

UNIT 1: WHAT IS LAND LAW

Contents

- Succeeding in Land
- Assessments
- Defining property
- Defining Land
- Ownership and possession
- Rights and obligations
- Registered and unregistered land

UNIT 1 – LEARNING OUTCOMES

- Understand how to succeed in your study of Land Law
- Define key terms in land law
- Differentiate between real and personal property
- Identify rights and obligations associated with land law
- Explain concepts of ownership and possession of land, differentiating between types of estates and legal and equitable rights
- Summarise the differences between registered and unregistered land
- Apply legal principles to factual scenarios

MODULE LEARNING OUTCOMES

LO1: demonstrate detailed knowledge and a systematic understanding of the principles and concepts which underpin land law, and the ethical issues which arise within land law

LO2: critically evaluate estates and interests which can be held in law, how they are acquired and how they can exist

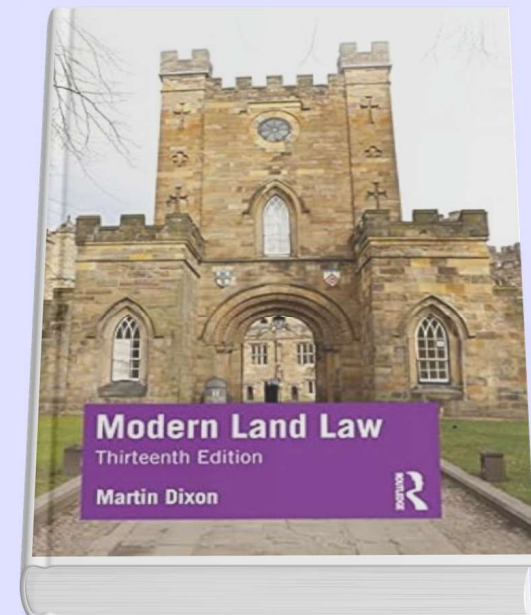
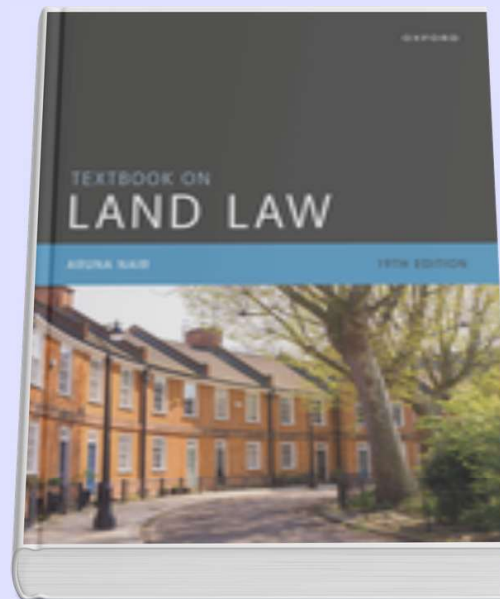
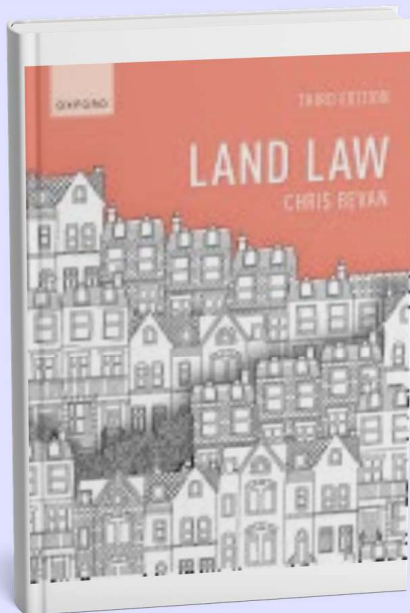
ASSESSMENTS

Assessment	Type	Length	Weight	Testing
1	Written and Oral Assessment	2000 words and 15 minutes	100%	LO1 and LO2

ASSESSMENT

- You have been instructed to represent a client in the High Court (Chancery Division) in a property dispute. Details of the case will be provided. In this moot you will represent your assigned client – this will either be the claimant or the defendant and advocate on their behalf. Advocating on behalf of the wrong party will result in you being awarded zero for this assignment.
- In this assessment you will prepare written and oral submissions. For your written submissions you must produce:
 - a skeleton argument outlining your case in support of your client's position against each of the heads of claim.
 - a concise case note summarising a case which you have found from your independent research which supports your client's case. This should not be a case cited in class and must be a case that you intend to use in your oral submissions.
- For your oral advocacy, you will present your submission before a judge (your course lecturer who will be marking your work) in a moot (mock proceedings) format. For each moot, one student will present the claimant, and one the defendant.

