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# Blueprints

Your plan for learning

# Land Law

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## KEY POINTS

- The definition of 'land' can be found at section 205 of the LPA 1925 and includes not just the land itself but objects 'fixed' to the land. It also includes 'incorporeal' rights such as easements or covenants.
- The extent of land ownership also includes 'up to the heavens above and down into the earth below' – meaning that a landowner owns 'airspace' into the 'lower stratum', that is up to a 'reasonable height' to enable a claim in trespass to be brought.
- The owner also owns things found in the earth below the property, with some exceptions such as oil, gas, or minerals. These generally belong to the state. This is also true of 'treasure' found in or on the land – though compensation may be payable under the Treasure Act 1996.
- Objects found *in* the ground generally belong to the landowner irrespective of who the finder might be, though things found *on* the land may be judged to be the property of the finder where the landowner has not expressed a sufficient level of control over the land (with the exception of 'treasure').
- At section 62(1) of the LPA 1925, the owner must leave all 'fixtures' with the property when selling that property – unless they are listed specifically as for removal (s. 62(4)). All 'fittings' or chattels can be removed by the landowner or sold separately to the buyer, though not as a way of defrauding on Stamp Duty.
- There are three common law tests for determining a fixture: the degree of annexation based on how firmly an object is fixed; the purpose of annexation based on the overall reason for the object being on the land; and the 'part and parcel' test which suggests that if an object has become an integral part of the landscape it may be seen as a fixture.
- Landowners may not remove fixtures (unless expressly stated in the conveyance) though tenants may remove tenant's 'trade' or 'ornamental or domestic' fixtures before the end of the tenancy and without causing or leaving damage.

## CORE CASES AND STATUTES

Case	About	Importance
<i>Bernstein v. Skyviews</i> [1978] 1 QB 479	The extent of land ownership above the property.	The ownership of land extends to the 'lower stratum' to a reasonable height necessary to enjoy the property and to be able to bring a claim in trespass.
<i>Kelsen v. Imperial Tobacco</i> [1957] 2 QB 334	The overhanging sign.	The correct claim would be for trespass not nuisance as for trespass there is no need to prove damage – trespass is actionable <i>per se</i> .
<i>Anchor Brewhouse v. Berkeley House</i> [1987] 2 EGLR 173	The arm of a crane overhanging a property.	Again – the claim for trespass would succeed where nuisance might fail.

Case	About	Importance
<i>Waverley BC v. Fletcher</i> [1995] QB 334	The medieval brooch found in the land.	Where objects are found in the land – then the landowner is the owner and not the finder.
<i>Parker v. British Airways</i> [1982] 1 QB 1004	A bracelet found in the BA passenger lounge.	Where the landowner has not expressed control over the land, objects found on the land rather than in the land belong to the finder.
<i>Holland v. Hodgson</i> (1872) LR 7 CP 328	Spinning loom attached to the mill floor.	Established the ‘degree of annexation’ and ‘purpose of annexation’ tests: the more firmly an object is fixed, the more likely it is to be a fixture; the more the purpose of annexation is to enhance the land, the more likely to be a fixture.
<i>Berkeley v. Poulett</i> [1977] 242 EG 39	Fixtures and fittings.	Scarman LJ preferring the degree test, but expressing concerns over its application.
<i>Elitestone v. Morris</i> [1997] 1 WLR 687	Bungalows resting on their own weight.	The new ‘part and parcel’ test is established: the more an object becomes integral to the land, the more it will be seen as a fixture.
<i>Botham v. TSB</i> (1997) 73 P & CR DI	109 objects – were they fixtures or fittings?	Trial judge – 108 were fixtures; Lord Justice Roch disagreed – a detailed application of the tests to distinguish between a fixture and a fitting.

Statute	About	Importance
LPA 1925, s. 62(1)	Sets down that fixtures will be deemed to pass with the land.	Anything deemed to be a fixture must be left in the property by the landowner.
LPA 1925, s. 62(4)	The exception to s. 62(1).	Fixtures can be ‘listed’ for removal in the conveyance documents.
LPA 1925, s. 205(i)(ix)	The definition of land.	This includes all corporeal and incorporeal rights: land, buildings, hedges, fences and also easements covenants and mortgages.
Treasure Act 1996	Defines treasure found in or on land and how it is dealt with – by the coroner.	‘Treasure’ must be handed over to the coroner’s court but compensation may be payable to the owner of the land.

## FURTHER READING

***Botham v. TSB Bank Plc* [1996]  
EWCA Civ 549**

This judgment is worth reading in full – an excellent explanation of the law on fixtures and fittings and how the courts apply the 'annexation' and 'part and parcel' tests.

**Friedman, M. *Capitalism and Freedom* (University of Chicago Press: Chicago, 1962). <http://plato.stanford.edu/entries/property/>**

Land ownership as seen as an economic commodity – a very insightful article which set the scene for the Thatcherite 'right to buy' programme.

**Heath, A. 'Thatcher's property-owning democracy needs to be rescued' <http://www.cityam.com/article/thatcher-s-property-owning-democracy-needs-be-rescued>**

An article explaining the explosion in home ownership – especially under Margaret Thatcher.

**The Yorker, Socialist Society Column, 'Land ownership: it's a homes issue', April 2013, <http://theyorker.co.uk/politics/york/13747-land-ownership-it-s-a-homes>**

This gives an interesting political overview of land ownership – especially from a more 'left-wing' perspective.



# PART 2

*Rights, interests  
and their  
protection*

## PART 2

Rights, interests and  
their protection

### CHAPTER 3 Personal and proprietary rights

Why the  
distinction  
matters

Third party  
rights

Licences

Purely  
personal  
rights?

Leases

Creation  
of a legal &  
equitable  
lease

The lease/  
licence  
distinction

*Street v.  
Mountford* to  
*Bruton*  
and beyond

Mirror,  
curtain and  
insurance  
principles

Aims and  
objectives  
of the  
LRA 2002

E-  
conveyancing

The main  
objective?

The register

Notices,  
restrictions

Overriding  
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LRA 2002,  
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Adverse  
possession

The future?

Overreaching

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### CHAPTER 4 Land Registration Act 2002