

Property A Notes *S1 2020*

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The Doctrine of Fixtures

Introduction

The doctrine of fixtures only applies where a contract does not specify whether the object, the statue runs with the land. It is assumed that the contract of sale has not specified whether the object is a chattel or fixture.

What is the issue?

If the item is a chattel (X) can remove the object, if it is a fixture then (X) cannot remove it after the contract is signed. However, before the contract is signed (X) can remove or exclude it from the contract and keep it.

If it is found to be a fixture it becomes the new owner's property (PLA s.18 & ILA s.38)

Quicquid plantatur solo: whatever is attached to the land forms part of the land

LAND = fixtures as "corporeal hereditaments" (PLA s.18) such as buildings/other structure permanently affixed to the land (ILA s.38)

Step 1: Contractual relationship?

Is there a contractual provision regarding ownership or removal of fixtures enforceable between the parties? IF NOT:

Step 2: Presumptions

Low threshold

The law applies the following presumptions: see e.g. *Belgrave Nominees*:

As the (object) is (example-resting on own weight) and it appears not fixed to the land the (object) is presumed to be a chattel.

As the (object) is (example-fixed to the land) and does not appear to be only resting on its own weight the (object) is presumed to be a fixture.

Step 3: Who has the burden of proof?

- a. Therefore the (object) is presumed to be a chattel the burden lies on (X) as he/she is claiming that (object) is a fixture (*Blacker*).
- b. Therefore the (object) is presumed to be a fixture the burden lies on (X) as he/she is claiming that (object) is a chattel (*Belgrave*)

NOTE – an object comprising of several parts can have each part considered separately (*NAB v Blacker*)

Per Conti J in Blacker: “there is no single test” to determine whether an item is a chattel or a fixture, thus (X) will “employ a two-stage test” (degree of annexation and object of annexation) to determine whether the (object) is a fixture or chattel.

Step 4: Degree of annexation test (how)

This test looks at how the object is attached to the land.

The degree of annexation TEST is to determine the extent to which the chattel has been affixed to the land (*Australian Provincial Assurance Co v Coroneo*)

Factors per Conti J in *Blacker*

- Effect of removal:
 - If removal would cause damage to building/item or put the remover in danger = fixture (*Belgrave Nominees* - air conditioner hard to remove)
 - If removal would not cause damage to building/item or put the remover in danger = chattel (*Blacker* - irrigation system could be easily removed)
- Mode/structure of annexation:
 - Strong attachment = fixture (*Belgrave Nominees* – air conditioner was on a platform, on its own weight- though very heavy, connected to water systems and the water pump was secured to the chiller)
 - Weak attachment = chattel i.e irrigation system, pumps sprinklers could easily separate from underground plant (*Blacker*)

- Cost
 - If removal cost exceeds value of property = fixture (*Belgrave Nominees* - removal of the air conditioner would cost between \$62,000-\$90,000 to remove)
- Expertise/specialised to remove the item
 - Required special expertise to remove= fixture (*Belgrave Nominees*)

Blacker – The above factors considered per Conti J (NAB v Blacker) shouldn't be applied too rigidly. Need to examine each case holistically.

Conclusion: on the balance, the degree of annexation test points to the (object) being a fixture/chattel

Step 5: Object of annexation (why/intention)

- The object of annexation TEST is to look at the objective intention of the parties when item was fixed (*Conti J in Blacker*)
- Factors
 - Purpose of enjoyment
 - Chattel was fixed to promote use and enjoyment of the building= fixture (*Belgrave Nominees*)
 - Chattel was fixed to promote the use and enjoyment of the chattel = chattel
 - Enjoyment of the object meant it was attached to land (*Lee v Taylor* – tapestry case)
 - Nature of chattel
 - Would you usually pick this chattel up and move it around?
 - No = fixture (*Belgrave Nominees*)
 - Yes = chattel (*Blacker*)
 - Would it be absurd for it to be a chattel or other way around?

<ul style="list-style-type: none"> ○ Permeance <ul style="list-style-type: none"> ▪ Is it fixed so securely “it cannot be detached (without) substantial injury to the object or to what is it attached” found the irrigation system could be easily separated and moved around (<i>Blacker</i>)? ○ Function of annexation <ul style="list-style-type: none"> ▪ Is it essential/crucial for the premises? Objective intention from the time the fixture was installed <ul style="list-style-type: none"> • Yes = fixture i.e. air-conditioning for office buildings (<i>Belgrave Nominees</i>) • No = chattel • Conclusion: on balance, the object of annexation test points to the (object) being a fixture/chattel
<p>Step 6: Limitations/POLICY considerations</p> <ul style="list-style-type: none"> • Inflexible, lacks a genuine, coherent legal principle • Sections have been overridden by statute • Not predictable
<p>Step 7: Is it a landlord/tenant situation?</p> <p>Does Property Law Act or Residential Tenancy Authority apply?</p> <p>- If it's tenant and landlord then the tenant is liable and has to remove the chattel before the end of the lease and then after the lease it can't be removed if it is a fixture</p>
<p>Step 8: Final conclusion</p> <ul style="list-style-type: none"> • On the balance of probabilities, it is likely that the (object) would be found to be a fixture/chattel, resulting in

Removal of Fixture

What type of relationship?