TEXTBOOKS



SCHEME OF WORK

- Introduction to Land Law
- Ownership of Land
- Leases
- Licences
- Mortgages
- Co-ownership and cohabitation
- Proprietary estoppel
- Third parties: easements and covenants

ACTIVITY 1: GETTING TO KNOW EACH OTHER

- Pair up with someone you have not previously worked with and find out a little more about them.
- Then, you are going to represent your partner as their lawyer in possession (eviction) proceedings. In these you will have 30 seconds to:
 - Introduce them
 - Tell the court a fun fact about them
 - Tell the court why they are being evicted (make this up – the more bizarre the better)
 - Give one reason why they should be allowed to stay in their home – this could be a real fact, or you can make something up

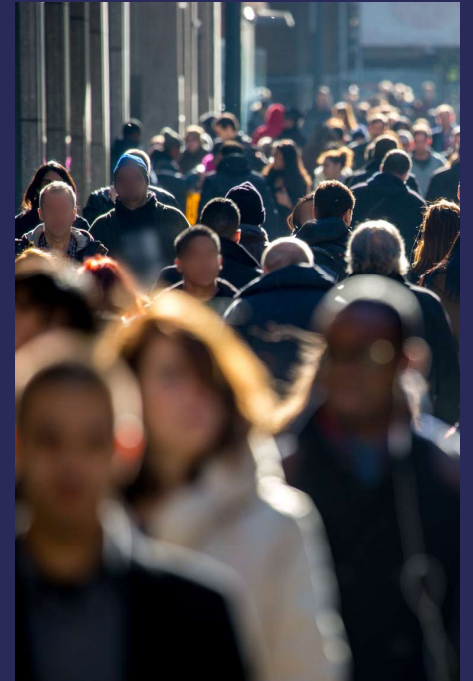
ACTIVITY 2: WHAT IS THIS MODULE ALL ABOUT?

- Define the following terms:
 - Property
 - Land
 - Ownership
 - Possession

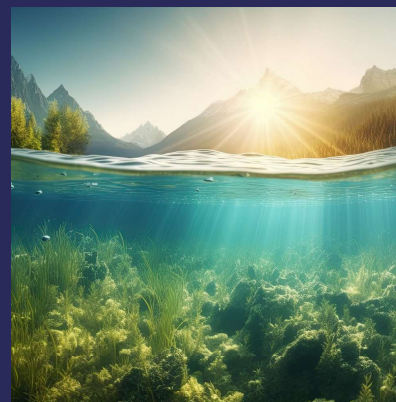
PROPERTY

- Notoriously difficult to define:
- *National Provincial Bank Ltd v Ainsworth* [1965] AC 1175, per Lord Wilberforce at 1247-1248:
 - “[Property]...must be definable, identifiable, by third parties, capable in its nature of assumption by third parties, and have some degree of permanence and stability.
- Goode, 2023, p.4:
 - “property is anything of realiseable commercial value.”

DEFINING PROPERTY



DEFINING LAND



LEGAL DEFINITION

- Estate in land
- Mines and minerals would include, for example, any coal beneath the property. In practice, all interests in coal are now vested in the Coal Authority under the Coal Industry Act 1994.
- Corporal hereditaments: Physical and tangible characteristics of land e.g. trees, rocks and clods of earth.
- Incorporeal hereditaments e.g. intangible property rights e.g. profits and easements.
- Manor and advowson reflect the feudal nature – limited modern application.
- Buildings and parts of buildings are included within the definition of land. Buildings can be divided horizontally or vertically, meaning that it is possible for a building to be included within the definition of land although it does not touch the soil. This is called ‘flying freehold’.

