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Tuesday, 25 June 2019 5:08 PM

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## 2. Fixtures

Thursday, 30 May 2019 9:25 AM

### Significance

- **Distinction important** because affects many different relationships (and who ends up with ownership):
  - **Vendor** and **purchaser** of land
  - **Landlord** and **tenant**
  - **Life tenant** and **remainderman**
    - **S 44(2): contingent remainder** valid even though life estate cut short (hypothetical trust established)
    - **Legal remainder rule**: must be capable of becoming possessory upon the natural end of a prior **estate** created by the same instrument
  - **Stamp duty/tax** purposes
  - **Devises** under will ('bequeath' personal property but devise real property – gifts/dispositions made by will) (not to be confused with '**demise**' – a grant of a lease)
- **Shelfer v City of London Electric Lighting [1895]**: remedy for trespass prima facie **injunction** but damages may be more appropriate where the "**good working rule**" applies:
  1. Injury to Ps **legal rights** is small
  2. Capable of being **estimated** in money
  3. Can be **adequately compensated** in small money payment
  4. **Oppressive** to D to grant injunction
- **Uniting Church v Immer (1991)**: can **contractually transfer** air space rights (e.g. 10 and 30m instead of 20 and 20)

### Annexation

- **Annexation**: process of **transformation** of chattels/goods into real property when become 'attached' to land
- Whether fixture or chattel is **question of law** (**Reynolds v Ashby & Sons [1904]**):
- **Chattels** (Latin *cattle*): movable property (i.e. Personal property)
- **Real property** (land AND fixtures) vs **personal property** (chattels), presumptions regarding:
  - **Degree of annexation**
  - **Intention** (objective, purpose of annexation, **Holland v Hodgson (1872)**)
  - **Nature** of object
  - If removal would **damage/destroy** object
  - **Permanency**
  - Status of the **affixer's** (their interest in land, e.g. tenant)
- **CL test**: **Holland v Hodgson (1872)**: "there is no doubt that the general maxim of the law is, that what is **annexed to the land becomes part of the land**; but it is difficult, if not **impossible**, to say with precision what constitutes annexation sufficient for this purpose. It is a question which must depend on the circumstances of each case, and mainly on two circumstances as indicating the intention, viz, the degree of annexation and the object of the annexation"
- **BJT** status usually determined by **contract/Statute** (e.g. **Personal Property Securities Act 2009 (Cth)**)

### Presumptions

1. **Degree of annexation:** manner in which attached (**Holland v Hodgson, Provincial Insurance v Coroneo (1938)**)
  - If chattel **attached**/fixed presume part of real estate (onus on person seeking to show is not fixture)
  - If **not attached** (e.g. resting on own weight) presume not fixture (onus on person seeking to show is fixture)
  - BUT presumptions are **rebuttable** if **intention** is otherwise (e.g. example of pile of stones)
  
2. **Purpose of annexation:**
  1. Can't be removed: **Australian Provincial Insurance v Coroneo (1938)**:
    - **Test:** whether "it has been fixed with the **intent** that it shall remain in position **permanently or for an indefinite or substantial period**" (**Hobson v Gorringe [1897]**)
    - "The intention of the person fixing it must be gathered from the **purpose** for which and time during which user in the fixed position is **contemplated**"
    - **Circumstances** are patent for all to see (**Hobson v Gorringe [1897]**)
  
  - **Can be removed:** **Leigh v Taylor [1092]**: consider **purpose**
    - **Facts: valuable tapestries mounted on walls** (Madame De Falbe was life tenant of Luton Hoo estates Tapestries mounted on frames and frames fastened to walls)
    - **Per Lord McNaghten:** "must have regard for **all the circumstances** of the particular case - to the **taste and fashion** of the day as well as to the position in regard to the **freehold** of the person who is supposed to have made that which was once a mere chattel part of the realty. The **mode of annexation** is only one circumstance of the case, and not always the most important - at its relative importance is probably not what it was in ruder or simpler times"
    - **Found:** only fixed to the wall to be enjoyed as ornamental tapestries so retained their status as chattel ("**no intention** to dedicate these tapestries to the house")
    - **Compare Re Whaley [1908]:** tapestries attached by the **owner** where annexed because (1) made reasonable to expect owner to intend that they contribute to the improvement of the land and (2) designed to enhance the Elizabethan character of the room
  
- **Belgrave Nominees v Barlin-Scott Air-conditioning [1984]:**
  - **Facts:** P (BN/owner of buildings) entered into contract with X (Guide) to renovate the buildings. X subcontracted with BS to supply and install 2 air-conditioning systems, BS installed 2 systems, 2 specially built platforms on roof with chiller resting on own weight on platform with pads as shock absorbers, chillers connected to water reticulation system and power cables which were part of the building structure connected to an electrical junction box on the air-conditioning units. (Power not connected yet). X failed to pay BS and then went broke. BN entered into contract with Y to complete the renovation of the buildings and BS agreed with Y to complete installation of the air-conditioning units. BS later removed the air-conditioning units including air chillers, compressors and general works
  - **Arguments:**
    - BN sought **mandatory injunction** requiring BS to deliver aircon units/damages for detinue/trespass
    - BS argued should consider BS's **intention** with regard to sub-contract (partly performed and contained conditions relating to repairing plant which would require its removal)
    - BUT **no contractual relationship** between P and D
  - **Holland v Hodgson:** **circumstances** in which units positioned on platform and intention as evidenced by **degree of annexation** and **purpose of annexation**
  - **Factors** set out in **Australian Provincial Assurance v Coroneo (1938)**:

- **Intention** was **should remain in** position permanently//for indefinite/substantial period = fixture
  - **Intention** only remain for some **temporary purpose** = not a fixture
- Intention is determined by **purpose** for which (and **amount of time**) thing affixed
- **Test of intention: objective** at **time of fixing**: relevant considerations:
  - Intention **permanently** to install
  - **Nature** of aircon plants (for use of building as modern office premises)
  - D supplied as **sub-contractor**
  - P are RP of **freehold**
  - Only be removed by causing **serious damage** to building/land strong evidence intended to be fixture
  - Plants **connected** to water reticulation system and when fitted, the plants formed an essential part of the buildings necessary to the use and occupancy of modern office premises
- **Subjective intention: *May v Ceedive (2006)*:**
  - **Facts:** M bought house but leased land ('owned' by C) (common practice of miners at time house built), C sought to evict M, query whether a protected tenant
  - ***Hobson v Gorrige [1897]*:** "relevant intention is to be gathered from the **circumstances** which show the degree and the object of annexation, which are patent for all to see, and not. ... "the circumstances of a chance agreement that might or might not exist between and owner of a chattel and a hirer thereof"
  - ***Santow JA*:** subjective intention may have **limited bearing** BUT generally test is objective
  - **Found:** regardless, M didn't affix house (done by predecessors) so clearly intended for long time