{228} A rente ancienne is considered an immovable at common law.\textsuperscript{229} It is payable either in cash (en argent) or in kind (en nature).\textsuperscript{230} A rente ancienne may be reimbursed in accordance with the procedure and rates listed in article 37 of Loi 1880. Rentes anciennes could historically be of two kinds, either assignable or foncière.\textsuperscript{231}

\textbf{7.1.2.1.1. Rente ancienne assignable}

This type of assignment is now considered obsolete\textsuperscript{232} however I have included this section to provide a better understanding of the concept of rente as a whole.

Historically the owner of the immovable property may have been required to accept a rente charged on a different parcel of land owned by a third party (provided that rente was similar in nature to the original rente).\textsuperscript{234} If rente was due on real property owned by an individual, he or she could sell the immovable free of rente provided that

\begin{itemize}
  \item \textsuperscript{220} Journeaux v. Little (1888) 76 EX 268.
  \item \textsuperscript{221} Gaulin v. Jean (1893) 76 Exs 439.
  \item \textsuperscript{222} Priaulx v. Le Sueur (1890) 10 CR 441.
  \item \textsuperscript{223} Loi (1891) sur la cour pour le recouvrement de menus dettes.
  \item \textsuperscript{224} Holloway v. Le Sueur (1883) 75 Ex 526.
  \item \textsuperscript{225} De Gruchy v. Le Neveu (1901) 77 Exs 153, (1902) 11 CR 260.
  \item \textsuperscript{226} Payn v. Prouings (1863) 8 CR 383.
  \item \textsuperscript{227} See Le Couteur, Philip, ‘Hypothecation And Guarantee: Lecture Given To An Audience Of Bankers On The 6th December 1955’
  \item \textsuperscript{228} See Loi (1915) sur la propriété foncière (garanties) and Loi (1970) touchant les reimbursement des rentes anciennes.
  \item \textsuperscript{229} See \textit{the Law of Property}, p. 2 at 1.6.
  \item \textsuperscript{230} E.G. agricultural produce such as cereals, poultry, eggs and fruit. See \textit{Study guide immovable property}, section 11.121.
  \item \textsuperscript{231} See \textit{the Law of Property}, p. 2 at 1.7 and article 37 (1) and (2) of Loi 1880.
  \item \textsuperscript{232} \textit{A.a.} p. 3 at 1.9.
  \item \textsuperscript{233} \textit{A.a.} p. 2 at 1.8.
\end{itemize}
payments by the seller continued. Security would be provided over other land that the seller owned.  

### 7.1.2.1.2. Rente ancienne foncière

A rente that had not been assigned since its creation, provided that a consecutive term of 40 years had passed, automatically became a rente ancienne foncière. The consequence was that the rente itself was no longer assignable. Statute provided that any type of rente that had not become rente ancienne foncière by 29 September 1848 should remain assignables in perpetuity. As stated above the practice of assignment of rentes is now considered obsolete.

### 7.1.2.2. Rente nouvelle

Rente nouvelle is an immovable by virtue of statute. It is created in cash only (contrary to a rente ancienne which could also be created in kind). A rente nouvelle carries an automatic charge over the property over which it is created, a hypothèque foncière. A rente nouvelle may be of two kinds, either a rente nouvelle perpetuelles or a rente nouvelle viagères.

#### 7.1.2.2.1. Rente nouvelle perpetuelle

A rente nouvelle perpetuelle terminates when extinguished/repaid and so does the charge attached to it. A rente nouvelle perpetuelle is reimbursable at the rate specified in its contract of creation or, in the event this is silent, in accordance with provisions listed in article 31 Loi 1880. A rente nouvelle perpetuelle is freely transferable.

#### 7.1.2.2.2. Rente nouvelle viagères

A rente nouvelle viagère continues for the term of the person’s life to which the payment is payable. A rente nouvelle viagère can only be reimbursed provided it is specifically reimbursable under the provisions of the contract of creation or in the event this is silent, in accordance with provisions listed in article 35 Loi 1880.

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235 See Comments by Peter Bisson.
236 A.a. p. 2 at 1.9.
237 A.a. p. 2 at 1.9 f.
238 See Loi (1848) touchant la taxation des rentes.
239 Article 27 Loi 1880.
240 Article 30 Loi 1880.
241 Article 33 Loi 1880.
242 See the Law of Property, p. 3 at 1.10.
243 Article 35 Loi 1880.
244 Article 20 Loi 1880.
245 Article 40 Loi 1880.
246 See the Law of Property, p. 3 at 1.10.
regulated in the contract that created the rente.\textsuperscript{247} A rente nouvelle viagère is not transferrable unless the contract of creation expressly states that it is.\textsuperscript{248}

### 7.1.3. Fief

A fief is an area of land (generally heritable land), or a district,\textsuperscript{249} over which the holder, the Seigneur or Dame of the fief, formerly\textsuperscript{250} enjoyed rights of feudal lordship.\textsuperscript{251} The land itself could be held directly from the Crown\textsuperscript{252} or from an overlord, in return for services and dues of different kinds. In England and Normandy these services were broadly knight services, i.e. military services,\textsuperscript{253} however in Jersey, where the fiefs were small, only the fief of St. Ouen is known to have been held by knight service. Only two or three fiefs in Jersey were held by ‘grand sergeant’, i.e. the rendering of honourable personal services to the sovereign.\textsuperscript{254} In the past the Seigneur exercised certain jurisdiction over the land through his Seigneural Court, if he was entitled to hold one, and he also enjoyed certain rights in respect of it.\textsuperscript{255}

As the fiefs in Jersey concern land ultimately owned by the Crown, they may be sold, transferred or leased without the prior consent of the Minister for Housing.\textsuperscript{256}

### 7.1.4. Contract lease

A lease concerning immovable property is classed as héritage, i.e. an immovable, provided the term exceeds nine years.\textsuperscript{257} This type of lease is known colloquially as a contract lease and it can only be formally created, and assigned (i.e. transferred from one tenant to another) by being passed before the Cour de Samedi similarly to sale of a freehold.\textsuperscript{258} By consequence cancellation of a contract lease must be sought in the Cour

\textsuperscript{247} Article 20 Loi 1880.
\textsuperscript{248} Article 32 Loi 1880.
\textsuperscript{249} Study guide immovable property, section 2.18 (iv).
\textsuperscript{250} The rights of the Seigneur or the Dame over the real properties were abolished by the Seignorial Rights (Abolition) (Jersey) Law, 1966, though the fiefs themselves remain in existence. At the annual ceremony of the Assise d’Héritage the Seigneurs and Dames of certain fiefs in Jersey still owe the duty of answering for them before the Royal Court. See Comments by Peter Bisson.
\textsuperscript{251} See the Law of Property, p. 1 at 1.3.
\textsuperscript{252} This was the most common way a fief was held in Jersey. See Comments by Peter Bisson.
\textsuperscript{253} See the Formation of English Common Law, p. 243.
\textsuperscript{254} See De Gruchy, G.F.B., Medieval Land Tenures in Jersey, pp. 54-88 and 113-141.
\textsuperscript{255} Study guide immovable property, section 2.18 (iv).
\textsuperscript{256} See article 10(2)(c) of the Housing Jersey law 1949 (as amended) [the Housing Law].
\textsuperscript{257} See York Street Pharmacy Limited v. Rault (1974) 2 J.J. 65 & 69. This includes leases for a term of nine years or less with an option to renew which extends the total term to in excess of nine years, see Brown v. Alexandre (1891) 214 Ex 349.
\textsuperscript{258} See Brown v. Alexandre (1891) 214 Ex 349. A lease drawn up in writing for nine years or less, a non-contract lease (sometimes called a paper lease), is a movable. A short-term lease may also be verbal (parol). Both types of leases are unenforceable if renewable for a longer period.
When a property is sold, the purchaser must honour the terms of the existing lease. A contract lease is considered an immovable (but not a bien-fonds, i.e. not land) and hence it cannot be hypothecated. The terms of a lease stipulate the conditions under which the tenant occupies the real property.

### 7.1.5. Simple conventional hypothec (hypothèque simple)

A simple conventional hypothec is a type of contractual mortgage that nowadays it is seldom used. Sums of money secured upon land by simple conventional hypothec are considered an immovable in Jersey. A simple conventional hypothec can only be created voluntarily in front of the Cour de Samedi following the procedure of passing of contracts (see below under chapter 7.3.3.) and thereafter registered in the Public Registry (see below under chapter 7.4.). The capital amount must be specific and repayable in one or more tranche(s) upon the creditor’s demand (unless the agreement explicitly states otherwise). The cash amount outstanding may or may not incur interest depending on what has been agreed between the contracting parties. The propriété foncière to which the simple conventional hypothec refer must be specific and distinctive from other corps de biens-fonds. A simple conventional hypothec will be extinguished upon repayment of the capital amount (together with the interest amount, if applicable) as per the provisions in its contract of creation. The agreement must not be for a term longer than 30 years (from the date of the passing of contract).

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259 Le Brun v. Saudrais (1904) 223 Ex 214. The Cour d’Héritage, i.e. the Héritage division of the Royal Court, is the correct forum in this instance, dealing with matters concerning immovable property. The Cour de Samedi deals with all other civil matters. See Comments by Peter Bisson.


261 See the Law of Property, p. 1 at 1.3.

262 Judicial and legal hypothechs fall outside the scope of this treatment.

263 Article prepared by Shaun O’Connor, Conveyancing Manager at Crill & Caravan, regarding real property conveyance jargon which was handed out during the seminar Buying and selling a property in Jersey – a basic introduction, The Law House on 28 September 2010 [Conveyancing Seminar].

264 In English law a hypothec would be a mortgage, see the Law of Property, p. 55 at 6.2.

265 Article 27 Loi 1880.

266 See article 17 Loi 1880. Agreements made contrary to the procedure are null and void.

267 See article 19 Loi 1880.

268 Ibid.

269 Article 1 Loi 1880 stipulate: ‘CORPS DE BIEN-FONDS: Un heritage formant un tout distinct et complet, susceptible, d’être hypothéqué séparément des autres héritages du propriétaire, et qui doit être loti et vendu en cas de liquidation, ou soumis au dégrèvement, indépendamment des autres bien-fonds qui furent au cessionnaire.’ See further article 21 Loi 1880. The latter clause provides for the possibility to create a simple conventional hypothec over several distinctly described corps de bien-fonds provided that these are all distinguishable and that the cash amount itself is explicitly proportioned between the different parcels.

270 See article 29 Loi 1880.

271 Article 19 Loi 1880.
In the case Re Dégrèvement Bonn the Court established that joint owners cannot separately hypothecate their interest in jointly owned immovable property. It is unclear whether a tenant in common may be able to do so. In respect of different types of ownships see chapter 7.2.3. below.

7.2. The Property owner

The Housing (Jersey) Law 1949 (as amended) and the Housing (General Provisions) (Jersey) Regulations 1970 (as amended) significantly restricts sale and transfer of real property as well as grants of tenancy as a special grant from the Minister for Housing is required in each individual case. A grant may be forthcoming provided that the purchaser or lessee meets criteria under the provisions of the law and regulations and the Housing Minister may attach conditions to his consent. The restrictions are motivated ‘…to provide for the administration of matters relating to the housing of the population, to empower the States to acquire land by compulsory purchase for the purposes of housing, and to control acquisitions, sales and leases of land in order to prevent further aggravation of the housing shortage’. The Court may order expedited hearing of appeal against a decision made by the Housing Committee.

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272 Re Dégrèvement Bonn (1971) 1 J.J. 1771 at 1783-1786.
273 See the Law of Property, p. 5 at 1.19.
274 The possible ownership of immovable property in Jersey by a non-natural person falls beyond the scope of this thesis.
275 Exemptions to the law are listed in article 10 (2)(a-d) and special rules apply to tourist premises and registered lodging accommodation. These rules fall beyond the scope of this thesis with the exception of article 10(2)(c) which ensures that all fiefs on the island may be sold, transferred or leased without prior consent of the Minister for Housing. Private lodgings are not controlled by the Housing Law.
276 In practice it is the Housing Committee that considers an application.
277 See article 11 (1) of the Housing Law. If a transaction has taken place without the Minister for Housing’s prior consent it may be declared void by the Court and recorded as such in the Public Registry of Contracts, see article 12 of the Housing Law.
278 See article 14 (3) of the Housing Law where the conditions, without prejudice, may be relating to the persons by whom the land may be occupied, the use of the land and the maximum price at which the land is to be sold or leased.
279 See the Preamble of the Housing Law. The motivation was amended in 1993 and the previous motivation read: ‘in order to ensure that sufficient land is available for the inhabitants of the Island’.
280 If a case requires expedition it is not necessary to observe procedural formalities. See Glazebrook v. the Housing Committee (1990) JLR N-9. The Court may only interfere with a decision made by the Housing Committee in certain instances such as if the decision was exercised on error of law, if an obvious mistake of fact occurred, if the Housing Committee based its consideration on irrelevant matters, or, failed to consider relevant matters, or/and in instances when the Housing Committee failed to accord with common sense or justice. In such instances the Court does not consider merits of application de novo: See Cottignies v. the Housing Committee (1969) J.J. 1149.
7.2.1. Qualifying circumstances to obtain Jersey Housing qualifications

The application for housing qualifications to the Minister for Housing must be supported by documentation evidencing that the person qualifies for the Minister’s consent. A fee must accompany an application for consent. 85% of Jersey’s population gain their housing qualifications through a period of long term of residency.

The references to regulations mentioned in the headings of the below chapters refer to the Housing Regulations.

7.2.1.1. Jersey born individuals - regulation (1(1)(a)

Subject to the provisions in the Housing Law, if a Jersey born individual has resided in Jersey for an aggregate period of at least ten years he or she may obtain consent from the Minister for Housing to rent a property at the age of 16 and purchase a property at the age of 18. The individual is qualified for any type of property and the qualification remains, irrespective of any absence from the Island.

7.2.1.2. Person living in accommodation bought or leased before 5 April 1949 – regulation 1(1)(b)

This situation is unusual and applies to an individual who has purchased or leased a dwelling accommodation prior to the 5th April 1949 and has ordinarily resided in that accommodation since that time. Such individual may apply for housing qualifications to the Minister for Housing under this regulation to purchase, transfer or lease of Jersey real property.

This regulation is subject to the five-year break rule (see below under chapter 7.2.1.12.).