Key sources: Law of Property Act 1925, s205(1)

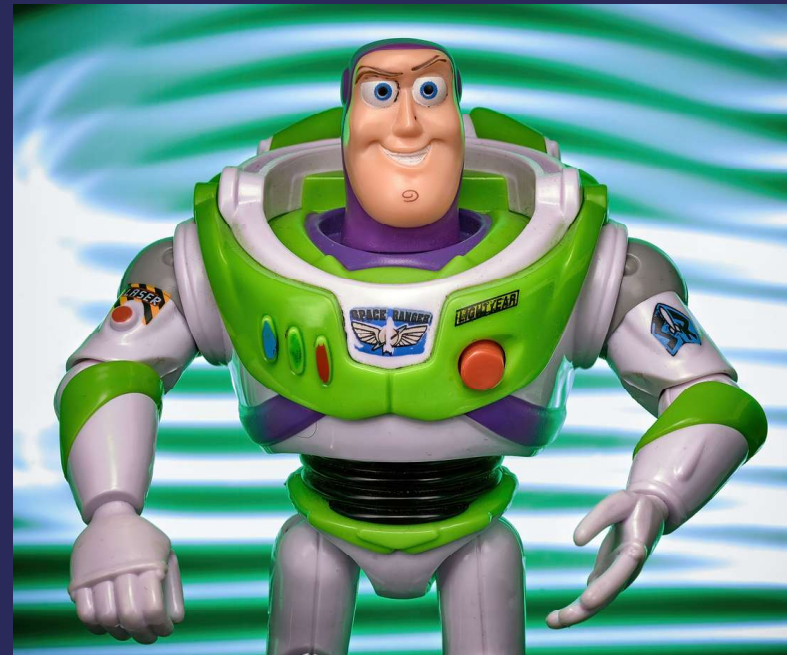
Land includes land of any tenure, and mines and minerals, whether or not held apart from the surface, buildings or parts of buildings (whether the division is horizontal or vertical or made in any other way) and other corporeal hereditaments; also a manor, advowson, and a rent and other incorporeal hereditaments and an easement, right, privilege, or benefit in, over or derived from land

CORPORAL AND INCORPORAL RIGHTS



TO INFINITY AND BEYOND

- *Cuius est solum eius est usque and coelum et ad inferos*
- Land extends upwards to infinity and downwards to the centre of the earth
- Modern limitations – courts have sought to balance rights of landowner and those of general public



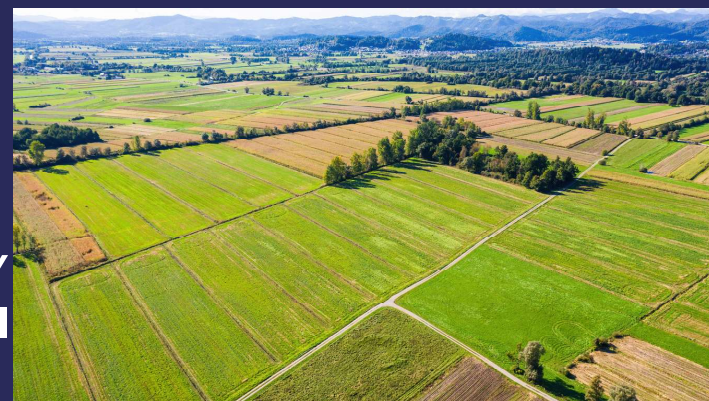
ON THE SURFACE

- ***Stukeley v Butler* (1615) 80 ER 316**
- Surface of the land is part of the land
- Buildings are part of the surface
- Trees and plants as attached
- Wild animals
- Minerals found on surface
- Restrictions:
 - Planning regulations
 - Tree preservation orders
 - **Water Resources Act 1991**: permission needed from National Rivers Authority to extract large amounts of water



SURFACE AREA BOUNDARIES

- Within UK, surface area meticulously mapped out
- 2D representation of the area under which parties have rights and responsibilities
- Boundaries are a human construct (though nature might have given some natural separation points)
- Shown on title plans
- general rebuttable presumption if present, boundary is presumed to lie along the edge of the ditch on the far side from the hedge
- Not always neatly separated, e.g. by a wall/fence
- Walls and fences move – and can be cause of bitter and expensive neighbour disputes! ***Palfrey v Wilson* [2007] EWCA CA 94; Jones v Stones [1999] 1 WLR 1739; Rimmer v Pearson [2000] 79 P & Cr D211**
- ***ER Ives Investment v High* (1967) 2 QB 379**
- Who's wall is it? Who is responsible for it?



