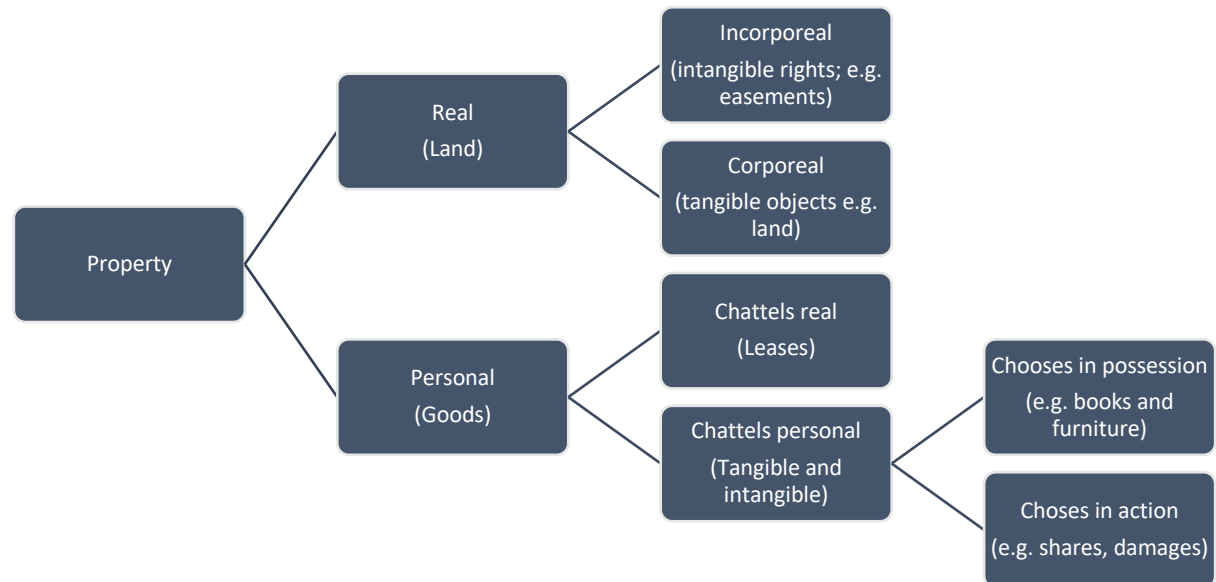


Classification of Property

CLASSIFICATION OF PROPERTY



Doctrine of Fixtures

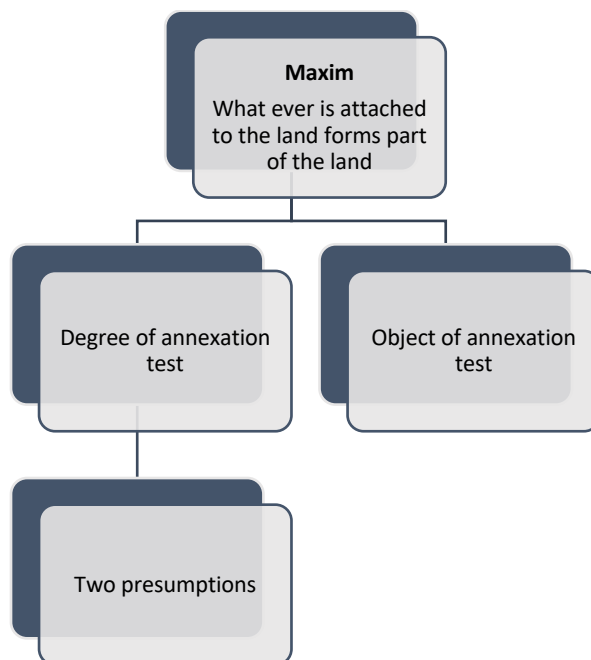
TERMINOLOGY

The Doctrine of Fixtures

- States that chattels (personal property) may transition from personal property to real property if it is annexed (attached) to land.
 - Depending on the ownership of the land, this may result in a transfer of the ownership in the particular object that is affixed.
- The Doctrine of Fixtures is relevant in the following relationships
 - Landlord and tenant (lease)
 - Vendor and purchaser (contract of sale of land).
 - Mortgagor and mortgagee (contract of sale of land)
 - Left tenants and remaindermen and reversioners (testamentary and inter vivos grants)
 - Devisees and legal personal representative (Wills and other testamentary dispositions).
- In each of these relationships a dispute may arise regarding the ownership or other entitlement to a particular item or object.
- Land does include fixtures as per **s 18 PLA**.
- In each case it is a question of fact.

