PROPERTY BOUNDARIES AND INCIDENTAL RIGHTS ATTACHED TO THE OWNERSHIP OF LAND IN TASMANIA

by

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INTRODUCTION

The maxim *cujus est solum ejus est usque ad coelum et ad inferos* suggests that a landowner by virtue of his fee simple estate is entitled to exercise ownership rights in respect of airspace and the subsoil. Translated the maxim means that the holder of the fee simple estate owns the airspace from the surface to the heavens and also the subsoil from the surface to the centre of the earth.

The maxim may be traced to Jewish Law and the first reference in English Law is to a contract for the sale of a house in Norwich 1285.[1] The first case law reference is *Bury v Pope*.[2] In this case the defendant erected a structure to prevent the windows and lights of his neighbours house looking into his land. It was held that the defendant was quite entitled to do so, because the ownership of his estate entitled him to exercise rights in respect of the airspace above the surface. This was the case even though the windows and lights had continued for approximately forty years. Blackstone also comments that:

> Land hath also, in its legal signification, an indefinite extent, upwards as well as downwards. *Cujus ets solum, ejus ets usque ad solemn,* is the maxim of the law; upwards, therefore no man may erect any building, or the like, to overhang another's land; and downwards, whatever is in a direct line between the surface of any land the centre of the earth, belongs to the owner of the surface ... So that the

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1 P. Butt, *Land Law,* Law Book Co Ltd, Sydney, 2nd ed 1988, p 11.

2 (1586) Cro Eliz 118; 78 ER 375 (KB).

> word "land" includes not only the face of the earth, but everything under it, or over it.[3]

Today, however, the maxim is somewhat misleading. It is incorrect to suggest that the possessor of the fee simple estate has exclusive rights in respect of the airspace above the surface and the subsoil below it. There are many statutory and common law controls that restrict the extent of ownership that the holder of the fee simple can claim. This article will examine the extent of property boundaries in Tasmania and the relevance of the maxim to Tasmania today. In particular we will consider the ownership of minerals and resources in the soil as well as the ownership of airspace. In addition to this we will also consider the extent of surface boundaries and rights incidental to ownership of land such as riparian rights and rights to support.

RIGHTS BELOW THE SURFACE

By far the vast majority of cases that consider the maxim have concerned intrusions into airspace, there is very little authority concerning ownership of the subsoil. As Butt comments, 'There appear to be no Australian or English cases dealing with the downward extent of the *cujus est solum* maxim'.[4]

What English authority that exists is of very limited value. The *Case of Mines* in 1568[5] established that gold and silver found on the surface or in the subsoil belongs to the Crown. In *Elwes v Brigg Gas Co*[6] an ancient boat was discovered by a lessee during excavations. The boat was within a few feet of the surface. Chitty J held that if the boat was to be treated as a chattel, then it belonged to the lessor. The lessor was to be regarded as not only being in possession of the surface but of everything that lay beneath the surface down to the centre of the earth. This position was adopted by Australia where Windeyer J in *Wade v New South Wales Rutile Mining Co Pty Ltd*[7] stated:

> that a freeholder is ... entitled to take from his land anything that is his ... except for those minerals which belong to the Crown, the soil and everything naturally contained therein is his.[8]

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3 W Blackstone, *Commentaries on the Laws of England*, vol ii, Stevens and Pardon, pp 17.

4 P Butt, p 16. For American authorities on this issue see *Edward v Sims* (1929) 24 SW (2nd) 619 at p 620. [Courts of Appeals of Kentucky]; see also *City of Chicago v Troy Laundry* (1908) 162 Fed 678 which concerned a tunnel 55 feet below the surface.

5 (1568) Plow 310; 75 ER 472.

6 (1866) 33 Ch A 562.

7 (1969) 121 CLR 177.

8 (1969) 121 CLR 177, p 185. These comments were *obiter*.

Despite these authorities the Privy Council stated in *Commissioner of Railways v Valuer-General*[9]:

> In none of these cases is there an authoratative pronouncement that "land" means the whole of the space from the centre of the earth to the heavens: so sweeping, unscientific and unpractical a doctrine is unlikely to appeal to the common law mind. At most the maxim is used as a statement, imprecise enough, of the extent of the rights, prima facie, of owners of land.[10]

Bradbrook[11] comments that:

> As the surface landowner's claim at common law to minerals rests on the *cujus est solum* doctrine, and as the scope of this doctrine appears to be doubtful, the surface landowner's common law ownership of minerals must be considered to be still unresolved, contrary to common legal understanding.[12]

Whatever the common law position is, the most significant development regarding ownership of the subsoil has been statutory.

