

Introduction					
<ul style="list-style-type: none"> <li>• People have the right to decide how they use their property within the limitations of the law</li> <li>• Things <b>real</b> and <b>personal</b> exist as a fundamental division in property law</li> <li>• Interaction between the right to possess, use, dispose and exclude from property</li> </ul>					
What is property?					
Is it property?	<ul style="list-style-type: none"> <li>• There are no property rights in a spectacle (<b>Latham CJ</b> in <i>Victoria Park Racing</i>)</li> <li>• There are no property rights to privacy (<b>Dixon J</b> in <i>Victoria Park Racing</i>)</li> <li>• Property rights are separate and distinct from personal obligations (<i>King v David Allen and Sons</i>)</li> <li>• Mere licensees do not confer property rights on to an individual (<i>Cowell v Rosehill Racecourse</i>)</li> </ul>				
What sort of property is it?	<ul style="list-style-type: none"> <li>• General title</li> <li>• Torrens System Land → it must be registered, unregistered = an equitable interest</li> <li>• Native Title (<i>Mabo v Queensland</i>)</li> </ul>				
Can new types of property be created?	Body Parts <ul style="list-style-type: none"> <li>• You are not your own property (<i>Moore v Regents of California</i>)</li> </ul>				
	Corpse <ul style="list-style-type: none"> <li>• A human body, or portion of the human body, has the potential to become property when the person has, by lawful exercise or skill, acquired the right to retain possession of it (<i>Doodeward v Spence</i>)</li> </ul>				
	Sperm <ul style="list-style-type: none"> <li>• = Property because work and skill has been applied to it in the context of IVF (<i>Bazley v Wesley Monash IVF</i>)</li> </ul>				
Who owns it?	<ul style="list-style-type: none"> <li>• Property owned by the government cannot override native title (<i>Yanner v Eaton</i>)</li> </ul>				
Doctrine of Fixtures					
<p>The [property] is considered personal property <b>per s18 PLA</b> and it is assumed to be a real chattel affixed to the land. There is no express agreement between X and Y. X will argue that it is a fixture and that X should retain possession whereas Y may argue that it is a chattel, that is moveable property, and will seek to remove it. The court presumes the CL maxim <i>quicquid plantatur solo, solo credit</i>; whatever is attached to the land becomes part of the land. The burden of proof rests with Y to prove otherwise.</p>					
Is there a K for sale?	Doctrine of Fixtures applies only where a K does not specify if the object runs with the land.				
Do the parties involve tenants?	<ul style="list-style-type: none"> <li>• If a tenant has installed a fixture, the tenant is able to remove said fixture (<b>s64(2) RTA</b>) – however they may be liable for paying the landlord any cost for the price of restoring the premises (<b>s64(2)(b) RTA</b>) if they have not done so themselves (<b>s64(2)(a) RTA</b>).</li> </ul>				
Step 1: Burden of proof	Is the object fixed by more than its own weight?				
	<table border="1"> <thead> <tr> <th>YES</th> <th>NO</th> </tr> </thead> <tbody> <tr> <td>Presumed fixture: BoP on party arguing it is a chattel</td> <td>Presumed chattel: BoP on party arguing it is a fixture</td> </tr> </tbody> </table>	YES	NO	Presumed fixture: BoP on party arguing it is a chattel	Presumed chattel: BoP on party arguing it is a fixture
	YES	NO			
Presumed fixture: BoP on party arguing it is a chattel	Presumed chattel: BoP on party arguing it is a fixture				
BoP lies on [X/Y] to prove, on the balance of probabilities, why the object should [not] be classified as a fixture. This an objective test ( <b>Belgrave Nominees</b> )					
Step 2: Degree of annexation	<p>First, the degree of annexation test is considered (<i>Leigh v Taylor</i>)</p> <ul style="list-style-type: none"> <li>• <i>How is the object attached to the land?</i></li> <li>• <i>Has the object been attached to the land for better appreciation of the object or the land?</i></li> <li>• <i>Are there two items? A painting and the bracket holding it against the wall?</i> ←</li> </ul> <p><b>MULTIPLE OBJECTS</b></p>				
	How is it attached?	<ul style="list-style-type: none"> <li>• Nailed to wall = fixture (<i>Leigh v Taylor</i>)</li> <li>• Connected to land = fixture (<i>NAB v Blacker</i>)</li> <li>• Resting on platform = chattel <b>BUJ</b> connected to water pipes using bolts and nuts = fixture (<i>Belgrave Nominees</i>)</li> </ul>			
	Will it cause damage to remove?	<ul style="list-style-type: none"> <li>• Nailed to wall = likely (<i>Leigh v Taylor</i>)</li> <li>• Connected to land = likely (<i>Blacker</i>)</li> <li>• Resting on platform = unlikely (<i>Belgrave Nom</i>)</li> </ul>			