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281 Regulations 1(1)(l) and 1(1)(m) of the Housing Regulations fall outside the scope of this treatment. A regulation numbered 1(1)(i) does not exist.
282 Such documentation may for example be a birth certificate (if Jersey born), school records, evidence of residency from landlords, records of employers, in exceptional circumstances records from doctors and other professionals, social security records, rates and electoral records. See the Citizens Advice Bureau’s website http://www.cab.org.je/index.php?option=com_content&task=view&id=658&Itemid=66 - section Housing Qualifications – Application forms and methods of proving residence (11.5.0.L5) clause 2.
283 Article 13 of the Housing Law. The fee is currently £65.00.
284 See http://www.gov.je/home/RentingBuying/HousingLaws/Pages/ResidentialRequirements.aspx
7.2.1.3. Individuals in real property exempt from the Housing Law – regulation 1(1)(c)

There is real property in Jersey that is exempt from the restrictions enforced by the Housing Law. The exemptions are listed under article 10 of the Housing Law. The only circumstance relevant for this thesis is the situation regulated under article 10(2)(c) stating that conveyances or leases of land by or to the Crown are exempt from Housing control.

This regulation is subject to the five-year break rule (see below under chapter 7.2.1.12.).

7.2.1.4. Individuals who have previously been consented to buy or lease - regulations 1(1)(d) and 1(1)(e)

This situation is applicable to a person who already has purchased or leased a freehold property in Jersey\textsuperscript{286} and who wishes to purchase or lease an alternative property. Such person, provided that none of the regulations 1(1)(g), 1(1)(j), 1(1)(k) or 1(1)(n)(i) or (ii) applies, shall be granted consent by the Minister for Housing.

This regulation is subject to the five-year break rule (see below under chapter 7.2.1.12.).

7.2.1.5. Ten years residence rule - regulation 1(1)(f)

An individual who has been ordinarily resident on the Island for a continuous period of at least ten years up to the date of the application shall be granted the consent of the Minister for Housing. There are no restrictions in the type of property which the individual may wish to purchase, transfer or lease; however, this regulation is subject to the five-year break rule (see below under chapter 7.2.1.12.).

7.2.1.6. Applications on grounds of hardship – regulation 1(1)(g)

This regulation applies where an individual would not qualify under any other regulation to apply to the Minister for Housing for consent, but he or she is ordinarily resident on the Island and can demonstrate a degree of hardship (other than financial hardship) due to not having been able to purchase or lease Jersey real property. Only a small number of individuals each year gain their housing qualifications through this concession.\textsuperscript{287} When exercising his discretion\textsuperscript{288} the Minister may consent in circumstances such as: -


\textsuperscript{287} During the seminar ‘Jersey Housing Qualifications ‘Quallies’ held by Daniel Young of Bois Bois Lawyers, held at the Law House on 8 February 2011 [the Housing Seminar], Mr Young mentioned that the
• an unqualified spouse of a qualified person, with or without children, who has been deserted by the qualified person or whose qualified spouse has died
• an unqualified spouse has been married for a period of at least five years to a qualified person but subsequently separated or divorced, or, alternatively, an unqualified person has co-habited with a qualified individual, and in both instances, the unqualified individual has accrued at least ten years continuous residency and has obtained a Residence Order for the children of the marriage or relationship
• an unqualified person who has lived on the Island for a considerable length of time becomes ill or handicapped
• a non-Jersey born person who in the past has obtained housing qualifications but who has lost these due to the five year break rule having emigrated or left the Island for reasons such as job requirements or family commitments and who wishes to again obtain the Minister’s consent.

This regulation is subject to the five-year break rule (see below under chapter 7.2.1.12.).

7.2.1.7. Children of parents who are Jersey born (or who would not lose their qualifications by leaving the Island) - regulation 1(1)(h)

Children of qualified parents (who cannot lose their qualification by leaving Jersey) who arrive in the Island before their 20th birthday should be granted consent by the Minister for Housing provided that the child is ordinarily resident on the Island for an aggregate period of at least ten years prior to his or her 20th birthday. The individual is qualified for any type of property and the qualification can never be lost even if the individual leave Jersey.

Population office/the Minister of Housing receives approximately 80 applications a year based on the ground of hardship and circa 50% of these applications are approved.

Whilst using its discretion in each individual case the Housing Committee ought to combine accurate statistical information and economic analysis of shortage of affordable housing with a sensitive understanding of living conditions and circumstances to determine whether a claim to hardship is justified, see Glazebrook v. the Housing Committee (2003) JLR N (15).


A.a. point 6.
7.2.1.8. Children of parents (who would lose their qualifications by leaving the Island)\textsuperscript{291}

Children of qualified parents (who can lose their qualification by leaving Jersey) who arrive in the Island before their 20th birthday should be granted consent by the Minister for Housing provided that the child is ordinarily resident on the Island for a total aggregate period of ten years prior to his or her 20th birthday. The individual is qualified for any type of property however the qualification is subject to the five-year break rule. Provided that the parents remain ordinarily resident in Jersey during the child’s absence from the Island the five-year break rule does not apply.\textsuperscript{292} The age of maturity remains 16 to lease and 18 to purchase a property.\textsuperscript{293}

7.2.1.9. Essentially employed - regulation 1(1)(j)\textsuperscript{294}

Provided that the Minister for Housing is satisfied that a non-Jersey born person is, or will be, essentially employed in Jersey and it is in the best interest of the community in the Island, the Minister may grant a so called j-category licence which allows the individual to purchase a real property (through a company of which he or she is the shareholder)\textsuperscript{295}, or lease a property (in their employers name), and remain an occupant of a certain accommodation as long as he or she continues to hold the full-time employment, in the agreed role, with the agreed employer and for the stipulated period for which the licence has been granted.\textsuperscript{296} Only 3\% of the workforce gains their housing qualifications this way\textsuperscript{297} and currently there are approximately 2,000 j-category licences issued on the Island.\textsuperscript{298} The five-year break rule (see below under chapter 7.2.1.12.) does not apply to

\textsuperscript{291} There are instances when a person who arrived after his or her 20th birthday may obtain consent provided that he or she was ordinarily resident in Jersey on 12 October 1995. This is due to a change in the regulations in October 1995.


\textsuperscript{293} A.a. point 6.

\textsuperscript{294} Special rules also apply to whom may work in Jersey and what job the individual may be employed to do (see the Regulation of Undertakings and Development (Jersey) regulations 1978 and the Regulation of Undertakings and Development (Jersey) Law 1973 (as amended)). This matter, however, falls outside the scope of this treatment.

\textsuperscript{295} Conveyance through share transfers falls outside the scope of this treatment as it concerns movables.

\textsuperscript{296} See http://www.gov.je/Home/RentingBuying/HousingLaws/Pages/EssentiallyEmployed.aspx

\textsuperscript{297} See http://www.gov.je/Home/RentingBuying/HousingLaws/Pages/ResidentialQualifications.aspx

\textsuperscript{298} As was advised during the Housing seminar the average earnings for a j-category position are £80-90K per annum and approximately 70\% of the licences are issued to the finance industry. Mr Young also mentioned that eight applications had been made during 2010 and five of these had been approved.
the j-category employee due to the nature of the licence.\textsuperscript{299} Factors taken into account by the Minister for Housing when providing a grant are for example: -

- the experience, qualification and ability of the employee
- that no local person can be found to fill the position
- the importance of the position; a senior position being favourable in comparison to a junior- or short term position.\textsuperscript{300}

The Minister may not grant consent in the case that he or she is satisfied that the applicant should more properly occupy accommodation provided by his or her (prospective) employer.\textsuperscript{301}

7.2.1.10. Consent to purchase for economic or social reasons - regulation 1(1)(k)

Provided that the Minister for Housing is satisfied that consent to a non-Jersey born person is justified on social and/or economic grounds and it is in the best interest of the community in the Island,\textsuperscript{302} the Minister may grant a so called k-category licence which allows the individual to purchase or lease a property in Jersey. Factors that may motivate consent are major contributions to the tax revenue and other social benefits of the Island. Each application, as in every other case under the regulations, is reviewed on its own merits. The property types that are eligible for this type of licence holder are expensive houses and luxury flats.\textsuperscript{303} Applicants must have assets of at least £12 million and a taxable income of a minimum amount of £750,000 to be considered\textsuperscript{304} and the overall

\textsuperscript{299} The j-category licence is issued to the employer and goes with the employment rather than being issued to the employee.
\textsuperscript{300} See http://www.gov.je/Home/RentingBuying/HousingLaws/Pages/EssentiallyEmployed.aspx
\textsuperscript{301} Regulation 1(4) of the Housing Regulations.
\textsuperscript{302} In Bundy v. the Housing Committee (1979) J.J. 99 it was established that in refusing consent under the Housing Regulations, regulation (1)(1)(k), the “best interests of the community” is not a relevant factor and it is an error in law to rely on it.
\textsuperscript{303} In Bundy v. the Housing Committee (1979) J.J. 99 it was established that to grant application under the Housing Regulations, regulation 1(1)(k), the Housing Committee must be satisfied as to economic benefit which would accrue to the Island from an applicant and, in addition, the real property itself must be regarded as a suitable regulation 1(1)(k) property. The real property will be considered suitable if by valuation by the Housing Committee it is regarded as being too expensive for ordinary inhabitants of Island and therefore there can be no “unsatisfied demand” by inhabitants for the property in question.
\textsuperscript{304} See the Citizens Advice Bureau’s website http://www.cab.org.je/index.php?option=com_content&task=view&id=657&Itemid=66 - section: Housing regulations – Housing qualifications 11.5.0, point 11. Compare with the article ‘How much tax does a millionaire pay?’, by Andy Sibcy, published in the Jersey Evening Post on 8 October 2010, p. 12 f. According to the article the policy since 2005 is that a k-category licence holder has to show that he or she has means to contribute £100,000 per annum by paying 20% income tax on his or her Jersey income, as well as 20% on the first £1M of his or her worldwide income, 10% on the next £500,000 and 1% on the remainder. On 7 December 2010, Jersey’s Treasury Minister, Senator Ozouf, asked the Housing Minister to increase the minimum annual tax contribution for new consents to £125,000.00 with immediate effect as was reported in Ernst & Young LLP’s Tax Alert for the Jersey Budget 2011, circulated via e-mail 13 December 2010.
contribution to the Island’s finances by Jersey’s circa 130 k-licensees is in the region of £13.5M per year.\textsuperscript{305}

This regulation is subject to the five-year break rule (see below under chapter 7.2.1.12.).

7.2.1.11. Spouse\textsuperscript{306} (of a qualified individual) who has joined in the purchase, transfer or lease - regulations 1(1)(n)(i), (ii) and (iii)

Consent should be granted by the Minister for Housing to allow a spouse (of a qualified individual) to enter into a joint tenancy arrangement with his or her partner. This arrangement does not give the spouse any housing qualifications in his or her own right, but housing qualifications can be obtained under the main rule in regulation 1(1)(f) of the Housing Regulations provided that the conditions stipulated therein are fulfilled and consent is granted. Further, the joint ownership of the property can be transferred into single ownership of the non-residentially qualified spouse should the marriage come to an end.\textsuperscript{307} The non-residentially qualified spouse may thereafter be allowed to continue occupying the specific real property.\textsuperscript{308} The non-residentially qualified spouse does not need to be ordinarily resident in Jersey to become a joint tenant of a Jersey property or contract lease. In the event however that the non-residentially qualified spouse is ordinarily resident on the Island at the time of the application and has been so resident for a period of at least ten years in a shared unit of dwelling accommodation with the same qualified spouse, and, the non qualified spouse is the joint tenant of the property or contract lease for which the application is made, he or she, with the exception of the non-qualified spouse of a k-category licence holder, may obtain a licence of their own.

Qualifications under regulation 1(1)(n)(iii) are subject to the five-year break rule (see below under chapter 7.2.1.12.).

7.2.1.11.1. Spouse of a k-category licence holder - regulation 1(1)(n)(iii) of the Housing Regulations

Spouses of k-category licence holders, even in the event that they may have jointly purchased the property in Jersey, must obtain their own licence under regulation 1(1)(f) of the Housing Regulations, i.e. a ten-year period of ordinary residency is required.

\begin{itemize}
  \item \textsuperscript{305} Davies, Harriet, \textit{Jersey Hikes Minimum Contribution Under 1(1)(k) Regime}, WealthBriefing, 9 December 2010 (www.wealthbriefing.com).
  \item \textsuperscript{306} The regulation does not recognise cohabitants living together as husband or wife unless they are in fact married.
  \item \textsuperscript{307} Care must be taken in respect of the timing of transfer of ownership as, should the divorce take place whilst the property is still in joint names; the benefit of the legislation is lost. See the Citizens Advice Bureau’s website \url{http://www.cab.org.je/index.php?option=com_content&task=view&id=657&Itemid=66} – section: Housing regulations – Housing qualifications 11.5.0, point 13.
  \item \textsuperscript{308} See the Citizens Advice Bureau’s website \url{http://www.cab.org.je/index.php?option=com_content&task=view&id=657&Itemid=66} – section: Housing regulations – Housing qualifications 11.5.0, point 13.
\end{itemize}
7.2.11.2. Spouse of a j-category licence holder

Due to the personal nature of a J-category licence it is unlikely that the exception in regulation 1(1)(n) of the Housing Regulations is applicable in practice.  

7.2.1.12. The five-year break rule

An individual who has been granted consent by the Minister for Housing may lose his or her qualification if he or she leaves for a single period of five years and takes up ordinary residence outside of Jersey (commencing after the 1st of February 1993). The situation applies to consent granted by virtue of regulations 1(1)(b), 1(1)(c), 1(1)(d), 1(1)(e), 1(1)(f) and 1(1)(n)(iii); and regulation 1(1)(h) of the Housing Regulations provided that the consent in the latter case is granted under the Housing Regulations by virtue of regulation 3.  

7.2.2. Qualifying circumstances to obtain agricultural land in Jersey

Consent from the Minister for Planning and Environment is required for sale, transfer or lease of agricultural land. Agricultural land is defined as ‘land, including land under grass, used or capable of being used for any purpose of agriculture or horticulture, but does not include any dwelling house or outbuilding’. The Minister’s grant may be conditional and he, in his stewardship, ‘shall have particular regard to the desirability of reserving agricultural land for the use of bona fide inhabitants of Jersey engaged wholly or mainly in work of an agricultural or horticultural nature in Jersey, and ensuring that any lease of agricultural land is on terms that encourage the continued cultivation of the land in accordance with the principles of good husbandry.’  

310 As was advised during the Housing seminar, the Population office is currently reviewing amendments to the Housing Law and the Housing Regulations and the following areas are being reviewed (subject to debate and the States approval): a) Introducing a non-qualified register where individuals who don’t yet qualify for housing qualification may register; b) clarifications/improvements to the rules governing periods of absence from the Island; c) Ability for ‘non-qualified’ individuals to rent non-qualified space; and d) the possibility of a 25 year period of residence on the Island guaranteeing permanence of housing qualifications.
311 See regulations 1(5) and 1(6) of the Housing Regulations.
312 Article 2 of the Agricultural land (Control of sales and leases) (Jersey) Law 1974 (as amended).
313 Article 1 of the Agricultural land (Control of sales and leases) (Jersey) Law 1974 (as amended).
314 Article 2 of the Agricultural land (Control of sales and leases) (Jersey) Law 1974 (as amended).
7.2.3. Types of ownership/estates in real property

Jersey land and real property may be owned by a sole person or by two or more individuals. If the immovable property is co-owned it is held in one of two recognised legal forms, either as joint owners or as owners in common.

