

## DOCTRINE OF FIXTURES

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**Intro:** A fixture is a chattel so attached to land that it becomes part of the land. \_\_\_ will want to show \_\_\_ is/is not a fixture because fixtures run with the land (s 38 ILA). (Check to see if there is any contractual provision governing fixtures too)

Note also: T who at his or her own cost or expense has installed fixtures on, or renovated, altered or added to, a rented premises owns those fixtures and may remove them before the relevant agreement terminates (s154A PLA)

The doctrine of fixtures determines when and in which circumstances an item of personal property which is attached to land loses its identity as a chattel and merges with the land.

Doctrine of fixtures might be relevant when:

- **Land is sold:** fixtures are passed to the buyer under the contract of sale (chattels will only pass if specifically identified)
- **Land is mortgaged** (or charged): a mortgagee's security interest will generally include fixtures (but not chattels)
- **Land is leased to a tenant:** special rules apply to fixtures installed by a tenant (common law vs statute)
- **A land owner dies:** fixtures automatically pass to those entitled to the real estate not to those entitled to personal property
- **Land is given by gift:** only fixtures will be passed to the new owner (not chattels)

### 1. Definition of Land

*Property Law Act (PLA) 1958 (Vic) s 18* defines 'land' as: any tenure, and mines and minerals whether or not held apart from the surface, buildings or parts of buildings (whether the division is horizontal, vertical or made in any other way) and other corporeal hereditaments;

- also a rent and other incorporeal hereditaments, and an easement, right, privilege, or benefit in, over, or derived from the land and also an undivided share in land...

*Interpretation of Legislation Act 1984 s 38* defines 'land' to: Includes **buildings and other structures permanently affixed to land**

- Therefore, once you fix a chattel to the land, can become land = corporeal hereditament ***quicquid plantatur solo, solo cedit*** (whatever is attached to the land forms part of the land)

### 2. Definition of Fixtures

The attachment of a chattel to land results in the chattel becoming part of the land and the landowner acquiring title to the attached chattel

- Something that was once personal property (goods or chattels) is transferred to real property (fixture)
- Forced divestiture of your personal property right to someone else with a real property right

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### Tests: Doctrine of Fixtures

- Annexation is a question of circumstances indicating intention, viz, the degree and object of annexation (*Holland v Hodgson per Blackburn J*)

Deciding whether an item is a chattel or a fixture is a **question of fact**, determined **objectively** at the **time the item was annexed** (or not) to the land. This requires consideration of both:

- Degree of annexation: how is the item attached to the land?
- Object of annexation: what is the item attached to the land and why was it attached?

### Burden of Proof:

- Item fixed to land ONLY by its **own weight**: presumed to be a chattel – party claiming it is a fixture has the burden of proof (rebuttable).
- Item fixed to the land OTHER than by its own weight: presumed to be a fixture – party claiming it is a chattel has the burden of proof (rebuttable).

### 1. Presumptions

- If the chattel is attached there is a *prima facie* presumption that it is a fixture, and vice versa (*NAB; Belgrave*).
- The stronger the annexation the higher the burden of proof (*NAB*)

### 2. Degree of Annexation

The **Degree of annexation** test looks to the manner in which the chattel is attached to the land. There appear to be two relevant legal presumptions:

1. If a chattel is attached to the land **other than by its own weight** (for example, by screws or bolts), *prima facie* it is a **fixture**.
  - This presumption applies even if the degree of attachment is very slight (*Holland v Hodgson (1872)*)
  - The greater the degree of attachment, the stronger the presumption appears to be (*Spyer v Phillipson [1931]*)
    - party asserting that item isn't a fixture has burden of proof
2. Secondly, if a chattel is only **attached by its own weight**, *prima facie* the chattel is not a fixture even if it has become embedded in the soil.
  - party asserting item is a fixture has burden

**Important matters courts ought to consider** in determining degree (per *Conti J in NAB*)

1. Whether removal would cause damage to land or buildings to which item attached
2. The mode and structure of annexation
3. Whether removal would destroy or damage the attached item of property
4. Whether the cost of renewal would exceed the value of the attached property
5. Does that chattel require affixation in order function properly or be enjoyed (*Leigh v Taylor*)

### 3. Object of Annexation

Pursuant to the **Object of annexation test**, the courts will examine whether the object was affixed to the land, on the one hand, as a temporary measure or for the purpose of displaying it as a chattel, or, on the other hand, in order to benefit the real estate.

- Test is traditionally an objective test - what the reasonable person would consider the reason for attaching the object to the land (*Hobson v Gorringe*).
- Whether the attachment was for the better enjoyment of the chattel generally or for the better enjoyment of the land and/or buildings to which it was attached (*NAB*)
- The nature of the property the subject of affixation - Is this article typical of something that would serve the land? (*NAB; Belgrave*)
- Whether the item was to be in position permanently or temporarily (*NAB*)
- The purpose of annexing it in the first place (*NAB; Belgrave; Attorney- General (Cth) v R T Co Pty Ltd*)
- Relation and situation of the party making the annexation vis-à-vis the owner of the freehold or the person in possession (*Belgrave*)

None of the above is to be regarded as conclusive (*Powell J in NAB*)