

# LAW 301

## The Extent of a Landowner's Rights in Land

Rights to Airspace

Rights to Subsoil & Minerals

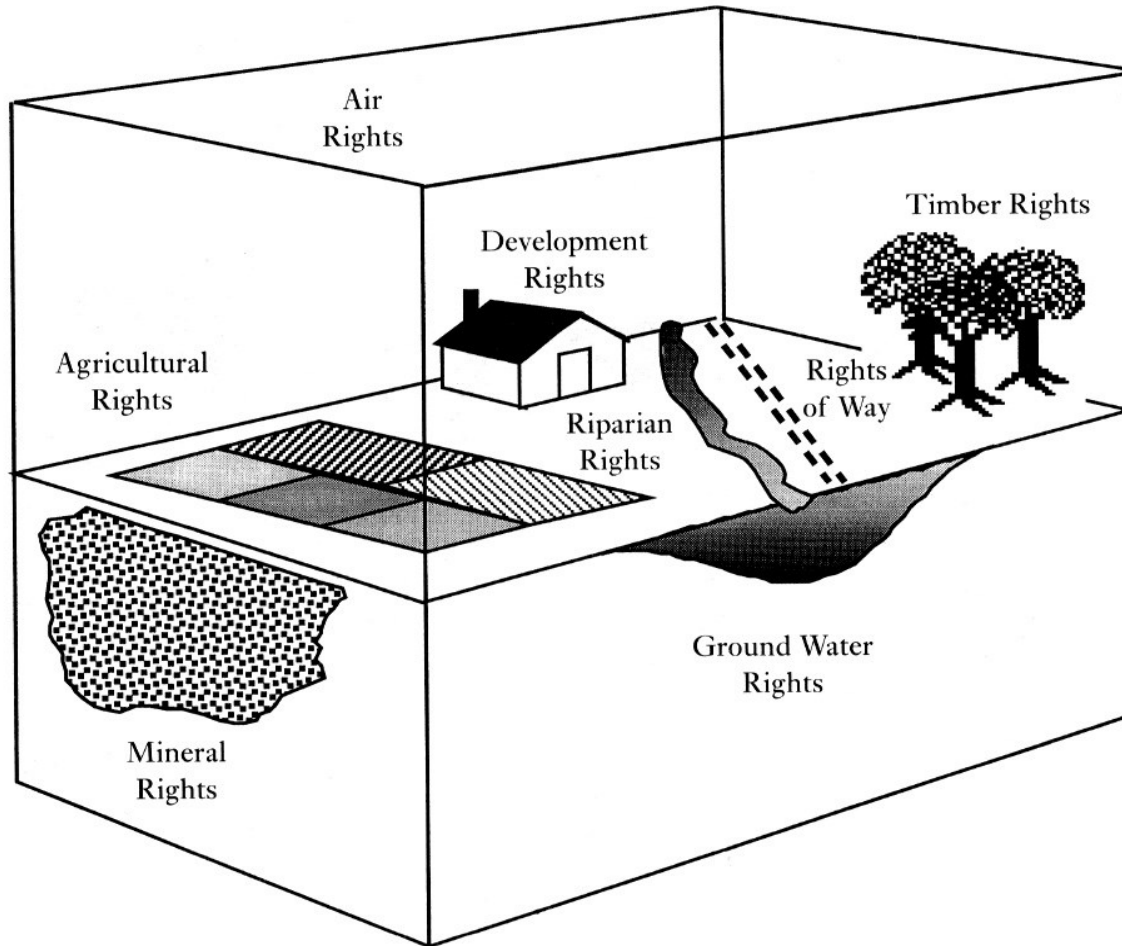
Rights to Fixtures & Non-Fixtures



THE UNIVERSITY OF  
**AUCKLAND**  
Te Whare Wānanga o Tāmaki Makaurau  
NEW ZEALAND

LAW

JAYDEN HOUGHTON



# Rights to Airspace



THE UNIVERSITY OF  
**AUCKLAND**  
Te Whare Wānanga o Tāmaki Makaurau  
NEW ZEALAND

**LAW**

## Starting Point

- ⑥ *Cujus est solum, ejus est usque ad coelum et ad inferos*
- ⑥ *Sic utere tuo ut alienum non laedas*

## Case Law

### ⑥ ***Kelsen v Imperial Tobacco* [1957] 2 QB 334**

#### ⑥ Facts:

- ⑥ Kelsen leased a single storey shop
- ⑥ Kelsen's single-storey shop was beside Imperial Tobacco's multi-storey building
- ⑥ Imperial Tobacco affixed a sign to their multi-storey building
- ⑥ The sign extended by 4 inches into the air space above the flat roof of Kelsen's single-storey shop
- ⑥ Kelsen sued in trespass to get the sign removed

#### ⑥ Questions:

- ⑥ Did Kelsen's rights extend to the height of the sign?
- ⑥ If so, were Kelsen's rights interfered with?

## Case Law

### ⑥ ***Bernstein of Leigh (Baron) v Skyviews & General Ltd [1978] 1 QB 479***

#### ⑥ Facts:

- ⑥ Skyviews flew over Bernstein's estate and took an aerial photograph
- ⑥ Bernstein alleged that Skyviews wrongfully entered into their airspace
- ⑥ Bernstein sued Skyviews for trespass

#### ⑥ Questions:

- ⑥ Did Bernstein's rights extend to the height at which the aircraft took aerial photographs of the property?
- ⑥ If so, were Bernstein's rights interfered with?

