

10 Land law

In most legal systems a distinction is made between land and other kinds of property. Sometimes land is called real estate in contrast to personal estate or immovable assets in contrast to movable assets such as furniture and vehicles. In this chapter “land” refers not only to a piece of ground, but to any buildings upon it.

All over the world people think of land as the most important form of property. A subsistence farmer in a developing country needs a secure right to use a piece of land in order to grow food for his family. A city dweller needs shelter from cold and heat and theft. Many people spend all their working lives paying instalments on a house or apartment so that they will own the place in which they live when they stop work and will have something of value to pass on to their children.

Of course, it is business property—shops, factories, offices, hotels—that is the most valuable land of all. In 1993, just one square meter of commercial land in Hong Kong was valued at around US\$20. Land is not just a site for dwellings or workplaces, but a commodity which can be sold, rented out or used as security in order to borrow money which can be used to buy shares or to buy other pieces of land.

Complexity

It is not surprising that the law regulating such a valuable form of property tends to be very complex and have a long history. When transferring land both the old and new owners want to be very clear about exactly what has been transferred. Is the house you want to spend all your savings on in a good condition? Do you have the right to use the small piece of ground at the back of the house? If the fence between your house and the next one falls down, who is responsible for it? Are there plans to build a new road right next door, and did the seller know about these plans? Can you even be sure that the seller is the true owner of the land and entitled to sell it to you? A person renting land (a **tenant**) will also want to know exactly what his rights and responsibilities are, especially if he is planning to live on that land for a long time or wants to be able to sell the right to rent the land to another person. How long can he use the property? Can the owner increase the rent or make him leave? Who must pay for repairs—the owner or the tenant?

As well as being complex, some systems of land law are rather old and include procedures and language which seem mysterious to non-lawyers.



Figure 10.1 *The most expensive land on earth.*

In part, this is because governments are often reluctant to change the laws relating to land: changes require detailed revisions of detailed laws, and landowners may be alarmed by new rules relating to their most precious possession. Having had less political change than most countries, England still uses many land laws which originated hundreds of years ago. Some landowners can produce written records which show how their land has passed through dozens of owners over the years through gifts or sales (although to prove title—that he is the legal owner of the land—the landholder only has to show that he or previous owners held the land legally for a certain number of years.) Even in France and the United States, where political revolutions led to the re-writing of the legal system, some people can show a right to land which originated in a family ancestor long before the revolution.

Estate in English law

In 1925, several laws were passed in England in an attempt to simplify the system of holding and transferring land. These laws recognised two estates in land. An estate is a right to possess land for a defined period of time, and the two estates recognised are (i) “fee simple absolute in possession” and (ii) “term of years absolute.” The first means that the landholder owns the land throughout his life unless he sells or gives it to someone else. Eventually, this land will pass to his **heirs** (people entitled to the property of someone after he dies: see previous chapter). The second is a right to hold land for a certain fixed period, after which the land returns to the holder of the estate “absolute in possession.”

We often call the first estate a **freehold** and the second a **leasehold**, or **lease**. All land is ultimately held by a freeholder, but sometimes it is the freeholder who is using the land, and sometimes it is a leaseholder. In England a majority of people living in houses own the freehold, but people living in apartments usually own a lease. When they buy an apartment they will want to buy as long a lease as possible from the freeholder—for example, 99 years. Often the leaseholder (or lessee) has the right to sell his lease to someone else, but of course he can only sell the right to use the land for the number of years remaining on the lease. Until the lease ends, he has the right to possess the land exclusively: even the freeholder has no right to enter the land without the leaseholder’s permission. However, the contract he signed with the freeholder will require him to fulfil certain obligations, such as paying rent (ground rent) and keeping buildings in a good condition. The obligations, or covenants, which the leaseholder and

freeholder owe to each other can be very complicated. For example, they must decide who is to pay if expensive repairs need to be done. Even a 99 year lease could be ended (**forfeited**) if the lessee breaks an important agreement such as rent payment.

It seems likely that the leasehold system for owning an apartment will be changed in the near future. In other countries which inherited the English system of law, apartment owners usually hold a **commonhold**—a share in the freehold of the land on which the whole apartment building stands. This system is similar to the way apartments are owned in continental-law countries and enables an owner to sell his apartment without the worry that his lease is too short.

