

CLASSIFICATION OF PROPERTY

ANS STRUCTURE:

State: What each party will argue

Definition: A fixture is a chattel which is attached to the land so as to become part of the land.

- Fixtures will automatically pass with a conveyance of an estate of land (s38 interpretation of legislation act)
 - a) Identify who is arguing fixture, and who is arguing chattel
 - b) Consider whether there is already a contract in place detailing the nature of the object in question - if not, common law tests (Belgrave; NAB) will be applied

Is there a K?

- Is there an express term specifically exempting it as a fixture
- In the absence of a K, look at the 2 test

Presumptions:

These presumptions are rebuttable

- a) If the object is fixed to the land to any extent other than by its own weight, it is prima facie a fixture (the party arguing that is a chattel has the burden of proof) (*Belgrave*)
- b) If the object is merely resting on its own weight, the presumption is that it is a chattel (the party arguing that it is a fixture has the burden of proof) (*Blacker*)

Test: There is no single test for determining whether something is a chattel or a fixture (Conti J in *NAB*)

1) Mode of annexation

Factors per Conti J *NAB*:

1. The effect of removal – if the removal will cause damage to land or buildings or to the actual item points towards a fixture. (*Blacker*)
 - In *NAB*, it was designed to be removed hence no damage
2. Mode and structure of annexation – for example in *Leigh v Taylor*
 - Tapestry attached by nails, lightly connected. Not as if it was ‘cemented to the wall’
 - more securely attached the object is, the stronger the presumption that it is a fixture (*NAB*)
3. Cost: If the cost of removal would exceed the value of the attached property, presumption that it is a fixture.
 - *NAB*: no cost
 - *Belgrave*: removal of air con units would result in damage and cost more to replace

2) Object of annexation (Objective Test)

Factors:

1. Purpose of enjoyment (*Belgrave*)
 - chattel was fixed to promote increased enjoyment and use of the freehold, then it is a fixture.
 - attached for the better enjoyment of the object, it is a chattel.
 - In *Belgrave*:
 - AC was intended to be fitted permanently to the building for improvement and therefore a fixture at the time of removal. Grave damage could occur by removal. Intended for better enjoyment of building
2. Nature of the chattel
 - Some items have an inherent nature which make them a chattel or a fixture.
 - *Belgrave* → air-conditioning
3. Function of annexation: need to look at the objective intention of the parties
4. Permanence: If the chattel had been so securely fixed so that “it cannot be detached

without substantial injury to the object or to what it is attached”

Function of annexation: - need to look at the objective intention

- NB: courts will also consider actual practice. For example in NAB, equipment was fixture. The entire irrigation equipment was usually packed up by farmers when they sell the property.

Limitations

criticised for lacking genuine, coherent legal principle, which is inflexible. Ultimately need to turn on the facts of the case.

Proposals to reform this doctrine include:

- Increasing the flexibility of the doctrine
- Generating adapted solutions according to the terms of dispute

Conclude: Ultimately, it is a chattel/fixture, and therefore Party X/Y owns it.

POSSESSION AND ADVERSE POSSESSION

STRUCTURE:

Introduction

- a) **Who has the best title prima facie:** prima facie X has the best title as they are the registered proprietor
 - o Documentary title holder, remains subject to the rights of adverse possession (s 42(2)(b) TLA).
- b) **Define AP:** Where a dispossessor has possessed someone's land for 15+ years, adverse to owner then dispossessor will AP that land and owner will not be able to recover the land, extinguishing owner's title (S8, s18 LAA).
- c) **If relevant:** if title holder sold their property, then new title holder will also be subject to AP (s 42(2)(b) TLA)
- d) **land that cannot be AP?** (s 7-7C LAA)
 - i. The Crown (s 7 LAA)
 - ii. Victorian Rail Track (s 7A LAA)
 - iii. Water Authority (s 7AB LAA)
 - iv. Council (s 7B LAA)
 - v. Owners Corporations (s 7C LAA)

AP is determined objectively, courts will consider if X had both factual possession and intention to possess for 15 years

Factual possession

The AP needs to demonstrate an appropriate degree of physical control of the land (*JA Pye*). This may be found if possession is "open act, that is not secret, without consent, is peaceful and adverse to the owner" (Brown CJ in *Mulcahy*)

- nb: IF a large area of land, the acts of possession performed in a portion of the land *may* be sufficient to establish adverse possession over the whole – need to demonstrate sufficient acts of possession though (i.e. appropriate degree of physical control of whole parcel of land)

FACTORS to consider:

- o Go through open, peaceful and no consent.
 - o **Open** means "such that it would be noticed by a documentary owner reasonably careful of his or her interest" – Re Riley
 - **NB:** can still possess underground cellar in secret- About AP's behaviour not whether land itself is capable of being openly possessed
 - Things like installing a lock evinces physical control (Pye)
 - are these act discoverable or concealed
 - o **Consent:** Was there a lease or did owner given consent? Only AP if consent expires:
 - Time starts running when consent ends- argue when and why the consent ended on that date
 - **Analogise to *JA Pye v Graham***- they couldn't both use the land as a farm at the same time, thus it is adverse. G continued to graze cattle even after expiration and without P permission.
 - o **Peaceful** = uninterrupted, exclusive and continuous possession (*Shaw v Garbutt*)
 - Was there violence or force
 - In *Shaw*, squatter used a shotgun to warn off DHT from entering but was held peaceful.