- If it is a Vendor-Purchaser relationship:
 - Once a contract of sale has been entered into, fixtures can not be removed from the property (unless specifically excluded from sale per the contract) as they have vested in the purchaser. Chattels may still be removed subject to the contract.
- If it is a Mortgagee-Mortgagor relationship:
 - Once there has been a default, the Mortgagee is entitled to claim (possess) all of the real property, which extends to fixtures because they run with the land. Good example: *NAB v Blacker*

- If it is a Tenant-Landlord relationship, the below rules apply:

As this is a tenant and landlord relationship legislation applies. X had to have received consent from their landlord prior to installing the fixture, if not the landlord may have a cause of action (s64(1) RTA). As X is a tenant that has installed a fixture, FIXTURE, he is expected restore the premises to the condition it was in immediately before the installation or pay the landlord an amount equal to the reasonable cost of restoring the premises (s64(2) RTA). X is required to do this unless the tenancy agreement otherwise provides or the landlord and tenant agree otherwise (s 64(3)).

On balance the landlord will can take cause of action and force X to either repair the damage or pay him the funds to do so.

Residential Tenancies Act 1997 s64 (RTA)

1. A tenant must, without the landlord's consent -
 - a. Install any fixtures on rented premises; or
 - b. Make any alteration, renovation, or addition to the rented premises
2. Before a tenancy agreement terminates, a tenant who has installed fixtures on or renovated, altered or added to the rented premises (whether or not with the landlord's written consent) must
 - a. Restore the premises to the condition they were in immediately before the installation, renovation or addition, fair wear and tear excepted; or
 - b. Pay the landlord an amount equal to the reasonable cost of restoring the premises to that condition.
3. Subsection (2) does not apply if—
 - a. The tenancy agreement otherwise provides; or
 - b. The landlord and the tenant otherwise agree.

Property Law Act 1958 s154A (PLA)

- Broader
 - Commercial leases; Anything that isn't residential
1. A tenant who at his or her own cost or expense has installed fixtures on, or renovated, altered or added to, a rented premises owns those fixtures, renovations, alterations or additions and may remove them before the relevant agreement terminates or during any extended period of possession of the premises, but not afterwards.
 2. A tenant who removes any fixtures, renovations, alterations or additions under subsection (1) must—
 - 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. pay the landlord an amount equal to the reasonable cost of restoring the premises to that condition.
 3. This section does not apply to the extent that—
 - a. the lease otherwise provides; or
 - b. the landlord and the tenant otherwise agree.

Doctrine of Estates
<p>Type of Estate:</p> <ol style="list-style-type: none"> 1. Freehold 2. Future Interest
<p>Freehold Land</p> <p>Fee Simple</p> <p>X (grantor) was the fee simple owner, X granted Y a ? interest in their property.</p> <p>X now has a reversionary interest in fee simple (If life estate) A reversionary interest is an interest if the grantor of the future interest does not expressly specify where the estate will go, the estate will revert back to the grantor. If the grantor is dead at the time of reversion, the estate will take back the interest.</p> <ul style="list-style-type: none"> - Closest to absolute ownership, indefinite period of time - “Fee” = inheritable + “simple” = not limited to a class of heirs - Rights: use, exclude, alienate - Alienation can be inter vivos (transfer during lifetime) or testamentary disposition (via will) - When person dies goes to person in will/next of kin, if no will goes to Crown <p>Fee Tail</p> <ul style="list-style-type: none"> - REPEALED IN AUSTRALIA per <i>Property Law Act 1958 (Vic) s.249</i> - Estate was limited to a class of heirs (to keep land in a family) - Rights: use, exclude but NOT alienate <p>Life Estate</p> <ul style="list-style-type: none"> - Freehold estate granted to person (life tenant) with a limited duration (lifetime-ends at death) <ul style="list-style-type: none"> o Can be: pur sa vie (“to A for life” duration of the grantee’s life i.e. person with life estate) or pur autre vie (“to A for B’s life” duration of someone else’s life) <ul style="list-style-type: none"> ▪ Rights: use, exclude, alienate ▪ Can sell the life estate – but it terminates once you die (reversion or remainder interest) ▪ Responsibilities: doctrine of waste applies so the lesser interest does not degrade/damage land