Legal interests

As well as these two estates, or ways of holding your land, English law since 1925 has recognized four legal interests over land held by someone else. The first is an **easement**, such as a neighbor's right to use a footpath over your land, or your right not to have buildings or trees on your land block light to his windows. The second is a **rent-charge**—someone's right to charge a landholder a periodical sum of money. The third is a **legal mortgage**—an interest in property given as a form of security to someone who has lent the landholder money. If the money is repaid the interest ends. However, if the landholder fails to pay his debt by a certain time, the money-lender, or **mortgagee**, may have the right to take the property from the borrower, or **mortgagor**. Mortgages are very important in land law because when most people buy an initial house or apartment they have to borrow a lot of money from a mortgagee such as a bank or a building society. The last legal interest is a **right of entry**. The right of a freeholder to enter a lessee's property if he fails to pay rent is an example of a right of entry.

Land transfer

Someone who buys land needs to know exactly what rights and obligations are attached to the land. Although it is possible to deal directly with the seller, most people employ a solicitor to handle the complicated business of land transfer, known as **conveyancing**. In fact, even after the simplifications of 1925, which reduced the system to two kinds of legal estate and four kinds of legal interest, there still exist many kinds of "equitable" interest (see previous chapter) which the buyer and seller need to know about. For example, even if the freehold you want to buy is

registered in the name of only one person, you should make sure the spouse of the freeholder does not have the right to continue living in the property after it has been sold!

When investigating the rights attached to land, solicitors used to examine **title deeds**—documents recording transfers of the property over many years. In Britain there is now a land registry which makes investigation of title easier because it is a central register describing the land, the landholder, and third party rights. However, not all land in Britain has yet been recorded on the register, and there are some land rights which need not be recorded there. Even if land has been registered, the solicitor still has many things to check, such as possible plans of the local council to build noisy roads near the house. Any mistakes he makes could cost the buyer a lot of money. Conveyancing is one of the areas in which solicitors sometimes get sued by clients.

Short-term possession

Another important area of land law concerns types of possession for shorter and less secure terms than freeholds and leases—for example, where a person living in property pays money to a **landlord** every week in return for permission to live there. The landlord is usually the freeholder or the leaseholder of the property, but sometimes he himself is paying rent to someone else. Sometimes it is not easy to decide whether a tenancy is a lease or only a **license**. Generally, a licensee does not have as much security as a lessee. For example, if he fails to pay the rent, his landlord may be able to repossess the property more easily and more quickly than a freeholder can get his land back from a leaseholder. However, many legal systems have laws to protect such land-users. In Britain, for example, the Landlord and Tenant Act requires landlords to give certain periods of warning to tenants if they want to repossess their property, and it provides means for tenants to negotiate a reasonable period of time in which to pay rent **arrears** (over due rent). Under the 1988 Housing Act, there are Rent Tribunals which sometimes have the power to reduce rents which they consider too high. There are also special laws concerning tenants who rent land in order to run a business. Usually, however, there is greater protection for someone who rents land to live on.

Regulation of private and public land

As well as laws to regulate relations between tenants and landlords of land, or between purchasers and vendors, there is a large amount of

law regulating our usage of the land we own or occupy. There is an old saying: “An Englishman’s home is his castle”—no matter how many laws control our life in society, we are free to live on and use our private land as we wish. But in England, as in every country in the world, such freedom is limited. If we make too much noise, or pollute our neighbor’s air, we may face an action in the tort of nuisance (mentioned in Chapter 8). If we want to build something or extend an existing building, we may need planning permission from the local authority. Indeed, there are cases of a local council forcing someone to pull down a new building or extension because it did not comply with regulations about size, height, design or building materials. When buying a house, the purchaser needs to be especially careful that there are no new constructions which were built without permission.

Most countries have regulations about using land for business purposes. In England, for example, a private house cannot be turned into a store without permission, and the local authorities will only give permission if they think the community needs such a store and that this business will not disturb the neighbors. In Japan, each local area is divided into zones, some just for residential housing, some just for industry, some allowing certain kinds of businesses, schools, or light industry.

There is also a large area of law concerned with publically owned land—for example, highways, pavements, parks. The owner of such land may be the state or a local government authority. In many cases, the land laws appropriate to individuals are also appropriate in dealings involving public land; however, in addition, there is a large body of national legislation, and local legislation (in England called **bylaws**) to regulate the use of such land. For example, a town council may own land that it sets aside as a place for parking. There will be bylaws about how long you can park there and how much it costs. Many governments designate certain areas of natural beauty as national parks. Sometimes the land is owned by the state and sometimes it continues to be privately owned, but the occupants have to obey strict rules about their use of the land. Many old houses, parks, footpaths and coastal areas in Britain are owned by the National Trust and National Trust for Scotland—large, charitable organizations (see previous chapter).