A co-owner, irrespective of in which capacity he or she owns the real property, can force other co-owners to end the co-ownership in accordance with the Jersey maxim ‘nul n’est tenu de rester dans l’indivision’ (nothing is bound to remain undivided). An enforced sale is brought about by an action en licitation, i.e. an action for an order that the real property be sold by auction. The sale may not be made by private arrangement, however, any co-owner is free to bid on the real property.

7.2.3.1. Joint ownership

The Privy Council in the case of Broomer v. Arthur defines joint ownership. This type of ownership allows the surviving owner(s) to automatically take over the full ownership of the part of land or real property previously owned by the deceased, i.e. his or her interest in the immovable property prior to death, and automatically defeats the rights of the deceased’s heirs and successors at law. Co-owning husband and wife commonly prefer this form of ownership, however, there is a presumption in favour of owners in common in Jersey and specific wording in the hereditary contract is required for joint ownership to be established. Normal phrasing for the purchase of a joint ownership is a purchase ‘…conjointement par ensemble pour le survivant d’eux et pour leur hoirs de tel survivan’, alternatively, ‘…conjointement par ensemble à qui plus vivra plus tiendra et le plus suffisant des [deux] pour le tout et pour ses hoirs’.

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315 The specific complexities connected with ownership of flats in Jersey falls beyond the scope of this treatment.
316 See the Law of Property, p. 3 at 1.15.
317 A.a. p. 4 at 1.17.
318 Also ‘Nemo in comunione potert invitius detineri’.
319 Le Sueur v. Le Sueur (1973) 1 J.J. 2341 at 2342. Note however that the Royal Court’s Matrimonial Causes Division may provide directions contrary to the maxim for a specified term which they see appropriate, see Fitzgerald v. Northcroft (1973) 2 J.J. 35 at 41.
323 Le Sueur v. Le Sueur (1968) J.J. 889 & 890; Re Degrèvement Bonn (1971) 1 J.J. 1771 at 1776, and Lane v. Lane 1985-86 JLR 48 at 53. Historically 50% of this survivorship and automatic succession could be challenged by the heirs of the deceased, see Pro forma Jersey conveyance, clause 18.
324 See the Law of Property, p. 4 at 1.17 and Report of the Royal Commission, p. xvi.
325 Translating as ‘jointly and together for the survivor of them and for their heirs of such survivor’, see Study guide Conveyancing at 1.44.
326 See Pro forma Jersey conveyance, clause 18.
327 The meaning is paraphrased as ‘jointly and together on the basis that whoever lives longest shall own [the property] longest and to the most able of the [two] for the entire property and for his heirs.’ See Study guide Conveyancing at 1.43.
In the event that a joint owner wishes to alienate his or her interest in the real property he or she must have the agreement and participation of the other co-owners or else the transaction may not go ahead. The end of the co-ownership can however ultimately be forced in accordance with the Jersey maxim ‘nul n’est tenu de rester dans l’indivision’. The interest of a joint owner cannot be separately hypothecated. It is unclear whether this applies to owners in common. An equity agreement may be drawn up when individuals are purchasing a real property jointly. This agreement deals with how the property is to be dealt with on a future sale and may prove useful if one tenant has paid a larger part of the purchase price than another.

7.2.3.2. Ownership in common

Owners in common own the immovable property in common. A deceased individual’s part ownership or interest in the co-owned real property forms part of that person’s estate upon death and the rights of his or her heirs and successors at law are therefore protected. Co-ownership need not be simultaneous. Each owner in common has an undivided share (une partie indivise) in the entire real property that may be equal or unequal to that of the shares owned by other owners in common.

An owner in common, contrary to a joint owner, can alienate his or her part of the real property without agreement of the other co-owners; however, he or she cannot alter the immovable property, or his or her proprietary rights, without the agreement of all. An owner in common may therefore forcefully end the co-ownership in accordance with the Jersey maxim ‘nul n’est tenu de rester dans l’indivision’ in two ways; either by bringing an act en licitation or by disposing of the share owned in the immovable

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328 Re Dégrèvement Bonn (1971) 1 J.J. 1771 at 1783.
329 See Le Sueur v. Le Sueur (1973) 1 J.J. 2341 at 2342. See also Ritson v. Slous (1973) 1 J.J. 2341.
330 See Re Dégrèvement Bonn (1971) 1 J.J. 1771 at 1783-1786.
331 There is no authority on this point. See the Law of Property, p. 5 at 1.19. It is the view of Deputy Greffier Paul Matthews that it cannot be separately hypothecated as per e-mail communication from Deputy Greffier Paul Matthews to Pia Holm dated 10 June 2011 [Comments by Deputy Greffier Paul Matthews].
332 See Article prepared by Shaun O’Connor, Conveyancing Manager at Crill & Caravan, regarding real property conveyance jargon that was handed out during the Conveyancing Seminar.
333 See the Law of Property, p. 4 at 1.17.
334 See Hamon v. Le Gresley (1836) 161 Ex 627, (1840) 7 CR 156.
335 Study guide immovable property, section 9.11.
336 See the Law of Property, p. 4 at 1.18.
337 See H A Gaudin & Co Ltd v. Bennett (1976) 266 Ex 448 and Wade v. Weston & Triggs (1979) 266 Ex 461. An example of alteration of proprietary rights may be a further subdivision which increases the number of co-owners, see Re Representation of L F Morgan Ltd 1987-88 JLR 336. It is unclear how far the principle stretches. See the Law of Property, p. 4 at 1.19.
property itself. It is unclear whether the interest of an owner in common can be separately hypothecated.

7.2.4. Split of legal and equitable ownership

It is possible in Jersey, that two (or more) people share the ownership of immovable property as described above. Unlike to the laws of England and Wales, however, it is impossible in Jersey that two (or more) people have a different quality of ownership, i.e. that there is a split of legal and equitable ownership over the same real property in Jersey, at the same time. The exception to this rule is real property in Jersey held *en fidéicommis* by one (or more) *Fidéicommissaire(s)* for a purpose.

7.3. Real property conveyance and due legal form

Property conveyance in Jersey is a matter that requires due legal form. In Jersey, in respect of all inter vivos transactions concerning real property but one, the executed hereditary contract must be passed before the Cour de Samedi in a public procedure known as *la passation des contrats* (the passing of contracts) for the sale and purchase transaction to be concluded and become legally binding on the contracting parties. The transaction is thereafter recorded in the *Registre Public* (the Public Registry). There are circumstances when the conveyance transaction, even though it has undergone the passing of contracts, and a legal transfer has prima facie taken place, may be declared void ab initio (*nul de plein droit*) or may be voidable (*cassable*) in accordance with general legal principles. Once the transaction has been recorded in the public registry, however, a Court decision in relation to the inter parties agreement is required.

The average conveyancing process in Jersey takes approximately four to six ‘working’ weeks.

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338 *Study guide immovable property*, section 3.9.
339 There is no authority on this point. See *the Law of Property*, p. 5 at 1.19. It is the view of Deputy Greffier Paul Matthews that it cannot be separately hypothecated. See *Comments by Deputy Greffier Paul Matthews*.
340 See article 11(2)(a)(iii) the Trust (Jersey) Law 1984 (as amended) and the Loi (1862) sur les teneures en fidéicommis et l'incorporation d'associations. See also *Study guide immovable property*, section 9.44 f. Ownership *en fidéicommis* falls outside the treatment of this thesis.
341 The exception falls outside the scope of this treatment and concerns the transfer of a private road to a Parish. See *the Law of Property*, p. 7 at 1.26.
342 See *the Law of Property*, p. 7 at 1.26. Non-consensual transfers of title such as in the case of insolvency or compulsory purchase transactions fall beyond the scope of this treatment.
344 Examples when this may occur are situations where deeds have been executed by non sui juris individuals, where the contract is contra bonos mores or where the form criteria have not been respected. See Le Geyt, *Constitutions, Lois et Usages*, p. 118. See also Dupre v. Le Quesne (1908) 49 H 336, Golder v. Société des Magasins Concorde Ltd (1967) 1 J.J. 721 at 731 and Ferbrache v. Bisson (1981) J.J. 103.
346 *Conveyancing seminar.*
7.3.1. Promise to sell or purchase immovable property and preliminary agreement of sale

In Jersey promises to purchase or sell immovable property in future are (in principle) non-binding. In Jersey this conclusion is drawn in accordance with the long-standing legal principle ‘promesse à héritage ne vaut’\(^\text{347}\). The meaning of the maxim is that a promise to perform a transaction in relation to immovable property cannot be enforced by an order for specific performance.\(^\text{348}\) It would appear however that the true meaning of the maxim is that the Court will not, except in extraordinary circumstances, order specific performance.\(^\text{349}\) The Court has (however admittedly rarely) appointed a court official to pass title in the absence of a promisor.\(^\text{350}\)

Although this thesis does not treat enforced sale of movables it is worth pointing out that the Court has enforced the sale of shares of an investment holding company whose main asset was an immovable.\(^\text{351}\) It is also worth pointing out that a lease which is not a contract lease, i.e. a lease which has a term for nine years or less, is not considered an immovable and it may therefore be forcibly conveyed.\(^\text{352}\)

It is important to keep in mind that the Court still retains power to award damages against the defendant in certain circumstances. The agreement must at least be evidenced in writing.\(^\text{353}\)

To get around the inherent problems associated with a (in principle) non-valid promise to convey immovable property in future, or indeed a delay of completion, it is common that the contracting parties sign a preliminary agreement of sale stipulating a penalty for non-compliance.\(^\text{354}\) The sum is usually ten per cent of the purchase price in the event of delay and, in addition to that amount, an agreed penalty for failure to complete.\(^\text{355}\) The preliminary agreement is subject to contract and will contain conditions such as clarification requirements in respect of boundaries, the title, different types of rights of enjoyment, granting of a mortgage, undertaking a structural survey etcetera.\(^\text{356}\)

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\(^{\text{347}}\) Also referred to as ‘à heritage nulle promesse ne vaut’.


\(^{\text{349}}\) See Pirouet v. Pirouet 1985-86 JLR 151, where the Court specifically enforced a non-contractual promise based on the concept of proprietary estoppel.

\(^{\text{350}}\) In relation to termination of indivision see Ritson v. Slous (1973) 1 J.J. 2341 and regarding the enforcement of an English court order see Lane v. Lane 1985-86 JLR 48.

\(^{\text{351}}\) See York Street Pharmacy Limited v. Rault (1974) 2 J.J. 65 where the lease agreement itself exceeded nine years but where the Court ruled that an order for specific performance be made up to the extent of nine years.


\(^{\text{353}}\) Conveyancing seminar.

\(^{\text{354}}\) See \texttt{http://www.cab.org.je/index.php?option=com_content&task=view&id=656&Itemid=66 -} section Purchase of Freehold Property (11.1.30.L2) under clause 8. See also the Article prepared by Shaun O’Connor, Conveyancing Manager at Crill & Caravan, regarding real property conveyance jargon that was handed out during the Conveyancing seminar.

7.3.2. The roles of legal advisers and estate agents

Often estate agents market a real property for sale to the general public however lawyers represent the vendor and the purchaser. Only a qualified person under Articles 1 and 2(2) of Loi (1961) sur l’exercice de la Profession de Droit à Jersey can present a contract to the Court, i.e. the Attorney General, the Solicitor General or an Advocate or Solicitor of the Royal Court.

The vendor’s legal representative prepares a draft deed of sale stipulating what his client is prepared to convey to the purchaser based on having reviewed previous conveyancing contracts in relation to the property. The purchaser’s legal representative’s reviews, and if necessary, propose amendments to the draft based on his or her findings. When checking the title of the real property the purchaser’s lawyer begins by undertaking searches in the Property Register (see below under section 7.4.) to establish that the vendor has good title to the real property in question. The purchaser’s legal adviser ensures that the exact description of the property that is to be conveyed concurs with the earliest deed in relation to the immovable property. He or she also makes sure that all other relevant interests encumbering the land (e.g. rights of way, rights for service and/or drainage and servitude) are listed in the hereditary contract. The legal representative will also review the deeds and descriptions in the hereditary contract of immediately neighbouring properties to ensure that title is correctly reflected in respect of boundaries, covenants and other interests that may burden the property.

The purchaser’s lawyer further checks that the Housing Application form has been submitted to the Minister for Housing (see above under section 7.2.1.). If agricultural land, or in certain instances an extensive garden plot, is to be conveyed, agricultural consent may also be required from the Minister for Planning and Environment as described above (see section 7.2.2.). The purchaser’s lawyer undertakes the dispatching of letters to statutory and parochial bodies that may be able to provide information in relation to the root of the title and other relevant matters. He or she further enquires

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357 The draft deed of sale may be prepared by the vendor himself without the involvement of a lawyer however he or she must have sufficient skill and knowledge. See [http://www.gov.je/Home/RentingBuying/Buying/BuyersGuide/Pages/RolePublicRegistry.aspx](http://www.gov.je/Home/RentingBuying/Buying/BuyersGuide/Pages/RolePublicRegistry.aspx)


359 Ibid.

360 Ibid.

361 Ibid.

362 The submission is generally done by either the purchaser or the estate agent, however may in certain instances instead be done by the party’s legal representative, see the Citizens Advice Bureau’s website [http://www.cab.org.je/index.php?option=com_content&task=view&id=656&Itemid=66](http://www.cab.org.je/index.php?option=com_content&task=view&id=656&Itemid=66) - section Purchase of Freehold Property (11.1.30.L2), clause 3.

363 Letters may for example be dispatched to the Planning & Building Services Department (for example in relation to information regarding the main road, Island Plan/Town Map zone confirmation, site of architectural, archaeological or historical importance confirmation), the Parish (in relation to for example title and other relevant matters such as plans to widen roads or developments which could effect the real property), Jersey Electricity Company (for example regarding routing of underground service cables), Jersey Water (regarding matters such as mains water distribution system, responsibility for service and water meters) and the Transport and Technical Services Department (regarding matters such as drainage, waste management and highway reports). See the Citizens Advice Bureau’s website
into the funding of the purchase and, if applicable, the details of the mortgage provider. He or she also ensures that sufficient funds (including stamp duty, disbursements and legal fees) are placed with the law firm in a client account or, alternatively, arranges for an irrevocable undertaking from the client’s bankers that sufficient cleared funds will be forthcoming on the relevant date. The purchaser’s lawyer will also attend a site visit to ensure that the description in the draft deed of sale corresponds with all matters found in the Public Registry as well as the responses received from the parochial and statutory bodies. If the site visit throws up previously unknown matters (such as that buildings may have been demolished, extensions have been built, encroachments of boundaries have occurred) the lawyer must consult his or her client and remedial action may be required. Such action may be to request a neighbour to become a party of the deed of sale, to request planning and building inspectors to attend a site visit to see whether a building or extension has received approved planning permission or to obtain defective title insurance cover in the event that the boundaries cannot be definitely established. The purchaser’s lawyers should also ensure that a written inventory is prepared listing items such as carpets and furniture that are to be included in the purchase (if any). The deed of sale should also regulate the date of possession. Once a completion date is set the legal adviser should go through and explain each point in the hereditary contract, as well as the process of passing of contracts, so that the client can fully understand the conveyance transaction and its resulting consequences.

