

# 2: Fixtures and Chattels

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## Introduction

In certain circumstances, chattels will become 'fixtures' so that when title to the land passes, title to the chattel also passes. In essence, this occurs when the chattel becomes part of the land. **The question is whether a chattel remains a chattel or whether it becomes a fixture.**

Process:

1. Determine whether the thing is a chattel or a fixture ('Chattel or fixture?')
2. Determine whether the tenant is allowed to remove the fixture from the land ('Tenants' fixtures')

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## (# 1) Chattel or fixture?

**GENERAL MAXIM:** "whatever is attached to the soil becomes part of it": *Holland v Hodgson* per Blackburn J.

**TEST:** Whether the circumstances, viewed objectively, evidence an intention on the part of the affixer that the item should remain permanently on the land: *Holland v Hodgson*.

**KEY CONSIDERATIONS:** In the absence of a contractual provision, the intention of the affixer can be evidenced by two considerations (*Holland v Hodgson*):

1. the **degree** of annexation – the extent of the affixation
  - where the chattel is attached by more than its own weight, it is presumed to be a fixture, and vice versa: *Belgrave Nominees*
    - Onus on party arguing to contrary to rebut the presumption
    - If detachment would cause substantial injury to the thing itself or to that which it is attached, it will probably be a fixture: *Australian Provincial Assurance Co v Coroneo*.
2. the **object** of annexation – the purpose of the affixation
  - was the affixation for the better use of the land (fixture) or for the better use of the chattel (chattel)?
    - This is rebuttable presumption: *Australian Provincial Assurance Co v Coroneo*.
    - It is an objective question of fact: *Reid v Smith*
  - was the affixation intended to remain permanently or for a substantial period of time (fixture) or only for some temporary purpose (chattel)? – *Coroneo*.

**OTHER CONSIDERATIONS:**

- The nature of the chattel
  - Where the chattels form an essential part of the building/land, they will probably be fixtures: *Belgrave Nominees Pty Ltd v Barlin-Scott Airconditioning*.
- Manner in which it is used
- Transportability of the thing: *Eon Metals v Commissioner of State Taxation*.
- Commercial viability of land without the thing: *Eon Metals v Commissioner of State Taxation*.

**CASE EXAMPLES:**

- House resting on stumps by own weight only (*Reid v Smith*): FIXTURE
- Valuable tapestry nailed to walls by life tenant so it could be removed (*Leigh v Taylor*): CHATTEL
- Pictures installed to enhance the ambience of the room (*Re Whaley*): FIXTURE
- Electricity generators (moveable and transportable) (*Commissioner of State Revenue v Snowy Hydro Ltd*): FIXTURE
- Air conditioning unit resting on pads and bolted to roof (*Belgrave Nominees*): FIXTURE
- Tractor bogged in mud (Tutorial): CHATTEL

- Brick-making machinery bolted to factory floor (Tutorial): CHATTEL
  - Coffee stand concreted into the ground (Tutorial): CHATTEL
  - Shelves on a shed wall (Tutorial): FIXTURE
  - Vital irrigation system minimally attached to the soil (Tutorial): FIXTURE
  - Heavy garden ornaments improving the land (*D'Encourt v Gregory*): FIXTURE
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## (#2) Tenants' Fixtures

**GENERAL RULE:** tenants of leasehold or life estates are entitled to remove fixtures that they installed for domestic, trade or ornamental purposes ('tenants' fixtures') and not for permanent improvement of the land ('permanent fixtures').

- Removal of the fixture by the tenant is permissible during the lease, while they continue in possession thereafter and within a reasonable time after giving up possession: *McMahon's (transport) v Ebbage*.
  - Agricultural tenants have up to 2 months after the expiry of the lease to remove tenants' fixtures: *Property Law Act 1974 (Qld) s 155*.

**KEY QUESTION:** Having determined that a chattel has become a fixture, is the fixture a tenants' fixture or a permanent fixture? (*Spyer v Phillipson*)

**CONSIDERATIONS:** the considerations are again the degree and object of annexation. However, **the object of annexation is the weightier factor**; only where the degree of annexation is such that it would cause grave damage to the land to remove the thing will the degree of annexation be of significance.

- There is a starting assumption that the tenant does not intend to 'gift' his thing to the landlord by installing the thing to the land: *Registrar of Titles v Spencer*.
- Note also: short-term residential tenancies are now governed by *Residential Tenancies and Rooming Accommodation Act 2008 (Qld) ss 207-209*.
- Goods obtained under a hire-purchase contract shall not be treated as fixtures so long as the contract is in force: *Hire Purchase Act 1959 (Qld) s 32*.

### FURTHER NOTES:

- Where the tenant leaves his fixtures behind after being relieved of possession of the land, the fixtures are abandoned and become the property of the landlord.
    - *Wincant v South Australia*
  - Where a chattel, not owned by the tenant, becomes a fixture, the true owner of the chattel **may** retain the right to enter the land and sever the chattel from the land to regain possession: *Kay's Leasing Corp v CSR Provident Fund Nominees*.
    - This arrangement is created by: (*Vopak Terminals Australia v Commissioner of State Revenue*).
      - any security arrangement which entitles the secured creditor to enter the debtor's land and seize goods that have become fixtures; or
      - a bailment which gives the bailor the same right; or
      - by a contract of sale which gives the buyer the same right.
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