Determining whether a chattel has become a fixture.

- Where the relationship has arisen from a contract, the court must first look to the contract to see whether the ownership of the item in question has been expressed in the contract.
 - If the terms of the contract do not determine ownership, then general law will apply.
- There are two tests for the DOF
 - Degree of Annexation
 - Object of Annexation.
- The diagram below illustrates how to determine a chattel has become a fixture (Doctrine of Fixture).



Degree of annexation (Objective Test)

- The degree of annexation test is used to determine how the chattel is attached to the land. (**Taylor**)
- Under this test there are two presumptions:
 - First presumption (Belgrave)
 - If the chattel is attached to the land by something more than its own weight (e.g. it is bolted to the land) prima facie it is a fixture.
 - The greater the degree of attachment the stronger this first presumption is.
 - Second presumption (Blacker)(Taylor)
 - If the chattel becomes attached by its own weight only, even if it becomes embedded into the soil, prima facie it is not a fixture.
 - Water Tank
 - Garden Shed
 - Above ground swimming pool.

Relevant considerations in applying the annexation test.

- If the removal causes damage to the land/ building it is attached.
- The mode and structure of annexation.
- If the removal of the item can damage the item, then it is attached.
- Whether the cost of the renewal exceed the value of the attached property.

Object/ purpose of annexation (Subjective test) (Belgrave)(Taylor)

- It was found that the degree of annexation was too rigid, so the courts added the object of annexation.
- This test assesses – why was it fixed to the land?
- The **object of annexation** allows the courts to determine whether the object affixed to the land as either:
 - On the land as a temporary measure for the purpose of displaying it as chattel. In this case, the object would NOT be considered a fixture, even if it is attached to building by something other than its own weight. **(Taylor)**
 - On the land to benefit the real estate, in which it would be considered a fixture. **(Belgrave)(Taylor)**
- In determining the object or purpose of annexation **Conti J** stated a variety of considerations: **(Blacker)**
 - Whether the attachment was for the better enjoyment of the property generally or for the better enjoyment of the land and/ or building to which it is attached to.
 - The nature of property of the subject of affixation.
 - Whether the item was to be in position either permanently or temporarily.
 - The function to be served by the annexation of the item.

TENANT FIXTURES

- **'Tenant's Fixtures'** is an example of where the common law recognises that in certain circumstance a person who affixes chattel to land DOES NOT automatically lose the right to remove them, even if they had under the Doctrine of Fixture become a fixture and therefore, the landlord's property.
- This reflects policy based on economic considerations, so that tenants have an incentive to annex chattels during their lease, especially in the case of commercial leases.
 - People would be reluctant if there were not allowed to put up tenant fixtures!
- The right to remove after the expiration is subject to the same rules, however it is not always clear.

s 154A PLA1958 – Tenant may remove building and fixtures

- (1) The law allows a tenant to remove and trade, ornamental and domestic fixture affixed by the tenant during the lease even if they through DOF are supposed to be owned by the landlord. (**s 154A (1) PLA**).
- (2) When the tenant removes the fixtures, renovations, alteration or addition as per **s 154A (1)** the premises must be restored to the condition it was prior to the installation(**a**). If not, then the tenant must pay the landlord equal to the reasonable cost for the restoration of the premises (**b**).

- (3) This is subject to any provision to the contrary to that written in the lease (a) or in situations where the landlord and tenant otherwise agree (b)

s 64 RTA 1991 – Tenant must not install fixtures without consent.

- (1) A tenant must not, without the landlord's consent—
 - (a) install any fixtures on the rented premises; or
 - (b) make any alteration renovation or addition to the rented premises.
- (2) Before a tenancy agreement terminates, a tenant who has installed fixtures on or renovated, altered or added to the rented premises (whether or not with the landlord's written consent) must—
 - (a) restore the premises to the condition they were in immediately before the installation, renovation or addition, fair wear and tear excepted; or
 - (b) pay the landlord an amount equal to the reasonable cost of restoring the premises to that condition.
- (3) Subsection (2) does not apply if—
 - (a) the tenancy agreement otherwise provides; or
 - (b) the landlord and the tenant otherwise agree.

