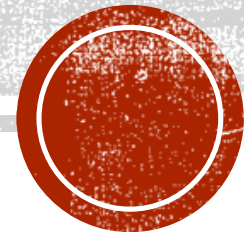


NOTARIES

How to translate civil-law notary terms into English

Rob Lunn

METM18, Girona



YOU NEED TO VISIT A NOTARY TO...

In Spain (civil-law notary systems)

- Buy a property
- Set up a company
- Make a will
- Grant a power of attorney
- Make a prenuptial/postnuptial agreement
- Get official/certified copies for domestic/foreign use

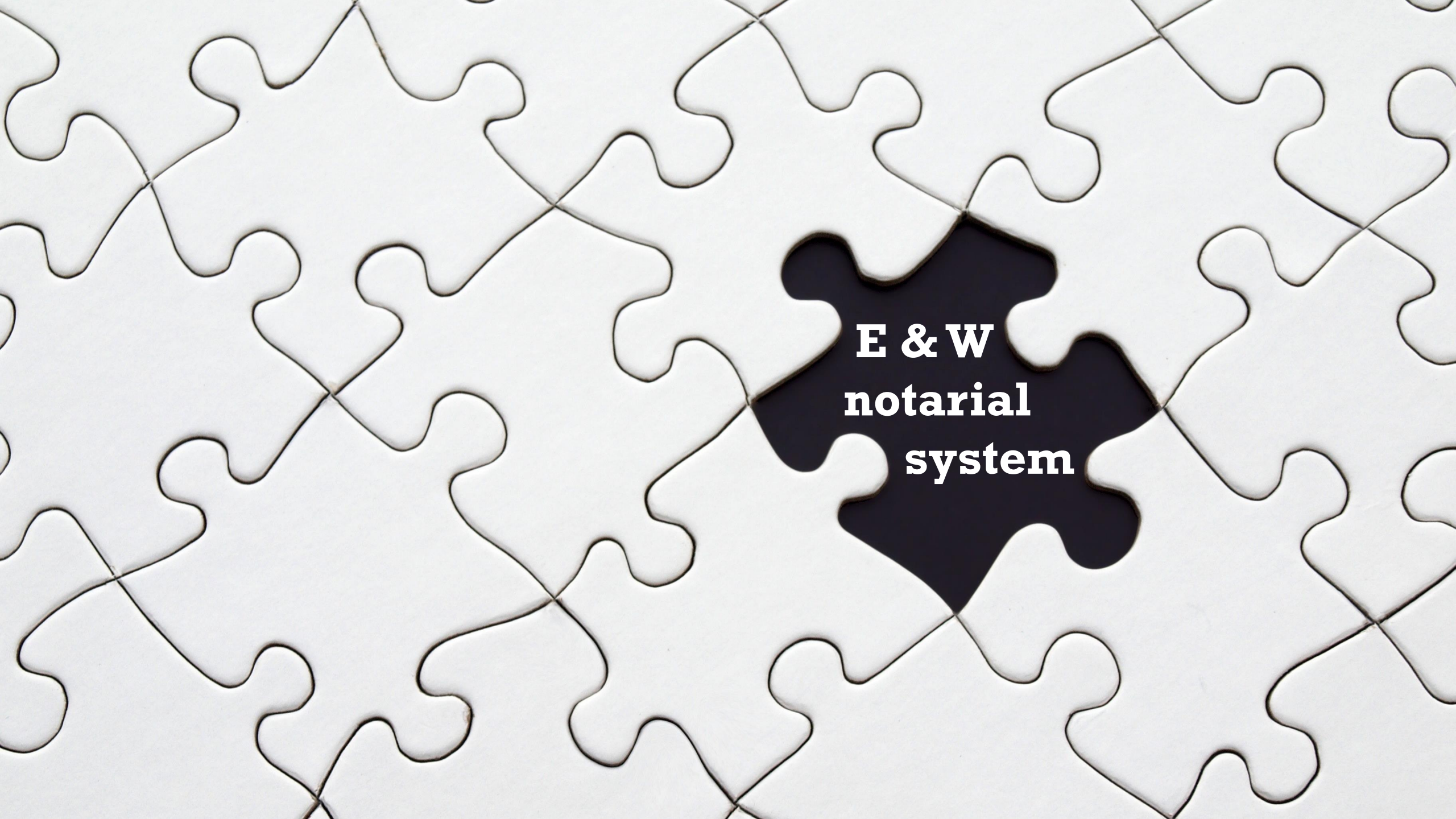
In England and Wales (common-law notary systems)

