

### 1.1.2 The extent of land.

The case of *Bocado v Star Energy* [2008] EWHC 1756 (Ch) contains an interesting point about ownership of the land 'down to the depths of the earth'. In this case, the claimants were the owners of the Oxted Estate in Surrey. The defendants were holders of a licence under the Petroleum Act 1934 to search and drill for and pump out petroleum products from an oilfield that extended partly under the Oxted estate. The defendants operated from land adjacent to the Oxted estate, but unknown to the claimants, their oil wells extended under the claimant's land.

The claimants eventually found out about the oil wells and claimed damages for trespass to their land. The defendants argued that the oil wells were so deep underground (a minimum depth of 800 feet) that they did not affect the claimant's use of the land in any way, and in fact the claimants had been unaware of them for years. The defendants therefore argued that the oil wells did not trespass on the claimant's land.

Peter Smith J held that the oil wells were a trespass. Although the oil wells were deep below the surface, the subsoil belongs to the owner of the surface unless it has been granted to someone else. The petroleum products belonged to the state by statute (Petroleum Act 1934). It was not a trespass to remove the petroleum, but it was a trespass to drill wells under the claimant's land without permission. The defendants were therefore ordered to pay compensation to the claimants, based on the amount the claimants could have charged for a right to drill the wells (a wayleave).

It is interesting that the judge did not apply the same rules as for airspace – that below a certain depth, there would be no trespass, just as above a certain height there is no trespass (see *Bernstein v Skyviews*). Peter Smith J explained this at paragraph [49]:

Is the position the same as regards the subsoil? In principle there is no reason why the subsoil should be treated any differently. A subterranean mole like passage under the subsoil can hardly be different from flying over the surface at 40,000 feet. The major difference of course is that there are valuable resources situated below the subsoil namely minerals. Those can be located at depths beyond even those contemplated by the present case.

Therefore, the owner of the surface has a legitimate interest in the subsoil, even down to very great depths.

### 1.1.4 Incorporeal hereditaments

One incorporeal hereditament is a manor. As we note in the chapter, manorial rights are generally ceremonial in character. However, there has been another case in which someone has bought up the titles to manors in order to try to claim valuable rights. In *Crown Estate Commissioners v Roberts* [2008] EWHC 1302 (Ch), the defendant tried initially to claim ownership of large areas of the foreshore of the Pembrokeshire coastline on the Welsh side. This

claim failed because of a decision in an earlier case (*Roberts v Swangrove Estates* [2008] EWCA Civ 98) so Mr Roberts instead claimed a number of manorial rights, including wreck de mer, a several fishery, treasure trove, sporting rights and estrays (even the court had to have these ancient terms explained to them, and there is a glossary in an appendix to the judgment). However, all he was able to prove title to was 'a moiety' (half) of a right to wreck.

There is an interesting article about this case: Hinks, F. 'To the Manor Bought' *Legal Week*, 4 September 2008, 26, available at <http://www.legalweek.com/Navigation/35/Articles/1159788/Commercial+and+Chancery+Bar+To+the+manor+bought.html>.