

LAND LAW
LECTURE 1
WHAT IS LAND?

The nature of land

1. REAL PROPERTY (REALTY)

Property is divided into two main categories: "real" property and "personal" property. The law of land, or real property, is concerned with the rights, interests and obligations which can exist over land, and with how these rights and duties are created, enforced, assigned and extinguished.

Chattels are another name for personal property.

In general, all interests in land are real property (or realty), with the exception of leaseholds (the legal term used for landlord and tenant relationships) which are classified as personalty.

[Leases were originally regarded as personal business arrangements under which one party allowed the other the use of his land in return for a rent, in other words, they were personal contracts. Leaseholds are still regarded as personalty in law, but because they are also recognised as estates in land they have a somewhat paradoxical technical name - chattels real.]

E.g. A freehold house is realty, but leasehold flat is personalty.

Land is defined in s.205 (1) (ix) Law of Property Act 1925 (as amended) ("LPA 1925"):

"Land includes land of any tenure, and mines and minerals, whether or not held apart from the surface, buildings or parts of buildings (whether the division is horizontal or vertical or made in any other way) and other corporeal hereditaments; also a manor, advowson, and a rent and other incorporeal hereditaments and an easement, right, privilege, or benefit in, over or derived from land..."

Includes:

Air space ... what is reasonable in the circumstances.

To the centre of the earth but CROWN (real owner) RESERVES anything valuable e.g. coal, gold, gypsum, oil and then licenses it out (a personal right to the licensee only – which cannot be assigned/ sold. Therefore, no real use to landowner – just the state etc.

A hereditament is a right in land that is inheritable. It can be corporeal or incorporeal.

What do these terms mean?

Corporeal

Earth Surface
Buildings
Minerals
Fructus naturales

Incorporeal hereditaments

Easements
Mortgage
Covenants

The study of the law relating to land is not confined to the physical dimension, but encompasses intangible rights over or interests in the land. These are of vital importance to the person who has physical possession of the land itself, and to any person who claims a right or interest in respect of that land. For example, a person with a right of way (easement) over land belonging to another person is said to have a right or interest in that land; likewise a mortgagee will have a right over the land.

Personal property "**personalty**" is basically everything else.

Two stage process:

Stage 1 - Contract for sale

This includes terms you have agreed upon e.g. price for land. Exchange of contracts = legally binding agreement. What have you bought? Is the greenhouse included or not?

Stage 2 - Conveyance

This is the document transferring legal title to land. Pay money and entitled to possession.

NB If in doubt expressly specify it in the contract.

2. FIXTURES

'Land' also includes any fixtures on it.

Those objects which as a matter of law are affixed to the land and become part of the land itself.

Buildings?

In rare circumstances something not actually fixed to the land but which appears to form an integral part of it, may be regarded as forming part of the land. See

D'Eyncourt v Gregory (1866) LR 3 Eq 382 – statues and garden seats

Holland v Hodgson (1872) LR 7 CP 328 – looms in a mill

2.1 In order to decide whether something is or is not a fixture, two questions must be asked namely:-

- (i) How securely has it been affixed? - the degree of annexation.
- (ii) Why was it affixed? - the purpose of annexation. If the purpose was to effect a permanent improvement to the land then the object is a fixture. If, however, the intention was merely to effect a temporary improvement or to enjoy the chattel as a chattel, then the object is not a fixture.

If an object is substantially affixed it is prima facie a fixture: but this presumption is rebuttable by showing that this was not the purpose of annexation.

Leigh v Taylor [1902] AC 157 – valuable tapestries attached to walls

Conversely, even if an object is hardly affixed at all it can still be a fixture if this was the purpose.

D'Eyncourt v Gregory [1866] LR 3 Eq 382 - statues and garden seats

It is always the purpose of annexation that is the decisive question.