BELOW THE SURFACE



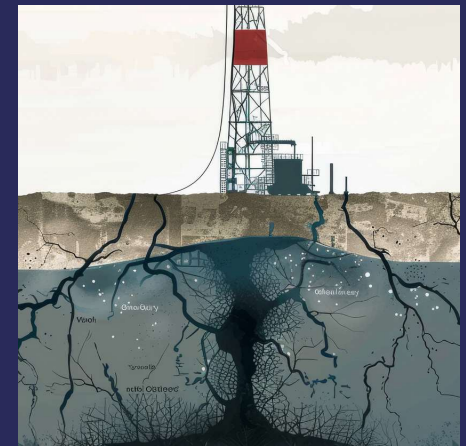
Tunnelling below
neighbour's property
would be trespass



Oil belongs to crown
Petroleum Act 1998, s2
Coal belongs to Coal
Authority **Coal Act 1938, s 9**



Bocardo SA v Star
Energy UK Onshore Ltd
[2011] 1 AC 380



Fracking >300m
Infrastructure Act 2015

BELOW THE SURFACE



All gold and silver
belongs to Crown
Treasure Act 1996



Ownership and
responsibility of water
pipes distributed
between Water company
and land owner (depend
on location)



Cellars ***Grigsby v Melville***
[1974] 1 WLR 80 but
possible to have rights only
to area below surface



Swimming pools: a
below ground
construction, need
planning permission

AIRSPACE



To the Heavens....
As necessary for
ordinary use



Overhanging billboards
and guttering ***Kelsen v
Imperial Tobacco Co
Ltd*** [1957] 2 QB 334



***Anchor Brewhouse
Developments v Berkley
House (Docklands)
Developments*** [1987]
EGLR 172

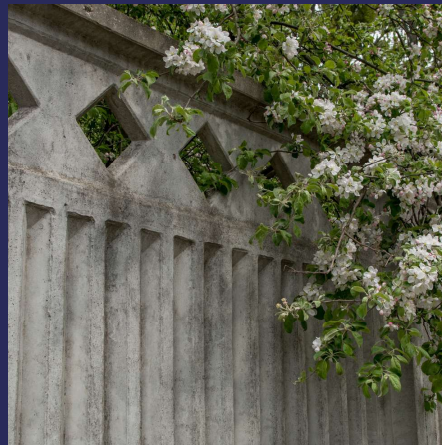


***Bernstein of Leigh (Baron)
v Skyviews & General Ltd***
[1978] QB 479
s76 Civil Aviation Act 1982

AIRSPACE



Civil Aviation Act 1982
Air Traffic Management
and Unmanned Aircraft
Act 2021



Overhanging branches
***Lemmon v Webb* [1985]**
AC 1 (HL)



Overhanging extractor fan
***Laiquat v Majid* [2005]**
EWHC 1305



Overhanging scaffolding
John Trenberth v. National
***Westminster Bank* (1979)**
39 P & CR 104

FIXTURES AND FITTINGS

- Distinction is made between fixtures and fittings
 - any fixtures form part of the land and are transferred with it, and
 - any fittings (also known as chattels) do not form part of the land and will be retained by seller
- Common sense approach: ***Elitestone v Morris* [1997] 2**

All ER 513



Key source: *Holland v Hodgson* (1872) LR 7 CP 328

Two key tests:

- method and degree of annexation, and
- the object and purpose of annexation

Example:

- blocks of stone placed on top of another without mortar or cement for purpose of drystone wall would become part of the land, but the same stones, left in a builders yard stacked on top of each other for storage remain chattels

ANEXATION

The Degree of Annexation

- How firmly affixed is the object to the land?
- The object could be resting on the land by its own weight, for example, a sculpture.
- It may be attached to the land by means of battens (strips of wood) and screws
- If the object cannot be removed without causing significant damage to the land, this indicates that it is a fixture
- If the object is easy to remove more likely a chattel
- Technological advances mean objects can be affixed and removed from land or buildings with relative ease.
- DoA test raises a rebuttable presumption that the item is a fixture

Purpose of Annexation

- Why has the object been attached to the land?
- Key test and takes priority over the DoA.
- If the object was attached to the land to enhance the land or to create a permanent improvement then it is a fixture.
- If the object was attached to the land for the better enjoyment of the object then it retains its characteristic as a chattel.
- The question depends on the circumstances of each case with the onus of proof being on the person claiming that the object has ceased to be a chattel.

