

1. CONCEPTS OF PROPERTY

Property has no universal definition, must be interpreted in the context in which it is used

Characteristics of property:

1. Rights in REM meaning enforceable against 'all the world' – except for a person with a better right
2. Ability to use and exclude (exclusive possession)
3. Alienate (ability to be transferred)
4. More than one person can have a property right in the same thing
 - Fixed categories of rights that the law recognised as having proprietary interests (fee simples/ leases/RC's/easements/mortgages)
 - Most systems of property rights incorporate mechanisms of public recording (especially in relation to land)

RECOGNITION OF PROPERTY RIGHTS:

Susceptibility to property rights depends on whether there is recognised category of property that applies

New Prop: Courts are reluctant to make new categories of property (**Victoria Park Racing v Taylor** – broadcasting horse races) however it can happen (**Tulk – restrictive covenants**)

Rights:

Rights in rem = property right in land, enforceable against the world

Rights in personam = contractual right held by a *person* enforceable only against other parties to the contract

Body Parts:

Starting proposition is that you don't own your body parts

1. However, if has been determined that with the application of 'work and skill' to a corpse or body part, it may become capable of being property
 - Property in sperm is possible, husband's estate had a proprietary right to control and deal with the sperm after his death (**Bazely**)

Moore v The Regents: Hairy cell leukemia – held no property rights to his discarded cells

Native Title:

Property generally implies the right to use or enjoy, the right to exclude others, and the right to alienate – by this standard cannot characterise indigenous relationships with land as proprietary – **Milirrpum v Nabalco**

Abundant evidence that law was traditionally occupied by individuals/family groups – contemporary rights & interests are capable of being established to attract declaratory or other relief – **Mabo v QLD**

WHAT TYPE OF PROPERTY IS IT?

Real property:

Hereditament: an interest passed by an individual to their heirs

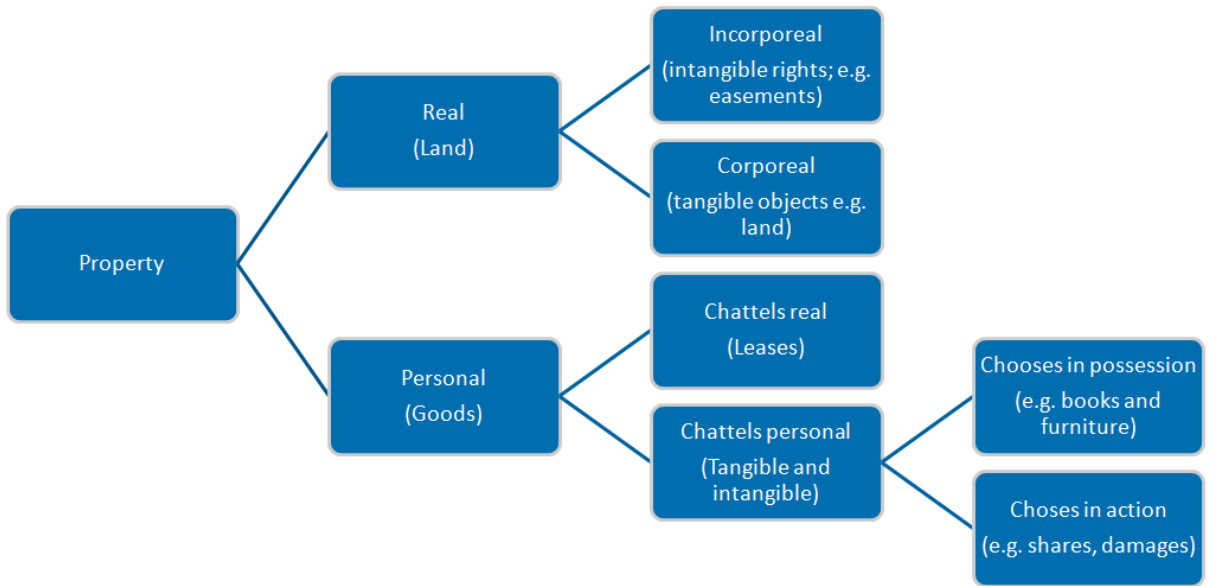
1. Corporal Hereditament: actual, tangible land (e.g. fixtures/buildings) – fee simples, life estates
2. Incorporeal Hereditament: Intangible property rights regarding property – e.g. Easements (restrictions)

Personal property:

1. Chattels real: Leases
2. Chattels personal:
 - Chose in possession: tangible objects which can be moved (books)
 - Chose in action: intangible object that can be transferred (money, debts)

Title and ownership: title means ownership rights over property recognised by the legal system. Ownership as a right in law to exercise all rights available with respect to that property

Chattels: A moveable object, not attached to land



2. DOCTRINE OF FIXTURES

1. FIXTURES

START: A fixture is a chattel which is so attached to the land that it becomes part of the land. It is automatically acquired by the owner in fee simple. X will assert that [object] is a fixture because [STATE WHY IS THIS AN ISSUE]

Determining ownership in each situation is *one of fact*, and courts will look to degree of annexation and the object of annexation to assist (**s18 PLA**)

Fixtures can change value of the land.

Maxim - "Whatever is attached to the land forms part of the land."

