

Curtin University of Technology
Department of Planning
Faculty of Built Environment, Art and Design

ENVIRONMENTAL PLANNING LAW 413/512

TUTORIAL TOPIC NO 2 - LAND

The **subject** of this topic is **LAND**.

The **purpose** of the topic is to help you:

- (a) to identify land;
- (b) to understand the special character of land as the principal kind of property;
- (c) to see the importance of land as the material planners work with; and
- (d) to see the ways in which people have organised their relationship with land in our legal system.

A. Principles:

Write brief notes explaining the nature of each of the following:

- (a) Real property;
- (b) Personal property;
- (c) Estate in fee simple (freehold estate);
- (d) Leasehold interest in land;
- (e) Mortgage;
- (f) Easement; and
- (g) Restrictive covenant.

B. General Law Approach to Land Use Planning

By the 19th Century in the UK and finally as a result of the case of *Tulk -v- Moxhay* an instrument for controlling land use evolved by the processes of the common law. Identify that common law instrument for land use control and discuss:

- (a) whether it remains necessary or even useful in an era when land use is comprehensively controlled by town planning schemes; and
- (b) what is the legal relationship between that instrument and town planning schemes? (NOTE: *P&D Act* Schedule 7, cl 11(1)).

C. Practical Problems

1. Assume that you are the planner in a local government acquiring land for a sports arena and associated car park. The land is being used for a variety of purposes, and has been developed as follows:
 - (a) on one lot there is an orchard including a shade house, well established fruit trees, seedlings in pots, a well with pump and reticulation and a caravan owned by the lessee of the property from which he conducts sales;
 - (b) on another lot there is a transportable house with an established garden and some gravel, bitumen and slab-paved areas and boundary fencing;
 - (c) on the third lot there is a caravan park operating as a going concern with 40 on-site caravans conducted as a profitable business. The caravans all have wheels and tow-bars, but also have annexes, so that they can be used conveniently on-site on a long-term or permanent basis.

The local government is only acquiring land in each case. You are required to report to the Council in regard to each of the 3 cases which of the improvements and other items on the land would be acquired by the local government and therefore the subject of compensation and explain briefly any reasons for your views.

(In this question you are required to discuss amongst other things what is land, how the law regards improvements to land, and the notion of fixtures, in addition to any other matters you think relevant.)

2. Assume that the local government has now acquired the land. However it will be 20 years before the orchard land can be converted to a car park to serve the sports arena and the local government has power to deal with the land in any way it considers fit and there is a person who will pay for the right to operate the orchard. Give preliminary information to the Council as to the following:
 - (a) The local government may grant a lease, or a licence.
Briefly explain the differences between those two types of transactions.
 - (b) What formalities should be observed in any event, having regard to the Statute of Frauds, to protect the interests of the local government and to ensure there is a valid agreement?
 - (c) Assuming the Council wants to grant a lease, what principal terms would you recommend for the lease? Should any condition be included to comply with s 136 of the P&D Act? (Note also s 140 of the P&D Act). (The issue here is that certain transactions are treated by the P&D Act as de facto subdivisions. Therefore they come under WAPC

subdivision control and transactions which do not comply with the P&D Act subdivision controls will be illegal and unenforceable.)

3. As to the portion of the orchard land to be sold, inform the Council in very general terms what it might do as to the following:
 - (a) It is necessary to have a means of access for pedestrians and service vehicles over the portion of the orchard land to be sold. By what means can an easement (in this case a right of way), be established? Can there be an easement in gross considering that the local government is the grantee?
 - (b) The local government does not want anything built on the portion of orchard land sold which will conflict with the sports arena use. Explain the possible use of a restrictive covenant in this case, and when can the restrictions be imposed? Can the restrictions be removed in the future and by what means? Can there be a covenant in gross given that the grantee is a local government?
 - (c) It appears that a house built on an adjoining lot about 12 years ago encroaches by 10cm over the boundary of the orchard land. The owner of this land is concerned. Can the local government insist that he remove the encroaching wall or that he buy the 10cm strip of land?

The students assigned to this topic should work together on the three problems in part C. You should arrange your preparation so that all the topics in C are presented, ideally, one for each student in the group. BUT, each student in the written up paper should cover:

- (a) Part A fully;
- (b) Part B fully;
- (c) 1 of the 3 sections of Part C.

Remember in dealing with C that you are only giving general information to the Council, and you are made to understand that on each issue, the local government at the appropriate time will act through and obtain firm advice from its solicitors.