	Are removal costs > than value of object	<ul style="list-style-type: none"> <li>&lt; value than removal = chattel (<i>Leigh v Taylor</i>)</li> <li>&gt; value than removal = fixture (<i>NAB v Blacker</i>)</li> </ul>
	It is likely [object] is a fixture [chattel]. However, when considering establishing if [property] is a chattel or fixture, a holistic approach must be taken. The courts will also consider the object itself using the object of annexation test: <b><i>NAB v Blacker</i></b>	
Step 3: Object of annexation	What is the purpose of the annexation?	<ul style="list-style-type: none"> <li>Functional/for more than mere enjoyment = fixture (<i>Leigh v Taylor</i>)</li> <li>Reference must be made to all circumstances of the case, particularly the objective intention of the party who brings the object on to the land and affixes it there (<i>Pricewaterhouse Coopers Legal v Perpetual Trustees</i>)</li> </ul>
	Nature of object in relation to its annexation?	<p><i>Would it be absurd to classify the object as a chattel or as a fixture?</i></p> <ul style="list-style-type: none"> <li>Well known practice for farmlands to be sold separately from equipment/stock (<i>NAB v Blacker</i>)</li> <li>Aircon essential part of modern offices (<i>Belgrave Nominees</i>)</li> </ul>
	Was annexation intended to be permanent or temporary?	<p><i>Is the object attached permanently or temporarily?</i></p> <ul style="list-style-type: none"> <li>Art = typically intended to be temporary for enjoyment purposes (<i>Leigh v Taylor</i>)</li> <li>No intention to make objects form part of land (<i>NAB v Blacker</i>)</li> <li>Aircons usually intended to be permanent unless broken down (<i>Belgrave Nominees</i>)</li> </ul>
<b>Consider:</b>		
<ul style="list-style-type: none"> <li>Does X make the object or land work better?</li> <li>Is it for a specialised purpose?</li> </ul>		
Farming irrigation system ( <i>NAB v Blacker</i> )	<ul style="list-style-type: none"> <li>A system containing multiple parts can have each part considered separately. <ul style="list-style-type: none"> <li>In this case, all objects held to be <u>chattels</u></li> </ul> </li> </ul>	
Air-con unit ( <i>Belgrave Nominees</i> )	<ul style="list-style-type: none"> <li>AC on roof of building attached with bolts – necessary for the enjoyment of said building, therefore <u>fixture</u> <ul style="list-style-type: none"> <li>Does X form, or was it intended to form, an essential part of the building?</li> </ul> </li> </ul>	
House contents ( <i>Palumberi v Palumberi</i> )	<ul style="list-style-type: none"> <li>A fixture is something for the enjoyment of the land (stove, carpet)</li> <li>Chattels are not as they are for the improved comfort of the land (curtains, TV antenna, light fittings)</li> </ul>	
Tapestries/art ( <i>Leigh v Taylor</i> )	<ul style="list-style-type: none"> <li>If hanging X on the wall is the only way to enjoy it completely, it will be considered a <u>chattel</u> <ul style="list-style-type: none"> <li>Is X exclusively for enjoyment or do they serve a purpose or function on the land?</li> </ul> </li> </ul>	
House on land ( <i>May v Ceedive</i> )	<ul style="list-style-type: none"> <li>If you try and remove a house from land, the house itself will fall apart, therefore <u>fixture</u></li> </ul>	
On balance, it is likely [property] is a chattel, therefore [the owner of the chattel] remains in possession of it. As such, it is not part of the land and is personal property. However, if it is a fixture, it forms part of the land and the [new owner] acquires title to [the object] upon settlement.		
Step 4: If fixture, consider scenario type	Vendor - Purchaser	<ul style="list-style-type: none"> <li>Fixtures cannot be removed once a K of sale has been entered into</li> <li>Chattels can be removed subject to the contract</li> </ul>
	Mortgagee - mortgagor	<ul style="list-style-type: none"> <li>Once there has been a default, the mortgagee is entitled to the claim all of the real property</li> </ul>
	Tenant - landlord	<ul style="list-style-type: none"> <li><b>S64 RTA</b>: tenant must not install fixtures w/o consent</li> <li><b>S154A PLA</b>: tenant may remove fixtures</li> </ul> <p>Consider:</p> <ul style="list-style-type: none"> <li>Was it fixed during tenancy?</li> <li>Was it at their own cost?</li> </ul>

		<ul style="list-style-type: none"> <li>- The legal title belongs to the landlord while affixed but reverts upon severing object from the land</li> </ul> <p>Installation of fixture = no implied covenant preventing tenant fixture. If the landlord <u>does not consent</u> and it reduces value of premises, it will amount to <b>voluntary waste</b></p>
	<b>Residential Tenancies Act 1997 (s64)</b>	
	<ul style="list-style-type: none"> <li>(1) Tenant cannot install fixtures without the landlord's consent; and</li> <li>(2) A tenant who has installed fixtures must restore the premise to the condition it was in before or pay for the cost of restoration</li> <li>(3) Subsection (2) does not apply if – <ul style="list-style-type: none"> <li>(a) The tenancy agreement provides otherwise; or</li> <li>(b) The landlord and the tenant otherwise agree</li> </ul> </li> </ul>	
	<b>Property Law Act 1958 (s154A)</b>	
	<ul style="list-style-type: none"> <li>(1) A tenant who has installed fixtures may remove them before the termination of the agreement or during any extended possession of the premises, but not afterwards</li> <li>(2) A tenant who removes any fixtures must – <ul style="list-style-type: none"> <li>(a) Restore the premises into the condition they were in before the installation, fair wear and tear excepted; or</li> <li>(b) Pay the landlord the amount equal to the reasonable cost of restoring the premises to that condition</li> </ul> </li> <li>(3) This section does not apply to the extent that – <ul style="list-style-type: none"> <li>(a) The lease provides otherwise; or</li> <li>(b) The landlord and the tenant otherwise agree</li> </ul> </li> </ul>	
As a result, X is [not] entitled to possessory rights over [property].		