See, for example:

Berkley v Poulett [1977] 1 EGLR 86 - pictures, marble statue and sundial

Hamp v Bygrave [1982] 266 EG 720 - patio lights, stone urns and statue and a trough

TSB Bank plc v Botham and others [1996] EGCS 149 - for a realistic approach by the Court of Appeal

Elitestone Ltd v Morris [1997] 2All ER 513 - for a closer analysis by the House of Lords

London Borough of Tower Hamlets v London Borough of Bromley [2015] EWHC 1954 (Ch) – a more recent case concerning ownership of a statue by Henry Moore

2.2 The question as to whether or not something is a fixture will be important on a change in the ownership or occupation of land.

(i) As between a seller and buyer of land, the seller must leave for the benefit of the buyer all fixtures attached to the land at the time of the contract for sale. The conveyance will pass such fixtures to the buyer without express mention, unless otherwise expressly agreed in the contract.

(ii) On the death of an owner of land, all fixtures pass under his will or intestacy as realty to the devisee of the land.

Leigh v Taylor [1902] AC 15

(iii) What happens when land is subject to a mortgage?

e.g. Holland v Hodgson [1872] LR 7 CP 328 - looms in a mill

(iv) The question 'land or chattel?' will be important in determining **whether the 'land' can be the subject of a tenancy agreement:**

Chelsea Yacht and Boat Co Ltd v Pope [2001] 2 All ER 409 – a houseboat moored in one location and aground at half tide is not of the same genus as real property and therefore not capable of being the subject of a tenancy agreement.

(v) As between a landlord and a tenant there are complicated rules that are beyond the scope of the course.

3. TENURE AND ESTATE

3.1 The two fundamental doctrines in the law of real property are:

(i) The doctrine of tenures: all land is held of the Crown, either directly or indirectly, in one or other of the various tenures;

and

(ii) the doctrine of estates: land held in tenure is also held for an estate i.e. for some period of time.

In theory all land in England and Wales belongs to the Crown. A subject of the Crown can only hold an estate in the land, i.e., the right for a period of time to possess and enjoy the land and/or to receive any rents or profits that it may

produce. Theoretically, a subject holds his estate directly or indirectly of the Crown on certain conditions, i.e., some type of tenure.

Since 1925, all freehold land in England and Wales is said to be held directly of the Crown in socage tenure.

The concept of the estate is of much more importance in modern land law than the concept of tenure.

3.2 Estates

This term indicates the duration of a particular interest in land.

3.2.1 Since 1st January 1926 the only estates in land which are capable of subsisting or of being conveyed or created at law are-

(a) an estate in fee simple absolute in possession;

(b) a term of years absolute.

(s. 1 (1) LPA 1925)

3.2.2. THE FEE SIMPLE ABSOLUTE IN POSSESSION (FREEHOLD)

POSSESSION includes receipt of rents and profits of the land, or the right to receive the same if any – s.205(1)(XIX) LPA 1925.

e.g. A owns the fee simple in Greenacres
A grants a lease of the land to B
A = owner of fee simple owner absolute in possession?

[Yes, the fee simple remains “in possession” and a legal estate despite the fact that the tenant acquires the physical possession of the land.]

3.2.3 THE TERM OF YEARS ABSOLUTE (LEASEHOLD)

The relationship of landlord and tenant.

The other estate which was designated as such by the LPA 1925 and is recognised at law is the leasehold estate (or term of years absolute). The concept of the term of years does not have its origins in the feudal system.

There are (amongst others) two important differences between freehold and leasehold estates:-

- a) When a leasehold estate is created, it is always for a fixed period, or for a period that can be made certain by a notice to quit.

- b) Ownership of a freehold estate is the nearest an individual can get to owning the land itself and the law regards such an interest as realty (real property). A lease, however, is not included in the category of realty, but is classified as personalty (personal property).

S.205 LPA 1925 defines term of years as including "a term of less than a year or for a year or years and a fraction of a year, or from year to year".

i.e. a term for any period having fixed and certain duration.

- e.g. To X for 99 years.
- e.g. To Y a yearly tenancy
- e.g. To Z a weekly tenancy

The above examples are all capable of being a term of years as defined by section 205 as there is a defined minimum duration of either a year or fraction of a year, or from year to year.

