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ASSOCIATION OF PENSION LAWYERS

Radcliffe Chambers

Signed, Sealed, Delivered: Issues with the proper execution of pension scheme documentation

Tom Robinson K.C. Wendy Mathers



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Introduction and agenda

- Signatures
- Witnesses
- Seals
- Delivery

Why talk about signatures?

Relevant to contentious and non-contentious pensions lawyers

Relevant to pensions and non pensions lawyers

Relevant to lawyers and non lawyers

And if that doesn't cover you…

"The Principal Employer and the Trustees may … by Deed alter cancel modify or add to any of the provisions of this Deed and by memorandum under hand signed .. alter cancel modify or add to any of the Rules" (*Newell* [2024] EWHC 48)

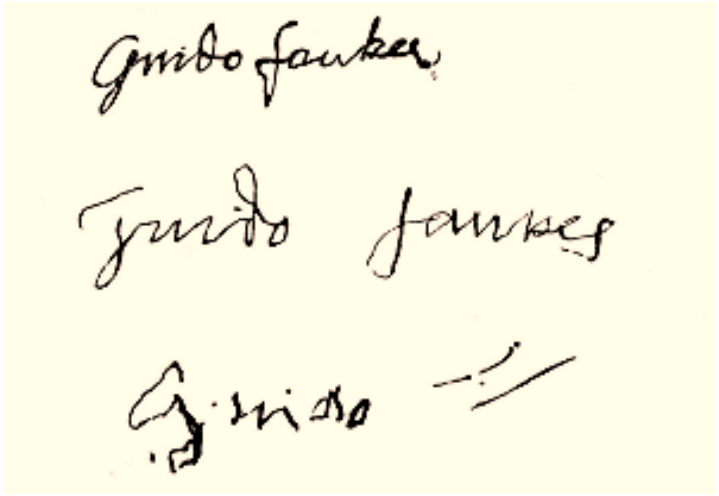
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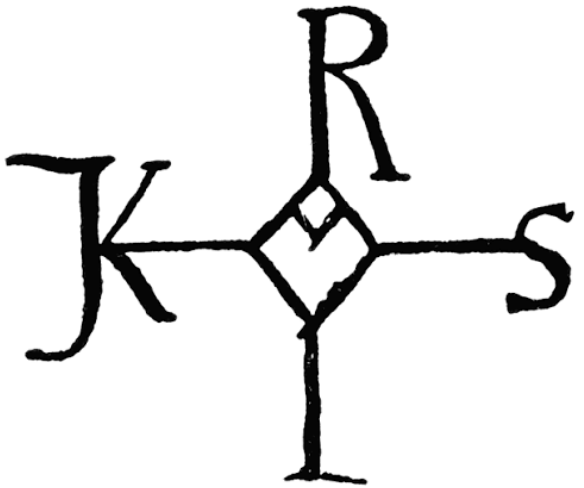
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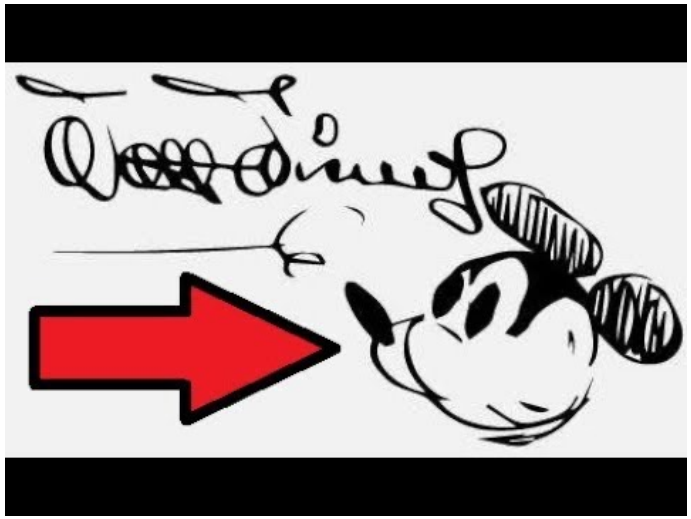
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Signatures through history





