

Property is one of the oldest rights that exist within the English legal system and an interest in land or property suggests that the individual with the right has some form of right of enjoyment of that property or land. These rights are hugely variable in terms of magnitude and strength, from the outright freehold held by a property owner to the rights granted to a shopper in a store.

The concept of interests is not a clearly defined one and as such it can be very difficult to ascertain exactly what rights and interests are held over a specific piece of land or property. Broadly speaking, there are two different categories of interest, equitable and legal. There is also a secondary category between interests that are capable of creating an estate in land and those that are not capable of creating an interest in land¹.

When considering the legal interests, these are derived from legislation, namely the Law of Property Act 1925 and common law, with equitable interests deriving from equitable principles. This distinction is largely historic in nature, as any actions arising out of legal interests were held in the common law courts and any equitable interests would be dealt with in the courts of equity². This distinction has all but gone, in modern times, but the differing interests remain, potentially causing confusion in relation to which interests exist³.

The legal interests have been reduced to just two as defined in the Law of Property Act 1925; fee simple absolute in possession and terms of years absolute⁴. These refer to freehold and leasehold respectively and can co-exist on the same piece of land or property.

The main areas of confusion come in relation to other proprietary interests which exist over land, but are not full estates of land and non-proprietary rights which can also exist on a given piece of land or property⁵. Proprietary interests that are not full estates in land include interests such as franchises, easements and mortgages, many of which can now be registered under the Land Registration Act 2002 to offer a degree of certainty and protection⁶. Non-

¹ Dixon, Martin, Principles of Land Law, Routledge, 2002

² Hudson, Alastair, New Perspectives on Property Law, Obligations and Restitution, Routledge Cavendish, 2004

³ Wonnacott, Mark, Possession of Land, Cambridge University Press, 2006

⁴ Smith, Kenneth & Keenan, Denis J., Smith & Keenan's English Law, Pearson Education, 2004

⁶ Cooke, Elizabeth, The New Law of Land Registration, Hart Publishing, 2003

proprietary interests in land include interests such as licences that do not offer the same exclusive rights of possession as other estates of land.

The complexities arising from the wide range of interests that are available in relation to land can be clearly demonstrated when the issue of distinguishing between a lease and licence is considered. The importance of this distinction is that a lease is capable of being enforced against a successor in title to the landlord whereas a licence is not an interest in land and cannot, therefore, be enforced against successors. The distinction is rooted in whether or not the interest is vested in the land (as is the case with a lease) or vested in the individual granting the interest (as is the case with a licence). A licence gives a right to occupy the land to the licensee by virtue of an agreement between the licensor and the licensee; a lease gives exclusive possession rights that are attached to the land.

Whilst this distinction may seem very clear, there has been a considerable range of cases heard in an attempt to distinguish between the lease and the licence. Where a lease is for seven years or more, or has been registered with a title of its own at the Land Registry or is granted by deed, it is definitely a property interest, whereas where there is an agreement for short periods of occupancy, such as a monthly or even weekly right, a dispute as to the extent of the interest may arise⁷. The rule in *Street v Mountford*⁸ assisted with this certainty by suggesting that the key factor was exclusive possession. Nevertheless, the extent and magnitude of this debate between lease and licence is a clear indication of how difficult it can be to determine whether or not a certain set of circumstances amount to a property interest⁹.

Another area that prevents a fixed list of property interests from being established is the willingness to accept equitable rights such as restrictive covenants and easements. This ability to establish further interests and rights in equity prevents a firm list from ever being drawn up.

It has been suggested that a firm list of rights (similar to the list of legal rights contained in the Law of Property Act 1925) could be enshrined in statute in order to give a definitive list

⁷ Smith, Roger John, *Property Law: Cases and Materials*, Pearson Education, 2006

⁸ [1985] AC 809 (HL)

⁹ Cooke, Elizabeth, *Modern Studies in Property Law*, University of Reading, Centre for Property Law, Hart Publishing, 2001

of the interests and corresponding rights that the courts should enforce¹⁰. This would largely involve the removal of the fluid rights and the use of a set of legal rules and rights that govern all interests in property. Until this happens, and equity remains central to the issue of property interests, it will be impossible to set out a definitive list of property interests and the rights and remedies that are associated with these interests. For as long as equitable rights are recognised, the list will continue to remain in a state of flux, with debates such as those about whether or not the interest is a lease or licence continuing to be battled out in court.

Bibliography

Chappelle, Diane, Land Law, Pearson Education, 2008

Clarke, Alison & Kohler, Paul, Property Law: Commentary and Materials, Cambridge University Press, 2005

Cooke, Elizabeth, Modern Studies in Property Law, University of Reading, Centre for Property Law, Hart Publishing, 2001

Cooke, Elizabeth, The New Law of Land Registration, Hart Publishing, 2003

Dixon, Martin, Principles of Land Law, Routledge, 2002

Hudson, Alastair, New Perspectives on Property Law, Obligations and Restitution, Routledge Cavendish, 2004

Smith, Kenneth & Keenan, Denis J., Smith & Keenan's English Law, Pearson Education, 2004

Smith, Roger John, Property Law: Cases and Materials, Pearson Education, 2006

Wonnacott, Mark, Possession of Land, Cambridge University Press, 2006

¹⁰ Chappelle, Diane, Land Law, Pearson Education, 2008