

## RECOGNISED INTERESTS IN LAND

### Numerus Clausus Principle

Property rights are enforceable 'in rem' (against a thing) and contract rights are enforceable 'in personam' (against a person). The numerus clausus principle ('closed list') means landowners are not allowed to customise land rights — they may only establish new rights that fit within tight specifications ('pigeonholes').

### Interests

|                                           |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
|-------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Fee simple</b>                         | The largest interest possibly attainable in land — when buying a house, this is what you acquire. This entitles a proprietor to possession of the land for an indefinite period, subject to only government acquisition, regulation, and other laws.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| <b>Lease</b>                              | This is a time-limited interest in land that entitles the owner to possession. A tenant or lessee is entitled to possession to the exclusion of everyone else (including the landlord/lessor). The landlord still holds the fee simple, but they have a smaller interest in the land which is referred to as 'the reversion'.                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| <b>Mortgage</b>                           | This is a small interest in land that the owner of a fee simple (or lease) gives to another in return for money. The owner of the land is the mortgagor and the person who gives the money is the mortgagee. A person (usually) will give a bank a smaller interest in their land in return for a sum of money. A mortgage includes a contractual promise to repay all of the money borrowed ('the personal covenant'). If the mortgagor does not keep the promise, the mortgagee can sell the land to cover the debt.                                                                                                                                                                                                                                        |
| <b>Easement</b>                           | A right to do something on someone else's land, such as to drive or walk across the land or run a pipe or wires across it. Outside statute, easements always affect two pieces of land — the land benefitted is the 'dominant tenement' and the land burdened is the 'servient tenement'. Easements 'run with the land', whoever owns the benefitted land can use the easement, and whoever owns the burdened land must put up with it.                                                                                                                                                                                                                                                                                                                       |
| <b>Restrictive (or freehold) covenant</b> | This is a right to stop someone doing something on their land, e.g., a right to prevent a neighbour building above two stories and blocking a harbour view. Like easements, restrictive covenants often impact more than one piece of land; they affect land that is 'benefitted' (cannot have its view blocked) and 'burdened' (land that cannot have more than one storey).                                                                                                                                                                                                                                                                                                                                                                                 |
| <b>Profit a prendre</b>                   | The right to gather naturally occurring materials from another's land, e.g., the right to quarry, cut timber, or shoot rabbits.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| <b>Charge or lien</b>                     | A limited interest in land which is equivalent to an amount of money owed to the owner of the charge or lien. If the land is sold for any reason, the owner of the lien had a right to be paid directly out of the proceeds of the sale. This is useful if the debtor is bankrupt or insolvent and owes more money to people than they can pay, like a mortgagee, the owner of a lien will be paid ahead of unsecured creditors. Charges are created expressly by landowners and liens arise from law. If a vendor is not paid the full price for a property — but transfer the title nonetheless — a vendor's equitable lien automatically arises. This is an equitable interest in land equivalent to the amount of the purchase price that remains unpaid. |

There are two forms of rights, property rights, and contractual rights. Property rights (*in rem*) attach to land and are enforceable against everyone. Contractual rights (*in personam*) are only enforceable against the other party to the contract, due to the rule of privity. The right to create new property rights (easements, covenants, etc.) is pertained to in the **Conveyancing Act 1919 (NSW) s 88B**, this allows developers to formalise obligations that bind current and future landowners to these property rights.

### FIXTURES AND CHATTELS

| <b>Fixtures (part of the land)</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | <b>Chattels (personal property)</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| The doctrine of <b>fixtures</b> holds that a fixture is a chattel affixed to land other than by its own weight, such as being bolted down, concreted in, etc., this is presumed to be part of the land.                                                                                                                                                                                                                                                                                                                                                                                                                                                 | A <b>chattel</b> is that which is only resting on the land with its own weight, something like this is <b>presumed</b> to be a chattel.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| <b>Landlord's Fixtures</b><br>Items that have been attached to the land or building with the objective intention of permanently improving the property itself. Since they satisfy the legal test for a fixture (degree and object of annexation), they merge with the land and become the property of the landlord. A tenant cannot remove these when their lease ends. Examples include built-in wardrobes, a newly installed ducted air-conditioning system, or a refitted commercial kitchen (where the intention is to permanently upgrade the premises).<br><br>If it is permanently improving the building, it is a landlord's fixture and stays. | <b>Tenant's fixture</b><br>Items firmly attached to the property by a tenant specifically for the purpose of their trade, domestic convenience, or ornamentation. Even though these items are technically attached securely enough to be classified as fixtures (meaning they temporarily become part of the land), the law recognizes a special exception. The tenant retains a <b>right of removal</b> . The tenant is legally permitted to detach and take these items with them when they leave, provided they do so before the lease expires and they repair any damage caused by the removal. Examples include bookshelves bolted to the wall for safety (domestic convenience), heavy machinery bolted to a factory floor by a manufacturing tenant (trade), or light fittings installed by the tenant (ornamentation).<br><br>If a tenant attached it just to run their business or make their life easier, it is a tenant's fixture, and they can take it when they leave. |

1. Degree of Annexation:

- a. Chattel resting on its own weight is *prima facie* a chattel; onus on person asserting it is a fixture **Ref Metal**.
  - b. Chattel attached to land (even slightly) is *prima facie* a fixture; onus on person asserting it is a chattel.
- 2. Object/Purpose of Annexation:
  - a. Was the item attached for the **better enjoyment of the land** (Fixture) or the **better enjoyment of the chattel** (Chattel)? **Ref Reid**
  - b. Determined **objectively** by circumstances "patent for all to see".