

IPCL

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2. Real Property

1. Is it a fixture or chattel?
2. If fixture, is there any property right/proprietary interest established?
3. Old system or Torrens Title land?
4. Is there a legal interest recognised in law (i.e. have the formality requirements been satisfied?)
5. If not, has there an equitable interest been assigned?
6. Effect of forgery/fraud on transfer.

2.1 Fixture or chattel?

1. Does the contract specifically state that it is a fixture?

2. If the contract is silent, is it a fixture?

- Presumptions: object attached to land is presumed to be fixture, (eg. plumbed in); only rest by its own weight, suggest chattel (plug in the wall is not sufficient to be “attached”) if pipes in concrete, it can be said to be attached.)

Per *Re Cancer Care Institute* [where the equipment and the frame were not a single item]

- There are two factors which are used to determine whether goods have become fixtures
 - 1) **The degree of annexation** (extent of attachment to the land)
 - The greater the degree of annexation, the more likely it is that goods have become fixtures.
 - If attached in such a way as to be impossible to remove without injury to goods or land then very likely to be a fixture (e.g., paint to wall)
 - Nb. Can separate objects into component parts (frame vs item itself) if installed and used separately or each part has ‘separate and independent viability’
 - However, unattached goods can be fixtures and attached goods need not be.
 - 2) **The object of annexation** (apparent purpose of attachment).
 - The essential question is this: was it joined to the land for its better use as a chattel or for the improvement of the land?
 - Consider: cost of removal, value of the item, architecture design, custom / practice in the particular area.

3. Is it a tenant’s fixture?

- Presumption that tenants do not make gift to the landlord.
- Wide definition allowing tenants to remove any fixture that they installed themselves unless there would be irreparable damage or an alternative original object. Tenants are liable to repair any damages from the removal.
- The most important question in this case is **the object of annexation**. Did the tenant attach the object for their own enjoyment of the leasehold estate, or was it attached as a permanent improvement to land. Generally speaking, structural additions or repairs are normally regarded as permanent improvements to the land. The common law also treats agricultural fixtures such as pens and sheds as permanent improvements to the land.

2. If not, has any equitable interest in land been created?

1) By a written and signed instrument (not deed): s 23C(1)

- s 23C(1)(a) deals with executed agreement, i.e. purported immediate transfer of interest.
- s 23C(1)(a) allows creation of an equitable (not legal) interest in Old System land by a written and signed instrument (not in the form of a deed) even without consideration – (Not effective under Torrens Title without consideration s 41)
 - Developed in the context of Old System land – but it is also a system by which unregistered interests in Torrens Title land are recognised.
- If the instruments are not in writing, s 23E(d) provides that part performance is an exception to s 23C(1)(a).

2) By enforceable contract that equity would decree specific performance

- **Requirements:**

- a) **If the contract is enforceable (s 54A) and;**

- Written contracts:**

- s 54A(1): Contract is enforceable if (a) agreement itself is in writing; or (b) there is a note or memorandum of the agreement in writing; and (c) it is signed by the party you want to sue (party to be charged) or the agent of that party.

- Oral/Unwritten contracts:**

- A. If not in writing, (1) first prove the existence of **oral contract**, (2) then prove **part performance: s 54A(2)**

- i. Per *Maddison v Alderson*: “the acts relied upon as part performance must be unequivocally, and in their own nature, referable to some such agreement as that alleged”. *Cooney v Burns*[179]
 - ii. Must be a part execution as to change their relative positions as to the subject matter of the contract: *Cooney v Burns*
 - iii. Acts must be relative to the possession, use or tenure of the land: *Cooney v Burns*
 - Merely a step towards performance (delivery of lease doesn't change title) or a parting with the interest in some measure is not part performance.
- Examples of sufficient acts:
 - Deposit of title deeds by way of security – *Cooney v Burns* (Stark J)
 - Taking possession with permission, making repairs, mortgage repayments: *Regent v Millett* cited in *Cooney v Burns*
 - For a lease, handing over keys, payment of security deposit, going into possession – *Van Schaik Organic Soils*
 - NOT sufficient:
 - Acts merely ancillary/preparatory to execution: eg. handing lease to lawyers to be drawn up, taking inventory of hotel prior to possession, incurring legal expenses – *Cooney v Burns*
 - Love and affection, enjoying comforts: *Maddison v Alderson*
 - Mere payment of money – *Ciaglia v Ciaglia*; *Maddison v Alderson*; although if combined with other things may be relevant – *Ciaglia v Ciaglia*; *ANZ v Widen*

This also applies to Torrens Title land under the *Real Property Act*.