OWNERSHIP OF MINERALS

The present position in Tasmania is that mineral ownership is generally vested in the Crown.

Section 16(3) of the *Crown Lands Act* 1976 provides that:

> No grant deed or transfer of any Crown land shall include or convey gold, silver, copper, tin, or other metals, ore, mineral, or other substances containing metals, or gems or precious stones, or coal or mineral oil, in or upon that land, and the same shall be deemed to have been excepted and reserved to the Crown.

This provision dates from the *Crown Lands Act* 1911 which substantially reproduced the original section from the *Crown Lands Act* 1905.

Furthermore, Section 54 of the *Crown Lands Act* 1976 provides that all Crown land which is sold or in respect of which a lease or licence is issued

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9 [1947] AC 328.

10 [1947] AC 328, pp 351-2.

11 Bradbrook, 'The Relevance of the *Cujus Est Solum* Doctrine to the Surface Landowner's Claims to Natural Resources Located Above and Beneath the Land' (1989) 11 *Adel L Rev* 462.

12 Bradbrook, p 464.

shall be sold only as regards the surface and to a depth of 15 metres below the surface unless the Minister otherwise determines.

The position regarding ownership of minerals prior to the original *Crown Lands Act* 1905 is more difficult to establish. Crown grants prior to 1859 contained no reservations, though gold and silver were probably subject to the royal prerogative.[13] The *Mining Act Amendment* 1911 provided that:

(i) Gold and Silver on or below the surface of all land in this State, whether alienated in fee-simple or not so alienated from the Crown, and if so alienated whensoever alienated, are the property of the Crown unless expressly comprised in the Crown grant.

(ii) All other minerals on or below the surface of all land in this State which was not alienated in fee-simple from the Crown before the 14th November 1893 are the property of the Crown.

Therefore the 14th November 1893 and not 1905 marks the date for reservation of minerals to the Crown. 'The point assumes greater importance when it is realised that, because of Tasmania's early settlement and relatively small area, mining and prospecting activities now frequently affect private land.'[14]

It is submitted therefore that prior to the 14th November 1893 the common law would apply and that after that date 'minerals' are reserved to the Crown. The term mineral is not defined in the *Crown Lands Act* 1976, though Section 2 of the *Mining Act* 1929 defines 'mineral' as:

> any metal or the ore of any metal and includes any inorganic substance, any combination of inorganic elements, any mineral aggregate, and any geothermal substance, but does not include coal, shale, stone oil or precious stones.

The common law position as stated is unresolved. The cases such as *Elwes v Brigg Gas Co* only considered the position just below the surface, there are no established Australian authorities that consider a substantial depth below the surface.

Tasmania authorities have considered the position regarding the surface of the land holding that a trespass occurs by the dumping of soil onto another's land.[15] In addition the decision of *Cooper v De la Motte*[16] held that a nuisance occurred by the encroachment of tree roots onto the neighbours property with resulting damage to sewerage and drainage

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13 J R S Forbes and A G Land, *Australian Mining and Petroleum Laws*, Butterworths, 2nd ed 1987, p 24.

14 Forbes and Lang, p 25.

15 See *Marriott v A G*, Unreported 71/1963, where nominal damages of £25 was awarded.

pipes. Again however, authorities which have considered a substantial depth do not appear to exist.

In the United States the maxim has been held applicable in respect of sewerage and other pipelines that run under a neighbours property. In *Miller v Cudahy Co*[17] a salt plant operator was held liable for continuing trespass which occurred when they buried a pair of pipelines that ran under a neighbours property.[18]

In the absence of authority in respect of a substantial depth into the subsoil, the court would be faced with two options - one, it could adopt a strict approach and consider that any intrusion was a trespass, or alternatively, it could hold that it is only where the intrusion interferes with a reasonable use that a trespass exists. For land granted before the introduction of the *Crown Lands Act* a court may follow *Wade v N S W Rutile Mining Co Pty Ltd* and hold that ownership exists to the centre of the earth or alternatively adopt the *Bernstein v Skyviews*[19] approach that rights only extend so far as is necessary for the ordinary use and enjoyment of the land. In light of the recent authorities on trespass to airspace[20] the strict approach may be adopted.

