

1. **Daisy's neighbour has started to build an extension to his house. The extension adjoins Daisy's back garden. The foundations for the extension and the new drainage pipes run under Daisy's garden. Has Daisy any grounds for complaint?**

Daisy does have grounds for complaint. She is the owner of the land included in her garden, and that land includes not only the surface of the land, but also the subsoil and subterranean space. Authority for this can be found in LPA 1925 s. 205(1)(ix), which states that land includes mines and minerals, which are below the surface. Houses may have cellars, and these form part of the land. See 1.1.2.1.

2. **Mai Ling's neighbour has just installed a new boiler. The flue extends some 10 cm into Mai Ling's garden, at a height of about 4 m. Has Mai Ling any grounds for complaint?**

Yes, Mai Ling does have grounds for complaint. The owner of land owns the airspace above the land '*to such height as is necessary for the ordinary use and enjoyment of his land and the structures upon it*', per Griffiths J. in *Bernstein v. Skyviews* [1978] QB 479. This case is similar to the facts in *Laiquat v. Majid* [2005] EWHC 1305, in which it was held that an extractor fan overhanging a garden at about 4.5m above the ground was a trespass to the airspace. See 1.1.2.2.

3. **Olu has just bought a house. When he saw the house before buying it, the garden contained a large shed and a number of beautiful plants. The shed and some of the plants were removed before he moved in. Does Olu have any grounds for complaint?**

Firstly, Olu should examine the contract he entered into for the sale of the house. If it has any provisions about the shed and the plants, then he must read those provisions. It may be that he and the vendor had agreed that the shed and plants could be taken, in which case he would obviously be unable to complain now.

If there are no such provisions, then Olu will have to establish whether these items are fixtures, which are part of the land, or chattels, which are not. The test is to be found in the leading case of *Holland v. Hodgson* (1872) LR 7 CP 328, in which a two-part test was established:

1. the degree of annexation;
2. the purpose of the annexation.

'Annexation' means attachment to the land.

Taking the shed first, it may have been built into foundations which would be a strong degree of annexation, or it may have been merely resting by its own weight, perhaps on a concrete base. If the latter is true, the shed is unlikely to be a fixture under the first test. As to the second test, the purpose of bringing the shed onto the land was

probably to store things in it. This is unlikely to mean that the shed is a fixture, as sheds are generally fairly temporary in nature. This may well mean that the vendor was within his rights to take the shed.

Plants are usually part of the land, as they are rooted in it, and therefore strongly attached. They also form part of the landscaping. However, if they were in pots, they might have remained as chattels.

Therefore, it is more likely that Olu can complain about the plants than the shed, but both depend upon the degree and purpose of annexation.

See 1.1.3

4. **Haminder is walking across Farmer Jones' field when he sees a golden bracelet half-buried in the soil. He loosens it with his fingers and takes it home to clean it up. Haminder hands the bracelet to the police, but they have handed it back, saying that they cannot trace the owner. Can Haminder keep the bracelet?**

The answer to this depends upon a number of factors. You will find this answer easier to follow if you look at figure 1.2 in section 1.2.4. Firstly, Haminder should consider whether the bracelet may be treasure within the meaning of the Treasure Act 1996. This is likely if it is at least 300 years old and has a precious metal content of at least 10%. If it may be treasure, Haminder must hand it to the coroner for a decision. If it is held to be treasure, he is likely to receive a reward, but this may not apply if he was trespassing on the field.

If the bracelet is not treasure, we need to decide whether it was found *in* the land or *on the surface* of the land. If it was buried in the land, it will belong to Farmer Jones - *AG of the Duchy of Lancaster v. Overton (Farms) Ltd* [1981] Ch 333. This may be difficult to decide here, as the bracelet was half-buried, and had to be loosened by Haminder. How deep was it in the land?

If it was on the surface of the land, we need to know whether Haminder was a trespasser. If he had no right to be there, the bracelet will belong to Farmer Jones. If he was there lawfully, for example on a footpath, the bracelet will belong to Haminder, unless Farmer Jones can show '*a manifest intention to exercise control over the [land] and all things which might be in it*' - *Parker v. British Airways Board* [1982] 1 All ER 834. This could be difficult to show if the field has a public footpath running across it, so Haminder may have the best claim to the bracelet.

See 1.2