

Introduction to Property and Commercial Law

Exam Scaffolds

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Real property

Fixtures

Is an object a chattel or a **fixture** – has it become part of the land?

- Significance of outcome – if it is a chattel, the tenant has a right of removal as it retains its legal identity
- When determining the **objective intention** of the party attaching the object, regard can be held to the actual intention of the party and **degree of annexation**. (*Cancer Care Institute*)
- Initial presumption: *Belgrave nominee Pty Ltd v Barlin-Scott Airconditioning (Aust) Pty Ltd*
 - Object **resting on its own weight**, presumed chattel. Person arguing fixture has burden of proof.
 - Object **attached** to land in some way, presumed fixture. Person arguing chattel has burden of proof. “even slight fixing sufficient to raise presumption”
- Court looks to overarching factors of:
 - Degree/mode of annexation
 - Object/purpose of annexation (greater significance to this)
 - Is the item annexation for the better enjoyment or use of the land, or the better enjoyment and use of the chattel?
- Fixture if contributes to overall architectural design (*D'Eyncourt v Gregory*)
- Chattel if interchangeable – can object be moved and used in other premises, can other objects be brought in to replace it (*Cancer Care*)
 - Significant in this case that linear accelerator was interchangeable
- If it is a fixture, it is a **tenant's fixture**? – would then be entitled to remove it and the end of the lease provided the following conditions are met:
 - (1) Installed for trade, domestic or ornamental purposes
 - (2) If so firmly attached that remove would destroy their essential character or value, or cause substantial damage to the realty – it is a landlord's fixture

Native title

- Is there **native title**? (*Mabo (No2)*)
 - Requires traditional **connection**
 - eg. communal gardens (*Mabo (No2)*), access and camp on land, engage in ritual and ceremony on land (*WA v Brown*)
 - Connection with the land which is **continuous**
 - from sovereignty until trial
- Has it been **extinguished**?
 - By **legislation**
 - This is harder after the *Racial Discrimination Act 1975*. Can't extinguish NT on racially discriminatory grounds (*Mabo (No 2)*)
 - Through exercise of **plenary power**?
 - Appropriation of land must be inconsistent with the continuing right to enjoy NT (*Mabo (No 2)*) eg. railways

- By the Crown as Executive through the **doctrine of tenure** eg. granting a mineral lease (*WA v Brown*)
 - Granting an interest that is wholly or partially inconsistent with the continuing right to enjoy native title. NT is extinguished to the extent of the inconsistency.
 - Inconsistent if existence of one right **necessarily implies the non-existence** of the other
 - Compare the two bundle of rights – their legal nature and content at the time of creation (ie. Not how rights are subsequently exercised)

Legal and Equitable interests in land

How does one get a **LEGAL interest** in land?

- **By deed**
 - No land shall validly pass at law unless by deed: CA s 23B
 - Must be written, signed, sealed, and delivered.
 - Deemed to be sealed if expressed by an indenture or a deed or to be sealed and if signed and attested: CA s 38(3)
 - Delivered doesn't require physical handing over. Delivered when intends to become operative.
 - Deeds can now be electronic: CA s 38A
- **Short term lease** – can be created by parol unless the landlord only has an equitable fee simple
 - Requirement for deed does not apply: CA s 23B(2)
 - Legal interest in land created by parol has the force and effect of interests at will only (can be terminated at any time): CA s 23D(1) subject to CA s 23D(2)
 - Attributes of a lease: CA s 23D(2)
 - Created by parol (oral promise)
 - Term (incl option to renew) does not include 3 years
 - At best rent (market rent)
 - Taking effect in possession (immediate right to possession)
 - Torrens land – applies but does not give a statutory/indefeasible interest.
 - Old system land – applies as alternative to deed. Document to give statutory/indefeasible interest.
- Taking **possession**
 - Does not require a deed: CA s 23E
- Torrens title land - legal interest by **registration**
 - The 'deed rule' does not apply to land under the RPA: CA s 23B(3)
 - No interest in land can pass under the act, or render land liable as security, unless registered in manner stipulated: RPA s 41(1)
 - Registered interest in indefeasible except in the case of fraud: RPA s 41(2).

How does one get an **EQUITABLE interest** in land?

- **(1) Direct disposition through written instrument:** CA s 23C(1)
 - Must be old system land – doesn't apply for TT without adequate consideration: RPA s 41