Note that it is possible to have concurrent legal estates: e.g. one or more leasehold estates may be carved out of the freehold estate (s.1(5) LPA 1925).

KEY POINTS:

- **'Land' includes tangible and intangible rights**
- **Fixtures are 'land'**, but chattels are personal property
- There are tests to distinguish fixtures from chattels
- We own estates in land, rather than the land itself
- There are two legal estates: the fee simple and the term of years

What are the less formal terms used for the two legal estates?

LAND LAW
LECTURES 2 AND 3
THE CREATION OF LEGAL AND EQUITABLE RIGHTS IN LAND

Introduction

Rights in land can essentially be divided into two categories:

- Estates
- and
- Interests

A person who has an estate in land has '**ownership**' of that land - a right to use, enjoy and dispose of the land.

A person who has an interest in land has a right against land owned by another person.

There are numerous types of interest in land:

For example:

A number of people may have different, sometimes competing rights over the same land.

Every property right (whether it be an estate or an interest) will either be legal or equitable.

Note that only certain property rights can ever be legal but all property rights are capable of being equitable.

What is the difference between a legal right and an equitable right?

Equity developed historically to prevent injustice and unfairness which could sometimes result from a strict application of the common law. Equity was more flexible than the common law.

Until 1875 equitable rights were only recognised by the Court of Chancery. Anybody wishing to enforce an equitable right could only do so through this court. Since 1875, however, common law and equity have been administered by a unified court system – Judicature Acts 1873 and 1875.

The result of this?

1. Test for legal property rights

There is a two stage test.

You must ask yourself the following two questions and if you can answer yes to both questions then the right will be legal:

(a) Is the right listed in section 1(1) or (2) Law of Property Act 1925?

Section 1(1) and (2) Law of Property Act 1925

This provides that only certain rights can ever be legal and it lists those rights.

There are only two types of estate which can be legal (section 1(1)) and five types of interest which can be legal (section 1(2)).

If a particular property right is one of the two estates listed or one of the five interests listed then it can be a legal property right.

But if it falls outside the list then it cannot be a legal property right.

It can only be an equitable property right.

Authority?

(b) Has the right been created or transferred by deed?

Section 52(1) Law of Property Act 1925

This provides that a deed is required to create or transfer a legal property right.

What are the legal formalities for a deed?

Section 1 Law of Property (Miscellaneous Provisions) Act 1989:

The document in question must:

- be clear on its face that it is intended to be a deed
- and
- be validly executed,

2. Test for equitable property rights

If the property right is not legal then it may be equitable.

Note however that even equitable property rights require a certain level of formality in their creation.

To decide what formality is necessary you must ask yourself:

Why has the right failed to be legal?

Is it because it is not listed in section 1(1) or 1(2) Law of Property Act 1925 or is it because it has not been created or transferred by deed?

(a) The right is not legal because it is not listed in section 1(1) or 1(2) Law of Property Act 1925

Formality required:

Section 53(1) Law of Property Act 1925

(unless the right is an implied trust – this is an exception – see section 53(2) Law of Property Act 1925 and section 4.6 below)

(b) The right is not legal because it has not been created or transferred by deed

All contracts for the creation or transfer of rights in land must comply with Section 2 Law of Property (Miscellaneous Provisions) Act 1989 in order to be valid.

3. Legal property rights

Remember that only those rights which are listed in section 1(1) or (2) Law of Property Act 1925 can be legal.

They must also be created by deed to be legal.

3.1 The legal estates

The two estates which can be legal are listed in section 1(1) LPA 1925.

They are:

(a) The estate in fee simple absolute in possession

(b) The term of years absolute

3.2 The legal interests

The five interests which can be legal are listed in section 1(2) LPA 1925.

They are:

(a) Easements and profits

... **but only those** of a duration equivalent to an estate in fee simple absolute in possession or a term of years absolute

An easement is a right of one landowner to make use of another nearby piece of land for the benefit of his own land.

Examples:

A profit is in essence a right to go **on somebody else's land and remove from** that land something which exists there naturally.

Examples: