

# Land, Fixtures and Chattels

- The common law has traditionally classified property rights by reference to the nature of the object over which rights are held, on the one hand, and the specific bundle of rights that are asserted in respect to it, on the other.
- Objects of property divided into two basic categories - real property or realty and personal property or personalty. *See figure 2.1 on p. 35*

## Land

- Land, also known as realty is defined as rights over land and anything annexed to it. It may also include a quantum of airspace. It is also known as immovables.
- Ownership of land can be split into multiple interests both physically and according to the doctrine of estates.
- Has two subcategories - corporeal/hereditaments or incorporeal
- Corporeal refers to rights to the land itself.
- Incorporeal refers to rights over the land.
- Land also includes fixtures - those chattels that have become part of the realty.

## Personalty

- It is moveable and tradable - **goods** can be physically transferred from hand to hand, may deteriorate over time. It has a limited life and tends to change hands more frequently.
- Two classes - chattels real or leaseholds and pure personalty.
- Leaseholds more naturally part of real property

### Choses in possession

- Also chattels and goods denote tangible personal property.
- Physical things that are not land.

### Choses in action

- Property rights over intangible things, covering rights such as intellectual property, shares, rights to payment of debts and money.
- Not possible to acquire rights over this type of property same as tangible.

## What is land?

- In addition to physical earth - generally considered to include airspace above it, minerals, vegetation and buildings on it.
- Land is owned from the heavens above to the centre of the earth - *cujus est solum*. Cannot be taken literally.
- Airspace can be sold as land in own right: *Bursill Enterprises Pty Ltd v Berger Bros Trading Co Pty Ltd* (1971) 124 CLR 73.

### Airspace/ Rights above the surface

- Subject to zoning laws, the owner of land may use his or her airspace to build to any height and for any purpose: *Victoria Park Racing Co v Taylor* (1937) 58 CLR 479.
- Can use airspace for reasonable enjoyment of the land : *Bernstein of Leigh (Baron) v Skyviews and General Ltd* [1978] QB 479.
- *Davies v Bennison* (1927) 22 Tas LR 52 - Shot the neighbours cat, there was a trespass to land through transit of the bullet.
- Permanent Intrusions - Overhanging and intruding into the neighbour space - *Kelsen v Imperial Tobacco*
  - *Wollerton v Costain* [1970] 1 WLR - crane jib 15 m above plaintiff land - is this trespass?
  - *LJP Investments Pty Ltd v Howard Chia Investments (No 2)* (1989) 24 NSWLR 490: 'I think the relevant test is not whether the incursion actually interferes with the occupier's actual use of land at the time, but rather it is of a nature and at a height which may interfere with any ordinary uses of the land which the occupier may see fit to undertake' - now see S 88K Conveyancing Act - can get easement e.g. right of way.
- Invasions of the airspace over which the owner has exclusive rights are actionable as trespass.

### Subsoil - Rights below the surface

- No authority exists about extent of rights owner below the surface.
- Gold and silver are considered to be royal minerals and they belong to the Crown at Common Law. Most Crown grants in NSW reserve minerals to the crown.