An introduction to land law

Introduction

Land Law is a pretty fundamental area of English law and is an important part of any law course. It is not an easy area of law, largely because of the unfamiliar words used.

Land is fundamental to our lives – we all need somewhere to live. It is used to grow the food that we eat, and we need to travel over it to get to places. Over the centuries a number of different rights have evolved to deal with the complex way that land is used.

Before 1925 land law was all a bit of a muddle. However the 1925 Law of Property Act simplified things considerably and happily we do not need to know anything about the system before then.

It is still fairly complicated though. Plus, as you will probably realise from last week’s article on trusts, you can own either the legal or the beneficial interest in land or both.

But let us not run before we can walk. We have a fundamental question to ask ourselves.

What is land?

Let’s see what the Law of Property Act 1925 says

“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, vertical or made in any other way) and other corporeal hereditaments; also a manor, an advowson, and a rent and other incorporeal hereditaments, and an easement, right, privilege, or benefit in, over, or derived from land; . . . and “mines and minerals” include any strata or seam of minerals or substances in or under any land, and powers of working and getting the same . . .; and “manor” includes a lordship, and reputed manor or lordship; and “hereditament” means any real property which on an intestacy occurring before the commencement of this Act might have devolved upon an heir; Law of Property Act 1925 s205(1)(ix)

Exactly. Clear as mud.

But let’s take a closer look at some of those items. Land for example includes ‘mines and minerals’.

“and is not just the actual surface but also land below and air space above., What is unsettled is how far it extends” From Bernstien v. Skyviews and General Ltd (1978)

Maybe not that helpful but at least we know what we don’t know.

What then are hereditaments? A lovely word which no-one but a lawyer would ever willingly use. Let alone corporeal or incorporeal hereditaments. But it is quite easy really:

- **Corporeal hereditaments** are the land and what is attached to the land. Real things you can touch and hold.

- **Incorporeal hereditaments** are rights over land. Such as rights of way.
What about tenure? What's that?

- **Tenure** is the type of ownership (bearing in mind that we don't have ownership, see below) that you have. Your **estate** in the land.

**Estates in Land**

We say ‘estate in land’ as technically the Crown owns all the land and we can only own an ‘interest’ in it.

No one other than the Queen owns land absolutely. We do not have any ‘allodial land’ (land which is held absolutely rather than from a feudal superior) in this country.

However in practice the Queen is not going to start interfering in your use of your property (or even visit it, however much you might like her to).

It is quite useful though, having this general overall ownership. It means that when there is no apparent owner of property, it can revert to the Crown, so everyone knows where they are. There can be no land without an owner.

Under the Law of Property Act there can only be two legal estates in land:

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.

*Law of Property Act 1925 s1*

What does that all mean?

**An estate in fee simple**

- **An estate in land** refers to the rights which a person has to control and use the land. Remember no-one can own land other than the Queen.

- **Fee** means that it can be inherited

- **Simple** means by anyone

- **Absolute** means that it will not end at any particular time (ie it is not given to X until he marries), and is therefore unlimited or perpetual

- **In possession** means that you have it now rather than at a future date (it does not necessary mean that you actually live there though)

The estate in fee simple therefore is the closest thing we get to absolute ownership. It is also known as freehold.
The term of years

This is largely the subject matter of this course!

A term of years is where someone owns land for a period of time only. After that period of time has ended, it reverts back to the original owner. Or if the ‘reversion’ has been sold on to someone else, to that person. It is also known as leasehold.

There is also another interest in land called commonhold, but we are not going to be looking at that in this course.

Interests in land

So we have our two estates. You can either hold land on a freehold basis or on a leasehold basis. In law anyway (we’ll talk about equity later). However that is not the end of the story. You can also have interests in land.

- An interest in land is a right which someone has over another persons property.

As an added complication they are divided into

1. Legal interests, and
2. Equitable interests.

Before we start looking at interests, I need to tell you that they are proprietary rights in land.

So whats that then?

- **Proprietary rights** are rights which are capable of binding third parties. As opposed to
- **Personal rights**, which are rights which are not capable of binding third parties.

So if you have a right of way over Fred’s land (which is a proprietary right) this will bind any purchaser of Fred’s property.

Whereas if Fred has just given you permission to sketch the flowers in his garden, this is a personal right, and when Fred sells the property, you will lose it.

Legal interests in land

These are set out in s1(2) of the Law of Property Act 1925. Just after the section which sets out the two permitted estates in land. Basically if it is not in s1(2) it is not a legal interest. They are:

- **Easements**

This is the right to:
- Use someone else’s land in a particular way – for example a right of way will allow you to walk over someone’s land, or

- Prevent someone’s land being used in a particular way – for example if you have a right of light

- **Profits a prendre**

  This is:

  - The right to take something from someone else’s land. For example peat, fish, wood or grazing rights.

  Profits are considerably less important than they were, say a couple of hundred years ago, due largely to the increasing urbanisation of our society.

- **Mortgages**

  This course is not going to look at mortgages in any detail. However as you probably know, they are a ‘charge’ on land to secure a debt.

- **Others**

  There are a few other legal interests which I do not want to go into particularly as they are not relevant to our course. They include rentcharges and various periodical payments charged on land.

**Creating a legal interest**

Section 53(1) of the Law of Property Act requires legal interests to be created or conveyed by deed (save for one important exception which we will be looking at next week). What is a deed?

This is set out in section 1 of the **Law of Property (Miscellaneous Provisions) Act 1989** which says that an ‘instrument’ will not be a deed unless:

- The document makes it clear that it is intended to be a deed (ie by saying that it is a deed or that it is signed as a deed)

- It is signed by the person making it and by a witness who is present at the same time and who signs it as witness

- It is ‘delivered’ by the person making (or ‘executing’) it or by someone on his behalf

- Before 31 July 1990 it had to be ‘sealed’ but this is now no longer necessary.

These are probably all fairly clear, apart from delivery.

**Delivery** is when the person signing the deed indicates that he intends to be bound by it. Originally it was done by physically handing the document to the other party or by a special form of words. However this is no longer necessary. Delivery is normally implied by the conduct of the person signing the deed, generally by virtue of the fact that the deed has in fact been signed.

**Equitable interests in land**
This means a type of interest which would originally only have been recognised in the old Court of Chancery. Here are some equitable interests:

- Interests under trusts
- Interests not created formally (ie by deed) – remember that maxim of equity we looked at last week “Equity regards done what ought to be done”
- Restrictive covenants – this is where someone agrees in a deed to use or not to use land in a certain way (for example to keep fences in repair, or not to keep pigs)

**Overreaching**

This is a process where a person’s equitable rights under a trust of land can be removed from the land and be transferred to the proceeds of sale.

**Conclusion**

I am sorry that this article has been a bit of a jargonfest, but that’s land law for you. Most of the ideas and concepts are very straightforward but they are clouded by all the old fashioned terminology that goes with them.

The reason why we have this terminology though and keep on with it, is that once you know what the term means you know where you are. So if I say that something has to be signed as a deed, you will now know exactly what I mean. Or will do once you have come back here to read it again and remind yourself!

We won’t need to re-visit many of the things I have discussed here. However landlord and tenant law grew out of land law, so it is a good idea to have some understanding of land law itself.

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