

DOCTRINE OF FIXTURES

- When an item is sufficiently affixed to land, it becomes part of the real property; a 'corporeal hereditament' (PLA s 18) and not a chattel.
- Land includes 'structures permanently affixed to land' (ILA s 38).

STEP 1: IS THERE A CONTRACT REGARDING OWNERSHIP OR REMOVAL OF FIXTURES ENFORCEABLE BETWEEN PARTIES?

- The doctrine of fixtures only applies where a contract does not specify whether the object runs with the land.
- Fixtures pass to new owner on sale of property as part of real property (PLA s 18) unless otherwise specified in the contract.

STEP 2: STATE THE PRESUMPTIONS AND ONUS OF PROOF

- During the sale of land, a purchaser may argue that an item is a fixture, and the vendor will argue that it is a chattel.
- If the object is merely resting on its own weight, the presumption is that it is a chattel (the party arguing that it is a fixture has the onus of proof) (*NAB v Blacker; Belgrave Nominees*).
- If the object is attached to the land to any extent other than by its own weight, it is prima facie a fixture (the party arguing that it is a chattel has the onus of proof) (*NAB v Blacker*).

STEP 3: DEGREE OF ANNEXATION TEST

- This test looks at to what extent the chattel has been affixed to the land. It is determined objectively.
- The presumptions apply even when the degree of attachment is slight (*Holland v Hodgson*).
- As per Conti J in *NAB v Blacker*, whatever is affixed to the soil becomes part of the soil.
- If a chattel is only attached by its own weight, it is not a fixture even if it becomes embedded in the soil (*Hamp v Bygrave*).

As per Conti J in *NAB v Blacker*, to determine the degree of annexation the courts will consider:

- The effect of removal:** if the removal will cause damage to land or buildings or to the actual item, presumption that it is a fixture.
- Mode and structure of annexation:** how is it attached? How strong is the attachment? Is it demountable (indicates intended to be removed, not affixed)? Connections e.g. cables (indicates intention to be more permanently affixed)?
- Cost:** If the cost of removal would exceed the value of the attached property, presumption that it is a fixture.

STEP 4: OBJECT OF ANNEXATION TEST

- Look at the objective intention of the parties at the time of fixing the object (Conti J *NAB v Blacker*).
- An object becomes a fixture if it has been placed or attached as an improvement to the land.

As per Conti J in *NAB v Blacker*, the object of annexation can be identified by:

1. Purpose of enjoyment

- If the chattel was fixed to promote increased enjoyment and use of the freehold, then it is a fixture (*Belgrave Nominees*).
- If it was attached for the better enjoyment of the object, it is a chattel (*Leigh v Taylor*).
- For example, in *Leigh v Taylor* – tapestries were fastened to canvas by tracs. The court held that tapestries' retained their character as chattels and formed part of the personal estate, even though they were affixed to the wall, this was the only way they could be enjoyed.

2. Nature of the chattel

- Is the item an essential feature of the land?
- Some items have an inherent nature which make them a chattel or a fixture.
- Belgrave Nominees* held that an air conditioner is a fixture as it is essential for the enjoyment of office premises.
- Farm equipment is often sold separately to property = chattel (*Blacker*).

3. Permanence – was the item intended to be attached permanently?

- If the chattel had been so securely fixed so that "it cannot be detached without substantial injury to the object or to what it is attached – this is evidence that it is a permanent fixture.

4. Function of annexation

- Need to look at the objective intention: Is it crucial and necessary to the property?

STEP 5: CONCLUSION

- If you conclude it is a chattel: The item will not run with the land.
- If you conclude it is a fixture: The item will run with the land (s 38 ILA, s18 PLA)

STEP 6: IF IT IS A FIXTURE, CAN IT STILL BE REMOVED?

- **Before a contract of sale is entered:** Owners who attach fixtures to their own land **may remove them** at any time **before entering into a contract to sell the land**
- **After contract is entered into:** **A fixture may not be removed from the land.** A **chattel may be removed from the land at any time** by the owner of the chattel subject to any terms of the contract between the parties.

If relevant on the facts: tenant-landlord relationship:

Step one: Common law

- **Installation of fixtures:** no rule preventing. [Consider doctrine of waste]
- **Removal of fixtures:** tenant can remove a fixture installed by them if it is trade/domestic/ornamental

Step two: Statute

General: S 154A PLA 1958

- (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.**
- **Excludes** general **wear and tear**

Residential lease: S 64 RTA 1997

- A renter **must not install fixtures** or make alterations **without landlords consent**
- Owners must not **unreasonably refuse** modifications made by renter

DOCTRINE OF FIXTURES – CASE LAW

- **Leigh v Taylor:** A tapestry was hanging on a wall. Hanging the tapestry on a wall was the **only way to enjoy it properly:** chattel.
- **NAB v Blacker:** Irrigation system on a farm, made up of valves, sprinkler heads, and pumps on wheels. **Held: a system comprising multiple parts can have each part considered separately.** In this case, each part was found to be a chattel.
- **Belgrave Nominees:** An air conditioning unit on the roof of a house, **attached with bolts.** Inherently a fixture of an office building.

POSSESSION

POSSESSORY TITLE

- The ability to **acquire title to land through possession** was found to **apply in Australia** by the Privy Council in **Perry v Clissold**
- Who has better title? A person who takes possession acquires a 'possessory' interest, good **against the whole world except another person who can show a prior or better right** by virtue of documentary title (**Asher v Whitlock**)
- Person in possession is **presumed to be there lawfully** i.e to have title (fee simple) until this is **disproved** (**Mabo**)
- **Possession** shall amount to something against a 3rd party, however, **will not amount to more than the DTH.** (**Perry v Clissold**)

Jus Tertii claim:

- A **later possessor cannot raise a claim of jus tertii.** That is, a **third party** cannot justify its entitlement to possession **based on showing legal title of another,** who may have the legitimate or 'better' title (**Perry v Clissold**)

RIGHTS OF FINDERS

- Prima facie, the finder of an item will be **enabled to keep it against all but the rightful owner** (**Armory v Delamire**)

RIGHTS AND LIABILITIES OF THE OCCUPIER (PARKER V BRITISH AIRWAYS BOARD):

- The **occupier has better rights** than the finder to things **embedded or attached** to land or a building, **even if they did not know it was there.**
- The **occupier has better rights** to items **inside or on top** of the building only if they have **manifested an intention to exercise control** over the building and the things in it (E.g maintaining a **lost and found facility** in a reasonable manner)
- "Occupiers" of a chattel for example....**vehicles, boats, cars, airplanes,** etc. are treated like the occupiers of **buildings** for these rules.

RIGHTS AND OBLIGATIONS OF THE FINDER (*PARKER V BRITISH AIRWAYS BOARD*):

- No rights are acquired unless the item is abandoned or lost, and the finder must take the item under their care and control to gain rights.
- If the finder takes it into their care with dishonest intent or in the course of trespassing, then they acquire only limited rights.
- The finder only acquires any rights against the world as a whole. The true owner, and anyone with a prior right to keep the item that existed when the finder took it into their care have better rights to the item.
- Employees finding items in the course of their employment are finding it on behalf of their employer (unless there is agreement otherwise).
- The finder has an obligation to inform the true owner that the item has been found and where it is by whatever means are reasonable in the circumstances. In the meantime, they must take care of the item.
- *Waverly Borough Council v Fletcher* held that the finder did not have a right to the brooch considering: Recreational activities of park did not include acts of metal detecting (Unlawful activity to metal detect in park) and the brooch was firmly embedded into the ground.
- Exam Q: Address every finder / occupier separately!!

TENURE AND THE DOCTRINE OF ESTATES

DOCTRINE OF TENURE

- All land is owned by the Crown and all titles to land derive from a grant by the Crown.
- It describes how a person holds a freehold estate in land from the Crown, as the absolute owner.

DOCTRINE OF ESTATES

- Doctrine of estates developed to allow for different people having different rights of possession at different times.
- The nature of the estate determines the extent and duration of the right to possession.
- An estate is a thing separate from the land itself.
- Rights in land which do not give a right to possession are not estates – they are interests in land e.g. mortgages, easements, restrictive covenants

FREEHOLD ESTATES:

- Freehold estates confer a right to possession that has no certain duration – can exist for a lifetime or indefinitely.
- Three types of freehold estates: Fee simple, life estate and fee tail

Fee simple estate:

- The highest and most absolute form of freehold estate legally recognised. Endures indefinitely and is freely inheritable.
- S 60 PLA 1968
- Right to use (sell, gift, rent, retain), alienate (inter vivos – during lifetime; or by testamentary disposition – via will) and exclude.

