

## Topic 1: (A) The Concept and Function of 'Property'

### Defining 'Property'

'Property' is treated as a 'bundle of rights', however it is not a 'monolithic notion of standard content and invariable intensity'. (*Yanner v Eaton*) A person's property therefore refers not to a thing but a right to a legal relationship with that relevant thing. Property rights create rights *in rem*, meaning that they are enforceable against all the world, and this degree of power is recognised in law. (*King v David Allens and Sons, Billposting Ltd*).

### Statutory Property Rights vs Common Law Property Rights

The legislature is able to create unlimited and novel sorts of different proprietary rights and is not bound by restrictions similar to that at CL (*Yanner v Eaton*).

Common law restricts the number of proprietary rights that can be created. To constitute a proprietary interest at CL, the right must fit into one of the established categories. If the vested rights in question do not fit into any one of the CL's established categories of proprietary interests, a proprietary right does not exist. (*King v David Allens and Sons Billposting Ltd*)

### Fixtures

- Whether the item is included in a transfer of land depends on whether that item is classified as a fixture or a chattel.
- A fixture is a chose in possession that has been attached to or is resting on the land in such a way that it has lost its legal identity as a separate object and has instead become a part of the land.
- Thereby, a fixture will be included in the passing of the land, while chattels will not.

#### ADDRESS CONTRACT POINT BEFORE ANALYSIS

- \*\*\*NB: If there is a **contract** that expressly deals with this question, the matter may be settled by reference to the contract – if there is no contract, we must defer to the objective intention test

### Fixtures: Objective Intention Test

- Whether something is a fixture, or a chattel is determined by the test of **objective intention** of the party bringing the object to the land/the affixer (*Belgrave Nominees*)
- Two limbs (1) degree or mode of annexation, (2) object or purpose of annexation

#### (A) Degree or mode of annexation

##### Presumptions for the doctrine of fixtures based on the degree or mode of annexation

- 2 initial presumptions regarding the degree or mode of annexation to assist in ascertaining objective intention.
- If the object **rests by its own weight on the land**, it is **presumed to be chattel** (prima facie a chattel)
  - o Burden is on the party that is **trying to prove that the object is a fixture**, that it is in fact a fixture and not a chattel
- If the object is **attached to the land** in some way, it is **presumed to be a fixture** (prima facie a fixture)
  - o Burden is on the party that is trying to prove that the object is a chattel, that it is in fact a chattel and not a fixture (*Belgrave Nominees*)
  - o "Even an indirect or slight connection with the building is sufficient to raise the presumption that a chattel is fixture" → E.g., Connected by pipes to building's water reticulation system (*Belgrave Nominees Pty Ltd*)

#### Multiple items – whether composite items are to be treated as a single object or separately? (*Re Cancer Care*)

- Generally, composite items are treated as one single object (*Butt's Land Law*)
- However, **composite items that be used interchangeably and independent of one another** so that the items have '**separate and independent viability**',
  - o Some items may be classified as a fixture and others may be classified as a chattel
  - o I.e., where one part of a composite item is a fixture (bolted steel frame), does not mean that the other composite parts are also a fixture (radio therapy machine) (*Re Cancer Care*)
    - *Re Cancer Care*: radio therapy machines could be used removed and used separately without the bolted steel frames cemented onto the floor; medical machines = chattels, while the steel frames = fixtures

#### General principles for degree/mode of annexation

- **Removability of the object/extent of annexation**: Can the object be removed without destroying its essential character or value, or without causing substantial damage to the realty? (may affirm or alter the persuasiveness of initial presumption)
  - o Damage to and the value of the chattel must be weighed against the cost of removal
  - o *Re Cancer Care*: medical machines could be easily removed
  - o *Spyer v Phillipson*: valuable wood panelling, fireplaces and chimneys were not fixtures because they were easily removeable

#### (B) Determining the object/purpose of annexation

- Court will then look to the object/purpose of annexation to determine whether or not the intention was for the object to become a fixture or to remain a chattel.
- The overarching question that is **whether the intention** of the party bringing/affixing the chattel onto the land was to make it a **permanent accession to that land**.
- This intention is to be determined objectively by inferring from the circumstances (*Belgrave Nominees*)
- The courts have emphasised that this element of the **objective intention test is to have more weight** than the degree/mode of annexation element (*Palumberi v Palumberi*)\*\*\*

#### Purpose for which the chattel was fixed

- Was the object attached **for the benefit of the building to be used more comfortably?** I.e., *Is the item likely not to be enjoyed on its own, but to make the occupation of the building more enjoyable?* (fixture)

## IPCL Mid-Semester Exam Scaffolds

- Trust arises upon repayment
- Constructive trust is an exception to s 23C(1)(a)

\*\*\*has not been confirmed by the courts whether a constructive trust can arise outside a mortgage context

### Equitable interest by the court decreeing specific performance of an enforceable contract

#### Conditions to satisfy in order for this equitable interest to be granted

- (1) There must be an **enforceable contract** so as to satisfy s 54 CA that grants/transfers an interest in land (*Walsh v Lonsdale*)
  - A contract is not enforceable unless:
    - o There is an agreement is brought or some memorandum or note
    - o Is in writing, and signed by the party to be charged
    - o By the party to be charged or by some other person thereunto lawfully authorised by the party to be charged
  - \*\*\* Same analysis for executory/executed (s 54A) → Enforceable contract will be made out by previous executory/executed contract analysis
- (2) Equity must be prepared to grant specific performance of the contract → therefore we ask – whether the contract is one for which equity would decree specific performance
  - To answer this question, we may assume that if there is an enforceable contract, **equity would decree specific performance** because → equity would find that damages/remedy for a breach of contract where land is involved would be inadequate **because each parcel of land is unique** and the loss of interest in said unique land cannot be **remedied purely by damages**

#### If (1) and (2) are satisfied:

- The courts will likely state that the proprietary interest that is subject to the enforceable contract is regarded to have arisen in equity
- Exemplifying the **equitable maxim** that ‘equity regards as done that which ought to be done’; what ought to be done here being that the interest ought to be granted in accordance with the contract
- An equitable proprietary interest can be enforced, in appropriate circumstances, **against third parties**.

#### If (1) and (2) are not satisfied: go to part performance exception

##### *Lysaght v Edwards* scenario – contract for the transfer of fee simple

Where there is a valid contract for sale of land:

##### Seller/vendor

- Holds **legal fee simple**
- But becomes in equity a **trustee for the purchaser** of the land sold, and the **beneficial ownership** passes to the purchaser
- Has an **equitable lien** over the land, which is a proprietary interest in the land **to get what is owed post settlement** (by then the legal title passes to the purchaser but possession is retained by seller until they secure purchase money)

##### Purchaser

- While the transfer of legal title may be postponed, the **purchaser obtains the equitable fee simple** in the land from the time of contract

If proven – equitable fee simple

##### *Walsh v Lonsdale* scenario – contract to grant a lease

Where there is a valid contract for the grant of a lease:

##### Same principles apply

If proven – equitable lease

### Part performance exception under s 54A(2) (executory contracts) and under s 54A(2) and s 23E (executed contracts)

#### Enforcing oral contracts

- If there is no written and signed instrument to evidence an enforceable contract for which equity would decree specific performance, the contract can nevertheless be enforceable under the doctrine of part performance → allowing the creation/grating of an equitable interest in land **even in the absence of writing**.
- Where part performance is established, the court charges the defendant upon the equities resulting from the acts done under the contract.
- The doctrine of part performance does not enforce the contract itself, but enforces the equities arising from the actions out of the party, exemplifying the equitable maxim that ‘equity regards as done that which ought to be done’
- The doctrine of part performance may be relied upon where **one party has performed their obligations under the contract**, and the other party concurred in the doing of those actions, as it **would be fraud/unconscionable to allow the party who assented to the doing of those acts to plead that they are not bound to perform their contractual obligations in the absence of writing**, as that would be rendering the use of the statute fraudulent.

#### Test for whether an oral contract can be enforced through part performance

As per the English case of *Maddison v Alderson* (HOL) → approved by the HCA most recently in *Pipikos v Traynas* (2018)

- (1) The acts relied upon as part performance must **unequivocally, and in their own nature, be referable to some agreement** as that alleged
  - Payment of money, **while relevant** (*Ciaglia*), **will not alone be sufficient** to form part performance as it is equivocal (*Cooney v Burns*)

## Topic 2: Personal Property – Introduction to Choses in Possession

### Taxonomy of personal property

#### Choses in possession – taxonomy of personal property

- Something that is tangible and thereby could be subject of physical possession and physical control ([Channell J Torkington v Magee](#))
- Fry's dissent regarding whether shares were vested goods, upheld by the HOL from [Colonial Bank v Whinney](#)
  - o There are only 2 categories of property – (1) things in possession or (2) things in action
  - o There is no third category
  - o "All personal things are either in possession or in action. The law knows no *tertium quid* between the two" [285]
- CL historically drew a distinction between tangible and intangible property in the protection of personal property (**tangible property** = chattels/choses in possession + **intangible property** (consisting of rights to benefits obtainable only by action) = choses in action) ([Moore-Bick LJ Your Response Ltd v Datateam Business Media Ltd](#)) (appellate decision which confirmed [Colonial Bank v Whinney](#))
- Current view is that there is a divide between choses in possession and choses in action
- Courts have been reluctant to depart from this traditional categorisation of property as it is a matter for P (Moore-Bick LJ and Davies LJ)
- Authority: [Colonial Bank v Whinney](#) and [Your Response v Datateam Business Media](#)
- We get our classification from [Fry LJ's dissent](#) in [Colonial Bank v Whinney](#)

\*\*\*Ensure not to use the term 'chattels' as it includes **both** choses in possession and choses in action

#### 2 legal interests you can have in a chose in possession

- (1) Ownership
- (2) Possession

### Legal possession (legal interest)

- Possession = the prima facie indicator of ownership
- Is to be distinguished from ownership
- Possession does not necessarily concur with title → you can be in possession but not be the legal owner
- Has a nuanced and ambiguous meaning at law → concept of possession has continued to evade comprehensive definition
- At its simplest, possession connotes power of the article possessed ([Knapp v Knapp](#) per [Mayo J](#))
- Legal possession denotes a state of mind where the person in possession regards himself as having exclusive control over the goods and thus is entitled to use those goods free from interference by any other person ([Knapp v Knapp](#))

#### Elements of legal possession

- (1) **Animus possidendi**: Intention of the person claiming possession ([Tubantia](#))
  - o They must have had *animus possidendi*, that is a **mind and intention** to possess and control the object
- (2) The **extent of physical control** that they are exercising ([Tubantia](#))
  - o **Question of fact** (as per [Gibbs CJ](#) in [FCT v ANZ Banking Group](#))
  - o [Gibbs CJ](#) – 'the actual relation between the person and thing' ([FCT](#))
  - o What are the kinds of physical control and use of the object/s are practically capable? → the level of control required **does not require absolute possession**, but the **maximum possession** that is **possible** ([Tubantia](#))
  - o If the thing has (a) been taken by the person of his own motion and for himself and (b) it is under his control to the uses of which it is capable, it is in that person's possession ([Tubantia](#))
  - o In a case where you cannot have physical control applied to the res (the thing) as a whole, occupation to exclude strangers from interfering with the property is sufficient ([Tubantia](#))
  - o Factors that are likely to show element of control so as to satisfy possession
    - Use and occupation of which the subject matter was capable ([Tubantia](#))
    - The power to exclude strangers
    - Dealing with the res (the thing) as a whole

(1) and (2) satisfied? → Where elements of possession exist, the party claiming possession is likely to have **legal possession**, which is a definite legal relation of the person to the thing ([Gibbs CJ FCT v ANZ Banking Group](#))

#### Degrees/various levels of possession as per Pollock and Wright

- (1) Physical control/actual possession/mere possession/de facto possession (actual relation between a person and a thing, question of fact)
- (2) **Custody** → does not amount to legal possession, limited right
- (3) Legal possession (being a possessor **in the eyes of the law**, typically does co-exist with physical control but it does not have to co-exist; i.e., a person can have legal possession even if another person has physical possession)
- (4) Unlawful legal possession (no lawful right to the possession that you have taken, e.g., thief)
- (5) Right to possession (right of a person who has been wrongfully deprived of possession)
- (6) Constructive possession (when one person has legal possession and the other has factual possession/custody)