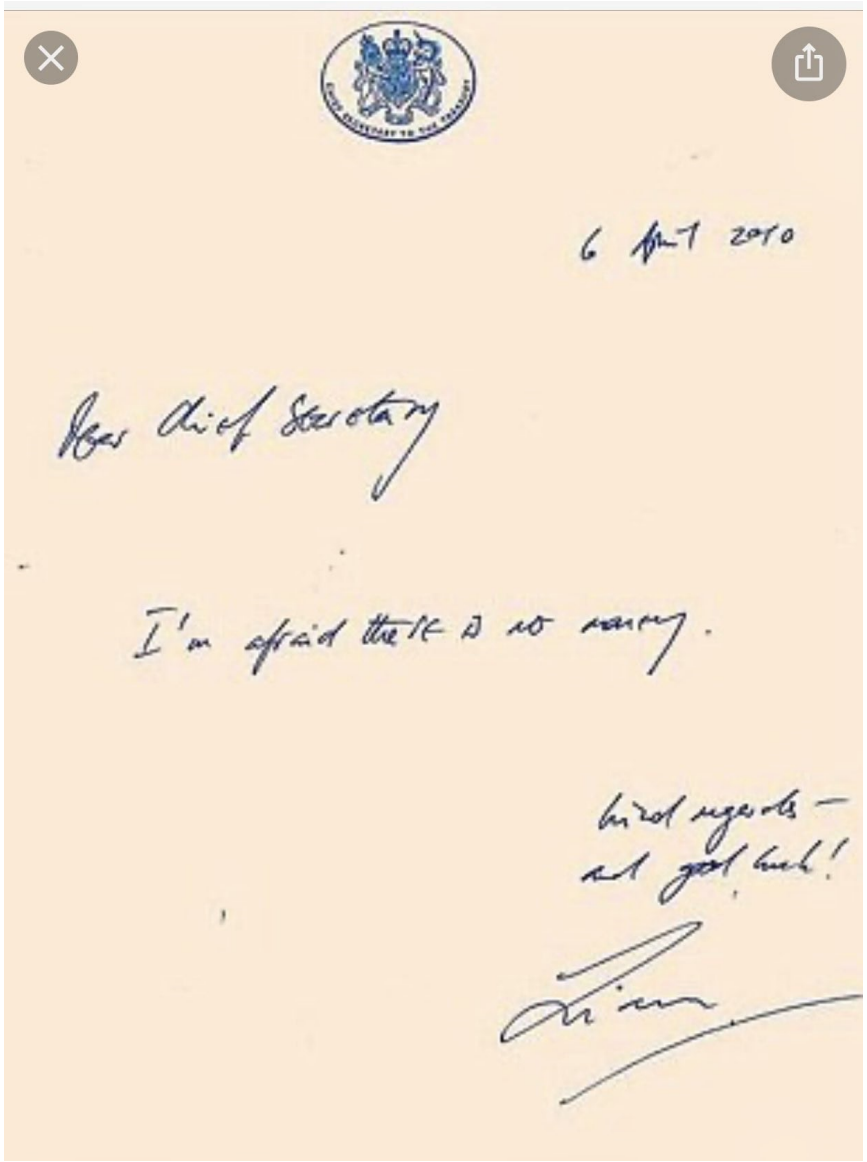




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Signatures through history



6 April 2010

Dear Chief Secretary

I'm afraid there is no money.

Kind regards –
and good luck!



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What counts as a signature?

The touchstone: “an intention to authenticate the document”: *Caton v Caton (1867) LR 2 HL 127* .

Poll:

Tom Robinson

TJDR

Robbo

X

Trustee

Your loving Mother

I

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Pitfalls

1. *The signature is "incidental" to the document.*
2. *Wrong place*
3. *Wrong person*
4. *Wrong capacity. Rectify the signature block? (Ballard* [2025] Pens LR 3*)*
5. *Missing signatures*

Missing signatures

HR Trustees Ltd v Wembley plc [2011] EWHC 2974

"Equity looks on as done that which ought to be done"

*"There is something wrong with a state of the law which makes it necessary to create fairy tales" (*Lord Toulson in *AIB)*

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Majority rule?

Does the Deed allow the Trustees to execute a document by majority?

PA1995, s.32(1): Trustee decisions may be taken by majority, unless the scheme provides otherwise.

But may only apply to meetings: s.32(2) envisages such decisions at “occasions”

