

Property law exam notes

LAWS4104

FIXTURES V CHATTELS

- **Doctrine of Fixtures** – Determines **when and in what circumstances** an item of personal **property attached to the land loses its identity as a chattel** and merges to become part of the realty
- **General Maxim** – ‘*that which is annexed to the land becomes part of the land*’
BUT IT CAN BE REBUTTED !!!
 - **Rebuttable presumption** – ‘When articles are attached to land by other than their own weight, they are part of the land. **Unless the circumstances show they were intended to not be part of the land.** Onus of proof rests with the party trying to prove they were fixtures (**Holland v Hodgson** – Blackburn J)
- **2 considerations:**
 - The **degree** of annexation- eg slight, total, partial
 - The **object** of annexation
- When considering **purpose**, consider (**NAB v Blacker**):
 - Whether attachment was for better enjoyment of the land to which it was attached
 - The nature of the property- ie what was it! An a/c? A artwork?
 - Whether the item was to be in position permanently or temporarily
 - The function to be served by the annexation of the item
- Consider as to the degree of **annexation** (**NAB v Blacker**)
 - Whether removal would cause damage to the land/property it is attached to
 - The mode and structure of annexation
 - Whether removal would destroy/damage the item
 - Whether the cost of renewal would exceed the value of the attached property
- **Case of the Owner** – **Holland v Hodgson** (Blackburn J)
 - Where owner of a fee simple **affixes an article to the premises**, it would generally be **presumed to be a fixture** provided the object of the affixing was to **improve the inheritance and to improve the premises**
- **Case of Tenants** – **Hellawell v Eastwood**
 - Where the tenant affixes, the tenant has the right to sever those fixtures at the end of the lease (or a reasonable time afterwards) as long as there has been **no intention to improve the inheritance of property**
- **Case of a House** – **Reid v Smith**
 - **Assumption that a house is a fixture** (Blackburn J’s rebuttable presumption)
 - Griffith J concluded that it was a fixture:
 - Only way to determine it wasn’t a fixture would be to partially destroy it (defeats the purpose)
 - Assumed that houses are fixtures for the purposes of insurance and mortgage

- Reason why it wasn't directly affixed was white ants
- Although in other circumstances, unattached houses might be fixed (miners house on a mine)
- **No single test** to determine whether an item is a chattel or fixture (*NAB v Blacker*)
 - Ought to have **regard to all the circs** of the case (*Eon Metals*)
 - Consider the **intention** with which the item was placed on the land, **objectively ascertained** (*Eon Metals*)
- Mere intention to sever does not transform fixtures into chattels (*Eon Metals*)
 - Legal severance (sale) is not sufficient, needs to be physical severance
- Other points to consider (*Eon Metals*)
 - (1) Ease of removal- will property be damaged?
 - (2) Economic viability of removal- cost of removal?
 - (3) Economic incentive to remove- cost of replacement? Cheaper to replace?
 - (4) Consideration of norms
 - (5) Transportable character of equipment concerned
 - (6) Common practice to transfer equipment of that kind
 - **(7) Relatively degree of attachment**
 - (8) No intention to improve value of the land
 - (9) Integrated systems
 - **(10) Purpose of attachment**

CASES

Holland v Hodgson (1872)

Looms bolted to floor fixtures

- Owner of a mill granted a mortgage over the mill and all fixtures. The mill contained looms which were bolted to the floor
- The owner became bankrupt and sold looms
- Because they were attached onus was on the party asserting that they weren't fixtures
- Court concluded they were **fixtures** because:
 - Placed there by the fee simple owner
 - Placed there for purpose of being a weaving mill
 - Placed there to **improve value of premises as a weaving mill**
 - Mill had been designed to have mills (holes in the floor)

Hellawell v Eastwood

Machines attached were chattels

- Plaintiff was the **tenant** of the defendant and operated a cotton shinning business that has attached machines to the floor
- Plaintiff owed money to the defendant and the defendant sought to remove the machines to satisfy the debt
- Machines were attached – rebuttable presumption they were fixtures
- Court found them to be **chattels**:
 - Tenant had affixed them
 - Only slightly affixed
 - **Not installed to improve value**
 - Tenant was thus entitled to remove fixtures at the end of the period

Reid v Smith (1905, QLD) House was fixture

- Plaintiff leased the land to the defendant for 21 years and the defendant **built two premises on the land**
- Houses were not fastened to soil but rested on their own weight on brick piers
 - Reason why it wasn't directly affixed was **white ants**
- At expiration of lease defendant sought to remove houses and the plaintiff sought an injunction
- Applied Blackburn J's rebuttable presumption
- Onus of proof was on the plaintiff because it wasn't attached
- Griffith J concluded that it was a fixture

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IMPORTANCE OF POSSESSION (FINDERS' RIGHTS)

A. ELEMENTS OF POSSESSION

- Possession of item gives the possessor possessory rights
- What does it mean to 'possess' something?

