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What would title registration bring to a deeds system with quality land information?

Prof. dr. Jaap Zevenbergen, MSc, LL.M

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FACULTY OF GEO-INFORMATION SCIENCE AND EARTH OBSERVATION



Land Registration

§ types of transaction evidence

§ (Oral agreement)

§ Private conveyancing

§ Registration of deeds

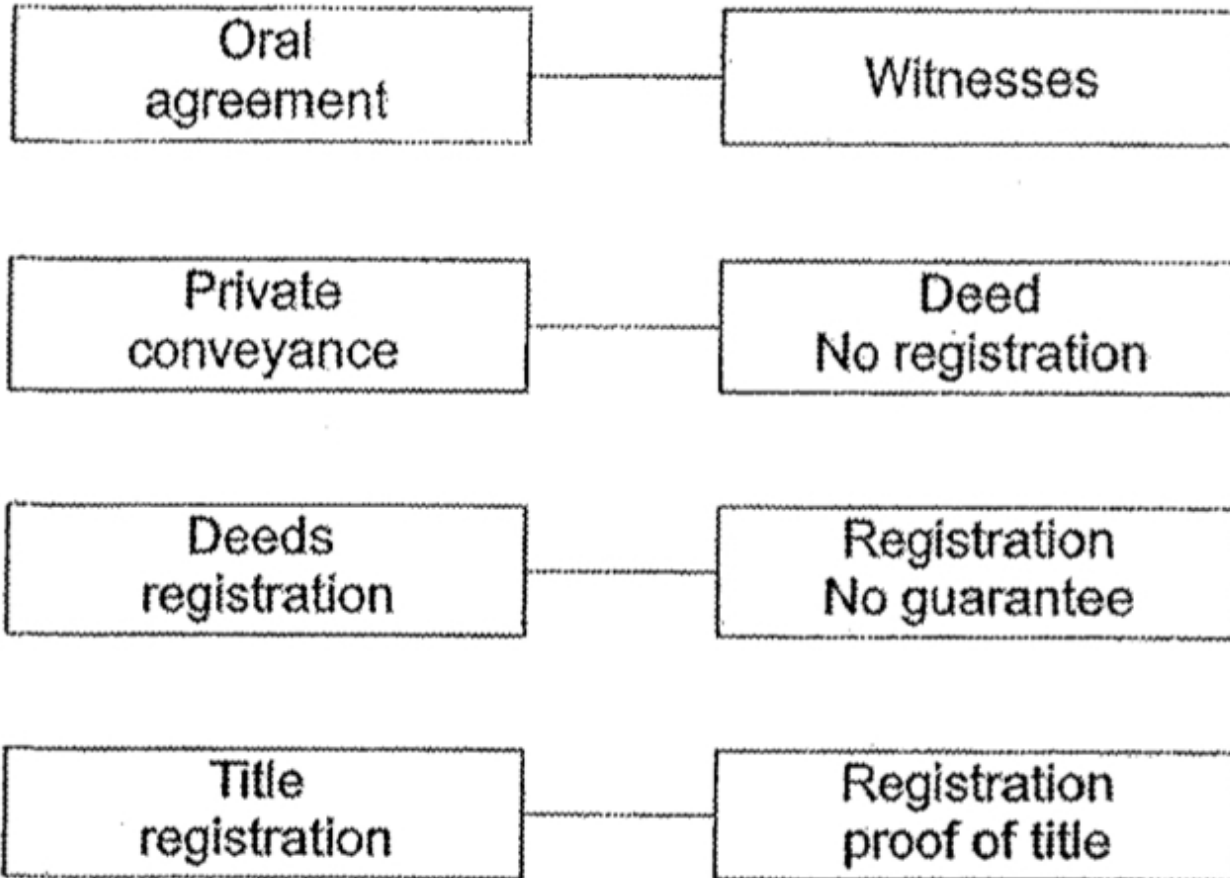
§ Registration of title

(Larrson 1991)



Means of transaction

Evidence



***Types of transaction evidence
(taken from Larsson 1991: 17)***

The four basic principles*

- a. The booking or register principle
- b. The consent principle
- c. The principle of publicity
- d. The principle of speciality



