

PROPERTY LAW SUMMARY



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DEFINITIONS OF PROPERTY

BASIC DEFINITION OF PROPERTY

Property is a concept used to describe the legal relationship between persons and 'things'. Property law focuses on the boundaries of land and the importance of distinguishing between real¹ and personal² property. There are two types of real property:

- Corporeal hereditaments; Tangible, visible objects e.g. above land.
- Incorporeal hereditaments; Intangible objects that are not visible e.g. below land

PROPERTY ABOVE LAND

Higher stratum of airspace

Bernstein of Leigh (Baron) v. Skyviews³

FACTS: The landowner claimed that an aeroplane flying over his land for the purpose of taking aerial photographs amounted to a trespass of his land.

DECISION: The court held that the higher stratum of airspace was not part of the owner's property which meant that there was no trespass.

Lower stratum of airspace

Wollerton and Wilson Ltd v. Richard Costain Ltd⁴

¹ Freehold interests in land

² Chattels – moveable, tangible objects

³ [1978] QB 479

⁴ [1970] 1 WLR 411

FACTS: A landowner took action when a tower crane on another property was swinging over his land, which he regarded as trespass.

DECISION: In contrast to *Bernstein*, this was regarded as a trespass because control over the lower stratum was necessary for the owner to have reasonable use and enjoyment of his land.

Guidelines for ownership of airspace

When deciding whether facts of a case involve the upper or lower stratum of airspace the courts will be guided by the following:

Civil Aviation Act 1982, s76(1) - no action in trespass can be taken if an aircraft observes the rules of the Air and Air Traffic Control Regulations.

Rules of the Air Regulations 1996, SI 1996/1393 – aircraft cannot fly lower than 1,500 feet except when taking off and landing.

Surface

Any intrusion of the surface of a landowner's property will amount to trespass. This can be seen from:

Lemon v. Webb⁵ - tree branches from a neighbour's land overhanging on another's land can be cut⁶ because this is regarded as trespass.

Kelsen v. Imperial Tobacco Co (of Great Britain and Ireland) Ltd⁷ - a sign overhanging on another's land must be removed as this amounts to trespass.

⁵ [1895] AC 1

⁶ The tree branches must then be returned to the neighbouring land.

⁷ [1957] 2 QB 334

PROPERTY BELOW LAND

Property found below land will usually be the property of the landowner. However, there are several restrictions and qualifications to the ownership of any property which is found below land.

SAMPLE

Minerals

These are regarded as the property of the state or the crown rather than the landowner. The landowner, therefore, receives no benefit from the discovery of minerals. This can be seen from:

- ***Coal Industry Act 1994 ss1(1), 7(3)***
- ***Petroleum Act 1998 ss1(a), 2(1)***

Treasure

The law on 'treasure' is determined by the Treasure Act (1996). It states that items or 2-9 coins which are at least 300 years old and at least 10 per cent precious metal, will be regarded as treasure. If 10 or more coins are part of the same find, they need not be 10 per cent precious metal. The Treasure (Designation) Order 2002 extended the Treasure Act so that any prehistoric object which is part gold or silver and any prehistoric base metal object would be regarded as treasure.

FIXTURES AND CHATTELS

Fixtures are objects annexed to the land and by virtue of this, become part of land. Chattels are items of personal property, which are not regarded as part of land. The distinction between these is a difficult one to make. 'The legal differentiation of fixtures and chattels has long been beguiled by issues relating to removability.'⁸

Blackburn J in ***Holland v. Hodgson***⁹ stated that:

'...articles not otherwise attached to the land than by their own weight are not to be considered as part of the land, unless the circumstances are such as to show that they were intended to be part of the land... and... on the contrary, an article which

⁸ Gray, K. and Gray, S.F. Elements of Land Law p. 52

⁹ [1872] LR 7 CP 328

is fixed to the land even slightly is considered to be as part of the land, unless the circumstances are such as to show that it was intended all along to continue a chattel.'

Two tests have evolved as a result of this case:

- Extent of annexation
- Purpose of annexation



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