1. There must be factual possession

- **Physical control** sufficient to exclude others (***Tubantia (1924)***)
 - Plaintiff spent \$40 000 to salvage sunken ship
 - Defendant entered operation, sent divers to take cargo
 - P successfully retrained D from taking cargo, given location and nature of the ship, these acts of control were sufficient to give legal possession.
 - Matter of public policy- law should encourage this type of bold and costly work which was of 'great public importance'.
- Possession requires **actual power over item** (***Young v Hitchens***)
 - Young's boats enclosed school of fish with nets, Hitchen rows in boat into opening and catches fish
 - Held- fish not in Young's possession until he actually catches them. 'Would have caught them' is not enough.

2. There must be an intention to possess

- All you need is the intent to possess for time-being
- Not necessary to intend to own it or possess it permanently

Abandonment

- Title remains with the original possessor until an intention to abandon it arises. (***Re Jigrose (1994)***)
- Factual (physical) and intention to abandon required (***Re Jigrose (1994)***)
- Change in possession can be modified by contract. (***Re Jigrose (1994)***)
 - Vendor sold farmland to purchaser, delivered possession, but left \$20K worth of hay there
 - Contract stated 'any such property not removed shall be deemed abandoned by the vendor'.
 - Held- for purchaser, abandoned per contract. Bales of hay appropriated by the purchasers by locking them up.

B. THE IMPORTANCE OF POSSESSION IN THE CONTEXT OF PERSONAL PROPERTY

Problem solving method in contest between occupier/owner and finder

- 1) Item attached?
 - Belongs to owner/occupier even if they didn't know it was there
- 2) Item unattached?
 - Occupier/owner has title if he manifested an intention of control over property

(a) Finder's rights

- **General rule-** person who finds item has a superior title to all in the world except the true owner, even against 3rd parties (***Armory v Delamirie (1722)***)
 - Armory found a jewel and brought it to defendant's shop. Defendant kept item claiming it didn't belong to Armory.
 - Since Armory found the jewel, and D is not the rightful owner, possession vest with the finder.
- Rights and obligations of finders established in ***Parker v British Airways Board (1982)***
 - 1) The finder of chattel acquires no rights over it unless (a) **it has been abandoned or lost** and (b) he **takes it into his care and control**

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C. ADVERSE POSSESSION OF REAL PROPERTY

(a) General principles

- The possessor's rights are good against all in the world except for those with superior titles (***Asher v Whitlock***)
- Possessory title can be inherited, devised or conveyed (***Asher v Whitlock***)
- ***Asher v Whitlock*** (1865) LR 1 QB 1
 - 1842 – W took possession of wasteland, enclosed it and built a cottage – established ownership by AP.
 - W died and left land to his wife for the remainder of her life/remarriage and then to his daughter
 - Wife married D then daughter died and then wife died.
 - P (daughters heir) brought an action to eject D from the land
 - Held: While the Lord was the true owner and W was trespassing, his right of ownership in possession is good against all but the true owner
 - W's right can be devised to his daughter
 - P has the superior title as D's AP had only been for 2 years (since the daughter's death).
- Principles contained in ***Asher v Whitlock*** confirmed in Australia by ***Perry v Clissold [1907] AC 73***
 - ***Perry v Clissold [1907] AC 73***
 - Minister of Public Instruction Perry unsuccessful in appeal against finding for adverse possessor Clissold who had adversely possessed land.

(b) The elements of Adverse Possession (write in this order for exam Q)

1. *Rights of the True Owner*

- **True owner of the land has a superior right against all the world** (***Asher v Whitlock***) subject to the doctrines of abandonment and adverse possession.
- **True owner's title is extinguished if the property is abandoned** (***Re Jigrose***):
 - Loss of physical control of the property

- Intention to abandon
- The onus of proof is on the party trying to prove abandonment (prove discontinued possession and intention to dispossess)
- 'Mere non-use does not amount to abandonment' – *Malcachy v Curramore*
- **If not abandoned the only claim against the true owner is for adverse possession.**