

**PRESUMPTIONS ABOUT BOUNDARIES AND VISITORS**

Quite often we get asked questions about ownership and identification of boundaries and right of way where a property is being bought or sold. It is not always easy to find an answer where there is no clear indication in the title deeds. The modern estate development is usually well set out and obligations for ownership and repair of boundary features are usually shown clearly on the title plan, and the covenants set out in the title documents. If only it were always so.

Frequently we have to deal with titles that are not registered at the Land Registry or those which have been registered but where there is no clear indication of boundary ownership or obligation.

The law is full of what are known as “presumptions”. Examples include a presumption of innocence, a presumption of equal joint ownership, a presumption of death. All of these can be challenged by evidence to the contrary, but in the examples I am going to set out below relating to boundaries, we will assume that there is no such evidence.

**HEDGE AND DITCH**

The presumption here is that the land owner has dug his ditch standing within his own land, placed the mound of earth removed from the ditch on his boundary thereby forming a bank and planted a hedge on top of it. The position is different if there is a natural stream or the land owner owns the land on both sides of his ditch.

**NON-TIDAL RIVERS AND STREAMS**

Here the ownership is presumed to belong up to half way by each adjoining owner. If the course of the river or stream changes naturally then the border follows the changed course. But that is not the case if the course of the river or stream is changed on purpose or by any sudden means whether natural or un-natural – perhaps where flood

defences have been installed or there has been subsidence altering the course of the water itself but not the position of the boundary.

## **LAKES**

The bed of a lake belongs to the owner of the surrounding land. I suppose it is reasonable to assume that if there are two adjoining owners where the lake divides part of their land then they each own it up to half way.

## **SEA SHORE, TIDAL RIVERS AND INLETS**

If you are lucky enough to own land which adjoins the sea then the boundary is presumed to lie at the top of the foreshore. The foreshore is almost always owned by the Crown but in parts of Devon or Cornwall by the Duchy of Cornwall although I have known cases where ownership has been passed from the Crown to a private owner. A local example of that I recently registered at the Land Registry was part of the foreshore at Crackington Haven, which had been acquired from the Duchy many years ago- before you could register in Cornwall. High and low water marks may change from time to time in which case the boundaries move with such changes except in the case of a sudden movement of land.

## **ROADWAYS**

If your property lies next to a public highway or a private right of way, the boundary is presumed to extend to the centre of that way. This is of course subject to the rights of the Highways Authority who will usually have adopted the surface. However, you as the adjoining owner of the land are presumed to own the sub-soil. And indeed the space above the surface, although that does not mean you are entitled to interfere with anyone who has a right to pass whether private or public. It is sometimes the case that properties, particularly in country areas, have a frontage to a roadway which is not actually owned by anyone. Each frontager is taken to own that roadway up to half way, subject of course to rights of way in favour of neighbouring owners and others who may be entitled to use it. Not all roads even though they may be hard surfaced are highways

or necessarily owned by anyone in which case the presumption of adjoining ownership can be appropriate. On the other hand, a private roadway may well belong to an adjoining owner- perhaps of a Manor House or Farm House or Estate Developer. In such cases the law provides for access either by specific grant in the Deeds, or perhaps by acquisition of a right of way over a long period of use.

Presumed as well as factual ownership can carry presumed or potential liability. For example if somebody has an accident by tripping, falling or slipping where there was a hazard which should have been made known to visitors or others entitled to use the area in question and even to trespassers in certain situations.

### **OCCUPIERS LIABILITY**

There are various obligations set out in Occupiers Liability Acts of 1957 and 1984 and it is always worth informing your Insurers where the public or any person invited onto your property may be at special risk but that is the subject for my next article coming to this page soon.

### **ACTION**

As you can see, presumptions and boundaries can be complex areas of law. An Englishman's home is his castle and many and bitter have been the arguments over the centuries about his exercise of these rights. His neighbour thinks the same about his property-and boundary disputes can be the worst of all disputes.

So seek good legal advice whether you are buying, selling, renting or seeking to enforce your rights over property. Here at Busbys we have decades of experience in all areas of property law-whether residential or commercial.

So do contact me, David Helman on 01288 35 9000. I will be more than pleased to help you.

**David Helman, Busbys Solicitors, Bude & Holsworthy.**