

The Structure of Property Law, Ben McFarlane

C2:6 REGISTRATION AND REGISTERED LAND: TABLES, p90-91

The table set out below combines the two tables set out on pp 90-1.

Footnotes have been omitted: they can be seen on pp 90-1 of the book.

		Positive Operation Consequences of Substantive Registration	Negative Operation Consequences of the Absence of Substantive Registration
Acquisition Question	Property Rights	By substantively registering his right, a party acquires that right <i>but</i> certain property rights cannot be substantively registered; <i>and</i> a party can lose his right if the register is rectified.	In general, if a party fails to substantively register a right, he fails to acquire that right <i>but</i> certain property rights can be acquired without substantive registration.
	Persistent Rights	<i>N/A</i> : no persistent right can be substantively registered.	<i>N/A</i> : substantive registration is never necessary for the acquisition of a persistent right.
Defences Question	Property Rights	If a party: (i) acquires his right for value; and (ii) substantively registers that right; then (iii) he will be able to use the lack of registration defence against an unregistered property right or persistent right <i>unless</i> that pre-existing right counts as an overriding interest.	<i>N/A</i> : If a party has acquired a property right without substantively registering it, that right will almost always be an overriding interest and hence will be immune from the lack of registration defence even if it is not defensively registered.
	Persistent Rights	<i>N/A</i> : no persistent right can be substantively registered.	If a party fails to (or cannot) defensively register his persistent right, his right is potentially vulnerable to the lack of registration defence. <i>However</i> , if a party with a persistent right is in actual occupation of the registered land, his right may count as an overriding interest and hence be immune from the lack of registration defence.