OWNERSHIP OF OIL/HELIUM/ATOMIC SUBSTANCES

In Tasmania, Section 2B of the *Mining Act* 1929 provides that:

> Notwithstanding ... anything to the contrary ...
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> (a) all oil
> (b) all helium; and
> (c) every atomic substance
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> existing in natural state on or below the surface of any land in this State is, and shall be deemed at all times to have been the property of the Crown.

Atomic substance is defined in Section 2 to include uranium, thorium and other substance declared by the Minister to be an atomic substance.

These provisions make it clear that in Tasmania there is a policy of universal Crown ownership regardless of what is stated in the original grant.

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16 Unreported 24/1985.

17 (1984) 592 F Supp 976.

18 See also *Terrall v Poole* (1986) 484 So 2d 227 which held that the existence of sewer lines on property was a continuous trespass - irrespective of whether they were used.

19 [1978] Q B 479.

20 See below.

SURFACE BOUNDARIES

The surface boundaries of a piece of land will usually be set out in the instrument that confers ownership or possession. The boundaries may be either natural, such as a foreshore or they may be non-natural such as survey pegs. By their nature natural boundaries may sometimes shift whereas non-natural boundaries are static.

TIDAL BOUNDARIES:

If land is bounded by tidal waters, the boundary is the mean high water mark.[21] Below this mark the land belongs to the Crown. In addition the river-bed of a tidal water which borders land is vested in the Crown.[22]

ACCRETION/EROSION

Under the doctrine of accretion, land which is gradually deposited from the sea becomes the property of the owner. The owner will also lose land to the sea by the converse situation of erosion.[23] As the High Court in *Hazlett v Presnell* stated:

> At common law, where land is bounded by a navigable river and the rule *ad medium filum* does not apply, the title to the land is applicable to land as it may be from time to time changed by the gradual and imperceptible processes of erosion and accretion. This is so even if there by the means of identifying the original bounds of the property.[24]

This doctrine is applicable to both Torrens system land as well as general law land[25] and though the increase must be due to natural causes, human involvement is not totally eradicated providing that the purpose of the human involvement is not to acquire more land.[26]

NON-TIDAL BOUNDARIES:

The river-bed of a non-tidal river flowing through private land belongs to the land owners.[27] If the non-tidal river abuts or divides two blocks of land and the land is described as bounded by the river there is a rebuttable presumption that the landowners own the land *ad medium filum* or to the

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21 *Attorney-General v Chambers* (1854) 4 DE G M and G 206; 43 ER 486.

22 *Gann v The Free Fishers of Whitstable* (1856) 11 HLC 192; 11 ER 1305.

23 *Hazlett v Presnell* (1982) 56 ALJR 884.

24 (1982) 56 ALJR 884, p 888.

25 *Verral v Nott* (1939) 39 SR (NSW) 89.

26 *Verral v Nott* (1939) 39 SR (NSW) 89.

27 *Orr Ewing v Colquhoun* (1877) 2 AC 839 (HL).

middle line of the river.[28] This rule is applicable to both Torrens system and general-law land.[29]

In Tasmania the *ad medium filum* rule has not been affected by statute[30] and is thus still applicable.

Additionally, it is open in Tasmania to argue that the *ad medium filum* rule could apply to land bordering private roads.[31] As far as public roads are concerned, Section 8(1) of the *Roads and Jetties Act* 1935 provides that 'All State highways and subsidiary roads shall be vested in the Crown'. In Section 3, road is defined as a public highway.

NATURAL RIGHTS

There are two major natural rights that are associated with the ownership of land. These are the right to water flowing in a defined channel through or alongside the property and the right to support of your land from your neighbours land, or at least the right not to have that support removed.

RIGHT TO WATER FLOWING IN A DEFINED CHANNEL

A landowner is entitled to the continuing flow of water from a natural water course through or adjacent to land. A riparian owner is entitled to use the water for domestic purposes and also for extraordinary purposes that are incidental to the ownership of land.[32] If however, a landowner impedes or pollutes or alters the flow of water he will be liable to other riparian owners. The position at common law was stated by Windeyer J in *Gartner v Kidman*.[33]

> [T]he proprietor of land upon the banks of a natural stream of running water, is entitled to have, and is obliged to accept, the flow of water past his land. He cannot either deprive those lower down the stream of its flow nor pen it back upon the lands of his neighbour higher up. These rights and obligations do not depend on prescription or grant. They are proprietary in character, natural incidents of the ownership or lawful possession of the land abutting on the stream. They do not depend upon the ownership of the bed

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28 *Lanyon v Canberra Washed Sand* (1966) 115 CLR 342.

