

SUBSTANCE: IS IT A PROPERTY?

I POSSESSORY INTERESTS

WHAT IS A PROPERTY?

Definition:

Focus lies in the legal relationships between persons with regard to things. It is a right to a thing, which corresponds to a general duty placed on other members of the society not to interfere with that right.

- It is a 'bundle of rights' (*Yanner v Eaton*)

IS 'SPECTACLE' A PROPERTY?

General principle. **No.**

Victoria Park Racing v Taylor

Held. 'Spectacles' are not property

Latham CJ.

"I find difficulty in attaching any meaning to the phrase 'property of spectacle' [p.496]. A **spectacle cannot be 'owned'**. Even if there was some property of spectacle owned by the plaintiff, it could only be described as a metaphorical property." [496]

- Courts do not erect fences where there are none. → there is no general right to privacy.
 - 'Any person is entitled to look over the P's fences and to see what's on in the P's land.' (494)
 - 'If the P desires to prevent this then the P can erect a higher fence' (494)

Dixon J.

- a spectacle only becomes a proprietary right **if** the intangible right the P claims falls into a recognised category of equitable protection. However, the circumstances of the case do not fall into any recognised categories.
- English law is clear that the natural rights of an occupier do not include freedom from the view and inspection of neighbouring occupiers. An occupier is free to obscure the view of passers-by by constructing a fence. [p.507]

OR IS THIS A LICENSE?

(I) What is a license?

Definition:

A license is a personal right to use property in some way (i.e. enter, occupy, use for a particular time/purpose), but they do not include a proprietary interest in land.

(II) Types of licenses:

- a. A bare license
 - Gratuitous permission that can be easily revoked
- b. Contractual license
 - For a certain period of time; revocable
- c. License coupled with an interest in land.
 - Proprietary license

(III) General Principles:

- a. A license to use something does not create a right in rem (*King v David Allen & Sons*).
- b. A right to see a spectacle does not create/cannot be regarded as a proprietary interest (*Cowell v Rosehill Racecourse*).

King v David Allen & Sons

Facts. King entered into an exclusive licence agreement under which DA&S was granted permission to place posters on wall for 4 years, terminable on six months' notice; DA&S paid 12 pounds a year for the licence. King granted a 40-year lease of building to a company and lease said nothing about the arrangements with DA&S. When DA&S attempted to place advertising posters on the wall, company rep prevented them from doing so

Issue. Does a licence agreement to use something have the full characteristics of a property right?

Held. No.

- A license to use something does not create a right in rem. In this case, the agreement was merely a license and did not create proprietary rights, but *mere personal obligation* by Mr King to ensure that the agreement could be carried out.

Cowell v Rosehill Racecourse

Facts. A goes to racecourse for meeting, was removed from racecourse. A contends that he had paid for entry to the races and that in return the R promised to give him licence to enter races and remain there for the duration of the races, and that R was therefore not entitled to revoke that license.

Issue. Does a right to see a spectacle create a proprietary interest?

Held. No.

Latham CJ

- The right to see a spectacle cannot create proprietary interest.
- What is created is not proprietary rights, but rather contractual rights and obligations (which might be enforced through specific performance etc. [*Wood v Leadbitter*])
- No grant of proprietary right (jus in rem) has been made to the plaintiff. He has only been granted contractual rights which are enforceable in personam by an action for damages

IS IT A FIXTURE OR A CHATTEL?

WHAT IS A FIXTURE?

Definition:

A fixture is a chattel (good) that has become part of the land (real property) for the purposes of the common law.

DETERMINING FIXTURES:

1. IS THERE A CONTRACT?

- Courts must enforce any contract that determines a dispute between parties regarding the affixation of an object. This is because of the **supremacy of contracts**. Hence, courts will assess if there is an express term in the contract.
- If not determined by contract, affixation is assessed on the facts – i.e. determined by elements of fixation

2. COMMON LAW (DEGREE OF ANNEXATION) TEST

a. Degree of annexation

- The finding on actual affixation creates a presumption that determines the onus.
- If a chattel is **actually fixed** to land to any extent, by any means *other than* its own weight, then prima facie it is a fixture; and the *burden of proof is upon anyone who asserts that it is not*.
- if it is **not otherwise fixed** but is kept in position by its own weight, then prima facie it is not a fixture; and *the burden of proof is on anyone who asserts that it is*.
- Belgrave v Barlin** – FIXTURE MADE OUT
 - a/c unit was only sitting on its own weight (not screwed down to avoid negative effects of noise and vibration), but was connected to the water pumps, pipes and electricity of the building. → presumed a fixture.
- May v Ceedive** – FIXTURE MADE OUT
 - House was supported by concrete foundations → presumed fixture

b. Object of annexation

- Test of **objective** intention, not subjective intention (**May v Ceedive**) that there was an intention for permanent affixation.
- Must assess the person who brought the object to the land's intention to affix the object (**Belgrave**)
 - Intention to affix temporarily or for the purposes of display → chattel
 - Intention to affix permanently or to benefit the property → fixture
- Relevant considerations (**Belgrave Nominees**):
 - duration → permanent vs. temporary (**Belgrave**)
 - The test of whether a **chattel** which has been to some extent fixed to land is a fixture is whether it has been fixed with the **intention** that it shall remain in position **permanently or for an indefinite or substantial period**: **Holland v Hodgson**, or whether it has been fixed with the intent that it shall remain in position only for some **temporary purpose**: **Vaudeville Electric Cinema Ltd v Muriset (May v Ceedive)**
 - Belgrave**: a/c units have a long life span
 - May**: houses are permanent
 - What is the **purpose** for which a reasonable person would have attached the thing in the circumstances?
 - Belgrave**: a/c unit was essential for the office
 - May**: house was essential/permanent
 - Was the object of attachment to **improve the realty or better to enjoy the thing** as a chattel?
 - Mode** and **structure** of the annexation;
 - whether the **removal** of the chattel would cause **damage** to the land (**May v Ceedive**);
 - in **May**, it was held that removal of the house would cause **substantial injury** to the thing itself (i.e. house) or the thing which it is attached (i.e. land). This supplied strong, but not necessarily conclusive evidence that a permanent fixing was intended. (**May v Ceedive**, [73])
 - whether **the cost of renewal** would exceed the value of the chattel;
 - "Absolutely necessary" test? (Re De Falbe, BMM 780).
- Hence, based on evidence gathered from the circumstances, ... [apply] --> **Olivia: purpose of annexation most important part?**

c. Note also.

- Declining importance of 'degree of annexation' test. 'Object of annexation' has assumed far greater relevance than 'degree of annexation' in recent times. (BMM TB)
- Tenants and landlords.**
 - Tenants are less likely to have intended to benefit the property
 - Tenants will be given a **limited right** to remove chattels which have been attached to rental property at their own expense (s 154A(1) PLA)
 - Does not extend to fixtures already upon the land at the commencement of the tenancy
 - Tenant who removes fixtures must either restore the premises to the condition they were in prior to installation (s 154A(2)(a)) or pay damages to the landlord (s 154A(2)(B))

May v Ceedive

Facts. The A, May, claims to be a protected tenant of "prescribed premises" under the Landlord and Tenant (Amendment) Act. It was on that basis that he unsuccessfully sought to **resist removal as a tenant** from the under-leased property.