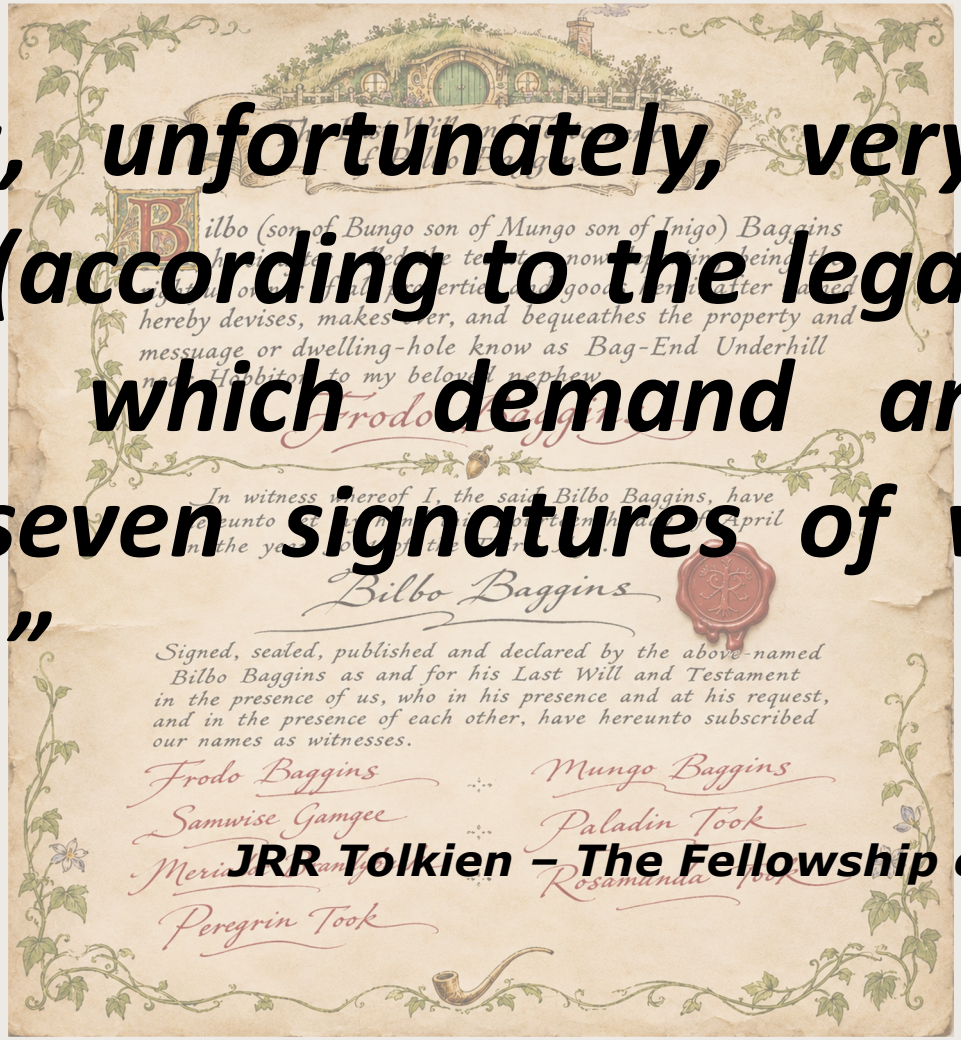
Witnesses

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Witnesses- a formal requirement

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"It was, unfortunately, very clear and correct (according to the legal customs of hobbits, which demand among other things seven signatures of witnesses in red ink)."

JRR Tolkien – The Fellowship of the Ring - Chapter 1

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Section 1(3) of the Law of Property (Miscellaneous Provisions) Act 1989

(3) An instrument is validly executed as a deed by an individual if, and only if—

(a) it is signed—

(i) by him in the presence of a witness who attests the signature; or

(ii) at his direction and in his presence and the presence of two witnesses who each attest the signature; and

(b) it is delivered as a deed

What is required of a witness?

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- Physical presence – even for electronic signatures?
  - Law Com 386 – Electronic execution of documents
- Must the witness sign the instrument?
  - *R. (oao Mercury Tax Group Ltd) v HMRC [2008] EWHC 2721, [38]-[40]*
- Can a witness attest multiple signatures by signing once?
  - *Euro Securities and Finance Ltd v Barrett* [2023] Ch 279
- Must a witness sign in the presence of the signatories?
  - *Wood v Commercial First Business Ltd (in Liquidation)* [2020] CTLC 1
- Can a party to the deed act as a witness for another?
  - *3Kings Holdings Ltd v TCF 1 GP Ltd* [2026] EWHC 2620 (BP) at [27]

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Can estoppel rescue defective attestation?

It depends…

YES - If the instrument appears to be a valid deed

Shah v Shah [2002] QB 35

NO - If the instrument is deficient on its face

Briggs v Gleeds [2015] Ch 212

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Impact of section 1(2) LP(MP)A 1989?

(2) An instrument shall not be a deed unless—

(a) it makes it clear on its face that it is intended to be a deed by the person making it or, as the case may be, by the parties to it (whether by describing itself as a deed or expressing itself to be executed or signed as a deed or otherwise); and

(b) it is validly executed as a deed [—]

(i) by that person or a person authorised to execute it in the name or on behalf of that person, **or**

(ii) by **one or more of those parties** or a person authorised to execute it in the name or on behalf of one or more of those parties.

