

PROPERTY LAW

Week 1 – property rights and fixtures

Real property is subdivided into:

- Corporeal hereditaments e.g. land (tangible): rights to the land
- Incorporeal hereditaments e.g. easements (intangible): rights to enter the land for particular purposes

Personal property is subdivided into:

- Pure personalty (personalty apart from leases)
 - o Choses in possession: items of personal property which you can touch and possess (tangibles)
 - o Choses in action: items of personal property which are intangible
- Chattels Real (leases)

King v David Allen & Sons (1916): appellant agreed with the respondents to give them permission to affix bills and posters to a wall on the side of a picture theatre to be erected on the premises. Appellant agreed that when the new company was registered it would execute the lease and ratify the agreement between the appellant and the respondents. He did his best to have the agreement honourably kept but was prevented by the company's servants.

Judgement: There is a contract between the appellant and the respondents which creates nothing but a personal obligation. It is unreasonable to attempt to construct the relationship of landlord and tenant or grantor and grantee of an easement out of such a transaction → the sole right is to fix bills against a flank wall. Nothing beyond personal rights was ever contemplated by the parties.

The document did not create any interest in land at all, it merely amounts to a promise on the part of Mr King that he would allow the other party to the contract to use the wall for advertising purposes. It follows that a licence does not confer a sufficient plenitude of rights over the land to qualify as a proprietary right. And only proprietary rights are enforceable against third parties.

Moore v Regents of the University of California (1990): samples of Moore's blood, bone marrow skin, semen and other body substances were taken for the purposes of diagnosing and treating his illness. Moore signed a consent to the removal of his spleen, which was a necessary part of his treatment, but did not consent to its use for scientific purposes and was unaware of the potential commercial value of his cells. Moore discovered his cells had been used for such purpose and brought action for damages claiming conversion.

Judgement: conversion protects against interference with possessory and ownership interests in personal property. Defendant argues that the unauthorized use of his cells constitutes a conversion.

To establish a conversion, plaintiff must establish an actual interference with his *ownership or right of possession*. Since Moore did not expect to retain possession of his cells following their removal, to sue for their conversion he must have retained an ownership interest in them. Moore's allegations that he owns the cell line and the products derived from it are inconsistent with the patent, which constitutes an authoritative determination that the cell line is the product of invention.

Since conversion is a strict liability tort, it would impose liability on all those into whose hands the cells come, whether or not the particular defendant participated in, or knew of, the inadequate disclosures that violated the patient's right to make an informed decision. The extension of conversion law will hinder research by restricting access to the necessary raw materials.

Fixtures

Theory: The doctrine of fixtures provides that chattels, by virtue of the circumstances surrounding their annexation to land, may change character from personal to real property. In certain circumstances, a chattel (personal property) which is affixed to or placed on land may become part of the land (real property). Depending upon the ownership of the land, this may result in a transfer of ownership in the particular objects which are affixed.

Burden of proof: *"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."*

Australian Provincial Assurance Co Ltd v Coroneo (1938) Jordan CJ

One must consider all of the circumstances of the case. In particular a) the degree of annexation and b) the object (i.e. purpose) of annexation → possible to draw an inference that the person who brought the chattel onto the land did not intend for it to become part of the land (if the court comes to this conclusion then it doesn't matter how closely it is attached it does not become part of the land).

Cases

May v Ceedive Pty Ltd (2006) NSWCA 369 → Mr May was a tenant in the pottery estate. This house was originally a miner's house (several which made up the community). Mr May's house was built of brick – high degree of annexation to the land (can't really remove without demolition) Contract for sale which specified that the subject matter of the contract was the house, not the land on which it was situated. Contract also purported to lease the land to the appellant in return for the payment of ground rent → consistent with practice developed whereby working miners would build their own houses on the land, retaining ownership of them. Mr May's subjective intention in 1969 was to acquire ownership of the house and sheds (but not ownership of the land).

