

Chapter 2: What am I Buying? (1) – The Land Itself

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Aims of this Chapter

This chapter will enable you to achieve part of the following learning outcomes from the ILEX syllabus:

- 1 Understand what is meant by "land"
- 2 Understand what will be purchased in a land transaction

2.1 Introduction

In **Chapter 1** you learnt the meaning of the term "property". We are now moving on to examine the meaning of "land" in the context of property transactions. This is important because any purchaser of land will want to know precisely what it is he is purchasing.



Fittings and Contents Form

Jennifer has now been working for Baxter & Campbell Solicitors for two months and has been asked to send a Fittings and Contents Form to clients who are in the process of selling their house in the town of Turton Bridge.

Jennifer is surprised how detailed the form is.

2.2 The meaning of land

"Land" includes various tangible and intangible items which are attached to land. This is for the obvious reason that a buyer of land expects to receive various items with the land, such as the buildings constructed on it. If a seller wishes to retain (i.e. keep for himself) any items included in the definition of land, this must be expressly stated in the documentation, usually in a Fittings and Contents Form.

The general rules governing what is included in the definition of land are from the common law and statute.

2.2.1 The common law

There are two common law presumptions which are used to define the extent of land:

- “he who owns the land owns everything extending to the heavens and to the depth of the earth”; and
- “whatever is attached to the ground becomes part of it”.

These presumptions are subject to various limitations: see **2.4**.

2.2.2 Statutory definition

s205(1)(ix) LPA 1925 defines land as including: *land of any tenure, any mines or 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 . . . and other incorporeal hereditaments.*

This statutory definition seems rather technical but is, in fact, fairly simple:

- “tenure” refers to the way the land is held (i.e. freehold or leasehold);
- “corporeal hereditaments” means physical or tangible objects (e.g. buildings);
- “incorporeal hereditaments” are various intangible rights associated with the land (e.g. the benefit of a right of way, or the benefit of a restrictive covenant over the land of another).

2.3 Fixtures and fittings

This is perhaps the most contentious issue of all. As noted above, anything attached to the land becomes part of it. This includes buildings, trees and plants. Such an attached object is known as a **fixture**, and when the land is sold, leased or mortgaged fixtures will also pass as a part of the transaction unless the seller makes it clear that they are not intended to pass.

Other items which are not attached to the land are called **fittings** (sometimes referred to as chattels) and will not pass automatically with the land; unless agreed otherwise, the seller can remove fittings.



What will stay and what will go?

So, for Jennifer, the purpose of sending the Fittings and Contents Form to the sellers in Turton Bridge is to clarify by express agreement which fixtures will, and which will not, be sold with the land. This form needs to be completed prior to exchanging contracts.

2.3.1 Why is a Fittings and Contents Form necessary?

The transfer or sale of land must be by deed (**s52 LPA 1925**), whereas the transfer or sale of goods need not be by deed. The sale of goods and other items will usually be valid even though the transaction is verbal or merely written.

When land is sold, it is important to distinguish between items which are part of the land (fixtures) and need to be transferred by deed, and those which are not part of the land (fittings) and which do not need to be transferred by deed.

In order to avoid disputes over the unexpected removal of items such as garden sheds, greenhouses or rotary washing lines, the Fittings and Contents Form should be completed.

What happens if the form is not completed? How do the courts distinguish between fixtures and fittings?



The need for a clear agreement

Jennifer remembers the excitement of moving into her new home with Barry just after they married, only to find that the dimmer switches had been removed from the living room and replaced with cheap rocker switches and a free-standing radiator was missing from the workshop in the garage. Several rose bushes had been removed from the garden as had a stone bird bath and a splendid pot containing an azalea on the patio. Neither she nor Barry remembered agreeing to these items being removed.

Now Jennifer is wondering whether they could have done something about it. At the time, neither Jennifer nor Barry was particularly concerned but perhaps they should or could have made a fuss.

2.3.2 Distinguishing between fixtures and fittings

The traditional approach of the courts has been to make use of two tests to determine what amounts to a fixture. Neither of them is wholly satisfactory and there is a large degree of overlap between the two. The courts frequently use both tests together in order to reach a conclusion.

Degree of attachment

The first test looks at the degree of attachment of the object. If it is attached to the land other than by its own weight, it is likely to be a fixture. In ***Holland v Hodgson [1872]***, spinning looms were bolted to the floor of a mill. Being attached other than by their own weight, the looms were held to be fixtures.

The degree of attachment test alone cannot, however, be conclusive. If it were, then it could be argued that items such as pictures and curtains would be part of the land.

Purpose of attachment

The courts also adopt a second test, which looks at the purpose of the attachment, that is: was the object attached for its own benefit – in which case it is likely to remain a fitting or chattel – or was it attached for the benefit of the land as a whole – in which case it may well be a fixture? In ***Leigh v Taylor [1902]***, a tapestry which was nailed to the wall of the premises was held to be a fitting. Normally, one hangs a picture, painting or tapestry to show the object itself to its best advantage and not to benefit the house as a whole. There may be exceptions, such as where the object is part of a general decorative scheme. In ***D'Eyncourt v Gregory [1866]***, for instance, the court held that marble statues of lions in a garden were fixtures as they were there to increase the owner's enjoyment of the land.

Permanence of the attachment

In addition to the above two tests, ***Botham v TSB Bank plc [1996]*** made clear that the permanence of the attachment is also relevant. How long the object is likely to be attached to the land is a quite separate issue from the degree of attachment, discussed above. Lampshades and curtains are unlikely to be considered as fixtures, whereas light fittings and fitted shelves probably will be construed as such.

It is difficult to determine whether some common household items are fixtures. Carpets frequently cause problems: if sufficiently fitted, they are probably a part of the land. On the facts in ***H E Dibble v Moore [1970]***, a greenhouse was held not to be a fixture. In ***Elitestone Ltd v Morris [1997]***, the House of Lords decided that a bungalow built on pillars was a fixture and in ***Chelsea Yacht & Boat Co v Pope [2001]*** a houseboat moored by cables and ropes with connection to mains water and power was held to be a fitting. It is important to make quite clear, when selling land, what is being sold with the land and what is not.

Further developments have occurred in ***Taylor v Hamer [2002]***, where a large country house was offered for sale. The dispute concerned a number of flagstones, and whether they were to be included with the property. They were there when the buyer inspected and made an offer for the property, but were then removed prior to purchase. Since they were attached to the land only by their own weight, the seller would have been entitled to remove them, but he gave misleading replies when enquiries were made about them, and disguised their removal with grassland. The buyer brought an action for their return, and the Court of Appeal held that, for reasons of decency and common sense, the buyer was entitled to receive what he had been shown on inspection, and what he believed he would be receiving.

2.4 Limitations on the extent of land

In **2.2.1** we saw that land includes everything above, below and attached to the surface of the land.

There are, however, some limitations to these rules.

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