29 *Lanyon v Canberra Washed Sand* (1966) 115 CLR 342.

30 Compare *Water Act* 1958 (Vic) s 5; *Water Act* 1926 (Qld) s 5; and *Rights in Water and Irrigation Act* 1914 (WA) s 15.

31 See *Harris v Sydney MC* (1910) 10 SR (NSW) 860.

32 *John Young v Banker Distillery Company* (1893) AC 691.

33 [1962-3] 36 ALJR 43.

> of the stream, but of its banks. They are thus called riparian rights.[34]

The position as regards water percolating in an undefined channel or which is running down a hill or even a previously altered natural watercourse is that the landowner is entitled to do what he likes. 'General speaking the owner of land through which an artificial watercourse runs may block or divert it at his will.'[35] Nevertheless Section 99 of the *Water Act* 1957 states that 'No person may with intent merely to injure some other landowner ... draw off groundwater not flowing in a defined channel'.

In Tasmania the common law position in respect of riparian rights has to be considered in light of a number of provisions of the *Water Act* 1957. Section 88 of this Act provides that 'all riparian rights to the use and flow of water in rivers and lakes ... are confirmed'. Section 100H would then appear to require that these be registered unless they come within the exception of 'ordinary riparian rights'. Section 100J then goes on to provide that ordinary riparian rights may be defined and quantified by regulations. The regulations that have been introduced specify the quantity of water that can be extracted.[36]

Tasmania also has the *Groundwater Act* 1985 which provides for a declaration of protected areas containing groundwater[37] and for the licensing of wells. In essence it does not confer any specific property rights in the Crown but allows for a registration system. If an area has not been declared as protected then the landowner will be entitled to exercise his rights in accordance with the common law.

RIGHT TO SUPPORT

A landowner has a common law right to the support of his land by adjoining lands or by the subsoil. 'The withdrawal of the lateral support from land is an actionable nuisance for which strict liability attaches without any proof of any negligence'.[38]

The major limitation on this right to support is that it is the right to support of the land in its natural state. If the land subsides primarily because of structures on the land itself rather than the removal of support by the adjoining land, liability does not arise. If, however, the removal of support results not only in land subsiding but also structures on the land,

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34 [1962-3] 36 ALJR 43, p 48.

35 [1962-3] 36 ALJR 43, p 48.

36 See for example Water Amendment Regulations 24/1973 and 239/1981.

37 Groundwater is defined in s 3 as 'any water contained in, or occurring in a geological formation that is capable of yielding to a well'.

38 *Fennell v Robson Excavations* (1977) 2 NSWLR 486.

the landowner responsible for the removal of support will be liable for damages to the buildings as well as the land.[39]

In Tasmania two decisions have considered this right to support. In *Thurley v Stelnick*[40] excavations caused a subsidence of land; damages were allowed for restoration of the land.

In *Todorovic v McWatt*[41] the defendant's house was only two feet away from the plaintiff's house. The floors of the defendant's house were lower than the foundations of the plaintiff's. In 1964 the defendant pulled down his house and dug out the site to a depth of four feet. On the side of the excavation nearest to the plaintiff's house, the ground dried out resulting in the plaintiff's foundations subsiding and the walls cracking. It was held by the Tasmania Supreme Court that the defendant was liable for the damage. It was immaterial whether enough soil was removed to directly affect the plaintiff's house or the removal of earth only started a process of erosion. Furthermore while there is no action for the withdrawing of support of groundwater (provided it is not done with the intent to injure your neighbour: see s 99 of the *Water Act* 1957); the case is otherwise where the abstraction of water is just the agency which causes a shrinkage of soil resulting in the subsidence of the plaintiff's house.

OWNERSHIP OF AIRSPACE

> *Whoever owns the soil is presumed to own up to the sky and down to the centre of the Earth.*[42]

Nicholls CJ in the Tasmania Supreme Court argued that it followed from this maxim that 'any intrusion above land is a direct physical breach of the negative duty not to interfere with the owner's use of his land, and is in principle a trespass'.[43] Despite numerous academic critics of this position[44] and the judgment in *Bernstein of Leigh (Baron) v Skyviews & General Ltd*[45] it is possible to maintain that the position of Nicholls CJ is the most useful approach in dealing with the question of landowners and

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39 See for example *Public Trustee v Hermann* (1968) 88 WN (pt 1) (NSW) 442; *Economy Shipping v ABC Building* (1969) 2 NSWR 97; *Redland Bricks v Morris* [1970] AC 652.