The legal adviser is responsible for providing good title and, if proven to have been negligent in the stewardship, the Court may award damages to the purchaser.

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364 See the Citizens Advice Bureau’s website http://www.cab.org.je/index.php?option=com_content&task=view&id=656&Itemid=66 - section Purchase of Freehold Property (11.1.30.L2), clause 4 and example documentation received at the Conveyancing seminar.
365 It is the legal adviser that is liable for payment. See the Citizens Advice Bureau’s website http://www.cab.org.je/index.php?option=com_content&task=view&id=656&Itemid=66 - section Purchase of Freehold Property (11.1.30.L2), clause 5.
367 Ibid.
369 Ibid.
370 Ibid. It is usual that possession is given either on the day of the passing of contracts or within a few days thereafter. See the Citizens Advice Bureau’s website http://www.cab.org.je/index.php?option=com_content&task=view&id=656&Itemid=66 - section Purchase of Freehold Property (11.1.30.L2), clause 9.
7.3.3. La passation des contrats (passing of contracts)

La passation des contrats is the unique procedure of the passing of the hereditary sale and purchase contract in front of the Cour de Samedi.\(^{373}\) The system for real property conveyancing in Jersey has its origins in medieval practice.\(^{374}\) La passation des contrats require the contracting parties, or their representatives\(^{375}\), to be present at the Court where they will stand when their name is called by the Greffier\(^{376}\) who will read the details contained on the so called codement (narrative/backing),\(^{377}\) namely, the type of transaction and the names of the contracting parties (and in what capacity he or she is acting, e.g. as an Attorney), whilst holding the engrossed contract. The presiding judge asks the contracting parties whether they are aware of the content of the contract and the contracting parties, whilst standing with their right hands raised, swear to honour the terms of the deed on pain of perjury (À peine de parjure)\(^{378}\).\(^{379}\) This oath concludes the record of the procedure of passing of contracts and it is at this point that the agreement takes full legal effect.\(^{380}\)

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373 The constitution of the Cour de Samedi, the Court in front of which the procedure for passing of title is made, is constituted by the Bailiff, his Lieutenant or the Deputy Bailiff and at least two jurats. The Cour de Samedi adjourns weekly on a Friday afternoon. The Court is not acting in its judicial capacity per se, but is acting ministerially, recording the conveyance. The presiding judge is named and his title is stated. See Pro forma Jersey conveyance, clause 8. Traditionally the passing of contracts used to coincide with market day, Saturday, in Place du Marché, now the Royal Square, adjacent to the Royal Court, hence the name Cour de Samedi. Only since 1963, for the sake of convenience, has the passing of contracts been combined with the weekly afternoon sitting of the Samedi Court. See Comments by Peter Bisson.

374 It can be traced back to the sixteenth century. See the Citizens Advice Bureau’s website \url{http://www.cab.org.je/index.php?option=com_content&task=view&id=656&Itemid=66} - section Purchase of Freehold Property (11.1.30.L2), clause 1. It can also be noted that studies of real property transfers in Normandy during the eleventh century indicate that a special degree of publicity was required for real property sales, see Tabuteau, Emily Zack, Transfers of Property in Eleventh-Century Norman Law [Norman Law], p. 30.

375 The representative may be either the party’s Attorney or, in the event that the contracting party is a minor, his or her Tuteur (guardian), or, if the contracting party lacks legal capacity due to being under interdiction, a Curator appointed in accordance with the Mental Health (Jersey) Law 1969. If a party is not present in Jersey and is neither represented by a party which he or she has appointed, nor within contact, the Court may appoint an Administrateur (administrator) to represent him or her, however this rarely occurs. See Pro forma Jersey conveyance, clause 11.

376 The Greffier Judiciaire (Judicial Greffe) is the Clerk of the Courts. One of the functions of the Judicial Greffe is to maintain the Public Register and the Probate Register. See introductory list of vocabulary in the Law of Property.

377 See Pro forma Jersey conveyance, clause 6.

378 N.B. only if the contract is “À fin d’heritage” are the words in perpetuity used. See Comments by Deputy Greffier Paul Matthews.

379 Attendance at the Royal Court, St Helier, 22 October 2010 at 14.30 pm to view the procedure of Passing of Contracts.

380 Historically oaths were taken during real property alienations in accordance with Norman custom ‘before God’ and it is likely that they were believed to bring divine punishment if broken, see Norman Law, p. 139.
7.3.3.1. Witnesses

The witnesses of the passing of contracts are the members of the presiding Court.\textsuperscript{381} The Court is handed the engrossed hereditary contract by the Gref\`ee, following the contracting parties having sworn to honour the terms of the deed, and the members of the Court sign the contract in their capacity as witnesses of this act.\textsuperscript{382}

7.3.3.2. Affected third parties

It is not unusual that third parties, or their representatives, are appearing at the Court at the passing of the contract.\textsuperscript{383} Such parties are for example a lender of funds releasing his right of hypothec, a widow abandoning dower rights and a neighbour whose land boundaries are disputed or which have not formally been established.\textsuperscript{384}

7.3.4. \textit{Contrat héréditaire} (the hereditary contract)\textsuperscript{385}

The contract of conveyance of \textit{propriété foncière} is a \textit{contrat héréditaire} (a hereditary contract).\textsuperscript{386} Prior to 1\textsuperscript{st} of June 2006 all contracts were written in French.\textsuperscript{387} As the root of title is still established through reviews of previous hereditary contracts, an understanding of the French used in traditional Jersey conveyancing is still essential for Jersey lawyers and conveyancers.\textsuperscript{388} Reference is also made where necessary in the English hereditary contract to acknowledge that clauses within it are translations of original French Articles and that the version in the French language shall apply in all cases of dispute.\textsuperscript{389}

To emphasise that all hereditary contracts are part of the public record they open with the sentence ‘\textit{A Tous Ceux Qui ces présentes Lettres Verront ou Orront…}’ (To all those who these present Letters shall see or hear…)\textsuperscript{390}

The content of a general hereditary contract is described in the following.

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\textsuperscript{381} See \textit{Pro forma Jersey conveyance}, clause 6.
\textsuperscript{382} Ibid.
\textsuperscript{383} See \textit{Pro forma Jersey conveyance}, clause 12.
\textsuperscript{384} Ibid.
\textsuperscript{385} The sale and purchase of perpetual rights in land is what is concerned in this thesis. This is also the character of the majority of land transactions that pass in front of the Court. See \textit{Pro forma Jersey conveyance}, clause 10.
\textsuperscript{386} See \textit{Pro forma Jersey conveyance}, clause 1.
\textsuperscript{387} See the Citizens Advice Bureau’s website \url{http://www.cab.org.je/index.php?option=com_content&task=view&id=656&Itemid=66} - section Purchase of Freehold Property (11.1.30.L2), clause 1.
\textsuperscript{388} This is likely to be the case for at least the prescriptive title term of 40 years.
\textsuperscript{389} See for example Title Deed, uncontrolled copy, livre 1234/page 462 printed 26 April 2010. \textit{[Title Deed]}
\textsuperscript{390} \textit{Pro forma Jersey conveyance}, clause 4. The wording may also be ‘To all whom these present letters shall come’ see \textit{Title Deed}. 

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7.3.4.1. Parties and forms of address

Prior to listing the contracting parties in the hereditary contract, reference is made to the Bailiff of the Island under the Monarch. 391 Thereafter follows a reference to the act of passing of contract itself: -

‘BE IT KNOWN that there appeared personally before us in the Royal Court of Jersey at St Helier on [date] 392

The parties are referred to by their full names as well as in which capacity they are acting, i.e. whether vendor or purchaser, and reference is made to the fact that their act will also bind the contracting party’s heirs and his or her successors in title. 393 Reference in full is also made to the Attorney acting for and on behalf of the parties. 394

Traditionally, to stress social origin, the sale and purchase contracts named the contracting parties by name and surname as well as by title. 395 Examples of such titles are: -

- **Écuier** (abbreviated to *Ecr.*). was originally the lowest rank of the old French hereditary *Chevalerie*. The title was reserved in Jersey for Seigneurs of the most senior fiefs 396. It was extended to all Jurats in or about 1712. By the 19\textsuperscript{th} century it had been further widened to include advocates, doctors, Masters of Arts, military officers (of the rank of captain or above) and various other professionals, equating to the ‘esquire by office’ of English law. In acts of Court the Jurats were cited as *A.B. et C.D., Ecuiers*. 397

- **Gentilhomme** (abbreviated *Gent.*). was the term used by men of leading families (who did not qualify as *Ecr.*) The title was used for non-seigneurial Jurats before 1912. From 19\textsuperscript{th} century onwards, *Gentilhomme* was used by lieutenants in the Royal Jersey Militia before their commissions described them as ‘gentleman’. The title was also used by courtesy for the eldest son of a Crown Officer or Jurat. 398

- **Monsieur** (abbreviated *Monsr.*) and **Demoiselle** (abbreviated *Dlle.*) is the prefix used for men and women of the middle class. 399

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391 See for example *Title Deed*.
392 Ibid.
393 Ibid.
394 Ibid.
395 Ibid.
396 E.g. St Ouen, Rozel, Samarès and Trinity.
397 *Comments by Peter Bisson*.
398 *Comments by Peter Bisson*. This usage of *Gentilhomme* for the eldest son of a Crown Officer or Jurat was the last usage to survive.
399 *Comments by Peter Bisson*. 

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• *Maître* (abbreviated to *Mr.*) and *Maîtresse* (abbreviated *Mse.*) was the prefix used for men and women of the artisan class and small traders until the 1960’s when it fell out of use altogether.\(^{400}\)

A transacting married or widowed woman is named in the hereditary contract with reference to her maiden name.\(^{401}\)

### 7.3.4.2. Statement confirming free will

Historically Jersey legal practice required a written record that the vendor transacted ‘…*de sa libre volonté il quitte, cèda et transporta à fin d’héritage…*’ (…he leaves, cedes and transfers [the land], out of free will, in perpetuity…).\(^{402}\) This statement served as proof if later accusations were brought that the vendor had transacted under duress or undue influence.\(^{403}\)

### 7.3.4.3. *Le corps de bien-fond* (parcel of land)

The subject matter of what is being transacted, the parcel of land (including or excluding buildings), are described as ‘*le corps de bien-fonds*’.\(^{404}\) The wording of the contract, often fairly complex, lists a detailed inventory of exactly what immovable property that is to be sold and purchased.\(^{405}\) It is a written description of the ‘*tenants et aboutissants*’ (i.e. the land, its surroundings and adjoining lands, boundaries etcetera) which identifies the corpus fundi.\(^{406}\) The conveyancer must also look at neighbouring titles to ensure consistency.\(^{407}\) The position may be clear however, in the event that it is not, and an agreement of boundary cannot be met with a neighbour, the land may be conveyed ‘with all its avenues, walls, hedges etcetera as may belong thereto’.\(^{408}\) The real property should be conveyed with reference to the Jersey Digital Map and its unique UPRN number.\(^{409}\)

Once the legal conveyancer has sufficiently described *le corps de bien-fonds* in the hereditary contract he or she makes reference to the *vingtaine* in older contracts (the fief on which the land is situated)\(^{410}\) and parish in which the land is situated.\(^{411}\)

\(^{400}\) Ibid.

\(^{401}\) The reference to a maiden name is argued to assist when titles are checked as well as in the search of certain third party rights such as widower’s dower rights. See *Pro forma Jersey conveyance*, clause 9.

\(^{402}\) See *Pro forma Jersey conveyance*, clause 13. Until fairly recently the practice specifically required the presiding judge to ask a widow in open court whether she freely gave up her dower rights.

\(^{403}\) See *Pro forma Jersey conveyance*, clause 13.

\(^{404}\) A.a. clause 19.

\(^{405}\) Ibid.

\(^{406}\) See *Pro forma Jersey conveyance*, clauses 20 f.

\(^{407}\) A.a. clause 21.

\(^{408}\) A.a. clause 22.

\(^{409}\) See for example *Title Deed*.

\(^{410}\) See Seignorial Rights (Abolition) (Jersey) Law 1966, article 4.

\(^{411}\) See *Pro forma Jersey conveyance*, clause 30.
Article 1 of Loi 1880 states that corporeal hereditaments must be conveyed separately. Each separate parcel of land is a separate corps de bien-fonds. If the elements are physically conjoined they make up one separate parcel, however if an area of land are separated by third party interests, a public road or similar, the areas of land must be treated as two separate parcels of land and each such corpus must have the sale and purchase price apportioned to them separately.

Propriété foncière in Jersey is rarely established by GPS and uncertainty as to where boundaries are located, and hence to the object itself, is not uncommon. A large number of boundaries are solely identifiable by their descriptions in title deeds which have been drafted over centuries and which to a great extent are written in an alien language. It is not uncommon that boundary stones and other visible signs of identification, which are referred to in these title deeds, are obsolete and no longer identifiable. Wording in neighbouring property deeds may have contradictory meaning or be silent on relevant matters. In addition a sale and purchase of Jersey real property may be undertaken without precise identification of the conveyancing object itself and due to such uncertainties defective title insurance policies from special insurance brokers may be required. This uncertainty adds to conveyancing costs in Jersey. The Royal Court Rules have provided for boundaries to be defined by reference to measurements shown on a plan that is attached to the hereditary contract (instead of by verbal description) but conveyancers have not taken advantage of this.

7.3.4.4. Article referring to defects in the real property

Until the beginning of the 1980’s the vendor remained responsible for the presence of any hidden defects in the property (vices cachés) also post the sale of the property and the purchaser took the property ‘with all such rights, appurtenances and dependencies as might belong thereto’. This fact was stressed in the hereditary contract as it contained the statement ‘Le tout tel qu’il est…’. In the 1980’s however, with the case of Kwanza Hotels Limited v. Sogeo Company Limited, the Court changed its practices. The Jersey purchaser nowadays carries the full responsibility for hidden defects in the immovable property unless the vendor has guaranteed or warranted otherwise. The hereditary contract now tends to contain a clause stating that the property is ‘conveyed with all and any defects, hidden or apparent’.