Key source: *Berkley v Poulett*
[1977] 1 EGLR 86, CA

SOME EXAMPLES

Fixtures

- A split-level cooker with a built-in oven and inset hob will be a fixture as this would be difficult to remove without causing damage
- Kitchen units are fixtures
- Items installed by a builder will probably be fixtures, for example wall tiles in a kitchen or bathroom
- Bathroom fittings (ie basins, baths and toilets) are fixtures as without them the room would not function as a bathroom

Fittings (Chattels)

- Items which are ornamental are often chattels, for example pictures
- A free-standing cooker connected via a flex will be a chattel
- Appliances in a kitchen can retain their characteristic as chattels as they are attached only by their weight and an electrical flex and can be removed or replaced without damage
- Carpets and curtains are likely to be chattels
- A gas fire connected purely to function as a fire is likely to be a chattel
- Light fittings attached by screws are likely to be chattels.

Key source: *TSB Bank Plc v Botham* [1996] EGCS 149

ARCHITECTURAL DESIGN



Tapestries in panelled
walls, pictures, marbled
vases and garden
ornaments

D'Eyncourt v Gregory
[1866] LR 3 Eq 382



Mobile home
Elitestone Ltd v Morris
[1977] 2 All ER 513



Tapestries: compare ***Leigh***
v Taylor [1902] AC 157
and ***Re Whaley*** [1908] 1
Ch 615



Seating compare ***Vaudeville***
Electric Cinema v Muriset
[1923] 2 Ch 74 and ***Lyon & Co***
v London City and Midland
Bank [1903] 2 KB 135

FIXTURES AND FITTINGS EXAMPLES



Worktops in a garage
***Orsman v The
Commissioner for Her
Majesty's Revenue &
Customs [2012] UKFTT
227 (TC)***



Framed paintings
***Brudenell-Bruce, Earl of
Cardigan v Moore
[2012] EHC 1024 (Ch)***



Solar panels on roof (and
equipment) ***Borwick
Development Solutions v
Clear Water Fisheries
[2019] EWHC 2272 (Ch)***



Serpentine boat house
***The Royal Parks Ltd v
Bluebird Boats Ltd [2021]
EWHC 2278 (TCC)***

ACTIVITY 3: FIXTURE OR FITTING

- In groups decide on whether the following would be considered fixtures or fittings
- Remember to consider the reasons for and against



ACTIVITY 4: WELCOME BACK TO LAND LAW

- How are you feeling about land law?
- How did you define ownership?
- How did you define possession?

OWNERSHIP

- The significance of property ownership has rarely been fully appreciated. All sentient life is concerned with property, either instinctively or rationally. No organism capable of volitional action can escape the demands arising within it for some kind of property relationship.
(LeFevre, 2018)
- In law ownership refers to having:
 - legal rights
 - control
- Some politicians hold significant value in property ownership – others common ownership better for society
- Legally ownership can take different forms – different parties can have different interests in same piece of land
- These rights and interests typically have a commercial value

ACTIVITY 5: RIGHTS AND INTERESTS

- Consider the image of the following farm and farmhouse.
- What rights and interests could arise in relation to this piece of land?
- Who might benefit from these rights?



OWNING LAND: ESTATES IN LAND

- The Crown (King or state) owns all land in E&W
- People and legal entities can own an **estate in land** - package of rights associated with that land for a period of time (**tenure**)
- Historically, greater variance in types of estate. LPA 1925, s1(1) simplified to two types:
 - a. **Freehold** (an estate in fee simple absolute in possession) = indefinite interest
 - b. **Leasehold** (a term of years absolute) = time limited interest (up to 999)
- Estates in land are capable of being transferred (conveyed) and inherited



Key source: Law of Property Act 1925, s1

OWNING LAND: INTERESTS IN LAND

- Beyond the estate, others may also benefit from interests (or charges) in relation to the piece of land.
- LPA, s1(2) recognises 5 forms of legal interest:
 - Easements
 - Rentcharges in possession
 - Mortgages
 - Other similar charges
 - Rights of entry ... for any purpose to a legal rentcharge
- s1(3): Other estates, interests and charges are equitable