40 Unreported 94/1968.

41 Unreported 94/1968.

42 *Cujus est solum ejus est usque ad solemn et ad inferos.*

43 *Davies v Bennison* [1927] Tas LR 52, p 57.

44 P Butt, 'Moot Point: The Limits of Application of the Maxim "cujus est solum ejus est usque ad coelum' (1978) 52 *ALJ* 160; J E Richardson, 'Private Property Rights in the Air Space at Common Law', (1953) 31 *Can B Rev* 115, pp 134-135; J Fleming, *The Law of Torts*, Law Book Co Ltd, 5th ed, 1977, p 43; J A Jolowicz and T Ellis Lewis, *Winfield on Tort*, Sweet and Maxwell, 8th ed, 1967 p 336-338. For a more balanced appraisal of this position see A J Bradbrook, 'The Relevance of the *Cujus Est Solum* Doctrine to the Surface Landowner's claims to Natural Resources Located Above and Beneath the Land', (1988) 11 *Adel Law Rev* 462.

airspace. Case law in Australia and the UK support this view and it will be submitted that the arguments of academics and their reliance upon *Bernstein* are unsound. Any problems caused by granting landowners unlimited control over the airspace above their property can be solved by legislation or by the limitations placed upon the remedies available against airspace trespassers.

Australian and English case law has favoured the proposition that intrusion above another's land is trespass regardless of the height at which the intrusion occurs. Case law has been scant in determining whether this position can be maintained for trespassers in the clouds or at a height of say 500 metres above the highest structure on a person's property. However, academic writers and a number of English judges have felt that private ownership of the upper airspace is incompatible with developments in technology and that the upper atmosphere is really a public common or wide highway for air travellers.

Butt argued in 1978 that text-writers, especially in the field of tort law have long followed an innate feeling that the scope of the *cujus est solum* maxim ought to be restricted in some way.[46] For instance Fleming argued that the cases in which the maxim had been invoked established 'no wider proposition than that the air above the surface is subject to dominion in so far as the use of the space is necessary for the proper enjoyment of the surface'.[47] This view has been supported by Richardson's detailed analysis of private property rights.[48]

The text-writers received a great fillip with the decision in *Bernstein of Leigh (Baron) v Skyviews & General Ltd*.[49] In this famous case, the defendants had flown over Lord Bernstein's land taking a photograph of the property. The defendants had run a business of selling such photographs to landowners for seventeen years previous to this case. Lord Bernstein was upset because such a photograph could prove a valuable aid to criminals or terrorists. The defendants compounded Lord Bernstein's ire by offering to sell him the negative as well as the original photograph.

In many respects Bernstein's case was little more than an attempt to maintain a claim to privacy. However, Lord Bernstein had to rely upon a claim of trespass to protect his interests. Griffiths J rejected this claim by arguing that the previous cases supporting property rights in airspace all

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45 [1977] 3 WLR 136. Discussed below.

46 P. Butt, 'Moot Point: The Limits of application of the Maxim "cujus est solum ejus est usque ad coelum"', (1978) 52 *ALJ* 160.

47 J Fleming, *The Law of Torts*, Law Book Co Ltd, 5th ed, 1977, p 43.

48 J E Richardson, 'Private Property Rights in the Air Space at Common Law', (1953) 31 *Can B Rev* 115, pp 134-135.

49 [1977] 3 WLR 136.

involved airspace immediately adjacent to the surface of the land. Griffins J made the following statement:

> The problem is to balance the rights of an owner to enjoy the use of his land against the rights of the general public to take advantage of all that science now offers in the use of airspace. This balance is in my judgment best struck in our present society by restricting the rights of an owner in the airspace above his land to such height as is necessary for the ordinary use and enjoyment of his land and the structures upon it and declaring that above that height he has no greater rights in the air space than any other member of the public.[50]

CRITICISM OF BERNSTEIN'S CASE

The novel approach in *Bernstein* was largely driven by the Judge's apparent desire to avoid a ridiculous outcome if he had found in the Lordship's favour. His Lordship was objecting not so much to the trespass by a plane over his property but to the taking of a photograph. A finding in his favour would have resulted in a number of future difficulties for the courts. The prospect would have arisen where the taking of a photograph directly above a property would be actionable against, albeit circuitously via the use of trespass, while a picture taken from the same height but on the other side of a property boundary would be unable to be prevented. However, Griffins J could have maintained the concept of unlimited right to airspace and awarded nominal damages for the intrusion over Lord Bernstein's land.