Registration of Deeds

- § public repository of documents (deeds mortgages, survey plans)
- § elements
 - § logging of time
 - § indexing of instrument
 - § archiving of document or copy
- § deed does not in itself prove title, it is just a record of an isolated transaction



Registration of Deeds

- § core principles (compared to private conveyancing)
 - § security
 - § evidence
 - § notice and priority
- § legal documents are registered, not title to a property



Registration of Title

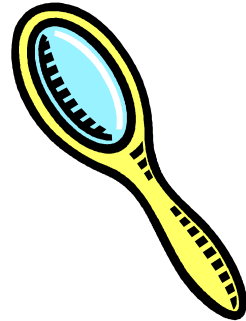
- § overcome defects of registration of deeds
 - § simplify process of transaction
 - § the register describes current property ownership and charges/liens
 - § compulsory, examination, warranty
 - § register becomes 'proof of ownership'
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- § > rudimentary deeds reg. of 19th cent.



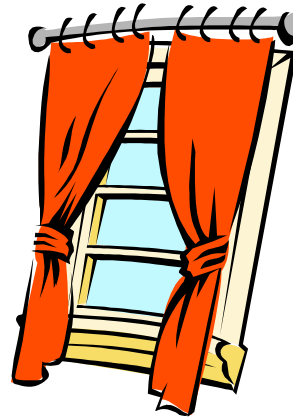
Title Registration System

§ Often associated with three principles:

§ Mirror



§ Curtain



§ Insurance



Registration of Title

§ Critique:

- § expensive and cumbersome to implement (and for government to run)
- § often involvement needed of (expensive) private practitioners, like land surveyors, lawyers/notaries, planners, valuers
- § time required for state examination and approval of title and survey (boundary)
- § introduction of overriding interest \neq mirror principle; title (cert.) does not reflect all rights on the ground



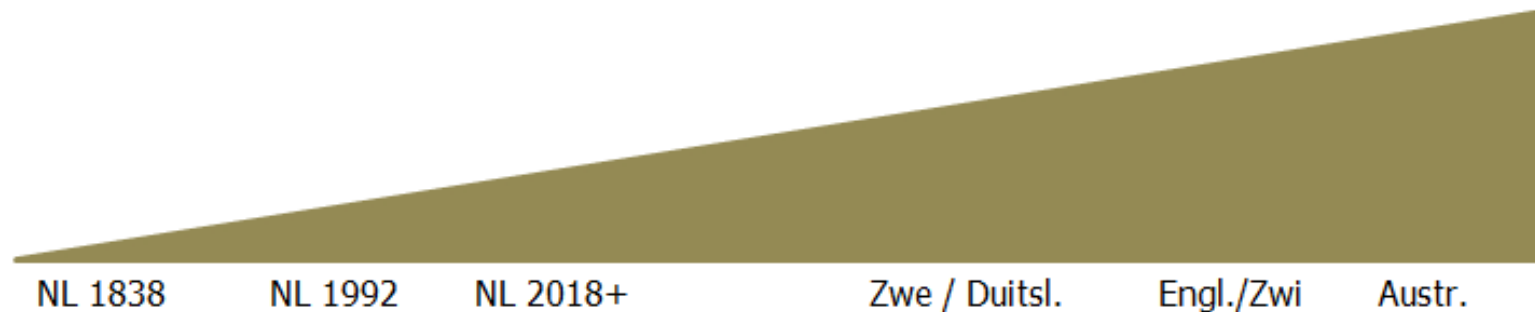
Improve Registration of Deeds

- § further improvements:
 - § better records management
 - § standardization of forms and procedures
 - § realistic/flexible survey standards / exam
 - § partial / sampling examination of documents
 - § compulsory registration
 - § automation of indexes
 - § searchable/computerized title abstracts



Gliding scale

vertical: legal provisions that enforce and guarantee
horizontal: ideal types: pure deeds (left) to pure title (right)



Registration of Deeds

- § Improvements in Netherlands:
 - § better records management +
 - § standardization of forms and procedures (*)
 - § realistic/flexible survey standards / exam *
 - § partial / sampling examination of documents*
 - § compulsory registration *
 - § automation of indexes +
 - § computerization of title abstracts +