FRAGMENTATION

FRAGMENTATION

- Property rights can be 'fragmented'.
- Property in essence is a bundle of rights over things which are exercisable against others.
- Fragmentation occurs because property can be held by multiple people or groups of persons at any given time and because these rights can be divided in a variety of ways among these number of persons.
- Fragmentation of these rights is recognised by several common law doctrines.
 - Doctrine of Estates
 - Doctrine of Tenure
 - Fragmentation by reference to the nature of the titles
 - Fragmentation by reference to the nature of the interests
 - Fragmentation by reference to the whether the interest is shared with another

Doctrine of Estates (Fragmentation by reference of time)

- The doctrine of estates is a division of land based on time.
- Multiple people have different rights to the same piece of land.
- The 2 types of estates:
 - Freehold estates
 - Leasehold estates

Freehold Estates

- Fee Simple
 - The greatest interest is recognised.

- Fee tail
 - Is similar to a fee simple except the right of disposition is limited.
 - The intention is keep the property within the family. This category is virtually abolished in Victoria.
- Life Estate
 - Interest in land (right to possession) as long as the person lives.
 - Once the person passes it transfer to a remainderman, who receives a fee simple estate.
 - The life tenant cannot dispose of the estate by will.
 - Can dispose of it by leasing it.

Leasehold Estates (Non – Freehold Estate)

- These are less than freehold estates and are generally distinguishable from freehold estates on the basis their duration is certain or capable of being rendered certain (fixed term leases).

Doctrine of Tenure (Fragmentation by reference to space)

- One piece of land can be subdivided in any number of ways. For example:
 - Subdivision along horizontal, ground level boundaries is used to produce a number of separate blocks of land.
 - Strata title systems allow people to acquire title to separate units in the same building using with both horizontal or vertical partitions.

Fragmentation by reference to the nature of titles

- The concurrent rights of a possessor of property and the owner of the property.
- In some circumstances both the possessor and an ‘owner’ of the property may have a title which can be asserted against a third party.

Fragmentation by reference to the nature of the interests

- Legal interest vs. equitable interest.

Fragmentation by reference to the nature of the right

- More than one type of property interest may exist in a single thing at the same time.
 - For example: A is the owner of the land and B holds the lease in the land. The Law and/ or equity recognise a variety of rights in property which do not give the holder a right to possession.

Fragmentation by reference to the whether the interest is shared with another

- Co – ownership.
 - For example: They maybe co – owners of a freehold or leasehold interest in land, or co – owners of a race horse.
- Most type of property interest can be held in co – ownership.

TITLE AND OWNERSHIP

TITLE AND OWNERSHIP

- Title
 - Ownership rights over property as recognised by the legal system.
- Ownership
 - The rights recognised by the law in respect to property.

- The rights are exercisable with respect to the type of property against all person.
- Includes the rights to the possession of the property.
- Title and ownership are interchangeable.

TITLE, SEISIN, POSSESSION

THE DOCTRINE OF TENURE

- Doctrine of tenure: Crown owns all land, and landowners hold land of the crown as tenants.
- The Crown had title to the land and thus the rights to issue grants over any part of the land and to assert absolute beneficial ownership over unalienated lands. (**Attorney General v Brown (1847)**).
 - This view was rejected in the **Mabo Case** which found that the territory was not terra nullius.

POSSESSION AND SEISIN/ DOCTRINE OF RELATIVITY OF TITLE

- Seisin: Possession of land by Freehold.
- The fundamental difference between possessory title and proprietary title on the other is the scope of enforceability.
- Under the Doctrine of Relativity of title, possessory title, while a valid title, is not an *in rem* title because the title of the true owner (Seisin) will defeat it.
 - The only exception to this doctrine is the Principle of Adverse Possession.
- If there is a dispute between a prior possessor who has been disposed of and a subsequent possessor who remains in possession, under the doctrine of relativity of title, the title of the prior possessor is stronger. (**Whitlock**)
 - This is because the possessor title allows the holder the rights to transfer, bequest, or devise that title. Therefore, if the holder of a possessory title has devised that title by will, it would be unfair if the interest acquired by the beneficiary could be defeated by the possessory title acquired by a subsequent possessor. (**Whitlock**)
- Possession is 9/10 law and the remaining 1/10 is a fight against the registered proprietor.
- Possession is, in itself, as good title against anyone who cannot show a prior and therefore, a better right to possession. (**Perry**)
 - If the rightful owner does not come forward and assert his title against all the world within the period prescribed by the provision of the Statute of limitations, then his right is extinguished, and the possessory owner acquires absolute title. (**Perry**)