

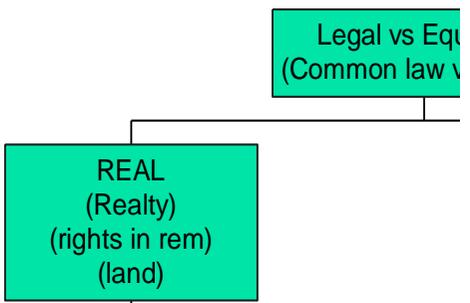
Property -		
Property in general Characteristics & categories of property Property transactions & torts Ownership, possession & relativity		
Personal Property Finders Keepers Bailment	Doctrine of fixtures doctrine of tenure/ Native title Doctrine of Estates	Real property doctrine of Native title Doctrine of Estates Torrens Title system Indefeasibility exceptions to indefeasibility Caveats, registrar's power of correction Compensation
Competing equities		

AIA 1954 (Qld) s 36
Definition: any legal or equitable estate (whether present or future, vested or contingent, or tangible or intangible) in real or personal property of any description (including money) & thing in action
Characteristics of property (National Provincial Bank v Ainsworth)

1. Definable
2. Identifiable (by 3rd parties)
3. Assignable (transferred to third parties)
 - a. Non – assignable right held to be proprietary (re Potter)
4. Durable (degree of permanence or stability)

Ownership: entire bundle of rights, person with bundle of twigs
Possession: some of the rights, person with one twig, exclusive (chooses in possession) the rights to alienation, gift & enforcement (chooses in action) **Knapp v Knapp** Prima facie evidence of ownership (Gatward v Alley)
Gift: the bundle of rights is given

Categories of property
ASK:
 Is (x) personal or real?
 Is (x) corporeal or incorporeal?
 Is (x) a legal (proprietary: *rem*) or equitable (personal: *personam*) interest?



Corporeal: tangible things over which rights of ownership can be exercised: land/building
Incorporeal: non physical rights affecting the land, easement/ profit a prendre
Choses in possession: tangible: things that you can see & touch (except land)
Choses in action: intangible, right to sue, intellectual property
Cross over: proprietary rights & personal rights can co-exist (property + contract)
 Eg. **Lessor and lessee** contract of lease (proprietary rights): enforceable btw contracting parties, enforceable against 3rd parties
Licensors and licensee: contract of license: (personal rights), only enforceable against the licensor

Mortgagee (lender) and mortgagor (borrower): mortgage- security interest: mortgage's property rights to mortgagor's land. Money (loan) contract enforceable btw contracting parties only

Fixtures
Definition of fixture: "a thing once a chattel which has become in law land through having been affixed to the land"
(Australian Provincial Co Ltd v Coroneo)
 –from personal property to real property
ISSUE: whether the affixer is entitled to remove the fixture? (seller/ buyer, tenant/ landlord, mortgage/ mortgagee)
1. is the item in question a chattel or fixture?
 Fixture: next question
 Chattel no need for test
2. Is there a contract?
 Are fixtures excluded by the contract? (**Real Estate Institute of Qld**)
 Common law doctrine is subject to contract: **Standard Portland Cement Co Pty Ltd v Good**
3. TEST OF ANNEXATION (Holland v Hodgson)
Degree/ manner of annexation (test)

- Is the item attached other than by its own weight?
 - o Yes: fixture: chattel advocate must rebut fixture presumption
 - o No: chattel: fixture advocate must rebut chattel presumption

TC: prima facie found that (x) is a fixture/ chattel?
4. Purpose/ object of annexation (test)

- Is the item attached for the better use or enjoyment of the chattel itself OR for the better use or enjoyment of the land
 - o Chattel: better use and enjoyment of the chattel itself self: chattel advocates rebuts fixture presumption
 - o Fixture: for the better use and enjoyment of land: fixture advocate rebuts chattel presumption.