## **Statutory Limits**

### **⑥ Civil Aviation Act 1990, s 97(2)**

- ⑥ “No action shall lie in respect of trespass, or in respect of nuisance, by reason only of the flight of aircraft over any property at a height above the ground which having regard to wind, weather, and all the circumstances of the case is reasonable, so long as the provisions of this Act and of any rules made under this Act are duly complied with”

### **⑥ Public Works Act 1981**

### **⑥ Unit Titles Act 2010**

# Rights to Subsoil & Minerals



THE UNIVERSITY OF  
**AUCKLAND**  
Te Whare Wānanga o Tāmaki Makaurau  
NEW ZEALAND

**LAW**



## Starting Point

- ⑥ *Cujus est solum, ejus est usque ad coelum et ad inferos*
- ⑥ *Sic utere tuo ut alienum non laedas*

# Rights to Subsoil

## ⑥ Examples

Burns Slant  
Drilling Co.

—[The  
Simpsons](#)

“Mohamed  
Fayed  
strikes it  
rich with  
stake in  
backyard  
oilfield”

—[Daily  
Telegraph](#)



## Rights to Subsoil

### ⑥ ***Bocado SA v Star Energy UK Onshore Ltd [2010]*** **UKSC 35, [2010] 3 WLR 654**

#### ⑥ Facts:

- ⑥ Star Energy was granted a license to extract oil from an oil field under Fayed's land
- ⑥ Star Energy drilled down into the oil field from neighbouring land, and constructed pipelines under Fayed's soil 800 feet down
- ⑥ Star Energy did not obtain Bocado's agreement to construct the pipelines through their subsoil
- ⑥ Bocado sued Star Energy in trespass

#### ⑥ Issues:

- ⑥ Did Bocado's rights extend to the depth of the oil field?
- ⑥ If so, were Bocado's rights interfered with?

## Rights to Minerals

- ⑥ Recognition of Crown's right to gold and silver since the "Case of Mines": ***R v Earl of Northumberland (1568) 1 Plowden 310 75 ER 472***
- ⑥ Under the **Crown Minerals Act 1991**:
  - ⑥ The Crown owns all gold, silver, petroleum and uranium whenever land is (or was) alienated: **CMA 1991 s 10**
  - ⑥ The Crown reserves all other "minerals" when land is alienated: **CMA 1991 s 11**
    - ⑥ "Mineral" is defined in **CMA 1991 s 2(1)**
  - ⑥ Earlier reservations to the Crown are preserved: **CMA 1991 s 11**
  - ⑥ The Crown licenses rights to explore and exploit

# Rights to Fixtures & Non-Fixtures



THE UNIVERSITY OF  
**AUCKLAND**  
Te Whare Wānanga o Tāmaki Makaurau  
NEW ZEALAND

**LAW**

## Rights to Fixtures & Non-Fixtures

- ⑥ Whether something is a fixture or non-fixture depends on:
  - ⑥ The **degree** of annexation
  - ⑥ The **purpose** of annexation

## Case Law

### ⑥ ***Lockwood Buildings Ltd v Trust Bank Canterbury Ltd [1995] 1 NZLR 22 (CA)***

#### ⑥ Facts:

- ⑥ Lockwood erected a show home on land
- ⑥ The owner of the land had a mortgage with Trust Bank
- ⑥ The landowner defaulted on the mortgage and Trust Bank sought to sell the land with the show home

#### ⑥ Issues:

- ⑥ What is the test for distinguishing fixtures and chattels?
- ⑥ Was the show home part of the land?

## Case Law

### ⑥ ***Auckland City Council v Ports of Auckland Ltd*** **[2000] 3 NZLR 614 (CA)**

#### ⑥ Facts:

- ⑥ The Auckland Council alleged the floating pontoons installed at Westhaven were part of the land
- ⑥ The pontoons are kept in place by rings, are unable to move horizontally, and cannot be separated from the locating piles
- ⑥ If the court decided the pontoons were part of the land, the council could include the pontoons when calculating rates

#### ⑥ Issues:

- ⑥ What is the test for distinguishing fixtures and chattels?
- ⑥ Were the floating pontoons part of the land?



## Case Law

### ⑥ ***Queenstown Central Ltd v March Construction Ltd*** **[2016] NZHC 1884, (2016) 18 NZCPR 71**

#### ⑥ Facts:

- ⑥ March excavated dirt ("Fill") from Henderson's land and placed the dirt on adjacent land ("Land"), where it was to be covered in topsoil and sown with grass
- ⑥ March entered into an agreement with Henderson's company to purchase the Fill for \$100,000
- ⑥ In 2010, Queenstown purchased the Land, believing March owned the Fill
- ⑥ March tried to sell the Fill to Queenstown. Queenstown replied that, if March owned the Fill, March needed to remove the Fill from the Land
- ⑥ The Fill needs to be moved so the Land can be developed
- ⑥ Queenstown sues March in trespass

## Case Law

### ⑥ ***Queenstown Central Ltd v March Construction Ltd* [2016] NZHC 1884, (2016) 18 NZCPR 71**

#### ⑥ Issues:

- ⑥ What is the test for distinguishing fixtures and non-fixtures?
- ⑥ Was the Fill part of the land?
  - ⑥ Who owns the Fill?
  - ⑥ Is March liable in trespass to Queenstown?
  - ⑥ Who is responsible for removing the Fill?

# LAW 301

## The Extent of a Landowner's Rights in Land



THE UNIVERSITY OF  
**AUCKLAND**  
Te Whare Wānanga o Tāmaki Makaurau  
NEW ZEALAND

**LAW**

**JAYDEN HOUGHTON**