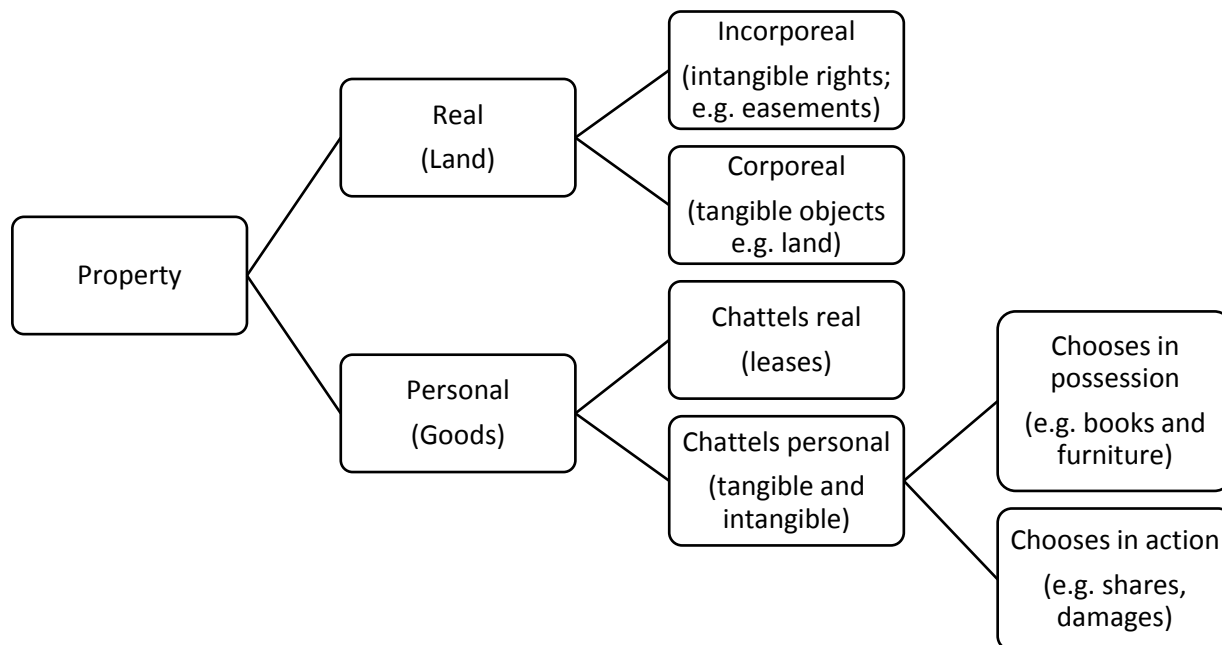


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Topic 2, Classification of Property

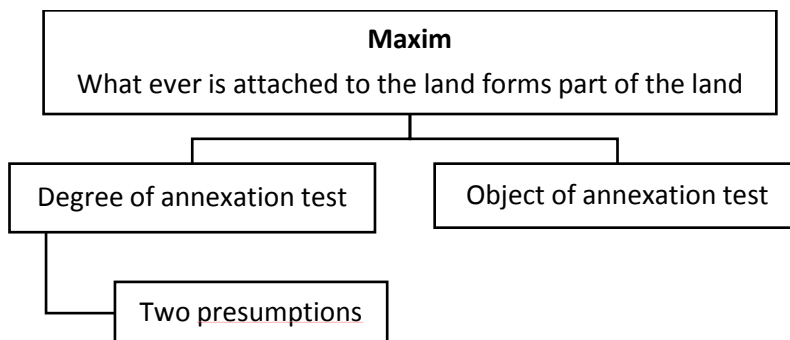
General Classifications



Doctrine of Fixtures

Element	Definition
Terminology	The doctrine of fixtures provides that chattels, by virtue of circumstances surrounding their annexation to the land, may change character from personal to real property. In certain circumstances, a chattel (personal property), which is affixed to and placed on the land may become part of the land, and this may result in a transfer of the ownership in the particular object that is affixed
Relationships that the doctrine of fixtures is relevant to	<ol style="list-style-type: none"> 1. Landlord and tenant (lease) 2. Vendor and purchaser (contract of sale of land) 3. Mortgagor and mortgagee (mortgage) 4. Life tenants and remaindermen and reversioners (testamentary and inter vivos grants) <ul style="list-style-type: none"> • Testamentary = leaving properties via your will [happens when you are dead] • Inter vivos = giving your property to someone [happens while you are alive] 5. Devisees and legal person representative (wills and other testamentary dispositions) <p>When a dispute arises, it is a <i>question of fact</i> whether ownership or entitlement to a particular item or object</p>

Chattel → Fixture



Element	Definition
Contract	<p><i>Note</i> – double check if it is stated in the contract if the item is a chattel or fixture</p> <ul style="list-style-type: none"> If so, then it is determined to be what the contract states it is
Degree of annexation test	<p>First presumption If the chattel is attached to the land by something more than its own weight (screwed, bolted, nailed or cemented to the land) prima facie it is a fixture</p> <ul style="list-style-type: none"> The greater the degree of attachment the stronger this first presumption is <p>Examples:</p> <ul style="list-style-type: none"> Hills hoist cemented into the ground Planter box affixed to the external wall of the house by two screws <p>Second presumption If the chattel becomes attached by its own weight only, even when it becomes embedded into the soil, prima facie it is not a fixture</p> <p>Examples:</p> <ul style="list-style-type: none"> Above ground swimming pool Garden shed Water tank <p>Test (National Aus Bank v Blacker):</p> <ul style="list-style-type: none"> Whether <u>removal would cause damage</u> to the land or buildings to which the item is attached The <u>mode and structure</u> of annexation Whether <u>removal would destroy or damage the attached item</u> of property Whether the <u>cost of renewal would exceed the value</u> of the attached property
Object of annexation test	<p>Test (National Aus Bank v Blacker): In determining the purpose or object of annexation, a variety of considerations may be taken into account:</p> <ul style="list-style-type: none"> Whether the <u>attachment was for the better enjoyment of the property</u> generally or for the <u>better enjoyment of the land and/or buildings</u> to which it was attached The <u>nature of the property</u> the subject of affixation Whether the item was to be in <u>position either permanently or temporarily</u> The <u>function</u> to be served by the annexation of the item