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412 See Comments by Peter Bisson.
413 Loi 1880, article 19. In accordance with article 21 of Loi 1880 charges may be attached only to separately identified corpus fundi (with the exception of a judicial hypothec) however this matter falls outside of the scope of this thesis.
414 For an introduction to the most common things that real property owners need to know to avoid boundary problems see the article ‘Questions to ask your Conveyancer’ by Jonathan Dauny of Crill Caravan. This article was handed out during the Conveyancing seminar.
415 See Rule 18/9(2)(f) of the Royal Court Rules 2004 and Comments by Peter Bisson.
416 See Pro forma Jersey conveyance, clause 31.
417 Ibid.
419 See Article prepared by Shaun O’Connor, Conveyancing Manager at Crill & Caravan, regarding real property conveyance jargon that was handed out during the Conveyancing seminar.
It is common practice that in the case of new builds the vendor (or developer) provides a six month warranty so that any defects which are noted during this term are remedied by the vendor (or developer) at his/its cost and a clause to this effect should be entered into the hereditary contract.\(^{420}\)

Defects in the real property are discussed in more detail under chapter 7.3.5.4 below.

### 7.3.4.5. Additional hereditary interests in *propriété foncière*

In addition to perpetual rights in land that is the main concern of the sale and purchase contract, Jersey also recognises additional hereditary interests in *propriété foncière* such as perpetual servitudes\(^{421}\), restrictive covenants\(^{422}\) and usufruct\(^{423}\).

Existing covenants and servitudes are simply acknowledged in the hereditary contract. They are said to be ‘reconnus’ (known/recognised). Known covenants bind any purchaser and it is irrelevant whether they have been recited in the hereditary contract or not as they bind the land in perpetuity. Care must therefore be taken whilst searching earlier transactions.\(^{424}\) All previous agreements in relation to the real property to be conveyed and its neighbouring properties, going back for a period of at least 40

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\(^{420}\) Ibid.

\(^{421}\) The meaning of a right of servitude in Jersey is either a contractual right to make use of a property of another, such as a right of way (an affirmative servitude); or, a contractual right to prevent the owner of a property to make use of it in a certain way, such as a prevention to erect buildings on the land which may obstruct a neighbouring property’s light (a negative servitude). See Pothier, Œuvres, 1821 ed, Tome 17, Titre XIII, Des Servitudes Réelles, Art I, para 1, page 216. In the case of a real servitude the right is subjected to a ‘servient tenement’, i.e. the immovable that carries the burden, and the benefiting real property to which the servitude is attached, known as a ‘dominant tenement’. A servitude may also be personal meaning it is attached to an individual who may exercise his or her right of servitude independently of what real property he or she may or may not own. See Arbaugh v. Leyland (1967) 1 JJ 745. The owner of an immovable which is subject to a servitude is never obliged to take any positive action. See *the Law of Property*, p. 10 at 1.38. There is a presumption of the freedom of land from servitudes in Jersey. See Coleberg Hotel (1972) Ltd v. Alton Hotel Ltd (C.A.) 2003 JLR 176 at 180.

\(^{422}\) In Jersey Law there is little difference between a restrictive covenant and that of a negative servitude, see the Law of Property, p. 10 at 1.39. A covenant may be written or implied in respect of real property. It lists restrictions attached to the immovable property in respect of the owner’s otherwise free enjoyment such as matters regarding rights of way, size restrictions of windows overlooking a neighbour’s property, or height restrictions in respect of hedges or buildings. A validly imposed covenant which has been passed in front of the Royal Court continues to be valid, binding successors in title of the original contracting parties, even if the covenants have been omitted in later contracts passed before the Court, see Jersey Hotels Ltd v. Inglebert Properties Ltd (1990) J.J. 23 at 26.

\(^{423}\) A usufruct (*usufruit*) is a burden on an immovable property. A usufructuary is a person who has a life enjoyment (rather than legal ownership) in the real property, i.e. there is a burden on the immovable property itself. See *Study guide immovable property*, section 9.5. A usufruct may be created by Will or by contract inter vivos, see *Comments by Peter Bisson*.

\(^{424}\) See Pro forma Jersey conveyance, clause 32. Note that only certain servitudes are created through passing of contracts in front of the *Cour de Samedi* and therefore so called natural servitudes or servitudes created under the principle ‘destination de père de famille’ may be difficult to identify whilst searching in the Public Registry alone, see the Law of Property p. 11 at 1.41f. Care is also called for in respect of restrictive covenants which may have been omitted from previous contracts but which may still be binding upon successors of title.
years, must be carefully examined, and later verified by one or several site visit(s), to
determine whether restrictive covenants, servitudes or other indefeasible third party
interests burden the property which is to be conveyed. This research is made near
impossible for a layman to undertake partly due to, for at least the majority of Jersey
residents, its alien language.\textsuperscript{425} Irrespective of who may conduct the research, and even
whilst attending several site visits and researching the title deeds in the Jersey real
property register, rights which burden the real property to be conveyed, and which will
bind a successor in title, may not become apparent.

\textbf{7.3.4.6. Passing of interests attached to the land}

As described in the hereditary contract (and ultimately effective from the passing of
contract) the burdens of the property, initially vested in the vendor, are being transferred
to the purchaser.\textsuperscript{426} This can be reflected in the hereditary contract by the sentence ‘THE
Purchaser was charged to conform to all the other Articles, conditions and restrictions to
which the Vendor was subject for and in respect of the Property…’\textsuperscript{427} or, by the sentence
beginning with ‘\textit{À la charge audit acquéreur de se conformer…}’ in the French hereditary
contracts.\textsuperscript{428}

\textbf{7.3.4.7. Provenance}

At this part in the hereditary contract follows a confirmation of provenance or the root of
the title, the proof that the vendor has the legal right of possession of the immovable
property that is to be conveyed.\textsuperscript{429} It consists of a list of who has owned the real property
in the past and specifies during which dates they owned the real property. The hereditary
contract also states through which type of transaction (e.g. sale, gift, property exchange
or inheritance) previous owner(s) obtained the title.\textsuperscript{430} Uninterrupted and
peaceful/unchallenged possession for a period of at least 40 years (\textit{possession quadragénaire}) is required in Jersey.\textsuperscript{431} This prescriptive title is an inheritance from
Norman custom and extinguishes the title of the previous owner, and gives a perfect title
to the occupier.\textsuperscript{432}

\textsuperscript{425} The States also actively discourages individuals from what it calls ‘DIY conveyancing’, see
\url{http://www.gov.je/Home/RentingBuying/Buying/BuyersGuide/Pages/RolePubRegistery.aspx}.
\textsuperscript{426} See \textit{Pro forma Jersey conveyance}, clause 33.
\textsuperscript{427} See \textit{Title Deed}.
\textsuperscript{428} See \textit{Pro forma Jersey conveyance}, clause 33.
\textsuperscript{429} Ibid.
\textsuperscript{430} See for example \textit{Title Deed}.
\textsuperscript{431} See Code of 1770. Possession must be ‘\textit{nec vi, nec clam, nec precario}’ (not by force, not secretly, nor
with permission).
\textsuperscript{432} See \textit{Pro forma Jersey conveyance}, clause 33.
7.3.4.8. Consideration

The consideration or purchase price is generally expressed as a cash sum (en espèces) and it is payable on or before the Tuesday next following the passing of contracts. The contracting parties may however agree that a partial cash payment takes place upon the date of the passing of contract and in that case the remainder is hypothecated. The contracting parties may agree to express the consideration in other than monetary terms (such as a peppercorn) and the payment date is open to negotiation.

Any existing charges on the property such as rentes or hypothecs are recited in this part of the hereditary contract.

7.3.4.8.1. Hypothecated remainder

When a certain part of the consideration remains hypothecated the vendor is said to ‘stipuler’ (stipulate) and the purchaser is said to ‘consenter’ (consent to) the hypothec in question. The purchaser undertakes a liability of any existing charges of the vendor in part payment of the consideration; the cash value being stated in the contract.

7.3.4.9. Vendor’s declaration: property free of financial burdens

In the hereditary contract following the consideration clause the vendor makes a declaration that the real property is free of financial burdens: ‘...franche et quitte de toutes rentes et autres redevances’. In English this part of the contract can read: ‘THE Vendor warranted that the Property was sold free of all ‘rentes’, hypothecs and other encumbrances’.

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433 The reason for the (general) payment date is the commonly known ‘ten day rule’ based on the potential implications of article 52 of Loi 1880. The effect of the article is, where any consideration payable under the contract (or hypothec) has been advanced to the other party, having within ten days next following the passing of contract (or registration of hypothec) applied to be or has been declared insolvent, the purchaser (or lender) is left as a simple creditor without preference rights (or hypothecary rights) as the contract is declared void ab initio. See The Jersey Law Review June 1997, Kelleher, John D., ‘The Ten Day Rule And Article 52 Of The Loi (1880) Sur La Propriété [sic] Foncière’

434 See Pro forma Jersey conveyance, clause 34. In practice the mortgage provider or the purchaser remits funds to its/his or her’s legal representative’s client account and on the payment date the legal representative arranges for the remainder of the consideration to be remitted to the vendor’s lawyer’s client account (to which the deposit has already been paid). In due course the consideration, less any fees and charges due to the vendor’s lawyer and/or any third parties (if any), is remitted to a bank account as per the vendor’s instruction.

435 See Pro forma Jersey conveyance, clause 34.

436 A.a. clause 35.

437 A.a. clause 34.

438 A.a. clause 35.

439 Historically the declaration also generally contained the provision ‘sauf les droits Seigneuriaux’ (apart from the rights of the Seigneur). See Pro forma Jersey conveyance, clause 38.

440 See for example Title Deed.
7.3.4.10. Possession

This is the part of the hereditary contract where qualified or unqualified/delayed possession is given to the purchaser.°441° Qualified possession can be expressed in the hereditary contract as: ‘THE Property was sold with immediate vacant possession’.°442° In the event that the property remains subject to third party rights and short term tenancies over the property conveyed (e.g. that of an usufruitier or a contractual tenant), the purchase will in effect only be proprietary where a reversionary interest is purchased (nue propriété) and where the purchaser is bound to honour and discharge personal obligations of the vendor toward these third parties.°443° In the French hereditary contracts this is expressed by the sentence: ‘Possession desdites premises présentement et ensuite à fin d’héritage’.°444°

In practice it is common that the keys to the real property are handed over at the Court following the passing of contracts on the Friday even though the consideration in general remains unpaid until the following Tuesday.°445°

7.3.4.11. Agreements in individual cases (which may be entered into the hereditary contract)

In some instances the contracting parties in Jersey may wish to regulate further matters in the hereditary contract than what is strictly required for the contract to become legally binding. Examples of such matters are how to allocate the responsibility of parochial rates°446° following the conveyance and what further contents, fixtures, fittings and appliances situate at the real property that the purchaser agrees to buy from the vendor.°447°

7.3.4.12. Vendor’s (and purchaser’s) guarantee (the fourniture et garantie clause)

Historically the sentence that generally follows next in the hereditary contract is a guarantee against eviction by another party with better title: -

‘Partant s’obligerent lesdites parties pour elles et leurs hoirs respectifs à la fourniture et garantie réciproque du contenu des premises selon droit’°448°

°441° See Pro forma Jersey conveyance, clause 39.
°442° See for example Title Deed.
°443° See Pro forma Jersey conveyance, clause 39.
°444° A.a. clause 40.
°445° See the article ‘Buying a property in Jersey: simple steps towards owning your new home’ which was handed out during the Conveyancing seminar.
°446° See Rates (Jersey) Law 2005.
°447° See for example Title Deed.
°448° See Pro forma Jersey conveyance, clause 41. Gifts, or titres gratuits, were generally not supported by such guarantee.
(The vendor on behalf of himself and his heirs hereby provides a statutory guarantee of title on behalf of the vendor and purchaser reciprocally in respect of the corporal hereditament in question)

The guarantee was, rather oddly, made on behalf or both the vendor (who guaranteed title to the property) and the purchaser (who undertook that rentes charged on the real property would continue to be paid) and hence a reciprocal obligation.\(^{449}\) Nowadays the \textit{fourniture et guarantie} clause is omitted in contracts as it is considered to serve no purpose that goes beyond the oath taken by the contracting parties (see below under section 7.3.4.13.) and by article 45 of Loi 1880 (which makes it clear that express statement of the vendor’s guarantee of title is not required but is deemed).\(^{450}\)

7.3.4.13. Note of oath sworn during the passing of contracts

The hereditary contract makes note of the oath sworn by the contracting parties during the passing of contracts as follows: -

‘AND the Vendor and Purchaser swore that they would not act nor cause anyone to act against this present contract on pain of perjury.’\(^{451}\)

7.3.4.14. Signing by Vendor and Purchaser and the Seal of the Bailiwick

In Jersey there is no legal requirement as such for the hereditary contract to be signed by (or for and on behalf of) the vendor and the purchaser. The passing of contracts is the final act that ensures the full legal effect of the agreement and it is that act which is witnessed by the presiding Court. Once the passing of contracts has been concluded the hereditary contract is sealed with the waffer seal of the Bailiwick\(^{452}\) at the \textit{Greffier’s} office by the wording ‘IN witness whereof we have sealed these present letters with the seal of the Royal Court; present hereto…’\(^{453}\)

\(^{449}\) The reason may be historic as the majority of land transfers in the past were made in consideration of the creation or assignment of rentes. See \textit{Pro forma Jersey conveyance}, clause 42.
\(^{450}\) See Practice Direction R.C. 06/01, schedule D [17]. For an interesting critique on the \textit{fourniture et guarantie} clause see The Jersey Law Review February 1997, Kelleher, John D., ‘The Effect Of The \textit{Fourniture Et Guarantie} Clause In An Hereditary Contract’.
\(^{451}\) See for example \textit{Title Deed}.
\(^{452}\) Historically green wax was used. The seal of the Bailiwick was gifted to the Bailiff of Jersey (and Guernsey) in 1279 and the royal grant contains the following (in translation) ‘We, desiring for the common utility of the men of those parts…have caused…our seal to be provided which we will from henceforth use there…and the agreements and contracts which from now shall happen to be made…and which hitherto were wont to be made verbally, and not by writing, from henceforth shall be sealed with the same seal…and you the Bailiff from this time shall cause such…agreements and contracts to be sealed with the same seal.’ See Patent Roll 7 Edward I M.1. Public record Office (Treasury Appendix Part II, No. 53, Prison Board case).
\(^{453}\) See for example \textit{Title Deed}.
7.3.5. Main obligations of contracting parties

The main obligations of the vendor and purchaser are in essence the same in Jersey as in Sweden.