Key source: Law of Property Act 1925, s1

LAW V EQUITY

- You will explore the difference between Law and Equity
- Relates to the historic differences as to what rights and interests would be recognised in:
 - the common law courts
 - the courts of equity (chancery)
- Equity may historically recognise (and remedy) a right/interest which the law would not (remedy harshness of law)
- Nowadays the administration of equity and trusts is fused: actions can be brought in the same court

DIVIDED OWNERSHIP

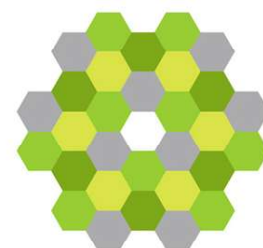
- Equity makes it possible to recognise the interests of those beyond those with legal title, or legal interests
- It makes it possible to differentiate, who has legal ownership over property, and who has equitable ownership



LAND REGISTRATION

- Registration status has an impact in land law, including the operation of third party rights
- Important for determining ownership
- Idea that should be single source (register) of all legal rights and interests
- Registration means recording with the land registry key information about rights and ownership relating to the land
- Slow process – certain triggers to registration, e.g. transfer of property
- Introduced gradually, – whilst compulsory for many decades, still many pieces of land unregistered
- estimated 13–15% of land in E&W remains unregistered

Land
Registry



POSSESSION

- The Oxford English dictionary defines possession as follows:

a.the action or fact of holding something (material or immaterial) as one's own or in one's control; the state or condition of being so held.

b.Visible power or control over something (defined by the intention to use or to hold it against others) as distinct from lawful ownership ...

2. That which is possessed or held as property; something belonging to one, a piece of property; belongings, property, wealth.

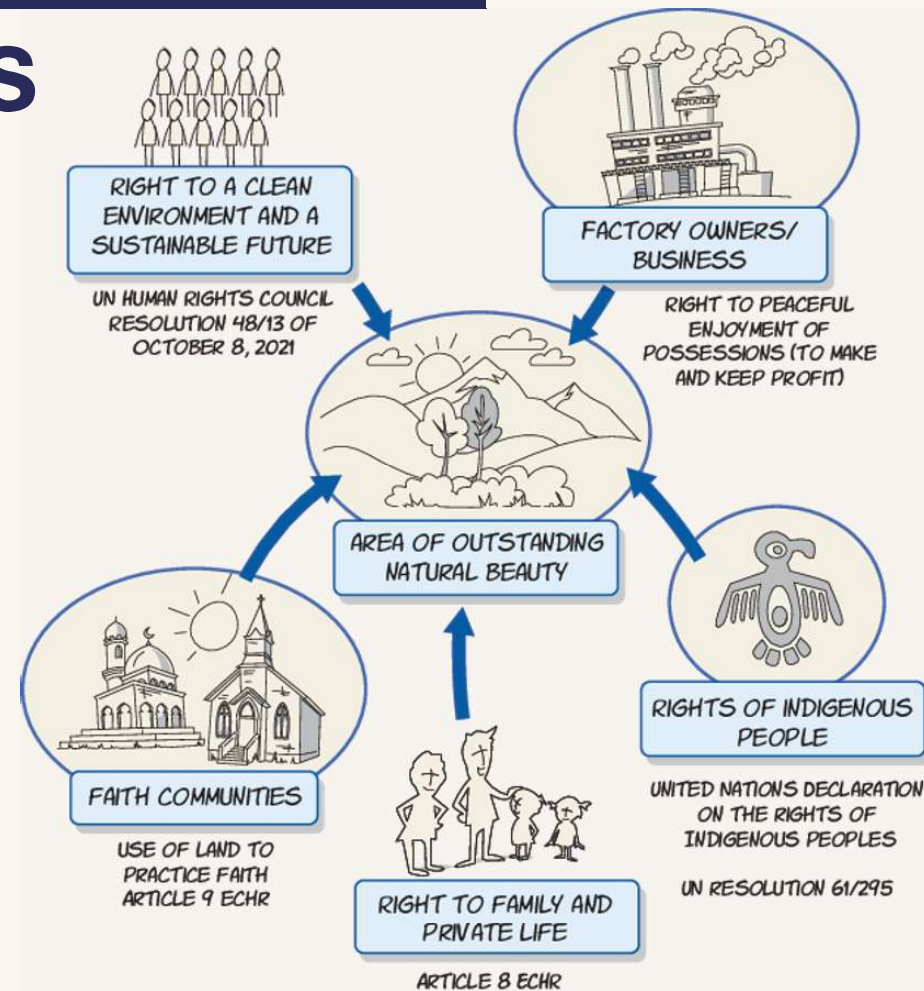
- Can be a verb or a noun

In law, not necessarily dependent on legal ownership e.g. friend staying in your holiday cottage. Person staying will not own, but will have possession