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Challenge to *Gleeds:* A missed opportunity?

- *Macdonald Hotels Ltd v Bank of Scotland Plc* [2025] EWHC 32 – *obiter* remarks at [239]-[240]
- *Dunn v Kazolides* [2025] EWHC 2212 (Ch)
  "The decisions in *Macdonald Hotels* and *Briggs* are not easy to reconcile." [80]
  It was not necessary to do so[87]
- *Dunn v Kazolides* [2026] EWCA Civ 1484
  - Ground 2 –Was the judge wrong to conclude the claim was barred by the Limitation Act 1980?
  - Respondent's Notice – Ground 1 – The limitation period is 6 years, i.e. the instrument is not a deed.

Appeal dismissed on other grounds – not necessary to consider the points raised in the Respondent's notice [67].

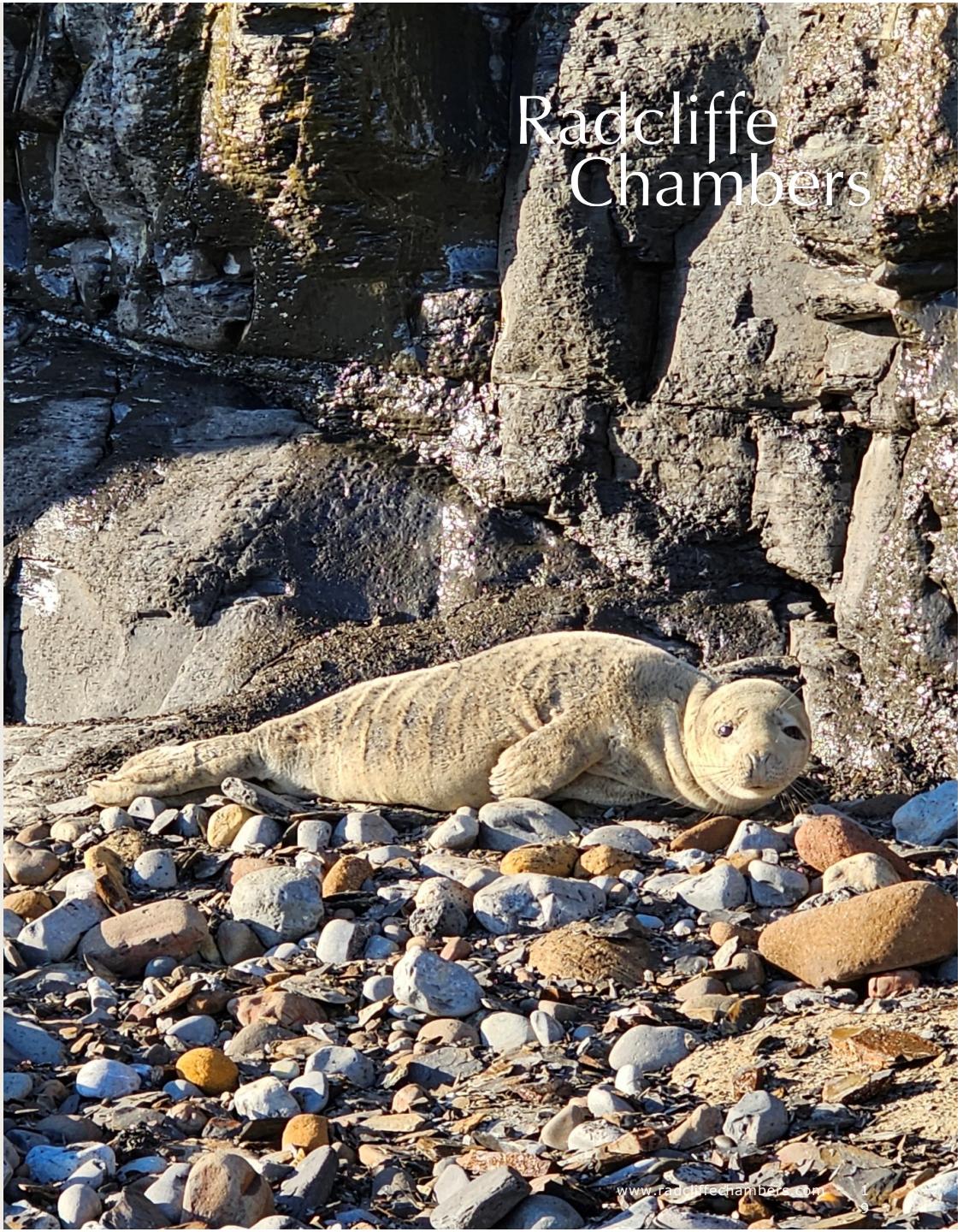
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AUDIENCE POLL – DO SOME OR ALL PARTIES TO A DEED NEED TO EXECUTE IT PROPERLY FOR IT TO TAKE EFFECT AS A DEED?

- A – If parties have purported to execute a deed, the instrument will not be a deed unless the relevant formality requirements have been complied with by ***all*** of the signatories.

- B – Section 1(2) provides that an instrument which was clearly intended on its face to be a deed would be valid as a deed provided ***at least one*** of the signatories had executed it properly as a deed, meaning that a failure to comply with section 1(3) by one party would not be fatal.

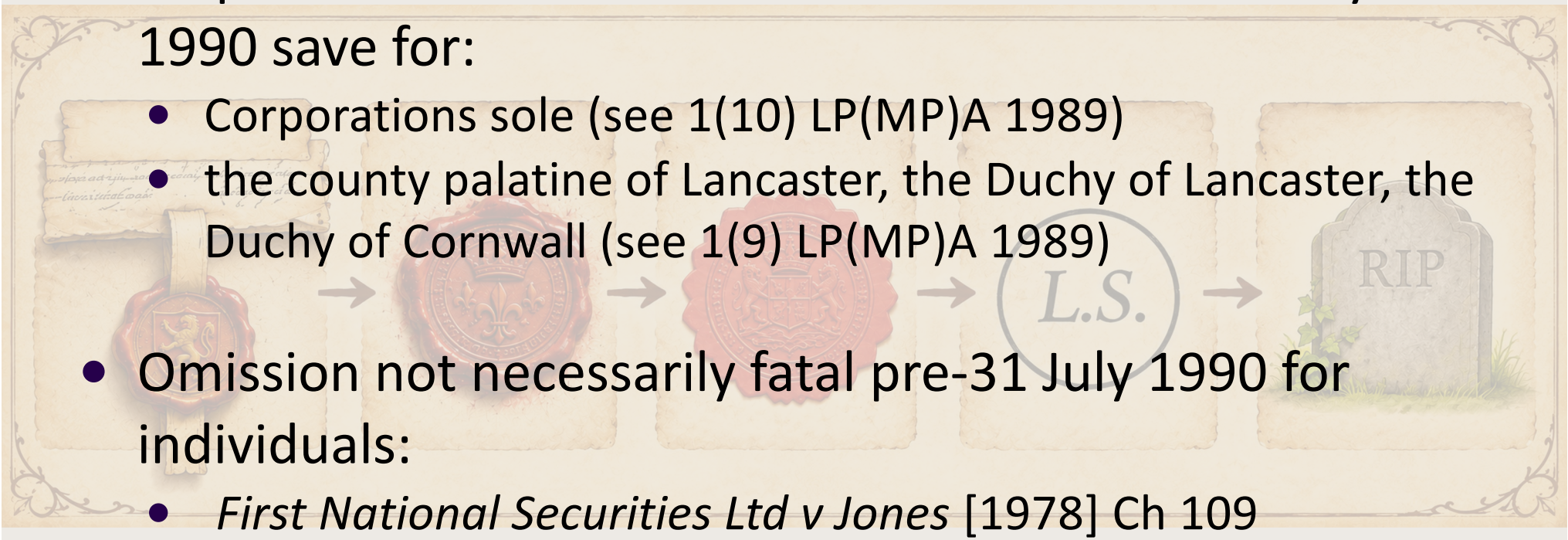
Seals



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The demise of seals

- Requirement abolished for *individuals* w.e.f. 31 July 1990 save for:
  - Corporations sole (see 1(10) LP(MP)A 1989)
  - the county palatine of Lancaster, the Duchy of Lancaster, the Duchy of Cornwall (see 1(9) LP(MP)A 1989)



- Omission not necessarily fatal pre-31 July 1990 for individuals:
  - *First National Securities Ltd v Jones* [1978] Ch 109
  - *TCB Ltd v Gray* [1986] Ch 621
  - *Southdown Building Society v Leighton Stradling Dyer* [1991] 10 WLUK 301

Delivery

s.1(3) LP(MP)A 1989 requires a deed to be "delivered as a deed" in order to be validly executed by an individual.

Likewise s.46 CA 2006 for companies, though delivery is presumed from execution.

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Delivery

But what is “delivery as a deed”?

- No need to hand the document over
- Just evidence an intention to be bound
- No-one else need be present

Pitfall: Delivery always comes last, after signing and witnessing (and sealing). If changes are made after deliver, the deed must be re-delivered (*Euro-Securities & Finance Ltd v Barret & Ors* [2023] Ch 279).

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