- Get a document authenticated for use abroad



“In England and other common law jurisdictions, the notarial system is less deeply rooted; notaries exist primarily in England to enable parties to authenticate documents or give effect to legal transactions in jurisdictions outwith the United Kingdom”

The UK and Ireland Notarial Forum

A white puzzle with one dark piece in the center containing the text "E & W notarial system".

E & W
notarial
system

IMPLICATIONS?

1. Non-equivalent documents and procedures
- ~~2. Non-equivalent terms?~~
2. Equivalent but obscure terms



KEY CONCEPT: PUBLIC FORM (*ELEVAR A PÚBLICO*)

- Narrated from notary's perspective
- Spanish notarial acts usually in public form
- English notarial acts usually in **private form**
- But English notaries can execute instruments in public form (and do anything else required for a foreign jurisdiction)



PUBLIC FORM ≠ PUBLIC DOCUMENT

In practice, when Spanish notaries talk about “*documentos públicos y privados*” there usually distinguishing between documents executed before a notary (in public form) and other kinds of documents.



Hence translations like:

“notarially-recorded document” versus “non-notarially-recorded document” (West)



SHOULD YOU USE “IN PUBLIC FORM” OR “PUBLIC” IN TRANSLATION?

Probably
not

Why not?

- Obscure outside of notary circles
- Redundant
- Easily misunderstood
- Adds nothing if not explained



WHAT CONTEXT?

Technical

- E.g., legal and notarial documents.
- Avoid “public”, etc.

Informational/academic

- E.g., webpages, books and articles on Spain
- Maybe describe and use terms like “public” and “in public form”.



2 TYPES OF PUBLIC-FORM NOTARIAL ACTS

Escritura pública (notarial instrument)

- “Instrument” that records an act
- “executes”, “makes”, “grants”

Acta notarial (notarial certificate)

- “Certificate” that records a fact
- “certifies”, “records”



In general

- (notarial) instrument (executed before a notary public)
- notarially-recorded instrument (West)

When equivalent

- (notarised) will (executed before a notary public)
- power of attorney

When non-equivalent

- escritura de constitución > notarial instrument of incorporation

***ESCRITURA
PÚBLICA***



WHAT ABOUT “DEED”?

01

Use it all the time (as an equivalent)

- “Notarial deed” better than “public deed”

02

Avoid it

03

Use it selectively

- (notarial/notarised) “deed of conveyance/sale” or “mortgage deed” (executed before a notary)



ACTA NOTARIAL (NOTARIAL CERTIFICATE)

- In general
 - recorded as a notarial certificate before a notary public
 - certified by a notary (public)

Acta notarial de la Junta General >
minutes certified by notary public/notarised minutes

Acta notarial de deslinde con citación de colindantes >
notarial certification of property boundaries made in the presence of abutting property owners (Jowers)

Acta notarial de notoriedad que acredita el título >
notarial certification of title certifying that ownership is common knowledge (Jowers)



***SAFE* AUTHENTIC TERMS**

- Protocol. (versus register (*libro-registro*))
- Appearer
- Notary public vs civil-law notary



A BIG THANK YOU TO

- Javier Pérez-Manglano (author of *Spanish Law for Notaries*) of Vanner Perez Notaries (<https://www.vpnotaries.co.uk>)
- References on my blog www.legalspaintrans.com

