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**Notion of 'Land' in English Property Law.**

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Land is vital for human living. In any society the use of land is of the utmost importance. Hence it is no surprise that Land law is very challenging and profound branch of law, made up of very sophisticated rules and concepts. Apparently, to master those complexities, one should start by grasping the very essence of the subject, that is, what English law really understands by the term 'land'.

At common law, 'land' traditionally comprises the soil, the rocks beneath and the air above. It also includes any mines and minerals, buildings, other structures and water reservoirs, situated on, above or below the surface.[1] However, nowadays land lawyers principally mean by land not the physical entity itself, but a bunch of numerous abstract interests in it, such as: estates, easements, profits, mortgages, other charges etc. That is why the definition given in the Law of Property Act 1925 [2] *(«'Land' includes land of any tenure...and other* ***corporeal hereditaments,*** *also ...a rent, and other* ***incorporeal hereditaments****...»*) combines both meanings. It should be noted that 'Corporeal hereditaments' here is an ancient synonym for the physical land and fixtures, while 'incorporeal hereditaments' are the invisible interests in it. Therefore, it is correct to say, whether you're buying a lease or a right-of-way over your neighbour's land, that you are buying 'land'.

Probably one of the most controversial questions relevant here is "How far above and below do landownership and 'physical land' itself extend"? First, it should be mentioned that the proprietor fully controls the strata beneath the surface. His rights are virtually not limited to any predefined depth, except for there exists some third-party interest in the rocks (e.g. *a lease*), held separately from the surface[3]. As a matter of fact, courts still cite and stick to the old Latin brocard *'cuius est solum, eius esty usque ad coelum et ad infernos*', which means 'whoever owns the soil, it is theirs up to heaven and down to hell'.

Nevertheless, nowadays this maxim is no longer true for the airspace. Freeholders still exclusively use the area above the surface, but only as long as it's necessary for the reasonable enjoyment of the surface and any buildings or structures on it. For example, in the 1978 case *Baron Bernstein of Leigh v Skyviews & General Ltd*[4], the court ruled that aerial photo shoot of plaintiff's land and house did not constitute a trespass. On the contrary, in determining how much air above a tenant is eligible to use, a court usually tries to stick to the precise wording of the lease. For example, in a case where the claimant, lessee of a flat, was underleased 'the terrace adjoining the premises' and later built on that place an extension to his flat, the court, interpreting the provisions of the deed, stated that it demised to the claimant the extension *including its roof, but excluding any airspace above*[5].

English law, like any advanced legal system, distinguishes between movables (In England, they are referred to as 'personal property, 'personalty' or simply 'chattels') and immovables (In England, those are called 'realty', 'real property'). What is unique to English law is that it also recognizes an intermediary category of 'fixtures', that is, all movable objects firmly attached to land. Fixtures are considered to be part of the land and are regulated by special rules. Some judges, as in *Elitestone Ltd vs Morris (1997)*[6], also mention things which are deemed to be 'part and parcel of land'. Those are the same as fixtures, but can never, under no circumstances,

be detached from land.

Jurisprudence of UK Courts clearly shows that this threefold classification of property is not as evident and easy-to-operate as it may seem. Particularly, it constantly gives rise to a complex yet very important issue of distinguishing between 'chattels' and 'fixtures'.

Courts have to solve this problem in each particular case and, to do that, usually try to answer the following two questions, that were determined by Blackburn J in *Holland vs Hogson (1871-72)*[7].

1. To what degree was the item attached?

For the object to be classified as fixture, the degree of attachment should be considerably great. Courts also evaluate the possibility of removing object without damage. However, in *Elitestone v Morris (1997)*[6], judges held that if any object (like a column, a monument or, in that particular case, a chalet) is heavy enough to rest on its own weight, fixation is not required.

2. What was the purpose of annexation?

This question should be considered as an objective one, determined solely on facts and not on parties' thoughts or wishes. What is also important is that the purpose is usually determined as on the moment of installation, not the date of trial. For example, sunk boats can never become fixtures[8]. Long-lasting, permanent improvements are also more likely to be recognized as fixtures.

Whether an object concerned is a chattel or fixture is so important because the answer to this question determines the resolution of a host of very important legal matters. For example, where the contract of sale is unclear and there is no detailed list of the sold items, all fixtures by default run with the land. Meanwhile if you fail to repay your mortgage debt, a bank is entitled to seize all the fixtures together with your estate. Finally, if you have some limited interest in land and it ends, you are allowed to remove (to take away with you) only chattels, but not fixtures.

**Источники и литература**

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3) Bocardo SA v Star Energy UK Onshore Ltd [2011] 1 AC 380 (SC)
4) Bernstein of Leigh (Baron) v Skyviews & General Ltd [1978] QB 479 (QB)
5) Rosebery Ltd v Rocklee Ltd [2011] L & TR 21 (Ch)
6) Elitestone Ltd v Morris [1997] 1 WLR 687 (HL)
7) Holland v Hodgson (1871-72) LR 7 CP 328 (ExCh)
8) Mew v Tristmire [2012] 1 WLR 852 (CA)
9) Mark Davys, 2013. Land Law (Palgrave Law Masters). 8th ed. Basingstoke: Palgrave Macmillan.