Life estate:

- The freehold estate is granted to a person, referred to as the life tenant, for the life of a nominated person.
- It can be for the life of the grantee (*Sa Vie*) – granted to X for the life of X.
- It can be for the life of someone other than the grantee (*Pur Autrie Vie*) – granted to X for the life of Y.
- If X was granted a life estate for X's life, and then sells the life estate to W, it becomes *Pur Autrie Vie* – granted to W for the life of X

Reversionary interest

- Where the grantor of a fee simple has not set out where the remainder of the estate will go. (E.g. life estate to X for the life of X, but X dies) ... What happens?
- By presumption, the estate will be reverted back to the grantor.

Remainder interest

- Where the grantor specifies where the title will go after the life estate
- **Vested interest:** E.g. Life estate to X for the life of X, then to B. B will have a right of possession once X dies.
- **Contingent interest:** E.g. Life estate to X for the life of X, then to B, provided they are 25 years old. Once B is 25, they become the owner and will vest title.

Fee tail estate:

- An older form of ownership, no longer used in Australia.
- Was a form of estate which could only be inherited by certain family heirs (e.g. the first born son).
- S 249 PLA: Fee estates cannot be created. Any existing fee tail becomes a fee simple.

DOCTRINE OF WASTE – LIFE ESTATES

- Aims to protect property during the duration of a life estate, requiring a tenant not to cause or permit material decrease in the value of the property. The doctrine of waste protects the interest of future interest holders and maintenance of the land at common law.

Ameliorating:

- Where the estate holder changes the 'character' of the land, to something that the reversioner or remainder-man didn't anticipate.
- May be an alteration to the land resulting in an improvement – least damaging form of waste
- Consider the severity of the changes, costs of rectification and reasonableness of improvement.
- Nominal damages as the law is unclear. However, courts are unlikely to grant an injunction where property value has been improved.

Permissive:

- Tenant allows harm to occur (such as failure to repair or address a leak or water damage etc) PLA s132A(5)

Voluntary:

- It is damage caused intentionally or negligently by the life tenant to the value of the estate. The acts harm the property. E.g. removing cabinetry, hole in the wall.
- PLA s 132A(1) Voluntary waste shall not be committed
- PLA s132A(3) If liability found, damages given to remainder person or reversioner

Equitable (subset of voluntary):

- Tenant causes intentional and serious harm to the property. Impedes the function of the household or the land.
- E.g. removing flooring or windows

Remedies:

- If the life estate owner damages the land, they may be liable in damages to the fee simple owner.
- Remedies for waste include damages or, if the conduct is ongoing, an injunction.
- PLA s132A(3) If liability found, damages given to remainder person or reversioner.

GIFTS OF PERSONAL PROPERTY/CHATTELS

STEP ONE: DONOR MUST HAVE CAPACITY

- It is necessary to consider that the person granting the gift had the mental capacity to understand that the gift is absolute
- In *Re Beaney* just before death, deceased made gift of house to her daughter. Gift set aside on grounds that she had dementia

STEP TWO: DONOR MUST OWN THE PROPERTY

- Was it the person's own property?

STEP THREE: DONOR MUST HAVE THE REQUISITE INTENTION TO MAKE A GIFT

- The donor/owner must intend to relinquish all interest in the property to the donee, rather than allowing the alleged donee to use and enjoy the property.

STEP FOUR: THE DONOR MUST HAVE INTENDED TO MAKE THE GIFT IMMEDIATELY

- The donor must have intended the transaction to take immediate effect as a gift.
- A promise to give something in future not enforceable

STEP FIVE: THE GIFT MUST HAVE BEEN ACCEPTED BY THE DONEE

- Was there acceptance of the gift by the donee?

STEP SIX: THERE MUST BE DELIVERY OF POSSESSION

- Mere words will not be enough (*Re Cole*)
- An oral promise to gift a chattel is not effective unless the chattel is delivered (*Re Stoneham*)

Donee already in possession of chattel (Possession then intention):

- If the donee is already in possession of the chattel, no further act is necessary however, a clear and unambiguous statement of intention is required (*Re Stoneham*)

Donor not in possession of the chattel (Intention then possession): Donee has to effect delivery: