

Fixture or Chattel?

The issue as to [whether or not the object is a chattel or fixture] will be decided through applying the relevant tests under the doctrine of fixtures. If [the object] is found to be a fixture, it runs with the land, and shall be the property of [owner] as they [own the land]. However, if found to be a chattel, [person] will be able to remove it from the land, as it does not run with the land (s18 PLA; s38 ILA).

STEP 1: IS THE OBJECT SPECIFIC TO THE CONTRACT?

Since [there is no contract/the contract does not specify the object] the court would need to apply the following test to determine whether the object is a fixture...

→ can remove fixtures before contract of sale

STEP 2: WHAT IS THE PRESUMPTION

- As [the object] is resting on its own weight, the court will presume that the object is a chattel even if it has become embedded in soil (NAB v Blacker).
- As [the object] is attached to the land, the court will presume that the object is a fixture (Belgrave Nominees v Barlin Scott Air Conditioning).
 - This applies even if the degree is very slight, however, the greater the degree of attachment, the stronger the presumption
 - If an object is permanently attached to the land, it becomes a part of that land. Therefore, through [selling] that land, it is implied that the object is included unless the contract of sale states otherwise.

NAB v Blacker	Possible to separate items that make up one system: <ul style="list-style-type: none">- Valves connected to underground pipes affixed to land- Pumps/sprinklers resting on own weight
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STEP 3: BURDEN OF PROOF

- As the court presumes the object is a chattel, the party claiming it is a fixture has the burden of proof (NAB v Blacker).
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STEP 4: DEGREE OF ANNEXATION (HOW?)

The court will look at the manner in which the object is attached to the land, considering the factors outlined by Conti J in NAB v Blacker:

- What is the effect of removal on the land?
- What is the effect of removal on the object?
- What is the mode and structure of annexation?
 - nailed on, concreted in, sticky tape → level of performance
- What is the cost of removal?
 - Relative to the cost of the object (If removal exceeds value, presumption that fixture.)

Based on these factors, the court would likely find the degree of annexation required to constitute a (fixture/chattel) is [not] made out on the balance of probabilities. However, merely applying this test alone to determine whether the object is a fixture or chattel is too rigid. Subsequently, the court will also consider the object of annexation test.

Doctrine of Estates

FREEHOLD		
Fee Simple	Life Estate	Fee Tail
<ul style="list-style-type: none"> Complete and unlimited form of freehold estate 	<ul style="list-style-type: none"> Estate through which the freehold estate is granted to a person, referred to as the life tenant, for the life of a nominated person. Can be for the life of the life tenant → <i>por sa vie</i> OR the life of another → <i>estate pur autre vie</i> 	<ul style="list-style-type: none"> Historical category Inherited estate where inheritance is limited to a particular person and their lineal descendants PLA s429: fee tail estates cannot be created any estate in fee tail becomes an estate in fee simple
<ul style="list-style-type: none"> Rights to use, alienate and exclude Can alienate — <ul style="list-style-type: none"> inter vivos (during lifetime); or by testamentary disposition (via will) 	<ul style="list-style-type: none"> Limited to the right to alienate the interest Right to receive any rents or profits Doctrine of waste — to protect and maintain the land for the benefit of other interest holders <ol style="list-style-type: none"> Ameliorating waste Permissive waste Voluntary waste Equitable waste 	<ul style="list-style-type: none"> Rights to alienate (sell or transfer), and right to receive rents or profits

- e.g. A has fee simple freehold estate. A grants to B “for life”, meaning A now has a reversionary interest and B has a life estate (AKA exclusive possessory interests for the duration of their life)
- B can alienate land (sell or transfer)
- A is the reversioner (has a future right to exclusive possession) — as soon as B dies, exclusive possession will revert to A.

LEASEHOLD			
Fixed Term	Periodic	At Will	At Sufferance
<ul style="list-style-type: none"> Fixed period of time which comes to an end automatically at the expiration of the period Certain duration, and if lease ends before it does not invalidate it 	<ul style="list-style-type: none"> Continues from period to period until it is determined by proper notice May be created by reference to any period of time Notice of termination usually equal to length of period, however yearly tenancy gives notice of 6mth Uncertain maximum duration 	<ul style="list-style-type: none"> Created when tenant occupies the land as a tenant on the basis that either party may terminate the tenancy at any time No agreement as to duration or payment of rent (usually) If they pay rent periodically and landlord accepts, reverts to periodic tenancy 	<ul style="list-style-type: none"> Tenant holds over at expiration of a lease w/ o consent of land lord Landlord can bring action for recovery of possession, but cannot sue for damages in TP as original entry was lawful

Legal Interest?

STEP 1: WHAT TYPE OF INTEREST IS IT?

[P] is seeking a ... (fee simple interest, life estate)

STEP 2: DO THEY HAVE A LEGAL INTEREST/HAS THERE BEEN A LEGAL TRANSFER?

A legal interest will arise when the requisite formalities have been met. Under Torrens System Land, this requires a registration of title in line with the Transfer of Land Act 1958.

Upon the facts...

- There is no evidence of registration either through paper title transfer nor through the PEXA system. Therefore, due to a failure to comply with the formalities required, [P] does not have a legal interest in the land.

Equitable Interest?

Nonetheless, if there is evidence of a valid, specifically enforceable, binding contract, [P] may have an equitable interest in the property.

STEP 1: IS THERE A VALID CONTRACT?

In order to constitute a valid contract, the court must find the presence of offer, acceptance, consideration and intention to create legal relations.

- OTF... offer and acceptance are likely established in preliminary correspondence
- Consideration was provided in the form of... (deposit / []'s promise to [do something] constituted executory consideration)
- Both parties manifested an intention to create legal relations.

STEP 2: IS THERE EVIDENCE OF A CONTRACT – IN WRITING

As per s126 of the Instruments Act, evidence of the contract may be found in writing provided it adheres to the requisite formalities.

- [Document] is (clearly/arguably) a memorandum.
- Memos must generally must contain at least all the essential terms (eg the parties, settlement date, title/property particulars, price, any commercial condition) ([ANZ v Widin](#); [Pipikos v Trayans](#)).
 - This (is/is not) satisfied here...
 - If multiple properties, may be satisfied for one but lacking for the other
- In this case, the person to be charged is [landlord], who has (clearly / clearly not) signed the document
 - Notion of signature is generally liberally interpreted e.g. initials will usually satisfy
- As per Hill J in [ANZ v Widin](#), multiple documents may be read together so as to constitute a memorandum in appropriate circumstances. This requires that the documents be referable to one another.
 - Where the initial document is signed, but lacking certain information, the secondary document may supplement this detail provided the documents either expressly or impliedly reference one another.
 - Implied reference could arguably be found as the second document is identical to the first, indicating they relate to the same transaction