The Netherlands (laws)

- § Cadastre (Napoleonic base) finished in 1832
- § Public Register in Civil Code 1838
- § Under one Agency 1839
- § New Civil Code 1992, incl. Law on Cad. and Public Reg.
 - § Strengthened legal position of the registers (and cadastre ?)
 - § More often registration mandatory, consequence of non-reg.
 - § Some call it 'semi-positive'
- § Law on Base Register Cadastre 2008
 - § For public sector mandatory use and assumption of correctness



The Netherlands (records)

- § Index keeping done from the start, also per parcel
- § Gradual improvements over time, esp. 1922
- § Around 1990 indexes became digital
 - § much easier searching
 - § easier to maintain consistency
 - § notaries could check online around moment of transfer
 - § 2000s notaries can lodge deeds electronically
- § Some projects considered to revisit unclear situations, semi-legal approach to showing adverse possession/prescription



The Netherlands (quality)

- § Transactions after 1992 legally better
- § Transactions after ~1990 more consistent
- § Transactions after ~2000 no typing mistakes
- § Since 2008 'cadastral owner' deemed correct in public sector
- § Society expects **correct information online**
- § Ambition of Agency
 - § In the long run we aim for a positive register in which the registered rights are guaranteed

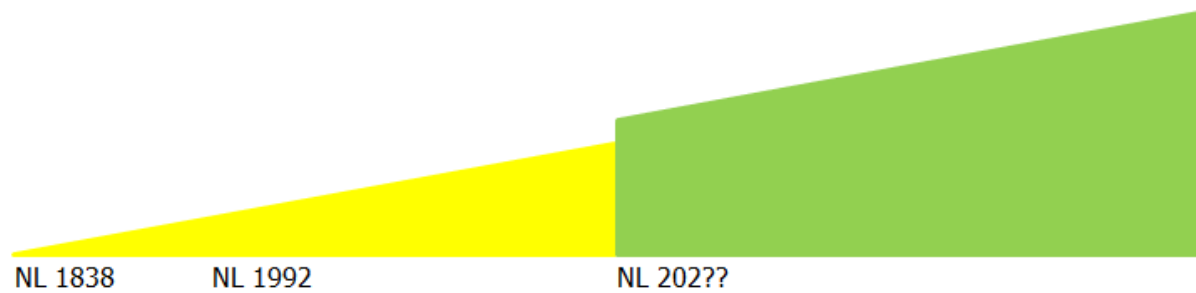


The Netherlands (ideas)

- § Agency could give quality label ('we guarantee') to 'cadastral owners' of land transacted for value since ~1995
 - § Notary could rely on this and reduce her 'searches'
- § Agency could invest in improving % of inheritances cleared to update register
- § Agency could proactively look for adverse position cases
- § Agency could investigate and clear out 'unclear areas' (legal provisions since 1992)
- § So move more and more to the middle of the diagram, but .. ?



It seems there is a threshold in the 'gliding scale'



Hop Step Jump

§ Hop

§ 1992 law + digital records

§ Step

§ Ongoing improvements

§ Jump ?

§ Positive system / Registration of Title



Better Quality LI à Registration of Title ?

- § More and more investments in data quality (via process chains) leads to better quality, but less and less improvements in the end
- § Transfers that do not legally demand document a/o registration remain hard to get, and take legal precedence over 'cadastral owner'
- § As long as non-registered owners can be around, parties / notary have to spend time to make sure it is not the case here

- § To really benefit from the good quality data, legal provisions in our opinion need to be changed à legal status of 'cadastral owner' has to be recognized in private law as well à guaranteed ??



Towards Positive System / Registration of Title ?

- § Current systems works fine for the real estate market
- § Very few court cases
 - § weaknesses around inheritance and adverse possession (but in many title systems as well)
 - § will full 'jump' be worth it ?
 - § will there be support in politics / main stakeholders ?
 - § if not now, will discussion come back ?
 - § same data is 'positive' for public sector
 - § society expects quality data from government / online
- § Future ? To be decied





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