



## Favourite Cases: *Bernstein v Skyviews*

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Call: 2008

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Catherine Doran specialises in insolvency and property law. She advises individuals, companies and office holders, and has extensive High Court experience. Catherine is ranked as a leading junior for insolvency by Legal 500.

### Reported at [1978] 1 QB 479

I've chosen this case that many will remember from their legal studies because we see 20<sup>th</sup> Century technology colliding with 13<sup>th</sup> Century principles.

Baron Bernstein of Leigh, to give him his full title, was greatly affronted by the Defendant company, Skyviews & General Limited, flying a Cessna aeroplane over his 150 acre estate, taking an aerial photograph and offering to sell him the photograph.

Lord Bernstein sued Skyviews for trespass and invasion of privacy, relying on the Latin maxim *Cuius est solum, eius est usque ad coelum et ad inferos* (whoever owns land it is theirs up to the heavens and down to hell).

Mr Justice Griffiths noted that the maxim had been applied in English cases, but these all involved structures attached to the adjoining land, such as overhanging buildings, signs or telegraph wires. In a subsequent case it was held that trespass is committed by cranes which oversail land without permission (*Anchor Brewhouse Developments v Berkley House (Docklands Developments) Ltd* [1987] EGLR 172).

Mr Justice Griffiths considered that it would be absurd to apply the maxim literally because it would mean a satellite committed trespass every time it passed over a suburban garden. The judge identified the need 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 air space". It was held that above the height necessary for the ordinary use and enjoyment of land, the land owner had no greater rights in the air space than any other member of public. The claim in trespass was therefore dismissed.

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Skyviews also successfully relied on the defence in section 40 Civil Aviation Act 1949 - now section 76 Civil Aviation Act 1982 - that no action in trespass or nuisance lies by reason only of the flight of aircraft over any property at a reasonable height. Skyviews pointed out (I imagine with relish) that Lord Bernstein was chairman of Granada Television, which had made a series of educational films that involved photographs being taken from helicopters without obtaining the various landowners' permission.

In the last decade we have seen an explosion in the use of drones, the legal term for which is unmanned aerial vehicles ("UAVs"). Commercial and consumer UAVs fly at lower altitudes than aeroplanes, and often lower than cranes. It surely cannot be long before a latter-day Lord Bernstein brings a claim in trespass against a UAV operator.

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