

LAW 301

The Extent of a Landowner's Rights in Land

Problem

Ebert, a land developer, is the owner of neighbouring Lots A and B. Ebert intends to build a block of townhouses on each Lot.

On Lot A, preparatory earthworks are well underway. The Lot, which is mostly dirt and mud, looks like a construction site, and the earthworks have left a large pile of spoil (soil discarded following excavation) near the boundary of the two Lots — a distance from any infrastructure. Though the spoil is compacted and flat, if one looked carefully they would find that it raised the height of the land by about one metre. It is estimated to cost \$10,000 to remove the spoil.

Recently, Ebert has come into significant financial difficulties and sells Lot A to Arnold. Ebert moves the diggers and cranes that were on Lot A to Lot B. Attached to one of the cranes is a wrecking ball, which overhangs Lot A. The wrecking ball hangs 20 metres above the spoil. Arnold is not particularly concerned about any danger imposed by the wrecking ball because if it were to drop it would probably thud into the spoil and roll a short distance only.

Soon after the sale, the region is ravaged by torrential rains. Once the weather clears, Arnold inspects Lot A. Expectedly, the excavations have turned to slush. Unexpectedly, the torrent has exposed a large deposit of minerals. Arnold secures the services of a geologist, who confirms that the minerals are of two types: quartz and silver.

Later, Ebert contacts Arnold and asks if he wants to purchase the spoil on Lot A. Arnold is confused as he thought the spoil was part of the land he purchased. Instead, Arnold, spotting an opportunity to save \$10,000 to remove the spoil, demands that Ebert remove the spoil, claiming that it is trespassing on his land. Ebert changes tack and asserts that the spoil is now Arnold's problem as Arnold purchased the spoil as part of the sale of the land.

Advise Arnold.