Some years later, Ceedive sought to evict May for non-payment of rent → if the house was a fixture, then the agreement would have to be regarded as a lease of the house AND the land (house could not be separately owned from the land).

Judgement: While the original affixer's intention is determined objectively it allows the possibility that the subjective intention can have bearing to the extent that it helps indicate such matter as the period of time the item is intended to remain in position and the function to be served by its annexation. It was not Mr May who affixed the house to the land in the first place but his predecessor more than 50 years back → Mr May's subjective belief that he was purchasing the house, based upon the documentation earlier referred to, would not alter the position at law. There is no suggestion that the house was intended to remain in position only for some temporary purpose → clearly the houses have remained whether for mining purposes or otherwise for their continued occupation.

Belgrave Nominees v Barlin-Scott Airconditioning (Aust) Pty Ltd (1984): owners of a building entered into a contract with a builder for the renovation of their adjoining buildings. In turn, the builder subcontracted with the defendant for the supply and installation of air-conditioning systems (installed 2 systems on the roof).

A platform was constructed on each roof to hold a chiller, which stood on its own weight on the platform with pads acting as shock absorbers between the base of the legs and its platform. Each chiller was connected to the water reticulation system of its building and electrical supply cables forming part of the structure of the buildings were connected to an electrical junction box fitted to the chiller on one of the buildings.

After the builder's liquidation, defendant removed the air-conditioning plants incorporating the chillers, compressors and general works. Plaintiffs sought a mandatory injunction compelling the defendant to deliver up two air-conditioning plants or alternatively damages for detention, conversion and trespass.

Judgement: plaintiff's claims for relief are based on the premise that at the time of removal *each air-conditioning plant was a fixture*. Whether the annexation of the plants was sufficient to constitute the plants fixtures must be determined by the circumstances in which the same were positioned on the platform, and more particularly the intention as evidenced by the degree of annexation and the purpose. *Where the article in question is no further attached to the land than by its own weight it is generally to be considered a mere chattel (burden of proof is on anyone who asserts that it is not). Even in such a case if the intention is apparent to make the articles part of the land, they do become part of the land.*

"The chillers were connected to water pipes by means of bolts and nuts and so there was a connection to the building – which may be described as slight only. Nevertheless even a slight fixation is enough to raise the presumption that a chattel is a fixture (degree of annexation is fairly small to raise presumption)."

The test is whether it has been fixed with the intention that it shall remain in position permanently or for an indefinite or substantial period. For the former it is a fixture, whether it has been fixed for the better enjoyment of the land or building, or fixed merely to steady the thing itself, for the better use or enjoyment of the thing fixed.

- Air-condition systems were designed for these particular buildings → the object of the annexation was to add to the building.

Reid v Smith (1905) 3 CLR 656: concerned a house that rested on its own weight (on brick piers not attached to the house). At the time this was common practice in Queensland (to avoid termite infestation). Had been erected by the lessee of the land (it was a term of the lease that the lessee do this). At the end of the lease term, the lessee sought to remove the house and take it with him.

HC determined that the house, although not attached, had become a fixture. Was a condition of the lease that the tenant build a house on the land → the intention of the agreement was that the tenant was under an obligation to improve the land; the terms of the contract rebutted the presumption that the house was not a fixture.

Leigh v Taylor (1902): A tenant for life affixed valuable tapestries to the walls of the drawing room. Tapestries were tacked onto canvas which was stretched over, and nailed to strips of wood which, in turn, were nailed to the walls.

To determine the question you must have regard to all the circumstances of the particular case – to the taste and fashion of the day as well as to the position in regard to the freehold of the person who is supposed to have made that which was once a mere chattel part of the realty.

Judgement: Although the tapestries were affixed to the walls, this was the only way that they could be enjoyed as ornamental tapestries. Thus, there was 'no intention to dedicate these tapestries to the house.' Given their ornamental character, they could not have been affixed more lightly, and moreover were easily removable from the structure without causing damage. The life tenant would in all likelihood not have intended to annex the tapestries for the benefit of the remainderman.