	<p><i>Note – there is no single test which is sufficient to determine whether an item of property is a chattel or a fixture</i></p> <p>Cases:</p> <ul style="list-style-type: none"> • <i>Belgrave Nominees</i> – air-conditioning units were fixtures [better enjoyment of the land] <ul style="list-style-type: none"> ○ <i>“Nevertheless even slight fixing to the land is sufficient to raise the presumption that a chattel is a fixture”</i> • <i>Leigh v Taylor</i> – tapestries remained chattels [better enjoyment of the property]
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Tenants’ Fixtures

Where the common law recognises that in certain circumstances a person who affixes chattels to land does not automatically lose the right to remove them even though they may have, under the rules already described, become fixtures

- Based on economic considerations, so that tenants have an incentive to annex chattels during the currency of the leases, especially in the case of commercial leases

Element	Definition
Legal construct	<p>While the lease is in force and the fixture(s) is attached to the land, the lessor is said to be the owner of the fixture(s) subject to the tenant’s right or removal</p> <p>Subject to any <i>provision</i> to the contrary contained in the lease, the tenant can remove the fixture(s) any time proper to the expiration of the lease</p>
Statutory rights	<p>Tenant may remove buildings and fixtures (s 154A, PLA)</p> <ol style="list-style-type: none"> 1. A tenant who at his or her own cost or expense has installed fixtures on, or renovated, altered or added to, a <u>rented</u> premises owns those fixtures, renovations, alterations or additions and may remove them before the relevant agreement terminates or during any extended period of <u>possession</u> of the premises, but not afterwards 2. A tenant who removes any fixtures, renovations, alterations or additions under subsection (1) must— <ol style="list-style-type: none"> a. restore the premises to the condition they were in immediately before the installation, renovation, alteration or addition, fair wear and tear excepted; or b. <u>pay the landlord</u> an amount equal to the reasonable cost of restoring the premises to that condition 3. This section does not apply to the extent that— <ol style="list-style-type: none"> a. the <u>lease</u> otherwise provides; or b. the landlord and the tenant otherwise agree <p>Tenant must not install fixtures etc. without consent; must restore premises or pay the equivalent of the cost to repair (s 64, Residential Tenancies Act)</p>

Fragmentation

The elements of a bundle may also be divided up among a number of persons in a wide variety of ways → thus, property rights can be fragmented in various ways

Element	Definition
<p>Doctrine of estates</p>	<p>Classification of interests in land according to the conditions on which they were granted the doctrine of tenure recognised that the sum total of rights in relation to an object could be divided in many ways, so that a number of persons could have proprietary interest in a single piece of land</p> <p>Fee simple This is the greatest interest in land recognised by the common law and is the closest it comes to recognising absolute ownership</p> <p>Fee tail Similar to fee simple except the rights of disposition limited. The intention was to keep the property within the family (specified descendants). This category of estate virtually abolished in most States, including Victoria</p> <p>Life estate This is where an estate is granted to a person for life. The life tenant cannot dispose of the estate by will, as it terminates upon death</p> <p>Leasehold estates These are less than freehold estates and are generally distinguishable from freehold estates on the basis that their duration is certain or capable of being rendered certain</p> <p>By reference to space One piece of land can be subdivided in any number of ways</p> <p>By reference to the nature of the titles The concurrent rights of a possessor of property and the owner of the property</p> <p>By reference to the nature of the interest Legal interest v equitable interest</p> <p>By reference to whether the interest is shared with another Co-ownership (i.e.) joint proprietor, tenants in common</p> <p>Title Ownership rights over property as recognised by the legal system</p> <p>Ownership The rights recognised by the law in respect to property, exercisable with respect to that type of property against all person; including the rights to possession of the property</p>
<p>Doctrine of tenure</p>	<p>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 (<i>Attorney-General v Brown</i>)</p>

	<p>This view was rejected in <i>Mabo</i></p> <ul style="list-style-type: none">• In <i>Mabo</i> the HCA found the territory was not terra nullius and that the land occupied by Aborigines could not be considered uninhabited lands• Therefore, the HCA held that the radical titles acquired on settlement did not confer on the Crown absolute beneficial ownership of land occupied by indigenous inhabitants
Doctrine of relativity	<p>Possession and seisin</p> <p>The fundamental difference between possessory title, on the one hand, and proprietary title on the other is the scope of enforceability</p> <ul style="list-style-type: none">• Under the doctrine of relativity of title, possessory title, while a valid title, is not an <i>in rem title</i>• Where there is a dispute between a prior possessor who has been disposed and a subsequent possessor who remains in possession, under the doctrine of relativity of title, the title of the prior possessor is stronger <p>Possession is, in itself, a good title against anyone who cannot show a prior and therefore better right to possession (<i>Asher v Whitlock</i>)</p> <p>A person in possession of land is the assumed character of owner exercising peaceably the ordinary rights of ownership has a perfectly good title against all the world but the rightful owner (<i>Perry v Clissold</i>)</p>