But may also have legal interest and possession, e.g. a tenant

LAND AND HUMAN RIGHTS

- Human rights operate differently in property law
- Usually operate to protect individuals from action state – public law rights
- Most of the rights discussed in this module are private law rights: not enforceable against the state – not constitutional rights
- However some exceptions in UK law, which are human rights, not enforceable against individuals in the context of peaceful enjoyment of possessions
- Land based human rights do sometimes compete with each other
- Different groups might claim competing rights.



LAND AND INTERNATIONAL LAW

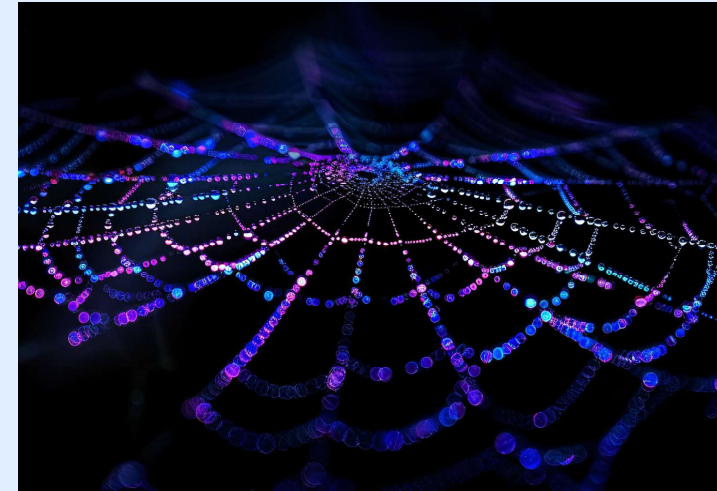
- Right to peaceful enjoyment of possessions and the right to own property contentious in international law
- Different types of philosophical and political differences between states
- Difficult for states to agree whether or not humankind has such rights in the first place
- Right to own property written into Art 17
- Waning international consensus
- International Covenant on Economic, Social and Cultural Rights, 1966, art 11:
 - Adequate standard of living for himself and his family... including adequate food, clothing and housing...

Key source: Article 17 of the Universal Declaration of Human Rights (UDHR) 1948

Everyone has the right to own property alone as well as in association with others. 2. No one shall be arbitrarily deprived of [their] property.

ACTIVITY 6: JOINING THE PIECES TOGETHER

- We've explored several key themes in this unit. Either individually, or together, collate the key themes from this unit into a visual diagram (e.g. a mind map)



UNIT 1 : LEARNING OUTCOMES

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RECAP

UNIT 1: READING MATERIALS

- You can draw on the following chapters of your textbooks to deepen your understanding of the topics discussed in this unit.
- Bevan (2022) chapter 1
- Dixon (2024), chapter 1

EXPLORING FURTHER

- You may find the following sources of interest to you in exploring the topics discussed in this unit further. You are not expected to read these to pass the module, they are provided should you wish to explore the topics further.
- Angell, K. (2019) Property and territorial rights in political philosophy. Available at: <https://doi.org/10.1093/acrefore/9780190228637.013.1384>.
- Doupé, M. and Salter, M. (2000) 'Approaching the nature and history of property law: the limits of the "Cheshire Worldview"', *King's Law Journal*, 11(1), pp. 49–77. Available at: <https://doi.org/10.1080/09615768.2000.11423592>.
- Goode, R.M. (2023) 'What is property?', *Law Quarterly Review*, 139, pp. 1–4.
- International Land Coalition (2020) Uneven ground. Land inequality at the heart of unequal societies. Available at: https://d3o3cb4w253x5q.cloudfront.net/media/documents/2020_11_land_inequality_synthesis_report_uneven_ground_final_en_spread_low_res_2.pdf (Accessed: 21 January 2023).
- LeFevre, R. (2018) The philosophy of ownership. Available at: <https://fee.org/resources/the-philosophy-of-ownership/> (Accessed: 6 May 2023).