TC prima facie (x) is a chattel/ fixture
OBJECTIVE TEST (Hobson v Gorringe) i.e. the affixer's intention at the time of affixation

- Size, nature, & degree of annexation (ease/ cost of removal)
- Duration of annexation (permanent/ temporary)
- Necessity (trade, business, architectural, design, purpose)
- Parties status

Authorities allow for the possibility of the affixer's intention but it has limited bearing (**May v Ceedive Pty Ltd**)
 All circumstances must be taken into account (**Hawkins v Farley**)
 - **Must argue for both fixture & chattel advocate**

CASES
Fixtures
Holland v Hodgson: looms attached to stone floors of mill
Hobson v Gorringe: gas engines
Australian Joint Stock Bank v Colonial Finance Mortgage: Machinery **Investment & Guarantee Corp** (heavy engineering machines for business purposes resting on their own weight)
Reid v Smith house on stumps
Norton v Dashwood and Re Whale: tapestries
Newton v Brown (No. 2): window blinds
Vaudeville Electric Cinema Ltd v Muriset: theatre chairs
Chattels
A-G of Cth v RT Co Pty Ltd (even heavier printing presses attached other than by their own weight but for more efficient use of themselves)
Anx v Haines House Haulage Co Ltd: relocatable house
Palumberi v Palumberi: window blinds
Lyon & Co v London City & Midland Bank: theatre chairs

Tenant's exception to fixtures
Are there any exceptions?
 Tenant's fixtures are subject to the tenant's right to remove them during the term of the lease or within a reasonable time **Vopak Terminal Darwin Pty Ltd v Natural Fuels Darwin Pty Ltd**
When can a tenant remove a fixture?

1. item attached: trade/ domestic/ ornamental purposes (**Holland v Hodgson**)
2. attached on tenant's behalf & cost (**Vesco Nominees Pty Ltd v Stefan Hair Fashions Pty Ltd**) and
3. removable w/o substantial damage or tenant has repaired any damage and exercise right to removal during or within a reas. Time after expiry of tenancy **McMahon's (Transport) Pty Ltd v Ebbage**)
5. subject to contract (**Curtin v Meadow Holdings Pty Ltd**)

CASE
Eye Corp Australia Pty Ltd v Goliath Investments Pty Ltd: advertising sign removable by tenant
Macrocom v City West Centre Pty Ltd: satellite dish became fixture whereas ancillary equipment remained chattel
Vopak Terminal Darwin Pty Ltd v Natural Fuels Darwin Pty Ltd: non-removal of tenant's fixtures
HERE: it is most likely that (x) is/n attached by its own weight and is/n for the better use and enjoyment of the land, and the affixer's intention rendering it chattel/fixture & [P] is/n entitled to remove the fixture. There was/n any tenant's exception.

Finder's keepers
 Competing rights to found property **RE:** do not mix up true owner & rightful owner
True Owner: the original owner, will always prevail, but must show never abandoned
Rightful Owner: the person besides the TO with the better right to a claim
Possession:

- Constructive: indirect control
- Actual: direct physical control

Finder: Actual possession includes prior & subsequent: prior prevails (**Gatward v Alley**)
1. Was (x) abandoned? [If game]
 Yes: then the finder will prevail. No: then the TO will prevail
Abandonment (Jigorse case)

- intention to relinquish interests in an item
- lost, there is still mental intention to possess
- not abandoned then TO has best right
- mere inactivity is not abandonment (**Moorhouse v Angus Robertson Pty Ltd**)

2. Did the [finder] manifest a physical/ mental intention to exclude others?

- mental (*animus possidendi*) (**Butter v Cooper**)
- physical element (*corpus possessionis*) (**Tubantia:** buoys attached to shipwreck- possession established)

3. Does the [finder] have a lack of dishonest intent? (Parker v British Airways Board)

- any dishonest intent will decrease the right to item
- trespass will also decrease the right to a claim (**Bird v The Town of Fort Frances**)

4. Did the [finder] take reasonable steps to find TO (Armony v Delamirie) prior (chimney sweeper) defeated subsequent (jeweler)
Employer
General Rule: servants who find things find them for their master (**Hannah v Peel**)
 Finder's employer will have a better claim if

1. the contract provides for the general rule
2. finder's employment provides the 'effective cause' of their finding

employment provided incidental occasion: **Byrne v Hoare** (police man on duty find an ignot, better claim as no effective cause. **EFFECTIVE CAUSE:** on duty & performing duty?)
Occupier/ owner
1. is the item found attached to or embedded in the land? (Parker v British Airways Board)
 Occupier/ Owner better title to claim
Elwes v Brigg gas Co: prehistoric boat embedded below surface: landlord prevailed
South Staffordshire v Sharman: gold rings embedded in mud at bottom of swimming pool: landowner
2. Is the item found unattached or lying on land? (finder prevail)