Relationships where it applies:

- Landlord and tenant (lease)
- Vendor and purchaser (contract of sale of land)
- Mortgagor and mortgagee (mortgage)
- Life tenants and remaindermen and reversioners (testamentary and inter vivos grants) [giving to son when you're alive]
- Devises and legal personal representative (Wills and other testamentary dispositions)

Presumptions:

Write: If the item is attached to the land (however slight or indirect) it is presumed to be a **fixture (Belgrave)**. This presumption is rebuttable and *<the party arguing it is a chattel>* bears the onus of proof to rebut the presumption as they are arguing that it is a chattel (**NAB**) **OR**

If the item is **not** attached to the land, but simply resting on its own weight, it is presumed to be a **chattel**. This presumption is rebuttable and *<the party arguing it is a fixture>* bears the onus of proof to rebut this presumption as they are arguing that it is a chattel (**NAB**).

2. DETERMINING WHETHER CHATTEL OR FIXTURE – two tests

TEST: There are two tests to be applied to determine whether the annexed item is a fixture or a chattel (**Belgrave**)

1. Degree of Annexation Test: *How is it attached?*

Start: This provides a rigid test X will try and rebut the presumptions by arguing:

- If an item is fixed to the land to any extent and by means **other** than its own weight, then prima facie it is a fixture. Whatever is attached to the soil becomes part of the soil.
- No conclusive test of determining whether chattel has become fixture (**Leigh v Taylor**), *At most this test determines BOP – party asserting it is not a fixture carries the BOP*. The court will consider the following factors:

Considerations (apply only relevant):

- **Mode of annexation:** State how the item is attached - the more attached, the stronger the presumption that it's a fixture (**NAB**) - if only held by own weight more likely to be a chattel
 - **Belgrave:** Slightly fixed by means of water pipes (although sitting on its own weight)
- **Cost of removal:** Will it cost more to remove it than the item is worth? (**NAB** – irrigation equipment was easy to remove)
- **Damage:** Will removal cause damage to the land or buildings, or to item itself? If yes – more likely a fixture however not conclusive, and vice versa (**Belgrave**)
 - **NAB:** Pumps removed without damage as they were designed to be movable
- Can draw on whole property to make arguments (e.g. heritage building etc)

- **Separate items:** Must look at items separately if possible
- **Belgrave:** Slight fixing of the units by means of water pipes meant that the starting presumption was they were a fixture, even though it was sitting on its own weight) Air conditioner – secured and fitted to form ESSENTIAL part of building

2. **Object of annexation test:** → *Why is it attached?*

Write: This limb is an objective test, focusing on whether object in question is affixed for the better enjoyment of the land (Fix) or the better enjoyment of the object itself (Chat)

NB: This test carries more weight (**Leigh**)

- **ASK:** *what the purpose for which a RP would have attached the item in the circumstances?*

Determined by assessing *Belgrave*:

- Nature of the object – what is the essential nature of the property?
- Make argument: ‘Not essential as an AC is to an office building’ (**Belgrave**) – or opposite of this
- Relation & situation between party making annexation
- Purpose for which object was fixed: (**Belgrave**)
 - To benefit/enjoy the land? (Fix)
 - For enjoyment of object (Chat) (**Leigh v Taylor** – *tapestries; held this was only way they could be enjoyed as an ornamental character – never intended to remain part of the house*)
- Intention of installation: (**Belgrave, NAB**)
 - Intended to be mobile?
 - Intended to be part of bigger system?
 - Intended to be permanent or temporary?
- IS it fixed in such a way that it could be detached without substantial damage to the thing = strong but not conclusive evidence it is a fixture?

Settled Examples:

- Plumbed air conditioning unit = fixture (**Belgrave**)
 - A/C intended to be permanent, increases enjoyment of land
- Modular irrigation system = chattel (**NAB**)
 - Intended to be mobile
 - Rested on own weight
 - Remove w/o damage to land
- Hanging tapestry = chattel (**Leigh**)
 - Annexed to increase enjoyment of land

3. **Removal of fixtures:**

Common Law: Tenants can install fixtures w/o contract, however tenants who install fixtures w/o LL’s consent will be in breach – especially an implied covenant to use premises in ‘tenant-like manner’

Tenants who affix chattels which, under doctrine of fixtures, become fixtures, do not lose the right to remove them (incentive to annex chattels during lease).

Commercial Leases: s154A PLA

- If tenant has installed fixtures, prima facie retains ownership & can remove w/o consent before lease expires **s154(1)**
 - Subject to anything expressly contrary in the lease

- After lease ends, need the LL consent
- Tenant must restore the premises to its original condition **s154(2)(a)**; OR
- Pay LL reasonable compensation for doing so **(s154(2)(b))**
- Unless they agree otherwise **(s154A(3)(a))**

Residential Tenancies: s64 RTA

- Tenant must not install fixtures w/o LL consent **s 64(1)**
- If tenant does install fixtures w /w/o consent, tenant must restore premises to original condition or compensate LL to reasonable cost **s64(2)**

Purchaser's right to remove:

- After contract is entered a fixture CANNOT be removed / Chattel may be removed at any time subject to terms between parties
- Before contract: owners who attach fixtures can remove at any time before entering into contract for sale of land

4. Conclusion:

If fix: Considering that more weight is put on the object of annexation test rather than degree (Belgrave), it is likely that item will/will not be considered a fixture and thus the new registered proprietor would acquire the fixture in the transfer.

If it is a chattel: On balance, it is likely that <the object> is a chattel. It therefore does not form part of the land and <the new RP> would not acquire title to <the object> upon statement