**Topic 1**  Introduction to Land and Fixtures and Chattels

### What is land

Land includes both corporeal hereditaments (physical land, buildings, etc.) and incorporeal hereditaments (intangible rights over the land).

Cuius Est Solum Eius Estque Ad Coelum Et Ad Inferos – the owner of the land essentially owns everything above and below. However, this is subject to the following restrictions:

- **Minerals and Mines:** certain classes of minerals belong to the state by statute.
- **Airspace:** Owner’s restriction of use over his land is limited to the height that is necessary for ordinary use and enjoyment of his land. Above this height is left for the public *(Bernstein of Leigh (Baron) v Skyviews and General Ltd)*.
  - E.g. a horse leaning its face across a fence over to the neighbouring land is deemed trespassing *(Ellis v Loftus Iron Co)*.
- **Below ground:** Ordinarily includes space below this land to be under the owner’s control *(Grigsby v Melville)*
- **Water:** The bed of a river belongs to the owner and in cases where a body of water borders two sets of land, each owner owns up to the mid-point of the water.

### Things found on land

Treasure trove, as governed by *Treasure Act 1986*, indicates certain items which belong to the state. However this only applies to objects found after the date in which this statute came into force.

Objects that are not treasure trove:

- **Objects within/attached to land** – landowner is entitled to ownership whether or not he was aware of the object’s existence.
- **Objects unattached to land** – finders may take ownership of the property unless the landowner has declared an intention to maintain control over the premises.
Fixtures and chattels

1) Define Fixtures and chattels
   • Fixtures: form part of land → Must remain with the land when land sold on
   • Chattels: removable object that does not form part of land → Buyer will be free to take them

2) Test to determine whether fixture or chattel
   • Test 1: Degree and method of annexation (Berkley v Poulett) (see also Holland v Hodgson)
     Apply to facts: How firmly is item attached to land? i.e. if attached to soil/securely affixed to land/would cause damage if removed → presumption of fixture. However, this presumption may be rebutted by test 2:
     • Test 2: Object and purpose of annexation (D’Eyncourt and Leigh v Taylor)
       D’Eyncourt: if forms part of architectural design of garden/house → fixture (even if free-standing/not firmly fixed)
       Leigh: Annexation is only way object can serve its function/purpose

3) Examples

<table>
<thead>
<tr>
<th>Object</th>
<th>Fixture or chattel?</th>
<th>Case</th>
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</thead>
<tbody>
<tr>
<td>Statue</td>
<td>Chattel, provided capable of being removed without causing damage and not part of architectural design.</td>
<td>Berkley v Poulett</td>
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<tr>
<td>Plinth</td>
<td>Fixture</td>
<td>Berkley v Poulett</td>
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<tr>
<td>Light fittings, white goods, carpets and curtains</td>
<td>All usually chattels</td>
<td>Botham v TSB</td>
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<tr>
<td>Greenhouse and garden shed</td>
<td>Chattels, provided capable of being easily dismantled and transferred round garden</td>
<td>Elitestone v Morris</td>
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