

Subsurface and Minerals

Edwards v Sims (1929)

- E owned entrance to underground cave opened to the public for profit
- Lee sought survey of cave to see if ran under Lee's land and if E was trespasser
- E sought writ of prohibition against Sims J for allowing order
- Logan J dissenting stated that man owns everything on, below and above and may use for "profit and pleasure and subject to dominion and control" BUT cannot own what he cannot use

Woolley v Attorney General of Victoria (1877)

- A sought to restrain D (AG VIC + mining company) from removing gold from beneath A's land
- A submitted that grant of land passed right to grantees

Land Act 1898

- Prior to 1 Jan 1898 no depth expressed in Crown grants
- Post 1 Jan 1898 limit of depth to 20 feet
- S 15 – limited depths of 40 f/12.19m (Goldfield and Mining Districts) and all others 2000 f/609.6m.
- Post 1906 all others 200 f/60.96m.
- Post May 1981 all of WA limited to 12.19m depth

Mining Act 1978

- (9) (1) (a) all gold, silver and precious metal...is the property of the Crown
- (b) all other minerals not alienated in fee simple before 1 Jan 1899 are property of the Crown

Petroleum Act

- All petrol vests in Crown regardless of date of grant

Air Space

The test for determining whether activities above surface of land constitute a trespass is whether they are of a nature that interfere with ordinary use of the land.

Graham v KD Morris [1974]

- P occupied house where 15 story building on adjoining land with large crane
- Crane's jib free to rotate and occasionally encroach 62 ft over P's land
- P complained of trespass and injunction granted – interfered with proper use and enjoyment of land
- Could affect property value
- Crane approx. 50 ft above roof was trespassing in Wollerton & Wilson

Davies v Bennison (1927)

- D killed P's cat with rifle whilst on his on land
- D paid for cost of cat but claimed committed no trespass
- Damages payable as injunction ineffective

Lord Bernstein v Skyways (1978)

- Not trespassing to cross land in balloon (Pickering v Rudd 1815) Lord Ellenborough
- Trespass to erect sign projecting over land (Gifford v Dent 1926)
- Trespass for sign projecting 8 in over land (Kelsen v Imperial Tobacco 1957)
- LB brought action claiming trespass and invasion of privacy