7.3.5.1. The purchaser’s main obligations

As described above the purchaser is normally required to settle the consideration in full, or the remainder (if a proportion of the purchase price has already been hypothecated), on the Tuesday next following the passing of contracts unless otherwise agreed between the parties. In Jersey the purchaser cannot be forced to present himself or herself to conclude the sale and purchase transaction in front of the Cour de Samedi as the conveyance is an act of free will. The passing of contracts in Jersey is a form criteria required by law for a legally binding agreement and a purchaser will not be entered into the property register based on the existence of a signed hereditary contract alone.

7.3.5.2. The vendor’s main obligations

As described above, to conclude the sale and purchase transaction and to ensure that the purchaser is entered into the Public Registry as the new owner of the real property, the vendor (or his or her representative) must take part in the passing of contracts. As previously stated nobody can be forced to take part in the passing of contracts. It is an act of free will. The vendor’s main obligation thereafter is to hand over the possession of the real property on the agreed date to the purchaser.

7.3.5.3. Fees and taxes

The contracting parties may freely make arrangements in respect of the fees incurred on the real property such as parochial rates and water rates and the arrangement should be included in the hereditary contract. Stamp duty in Jersey is an effective tax duly payable in respect of the purchase of immovable property. It is generally payable by the purchaser but in the event that the purchaser does not settle the tax, both vendor and purchaser are ultimately jointly and severely liable for payment.

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454 See for example Title Deed, where the parochial rates were apportioned pro rata with reference to the completion date.
455 Stamp duties and fees (Jersey) Law 1998 (as amended).
7.3.5.4. Faults in Jersey real property

As stated above, until the beginning of the 1980’s the vendor remained responsible for any hidden defects in the property (vices cachés) also post the sale of the property. With the case of Kwanza Hotels Limited v. Sogeo Company Limited, however, the Jersey Court changed its practices and the purchaser nowadays carries the full responsibility for hidden defects unless the vendor has guaranteed or warranted otherwise.

As there is very little chance of recourse against the vendor for any defects in the real property, it is highly recommended that the purchaser has the immovable property surveyed by a competent surveyor. The mortgage provider (if any) will instruct a surveyor to value the property.

There is no equivalent in Jersey of the Swedish legal concept ‘fault’, or indeed a division into different types of ‘faults’, however I have chosen in this thesis to present similar situations in Jersey to those previously treated in respect of Swedish law in an attempt to provide greater consistency.

7.3.5.4.1. Legal faults

In Jersey real property conveyance, in the event that it should become apparent that a vendor was not the rightful owner of a conveyed real property, the purchaser cannot rely on any statutory protection to maintain the real property in his or her ownership. Instead he or she may be able to demonstrate prescriptive title in accordance with ancient Norman custom; however this requires the consecutive possession of the immovable property for a period of at least 40 years. The purchaser may also be able to sue his or her legal representative for compensation in the event that the lawyer has proven to be negligent in his or her stewardship. One such example may be that the legal representative has not implemented or insisted on a ‘vendor’s guarantee clause’ in the hereditary contract as discussed above under chapter 7.3.4.12. If any uncertainties with regards to ownership were exposed during the conveyancer’s research of the root of the title it is likely that he or she would discuss the matter and its consequences with his or her client in detail, and, depending on the circumstances, may recommend either that the sale and purchase transaction be abandoned, or, that a reduction in the purchase price, reflecting the risk/reward ratio in relation to the particular transaction, be negotiated with the vendor. A prudent purchaser may also have arranged for an indemnity insurance to be

456 See Pro forma Jersey conveyance, clause 31.
458 See Article prepared by Shaun O’Connor, Conveyancing Manager at Crill & Caravan, regarding real property conveyance jargon that was handed out during the Conveyancing seminar.
459 Article ‘Buying a Property in Jersey: simple steps toward owning your new home’ provided by Shaun O’Connor, Conveyancing Manager at Crill & Caravan during the Conveyancing seminar.
put in place for the event that a third party challenge the transaction in future. As previously stated there are circumstances when the conveyancing transaction, even though it has undergone the passing of contracts, and a legal transfer has prima facie taken place, may be declared void ab initio (nul de plein droit) and, should the transaction also have been recorded in the public registry, a Court’s decision to this effect be required. This treatment is motivated to protect third party interests.

It appears unlikely that a real property in Jersey is encumbered with charges/simple conventional hypothecs that exceed the amount that the vendor declared in the hereditary contract at the time of completion as all charges against Jersey real property must go through the procedure of passing of contracts and become public knowledge when entered in the property register. For the same reason it appears unlikely that a real property has been encumbered jointly with another real property without it being public knowledge. In the unlikely event that it would happen, the legal adviser may have failed in his or her stewardship, for example by not implementing or insisting on a ‘Vendor’s declaration clause’ in the hereditary contract as discussed above under chapter 7.3.4.9., which may create a right to compensation from the practitioner to the purchaser.

In contrast to the situations listed above in this chapter it appears more likely that the real property to be conveyed may be encumbered with an indefeasible right of a third party such as a paper lease, or a right to electricity, a servitude, a right of way, and that the legal representative may not have identified this right during his or her research. I am making this statement as there is no legal requirement for rights of enjoyment to be listed in the real property register in Jersey. In accordance with the principles that the Court laid down in the case of Kwanza Hotels Limited v. Sogeo Company Limited the vendor has no obligation to advise a purchaser of such third party rights. A prudent purchaser must therefore investigate the matter and asks the vendor whether such indefeasible third party rights exist. The vendor then has a duty to disclose any rights he or she is ‘aware of’. Current Jersey case law therefore only provides remedy for a purchaser in cases of deliberate misrepresentation as he or she purchases the property ‘warts and all’.

7.3.5.4.2. Faults relating to authority to transact

There is no equivalent in Jersey to the Swedish regulation regarding faults relating to authority to transact and it is entirely the responsibility of the purchaser and his or her legal representative to research and enquire into any future plans of the States and its different departments, as well as the parochial authorities, to clarify what decisions that

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462 See Le Geyt, Loix et Coustumes, Livre 2, Tit VII, Art 7 and Le Gros, Charles Sydney, Traité du Droit Coutumier de l’Ile de Jersey, 1943 at 430.
465 Conveyancing seminar.
466 See Pro forma Jersey conveyance, clause 31.
may lie ahead in relation to the real property in question. The only remedy that may be available to a purchaser is to sue his or her legal representative in the event that he or she has failed in complying with his or her fiduciary duties.

### 7.3.5.4.3. Actual faults

Real property in Jersey is generally sold ‘as seen’ and the purchaser and his or her legal representative, who generally are much less familiar with the real property in question compared with the vendor, have a duty of enquiry and care to investigate all matters connected with the real property, including hidden defects *(vices cachés)*. The vendor is only legally required to advise the purchaser and his or her legal representative of any matters or events which the vendor is aware of and has been asked about or matters which the vendor has warranted or guaranteed.

The purchaser may have a right of recourse for compensation against any third party professional, such as a competent surveying engineer, which he or she may have appointed to assist with the investigative works, in the event that it emerges that the appointed has failed in his or her fiduciary duties during the exercise of the task. The purchaser may also sue his or her legal representative in the event that he or she has failed to properly advise the purchaser of the importance of engaging suitable third party professionals to assist with the investigative works, as well as in the event that he or she has failed to sufficiently explain the potentially dire consequences of not engaging such professional third parties.

### 7.3.5.4.4. Damage during interim period

There is no statutory regulation equivalent to that in Sweden for the event that nothing else has been agreed between the parties and the state of the real property physically deteriorates between the moment when the sale and purchase agreement became legally binding between the parties and the time that the purchaser takes possession of the real property. In practice it ought however be fairly rare that a dispute arises in relation to physical defects in real property as these circumstances are generally covered through a fully comprehensive insurance cover and banks and other mortgage providers generally require such cover. The oath sworn during the passing of contracts, as described above under chapter 7.3.4.13., ought to also be applicable in the event that a contracting party, or somebody acting on his or her behalf, commits a wilful act or an act of culpa in relation to the immovable.

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471 The situation is governed by the instructions given and the terms and conditions that were entered into in each particular case.
7.4. Le Registre Public (the Public Register)

In Jersey the real property register serves as an important tool to uphold the primary functions of the immovable property law and hence provide clarity regarding the object and its ownership. Le Registre Public (the public register of transactions in or to do with land in Jersey) dates back to 17th July 1602. The States at that time decided that the registration should obey the Ordinances of 1562 and 1591 made by Royal Commissioners.

The public registry in Jersey was historically kept in manually maintained livres (books); however, in 1984 a computerised system known as PRIDE was introduced to store the data.

In Jersey the Public Registry is in the same building as the Royal Court and is managed, administered and maintained by the Judicial Greffe.

Every transaction passed before the Court in relation to Jersey immovable property is entered into the public registry. This includes photocopies of hereditary contracts in respect of each real property transfer and all associated documents to evidence proper title to the same.

The Public Registry in Jersey not only contain hereditary deeds but also a register of ‘partages’ (divisions of immovable property), Wills of immovable property, deeds giving rise to judicial hypothecs and documents providing authority to an individual to represent him or her in relation to a transaction concerning immovable property such as a power of attorney.

474 The Commissioners recommended the setting up of a register of contracts already in 1562, however no action was taken and in 1583, when the next set of Commissioners took office, the work began but was discontinued. The States was prompted to set up the Public Registry in 1602 in its current form. Comments by Peter Bisson.
475 Conveyancing seminar.
476 The Public Registry at the Judicial Greffe, Royal Court House, Royal Square, St Helier, Jersey, JE1 1JG, Channel Islands.
477 See the introductory vocabulary in the Law of Property.
478 It is this photocopy that constitutes evidence of title and, contrary to the UK; there is no system of deeds. The contracting parties’ legal advisers generally hold the original contract on file. See the Citizens Advice Bureau’s website http://www.cab.org.je/index.php?option=com_content&task=view&id=656&Itemid=66 - section Purchase of freehold Property (11.1.30.L2) clause 2.
479 PRIDE has got details of hereditary contracts going back to 1798 although the Jersey Archive Centre holds prior records going back as far as 1602. See Comments by Peter Bisson.
480 It became mandatory to register divisions of an estate in 1840. See Loi (1840) sur le Registre Public des Contrats, article 2.
481 Not until 1926 did it become possible to dispose freely of inherited family property. See http://www.gov.je/Home/RentingBuying/BuyersGuide/Pages/RecsKeptPubRec.aspx. It was not possible until 1851 to leave non-inherited immovable property by Will. See Comments by Peter Bisson.
482 See the introductory vocabulary part of the Law of Property.
7.4.1. Relying on information in the public registry

The *codement* which is read out loud during the passing of contracts by the Greffe and which summarises the sale and purchase transaction, recites the interest of third parties present (and called) at the Court. Contrary to a copy of the hereditary contract, the *codement* is not launched in the public registry.

It is not possible to identify interests of all relevant third parties whilst searching the title deeds in the public registry alone.\(^{483}\)

8. Conclusion

8.1. Summary of primary object, subjects, functions and purpose

In both Sweden and Jersey the primary functions of immovable property law is to define the real property in question and to establish who the owner of that property is, as well as establish what restrictions and legal rights are attached to the real property in question. Efficient real property conveyance promotes the primary functions of immovable property law and provides certainty to the market. As part of the conveyancing process a reliable real property register has proven fundamental to the economic development of a country. Due to its importance the Legislator in Jersey as well as in Sweden is striving to fulfil the primary functions of immovable property law. Different methods and processes are utilised in the two jurisdictions and, in my view, there are benefits and drawbacks with each.

8.2. History and use of conveyancing language

When comparing Swedish and Jersey laws, practices and customs in relation to real property, i.e. their conveyancing systems, it can be concluded that, although being very different, they are both functional, and have been so for some considerable time. The real property owner’s or occupier’s rights to transact with immovable property have varied over time depending on both jurisdiction’s social, economical and political structures and development. In my view however, the conveyancing process in Jersey, although quaint, presents some unique challenges in comparison to the Swedish system. In my opinion this is due to customs, hereditary contracts, laws and regulations traditionally having been conducted and drafted in an alien language, containing specific and technical vocabulary as well as being spoken and understood by a privileged few. Clearly, now that the hereditary contract is drafted in English, and the procedure of passing of contracts is conducted in English in Jersey, the challenges mentioned will prove less relevant over

\(^{483}\) See *Pro forma Jersey conveyance*, clause 12.
time. I would however argue that Jersey’s legal heritage to some degree continues to lead to increased transaction charges for the contracting parties. The Swedish law is drafted in the common spoken language and is, in my view, more accessible to the general public and, at least in comparison to the Jersey system on this particular point, better catered to serve the primary functions of immovable property law.

8.3. Immovable property

There are significant differences in how the immovable property in Jersey and Sweden is factually defined; however, there are also some striking similarities, such as in respect of land. In Jersey immovable property consists of a larger number of legal concepts, and its definition is slightly wider than that in Sweden, as it includes contract leases, simple conventional hypothecs, fiefs and rente.

The statute in Sweden, contrary to that in Jersey, is fairly detailed in respect of what is considered a fixture and it lists several examples of the same. In both jurisdictions ‘houses and other buildings’ are considered fixtures (to land) and the exceptions to this main rule are similar in Jersey as well as in Sweden. There is however no equivalent in Jersey to the split of legal and physical fixtures as that which exists in Sweden. There is also no equivalent in Jersey to the concept of immovable fixtures affixed to buildings in their own right, or to land used for (or in part for) industrial purposes. In the situation where an object does not fit the description provided in statute, and when a precedent has not previously been established by the Legislator, the ultimate decision in Sweden, as well as in Jersey, is made by the Court on a case-by-case basis. The Court in these instances, in both jurisdictions, has a complementary function allowing for elements of equity and fairness, as well as flexibility, to be considered in an evolving society. In my view the definitions of immovable property in both jurisdictions are equally adequate and promote the primary functions of immovable property law.

8.4. Property owner

In Jersey as well as in Sweden the contracting parties must have full legal capacity for a binding agreement to come into existence and in the event that a third party is acting for and on behalf of one of the contracting parties, he or she must be issued with a valid written power of attorney. Joint tenancy, as defined in Jersey, does not exist per se in Sweden; however, real property may be owned in common in both jurisdictions. Jersey differs substantially from Sweden when it comes to who may or may not acquire and/or occupy immovable property within its jurisdiction. The Legislator in Jersey significantly restricts sale, exchange and transfer of real property, as well as grants of tenancy. Jersey is an island with restricted land area and resources, as well as a growing population, and the States has therefore felt it necessary to implement these restrictions. Sweden is not exposed to challenges of this kind to the same degree. The regulation in Jersey may restrict efficiency and turnover in the market place and the economy as a whole, however, based on this thesis alone and without further research into the subject matter, it is impossible for me to establish whether the restrictive regulation in Jersey, intended to
8.5. Real Property Conveyance and due legal form

Property conveyance in Jersey, as in Sweden, requires due legal form. In Sweden it suffices that the sale and purchase agreement(s) are clothed with the appropriate formalities in writing for a legally binding contract to come into existence. In Jersey, however, the hereditary contract must also pass before the Cour de Samedi, and, contrary to in Sweden, the contracting parties must appoint legal representatives (at least) for this element of the conveyancing process. On the one hand these requirements unavoidably incur additional transaction charges and, to some extent, impose delays in the transaction process and the overall turnover in the marketplace. On the other hand, the passing of contracts may also present a more appropriate and beneficial opportunity for vulnerable parties to raise their objections and protect their rights, as the process is public in a much more ‘hands on’ manner than the conveyancing process in Sweden. One would also expect the appointment of legal advisers to be beneficial for the contracting parties.