Bernstein's case only came to court because:

(a) the defendants tried to sell Lord Bernstein a photograph of his property.

(b) Lord Bernstein's letter demanding the destruction of all prints and the negative was replied to by a 18 year old newly commenced secretary who offered to sell Lord Bernstein the negative for 15 pounds;

(c) a letter from Lord Bernstein's solicitors demanding the negative, prints and an apology went unanswered.

Most academic comment in support of the ordinary use and enjoyment approach seems eager to prevent restrictions on scientific and other exploitation of airspace. For instance, 'Flying has become so important

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50 [1977] 3 WLR 136, p 141.

that it is idle to speculate whether courts might not inhibit it by an extravagant application of the *ad coelum* maxim'.[51]

Another basis for the decision of Griffins J was that the *Civil Aviation Act* 1949 provided that no action in trespass or nuisance would lie by reason of the flight of an aircraft over any property at a reasonable height.[52] The existence of similar legislation in Australian jurisdictions provides support for the proposition that there is no need to introduce the vague and imprecise concept of reasonable enjoyment.[53] The great weakness with reasonable enjoyment is trying to establish in advance what will or will not amount to interference with the reasonable enjoyment of property. Such a subjective concept seems to lead to the concept that property rights should only extend to a person actively using or enjoying their property.

By relying upon a concept of unrestricted common law rights to airspace above property greater certainty about property rights is maintained. Legislation such as the *Damage by Aircraft Act* 1963 (Tas) or the use of nominal damages avoids the messy approach outlined in *Bernstein's* case. It should be noted that in recent English and Australian cases involving intrusions by tower cranes over adjoining properties, the courts have relied upon a pure trespass approach avoiding the concept of 'reasonable enjoyment'.[54]

CONCLUSION

In Tasmania the *cujus est solum* doctrine does not adequately describe the extent of rights associated with the ownership of land. The doctrine states that the fee simple owner has ownership rights that extend from the soil to the heavens and from the soil to the centre of the earth. If one rejects the concept of reasonable use and enjoyment as being uncertain and unclear[55] and follows the more recent authorities such as *Anchor Brewhouse Developments* and *London and Manchester Assurance Co Ltd,* the doctrine may be applicable to airspace (though we still await a judgment of an appellate court) but has very little application to the subsoil. Legislation such as the *Crown Lands Act* 1976 and the *Mining Act* 1929 vest ownership of the subsoil below 15 metres and ownership of minerals and radioactive substances in the Crown. In addition the

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51 Fleming, p 41.

52 *Civil Aviation Act* 1949 s 40.

53 *Damage by Aircraft Act* 1963 (Tas) ss 3-4; *Civil Aviation (Damage by Aircraft) Act* 1958 (Cwlth).

54 *Anchor Brewhouse Developments Ltd v Berkley House (Dockland Developments) Ltd* (1987) 284 EG 625; *London & Manchester Assurance Co Ltd v O & H Construction Ltd and Another* (1989) 2 Ch 185; *Graham v K D Morris* (1974) Qd R 1. See also E McKendrick, 'Trespass to Airspace and Property Development', (1988) 138 *NLJ* 23.

doctrine has nothing to say regarding surface boundaries or the ancillary rights associated with the ownership of land such as riparian rights and the right to support. The position regarding surface boundaries is that if a bordering watercourse is tidal the boundary of the land will extend to the mean high-water mark, whereas if the watercourse is non-tidal the river-bed will generally belong to the Crown. Furthermore, if a non-tidal river abuts two blocks of land and is described as bounded by the river, there will be a rebuttable presumption that the landowners own to the middle line of the river. Likewise, if the watercourse adjacent to the land runs in a defined channel the owner of the land may also exercise riparian rights; that is, the landowner is entitled to use of water for domestic purposes and for some extraordinary purposes that are incidental to the ownership of land. The landowner will also have the obligation not to impede the quantity or the quality of the waterflow. Another ancillary right associated with the ownership of land is the right of support. The landowner is entitled to require that the support of his or her land be maintained by neighbouring landowners. In summary, there is no one maxim, one statute or one principal which dictates the extent of property boundaries and incidental rights attaching to the ownership of land in Tasmania. It is an amalgam of statute and case law and as such it is incorrect to just consider the *cujus est solum* doctrine as providing the answers to questions surrounding the extent of ownership of land.

55 Bradbrook, p 481, comments that 'even after centuries of consideration and litigation the scope of the doctrine remains unclear. This produces uncertainty in the law.'