Certainty of the transacting parties is ensured in both jurisdictions in similar ways and is equally efficient, in my view, in promoting the primary functions of immovable property law.

Certainty of the object to be conveyed is ensured in Sweden by the fact that all real property units in the territory have been uniquely identified in the Swedish property register. Propriété foncière in Jersey, on the contrary, although its territory is very small in comparison to that of Sweden, is rarely established by GPS. Uncertainty of the Jersey real property to be conveyed and its boundaries is not uncommon. A large number of land boundaries in Jersey are solely identifiable by their descriptions in title deeds, drafted in an alien language over centuries, and it is not uncommon that visible signs of identification referred to in the conveying deeds themselves are obsolete and no longer identifiable. In addition, the wording in neighbouring property deeds may be contradictory or silent in respect of the object. Further, sale and purchase of Jersey real property may be undertaken without precise identification of the object with the help of defective title insurance policies from specialist insurance brokers. Undoubtedly, in my opinion, this uncertainty adds to unnecessary conveyancing costs and additional charges as well as leaves the door open for potential legal disputes.

In Jersey existing covenants and servitudes are simply acknowledged in the hereditary contract and bind the land in perpetuity. Similarly to Swedish property law the possibility of existing rights of enjoyment justifies careful research by the purchaser and his or her appointed representative (if any). There is, however, a great difference between the Swedish and the Jersey system on this point as the public registration part of the real property register in Sweden generally lists servitudes and other third party interest which burdens real property units and therefore allows for an easier identification of restrictions in the use of the real property itself. In Jersey all previous agreements in relation to the real property to be conveyed and its neighbouring properties, going back for a period of at least 40 years, must be carefully examined and verified by site visit(s), to determine whether indefeasible third party interests burden the property that is to be conveyed. This
research is made near impossible for a layman to undertake and therefore incur increased conveyancing charges and less efficiency.

In Sweden, contrary to Jersey, the Legislator provides protective default legislation for the event that the contracting parties have not explicitly regulated a certain matter in writing. In my view this is beneficial as it imposes a certain minimum standard for conveyancing transactions and prevents disputes and unnecessary public expenditure in (what is often proven to be lengthy and costly) Court proceedings.

In accordance with Swedish law a fault in real property is not necessarily a physical imperfection in the real property, but rather a discrepancy from what was agreed, or from what could reasonably have been expected. A Jersey purchaser cannot rely on any statutory protection to maintain the real property in his or her ownership if it would come to light that the real property was conveyed by a party who was not its rightful legal owner, i.e. if a legal fault is present, however, the Jersey purchaser may be able to demonstrate prescriptive title in accordance with ancient Norman custom or receive some remedy through indemnity insurance. The current Jersey case law only provides remedy for a purchaser in cases of deliberate misrepresentation as he or she purchases the property ‘warts and all’. In Jersey until the beginning of the 1980’s the vendor remained responsible for the presence of any hidden defects in the property and this treatment was very similar to current Swedish law. In the 1980’s, however, the Court changed its practices and reverted to similar principles that applied in Sweden before year 1734. Nowadays a Jersey purchaser, rather than the vendor, carries the full responsibility for hidden defects in the immovable property, unless the vendor has guaranteed or warranted otherwise. This solution is questionable, in my opinion, as the vendor, at least in the majority of cases, ought to know the property more intimately. In respect of faults relating to authority to transact the statute in Sweden provides some protection for a purchaser in the event that a governmental body makes a decision that causes the purchaser’s right to transact freely over the real property to become restricted in any way. As with legal faults in a real property there is no de facto obligation imposed on the purchaser in Sweden to investigate whether faults relating to authority to transact exist, but if matters are raised which indicate to the purchaser that this type of fault is at hand, the purchaser must enquire further into the matter to satisfy himself or herself that the fault does not apply to the real property in question. There is no equivalent to this type of regulation in Jersey and it is therefore entirely the responsibility of the purchaser and his or her legal representative to research and enquire into any future plans of the States and its different departments, as well as the parochial authorities, to clarify what decisions that may lie ahead in relation to the real property to be conveyed. In general, in my view, the duty of care and burden of enquiry is therefore far heavier for a Jersey purchaser (and his or her legal representative) than it is for a Swedish purchaser (and his or her legal representative).

In Sweden, contrary to Jersey, fittings and appliances all form part of the real property itself and a purchaser therefore has reason to expect that the real property is conveyed including items such as carpets, fridges, microwave ovens, satellite dishes and cookers. This again, in my opinion, guaranties a certain minimum standard in relation to the conveyancing transaction, however, I have found no evidence that it would be more or less beneficial to the contracting parties, or the economy as a whole, that these items are instead specified in the written contract.
8.4. **The Real Property Register**

In Jersey, as well as in Sweden, the real property register serves as an important tool to uphold the primary functions of the immovable property law and hence provides greater clarity regarding the object and its ownership. In both Jersey and Sweden the real property register is provided with reliable information via the written form criteria in reference to the sale and purchase agreement(s). The Property register in Jersey is slightly older than the real property register in Sweden and historically both registers were maintained manually in charters that subsequently have been digitalised. In Sweden the public registry is divided into different parts which are managed, administered and maintained not only by one office, as in Jersey, but by several offices and in both jurisdictions the register is open to public inspection.

In respect of relying on the information in the real property register in Sweden, due to the fact that it is the execution and exchange of the actual sale and purchase agreement that changes the ownership of real property, the information in the register may prove to be unreliable, something I consider a weakness in the conveyancing system in comparison to the Jersey system where the passing of contracts is the event that finalises the conveyance and the basis for the registration. The ownership reflected in the Jersey property register therefore ought to always be correct (with the exception of the presence of an overriding prescriptive customary title). In both jurisdictions it is impossible to identify interests of all relevant third parties whilst searching the title deeds in the public registry alone. In Jersey, as described above, to a much higher degree than in Sweden, the onus lies on the purchaser to investigate matters such as the root of title, any third party interests and the presence of vices caches.
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Prop.1970:20
Prop. 1989/90:77
Prop. 1991/92:110
Prop. 1994/95:14
Prop. 2002/03

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SOU 1960: 25
SOU 1988:66
SOU 1991:81

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Loi (1840) sur le registre public des contracts
Loi (1862) sur les teneures en fidéicommis et l’incorporation d’associations
Loi (1880) sur la propriété foncière [Loi 1880]
Loi (1848) touchant la taxation des rentes
Loi (1887) sur la conversions de la dette publique
Loi (1891) sur la cour pour le recouvrement de menus dettes
Loi (1915) sur la propriété foncière (garanties)
Royal Court (Jersey) Law, 1948
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Interpretation (Jersey) Law, 1954
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Loi (1970) touchant les remboursement des rentes anciennes
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The Regulation of Undertakings and Development (Jersey) regulations 1978
Trust (Jersey) Law 1984 (as amended)
Loi (1991) sur la Copropriété des Immeubles Bâts
Stamp duties and fees (Jersey) Law 1998 (as amended)
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Rates (Jersey) Law 2005
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9.3. Case law:

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NJA 1986 s. 513
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NJA 1996 s. 139
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NJA 1997 s. 149
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NJA 1997 s. 699
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NJA 2002 s. 142
NJA 2007 s. 86

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RH 2001:36

**Jersey case law**

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Scarfe v. Walton (1964) J.J. 387
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Le Sueur v. Le Sueur (1968) J.J. 889 & 890
Basden Hotels Limited v. Dormy Hotels Limited (1968) 1 J.J. 911
Cottignies v. the Housing Committee (1969) J.J. 1149.
Re Dégrèvement Bonn (1971) 1 J.J. 1771
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Coleberg Hotel (1972) Ltd v. Alton Hotel Ltd (C.A.) 2003 JLR 176
Fitzgerald v. Northcroft (1973) 2 J.J. 35
Ritson v. Slous (1973) 1 J.J. 2341
York Street Pharmacy Limited v. Rault (1974) 2 J.J. 65
H A Gaudin & Co Ltd v. Bennett (1976) 266 Ex 448
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Bernstein v. Skyviews & General Ltd (1978) QB 479
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Lane v. Lane 1985-86 JLR 48
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9.4. Custom

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9.5. World Wide Web

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http://www.dictionary.net (as at 12 July 2010)
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9.6. Seminars

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10. Appendices

Appendix A: Immovable Property Chart (comparison Sweden and Jersey)
### Appendix B: Conveyance vocabulary in Jersey legal French

<table>
<thead>
<tr>
<th>French Term</th>
<th>English Translation</th>
</tr>
</thead>
<tbody>
<tr>
<td>À fin d’héritage</td>
<td>In perpetuity</td>
</tr>
<tr>
<td>À peine de parjure</td>
<td>On pain of perjury</td>
</tr>
<tr>
<td>À piétons/ à pied</td>
<td>On foot/ pedestrian</td>
</tr>
<tr>
<td>Aboutissant (of a building or wall)</td>
<td>Abutting</td>
</tr>
<tr>
<td>Adduction (f)</td>
<td>The supply</td>
</tr>
<tr>
<td>Adherent au sol</td>
<td>Affixed to the ground</td>
</tr>
<tr>
<td>Angle (m)</td>
<td>Corner (a fixed point, of a building or structure) (cf. carre)</td>
</tr>
<tr>
<td>Assiette (f)</td>
<td>Site (of a building)</td>
</tr>
<tr>
<td>Aubains (noun)</td>
<td>Alien</td>
</tr>
<tr>
<td>Aupourportant de</td>
<td>Co-extensive with/ adjoining</td>
</tr>
<tr>
<td>Ayant droit (noun)</td>
<td>Successor in title</td>
</tr>
<tr>
<td>Ayant droit de</td>
<td>Deriving title from</td>
</tr>
<tr>
<td>Bail à termage</td>
<td>Hereditary lease/contract lease (i.e. nine years or more), historically accompanied by the consideration known as ‘rente’. See also Héritage.</td>
</tr>
<tr>
<td>Bailler à termage</td>
<td>To lease</td>
</tr>
<tr>
<td>Bailler et Vendre</td>
<td>To sell (and subject to rente, hypothec or other encumbrance)</td>
</tr>
<tr>
<td>Bailler, céder et transporter</td>
<td>To cede and transfer (land subject to rente, hypothec or other encumbrance)</td>
</tr>
<tr>
<td>Bail, cession et transport</td>
<td>Cession and transfer (of land subject to rente, hypothec or other encumbrance)</td>
</tr>
<tr>
<td>Bailleur (m)</td>
<td>Lessor</td>
</tr>
</tbody>
</table>
| Banque                            | 1) A word describing a boundary where there is a difference in level between two adjacent properties and where the level difference is not supported by a retaining wall or similar construction. The presumption is that the banque is the dependency of the superior land.  
2) Bank |
| Becquet (m)                       | Small piece of land (see also morceau (m)) |
| Bel (m)                           | Yard (see Voir cour (f) and Cour (f)) |
| Biè (m)                           | Mill leat                           |
| Biens-fonds (m)                   | Corporeal hereditament (see also Corps de biens-fonds (m)) |
| Boîte de distribution (f)        | Jersey Electricity Company's section pillar |
| Bordure (f)                       | 1) Kerb                             |
|                                   | 2) Border                           |
| Borne (m)                         | Previously established boundary stone; pierre planted to establish boundary |
| Branchage                         | 1) Branches                         |
|                                   | 2) Refers back to a law that ensures that any vegetation growth that overhangs roads and footpaths is regularly cut back. |
| Brèque                           | Field entrance to a property        |

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484 Vocabulary list has been extracted from *Pro forma Jersey conveyance*, The Law of Property and the Citizens Advice Bureau’s website [http://www.cab.org.je](http://www.cab.org.je) as well as the States website [http://www.gov.je](http://www.gov.je)
<table>
<thead>
<tr>
<th>Term</th>
<th>Definition</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cabots</td>
<td>A measure of cereals used to pay for a feudal tenancy</td>
</tr>
<tr>
<td>Cache/chasse (f)</td>
<td>Access avenue to a property from a public road; driveway, carriageway, avenue</td>
</tr>
<tr>
<td>Camp/champ (m)</td>
<td>Unenclosed parcel of land; unenclosed field</td>
</tr>
<tr>
<td>Carre (f)</td>
<td>Corner (a location e.g. of field)</td>
</tr>
<tr>
<td>Cassable</td>
<td>Voidable</td>
</tr>
<tr>
<td>Cassé et annulé</td>
<td>Cancelled and annulled</td>
</tr>
<tr>
<td>Céder et transporter</td>
<td>To cede and transfer</td>
</tr>
<tr>
<td>Cession et transport</td>
<td>Cession and transfer</td>
</tr>
<tr>
<td>Chemin à piétons</td>
<td>Footpath</td>
</tr>
<tr>
<td>Chemin de voisiné</td>
<td>Roadway owned in common by two or more landowners</td>
</tr>
<tr>
<td>Chemin particulier (m)</td>
<td>Private roadway</td>
</tr>
<tr>
<td>Clos (m)</td>
<td>Enclosed (against its neighbors) parcel of land; enclosed field</td>
</tr>
<tr>
<td>Clos et étanché</td>
<td>Wind and watertight</td>
</tr>
<tr>
<td>Clôture (f)</td>
<td>Enclosure</td>
</tr>
<tr>
<td>Codement</td>
<td>Narrative or backing of hereditary contract read out to the Cour de Samedi by the Greffier during the Passation des contrats</td>
</tr>
<tr>
<td>Consenter</td>
<td>Consent to</td>
</tr>
<tr>
<td>Contrat</td>
<td>Contract (of title)</td>
</tr>
<tr>
<td>Contrat héréditaire</td>
<td>A contract concerning corporeal hereditament, i.e. bien-fonds</td>
</tr>
<tr>
<td>Contrebanque (m)</td>
<td>Contrebanque (earth bank faced or reinforced with stone)</td>
</tr>
<tr>
<td>Corps de bien-fonds (m)</td>
<td>Corpus fundi (pl. Corpora fundi) (see also Bien-fonds (m))</td>
</tr>
<tr>
<td>Cour de Samedi</td>
<td>The Royal Court (sitting in its administrative capacity)</td>
</tr>
<tr>
<td>Côtière</td>
<td>Wall of a building (cf. gable)</td>
</tr>
<tr>
<td>Côtil</td>
<td>Côtil (steeply sloping field)</td>
</tr>
<tr>
<td>Cour (f)</td>
<td>Yard (see Bel (m) and Voir cour (f))</td>
</tr>
<tr>
<td>Désastre</td>
<td>Désastre</td>
</tr>
<tr>
<td>Devant Justice</td>
<td>Before the Royal Court</td>
</tr>
<tr>
<td>Donataire (m); Donatrice (f)</td>
<td>Donee  Donor</td>
</tr>
<tr>
<td>Donateur (m)</td>
<td>Donor</td>
</tr>
<tr>
<td>Donation, cession et transport</td>
<td>Gift, cession and transfer</td>
</tr>
<tr>
<td>Donner, céder et transporter</td>
<td>To give, cede and transfer</td>
</tr>
<tr>
<td>Douairière (f)</td>
<td>Dowager</td>
</tr>
<tr>
<td>Douet (m)</td>
<td>Brook, stream</td>
</tr>
<tr>
<td>Droit de chemin et passage</td>
<td>Right of way and passage</td>
</tr>
<tr>
<td>Droit de jointure</td>
<td>Right to join</td>
</tr>
<tr>
<td>Droit d'usufruit et jouissance</td>
<td>Right of usufruct and enjoyment</td>
</tr>
<tr>
<td>Eau pluviale</td>
<td>Rain water</td>
</tr>
<tr>
<td>Eau superficielle</td>
<td>Surface water</td>
</tr>
<tr>
<td>Eboulement</td>
<td>Fall of objects, especially rocks, earth etcetera from higher ground onto lower ground. Can in certain circumstances give right of action by the owner of the lower ground against the owner of the higher ground.</td>
</tr>
<tr>
<td>Ecoignure (f)</td>
<td>Corner (of a building)</td>
</tr>
<tr>
<td>Égout collecteur (m)</td>
<td>Principle drain</td>
</tr>
<tr>
<td>Empiètement</td>
<td>Encroachment</td>
</tr>
<tr>
<td>Term</td>
<td>Definition</td>
</tr>
<tr>
<td>-----------------------------------------</td>
<td>-------------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Emplacement (m)</td>
<td>Site (of a building)</td>
</tr>
<tr>
<td>En espèces/ en argent</td>
<td>A cash sum</td>
</tr>
<tr>
<td>En verre dormant</td>
<td>Non-opening opaque glass</td>
</tr>
<tr>
<td>En verre opaque</td>
<td>Opaque glass</td>
</tr>
<tr>
<td>Epurs et immondices</td>
<td>Waste and sewage</td>
</tr>
<tr>
<td>És-qualités</td>
<td>In that capacity</td>
</tr>
<tr>
<td>Etant convenu(e) et accordée</td>
<td>It being agreed (cf. new Articles)</td>
</tr>
<tr>
<td>Etant reconnu</td>
<td>It being acknowledged (cf. existing Articles)</td>
</tr>
<tr>
<td>Ferme/fermier</td>
<td>A ‘ferme’ is an agreement by which the owner of land, or a rente, or a right, grants another the enjoyment of it for a certain period at a certain price, i.e. lets or leases it. A ‘fermier’ can mean a tenant or a lessee, as well as a farmer.</td>
</tr>
<tr>
<td>Fonds</td>
<td>Fonds, bottom of stream or a pool/ ground ownership</td>
</tr>
<tr>
<td>Fonds dominant</td>
<td>Dominant tenement</td>
</tr>
<tr>
<td>Fonds enclavé</td>
<td>Land entirely surrounded by fonds owned by third parties and therefore lacking access to a public road. May allow for a claim for voie de nécessité.</td>
</tr>
<tr>
<td>Fonds servient</td>
<td>Servient tenement</td>
</tr>
<tr>
<td>Fosse (f)</td>
<td>Pit/ ditch</td>
</tr>
<tr>
<td>Fosse d'aisance (f)</td>
<td>Cesspit</td>
</tr>
<tr>
<td>Fosse septique (f)</td>
<td>Septic tank</td>
</tr>
<tr>
<td>Fossé</td>
<td>1) Earth embankment/ a bank created by the digging of a ditch toward a boundary 2) Hedge</td>
</tr>
<tr>
<td>Fourniture et garantie</td>
<td>Statutory guarantee of title</td>
</tr>
<tr>
<td>Géon</td>
<td>Gorse</td>
</tr>
<tr>
<td>Haie vive (f)</td>
<td>Hedge (of plants)</td>
</tr>
<tr>
<td>Hêche (f)</td>
<td>Gate</td>
</tr>
<tr>
<td>Héréditaire</td>
<td>Hereditary (qualifying a transaction e.g. a sale or gift to indicate that it concerns title to land)</td>
</tr>
<tr>
<td>Héritage (m)</td>
<td>1) Hereditament 2) Reality/ immovable property</td>
</tr>
<tr>
<td>Hôgard (m)</td>
<td>Stackyard or farmstead (where wheat and other harvest would be gathered on top of a secured structure supported by mushroom shaped stones known as ‘Pierre de tas’)</td>
</tr>
<tr>
<td>Hypothèque conventionelle (f)</td>
<td>Conventional hypothec</td>
</tr>
<tr>
<td>Hypothèque foncière (f)</td>
<td>Hypothec foncière</td>
</tr>
<tr>
<td>Hypothèque légale (f)</td>
<td>Legal hypothec</td>
</tr>
<tr>
<td>Issue</td>
<td>An exit from a parcel of land to another or to a public road</td>
</tr>
<tr>
<td>Issues</td>
<td>1) The shoulders of an avenue 2) (Terrain en issues) a strip of land separated from and original parcel by the passage through it by a road</td>
</tr>
<tr>
<td>Le tout tel qu’il est</td>
<td>With all such rights, appurtenances and dependencies as might belong thereto</td>
</tr>
<tr>
<td>Les vieilles épines sur les fossés</td>
<td>Thorn bushes in ditches</td>
</tr>
<tr>
<td>Lisière (f)</td>
<td>Strip (of land)</td>
</tr>
<tr>
<td>Locataire réfractaire</td>
<td>The sub-tenant that becomes the new tenant where he or she previously held a lease from a tenant whose own lease expired.</td>
</tr>
<tr>
<td>Term</td>
<td>Definition</td>
</tr>
<tr>
<td>----------------------</td>
<td>-----------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Mielle</td>
<td>Sand dune</td>
</tr>
<tr>
<td>Mis pour perpetuelle demeure</td>
<td>Affixed to the ground with the intention to become a permanent feature</td>
</tr>
<tr>
<td>Mitoyen</td>
<td>Party owned (in contrast to exclusively owned)</td>
</tr>
<tr>
<td>Mitoyeneté</td>
<td>Party ownership in common of for example a wall or other boundary structure (such as boundary stones) which separate two adjacent properties belonging to different landowners</td>
</tr>
<tr>
<td>Morceau (m)</td>
<td>Small piece of land (see also becquet (m))</td>
</tr>
<tr>
<td>Mur de soutènement (m)</td>
<td>Retaining wall</td>
</tr>
<tr>
<td>Nocs et gouttières</td>
<td>Down pipes and gutters</td>
</tr>
<tr>
<td>Nul de plein droit</td>
<td>Void ab initio</td>
</tr>
<tr>
<td>Nulle promesse à heritage ne vaut</td>
<td>A promise to convey is not enforceable</td>
</tr>
<tr>
<td>Nulle servitude sans titre</td>
<td>No servitude without title</td>
</tr>
<tr>
<td>Ou environ</td>
<td>Or thereabouts</td>
</tr>
<tr>
<td>Parol</td>
<td>Verbal</td>
</tr>
<tr>
<td>Partage (m)</td>
<td>Contract of division/partition of immovable property</td>
</tr>
<tr>
<td>Passation des contrats</td>
<td>Procedure of passing of hereditary contracts in front of the Cour de Samedi</td>
</tr>
<tr>
<td>Perchée carré</td>
<td>A standard land measurement in Jersey, a square each side of which measures one perche (484 square feet)</td>
</tr>
<tr>
<td>Pièce de terre (f)</td>
<td>Parcel of land</td>
</tr>
<tr>
<td>Pied</td>
<td>A standard Jersey measure, one Jersey foot equals 3 times 11 Jersey inches = 2 feet 9 inches Imperial measure. One Jersey inch equals one foot, four and a half inches Imperial measure.</td>
</tr>
<tr>
<td>Pieds perches</td>
<td>A standard Jersey measure of land of 18 Jersey inches (which converts to 16 1/2 inches Imperial measure)</td>
</tr>
<tr>
<td>Pieds perches carré</td>
<td>A Jersey land measure which measures a square each side of which measures one pied de perche (121 square inches)</td>
</tr>
<tr>
<td>Pierre</td>
<td>Stone</td>
</tr>
<tr>
<td>Pierre ou devise (f)</td>
<td>New boundary stone (now being established)</td>
</tr>
<tr>
<td>Pignon (m)</td>
<td>Gable</td>
</tr>
<tr>
<td>Planche de bord</td>
<td>Fascia board</td>
</tr>
<tr>
<td>Plantes</td>
<td>Plants</td>
</tr>
<tr>
<td>Portique (f)</td>
<td>Porch</td>
</tr>
<tr>
<td>Possession propriétaire</td>
<td>Proprietary possession</td>
</tr>
<tr>
<td>Possession quadragénaire</td>
<td>Possessory uninterrupted title of at least 40 years (prescriptive title)</td>
</tr>
<tr>
<td>Pour lui et ses heirs</td>
<td>For him and his heirs</td>
</tr>
<tr>
<td>Pré (m)</td>
<td>Meadow</td>
</tr>
<tr>
<td>Preneur (m)</td>
<td>Lessee</td>
</tr>
<tr>
<td>Pressoir/preinsu</td>
<td>Press house (where cider was made)</td>
</tr>
<tr>
<td>Promesse de bail</td>
<td>A promise to grant a non-contract lease</td>
</tr>
<tr>
<td>Promesse à héritage</td>
<td>A promise to perform some transaction in relation to real property</td>
</tr>
<tr>
<td>Propriété foncière</td>
<td>Perpetual rights in land</td>
</tr>
<tr>
<td>Puisard (m)</td>
<td>Soakaway</td>
</tr>
<tr>
<td>Puits (m)</td>
<td>Well</td>
</tr>
<tr>
<td>Term</td>
<td>Definition</td>
</tr>
<tr>
<td>------</td>
<td>------------</td>
</tr>
<tr>
<td><strong>Quartiers</strong></td>
<td>A measure of cereals used to pay for feudal tenancy</td>
</tr>
<tr>
<td><strong>Rédevance</strong></td>
<td>Encumbrance</td>
</tr>
<tr>
<td><strong>Regard (m)</strong></td>
<td>Man hole/inspection chamber</td>
</tr>
<tr>
<td><strong>Registre Public (m)</strong></td>
<td>Public Registry</td>
</tr>
<tr>
<td><strong>Relief (m)/ offset</strong></td>
<td>A strip of land outside the boundary of a property that measures a width of a ‘pieds perches’, i.e. 18 Jersey inches. In the absence of a contrary covenant with a neighbor this land (relief) must never be obstructed and access must always be given to the property owner to enable him or her to do necessary work. Should a wall or anything similar have been erected, or live plants been planted, there may well be an encroachment on the neighboring land and rectification or ratification may be required. When a fossé has filled over time a relief is the land between the boundary and the foot of the bank, for most purposes this relief has a width of a ‘pieds perches’. In respect of a banque sans plantes the relief is only 6 inches.</td>
</tr>
<tr>
<td><strong>Rente</strong></td>
<td>Rente; in the case of a ‘bail à fin d'héritage’ the historic consideration was rente. This typically represented a specified proportion of the annual produce or value of the land in question due to the Seigneur for the feudal tenancy. Rentes were hereditary investments and the ‘Rentier’ (who was entitled to the annual payment) could choose to either receive his or her rente in kind (e.g. wheat or barley, eggs and poultry) or cash (at a rate fixed in the King's Receiver after the harvest). The Loi 1880 converted all historic rentes to monetary values.</td>
</tr>
<tr>
<td><strong>Rent viagère (f)</strong></td>
<td>Secured income for life</td>
</tr>
<tr>
<td><strong>Ruelle (f)</strong></td>
<td>Narrow road/lane/alley</td>
</tr>
<tr>
<td><strong>Sans fourniture ni garantie</strong></td>
<td>Without statutory guarantee of title</td>
</tr>
</tbody>
</table>
| **Serre** | 1) Greenhouse  
2) Conservatory |
<p>| <strong>Sixtonnier</strong> | A Jersey measure of cereal used to pay for feudal tenancy |
| <strong>Sol</strong> | Ground, i.e. land including fonds |
| <strong>Soupirail</strong> | Weep hole |
| <strong>Stipuler</strong> | Stipulate |
| <strong>Talus (m)</strong> | Embankment |
| <strong>Tenants et aboutissants</strong> | The land, its surroundings and adjoining lands, its boundary etcetera, i.e. a description of the corpus fundi |
| <strong>Terre (f)</strong> | Land (normally cultivable) |
| <strong>Terrain (m)</strong> | Land (open and unexploited) |
| <strong>Titre</strong> | Title |
| <strong>Tour d'échelle (f)</strong> | Ladder span |
| <strong>Toutefois et quantes et à tous usages</strong> | At all times and for all purposes |
| <strong>Tutelle</strong> | The collective name of the electors who nominate a ‘tuteur’ |
| <strong>Tuteur</strong> | Person appointed by the Court to manage and administer the property and affairs of a minor |
| <strong>Tuyau de trop plain (m)</strong> | Overflow pipe |
| <strong>Vendere, céder et transporter</strong> | To sell, cede and transfer |
| <strong>Vente, cession et transport</strong> | Sale, cession and transfer |</p>
<table>
<thead>
<tr>
<th>Term</th>
<th>Definition</th>
</tr>
</thead>
<tbody>
<tr>
<td>Vergée</td>
<td>A measure of land, approximately two thousand one hundred and fifty square yards. Two and a quarter vergées are more or less equivalent to an acre. A vergée equals 40 perches carrées (19,360 square feet).</td>
</tr>
<tr>
<td>Vices cachés</td>
<td>Hidden faults and defects in the property</td>
</tr>
<tr>
<td>Vingtaine</td>
<td>The fief on which the land which is to be conveyed is situated</td>
</tr>
<tr>
<td>Voie de nécessité</td>
<td>(Right of) way of necessity</td>
</tr>
<tr>
<td>Voir cour (f)</td>
<td>Yard (see Bel (m) and Cour (f))</td>
</tr>
</tbody>
</table>