Property Exam script

Fixtures and Chattels

Issue: Is the {insert item] a fixture or chattel?
The issue is whether the [insert item] should be classified as a fixture that forms part of the land and passes with it or a chattel that remains the personal property of [insert party]. The classification is crucial, as fixtures are included in the transfer of land, whereas chattels are not.
Legal test- Degree and purpose of annexation
The leading authority is Holland v Hodgson (1872) LR 7 CP 328, which establishes a two-step test. 1. **Degree of annexation:** if the item is physically affixed to the land (e.g. bolted, nailed, embedded) it is presumed to be a chattel. **Purpose of annexation:** this presumption can be rebutted. If the item was attached for the enjoyment of the land to improve to the premises, it is likely a fixture. If it was affixed merely to use or enjoy the item itself, it is more likely a chattel.
Application
Step 1: Degree of Annexation On the facts, the [insert item] was [insert attachment method- e.g. “bottled to the wall”, “resting on the floor by its own weight”]. According to Conti J in NAB v Blacker (2000), “whatever is affixed to the soil becomes part of the soil.” This Physical connection created a presumption that the item is a [fixture/chattel], demanding on how firmly and permanently it is integrated. If removal would cause damage to the item, the premises, or both, that supports classification as a fixture. Further, if the structure of annexation suggests performance- such as multiple bolts or wiring- that also points to the item being a fixture. Where the cost of removal is signification and exceeds the value of the item, the presumption is even stronger. Step 2: Object of Annexation The court must then assess the objective purpose behind affixing the item. If the item was attached to improve the land utility, function, or value, it is more likely a fixture. If it was attached merely to enjoy or operate the item, it remains a chattel. → In Leigh v Taylor, tapestries affixed to the wall were held to be chattels because their attachment was essential to their enjoyment, not to improve the building. → In Belgrave Nominees, air conditioners were deemed fixtures because they were necessary for the premises’ commercial use. On the facts, the [insert item] was used [insert purpose – e.g. “to service the land”. “as a temporary measure”, “to provide personal convenience”]. If the property layout was designed around the item, or the item is integral to its function, this supports a fixture classification. If it was temporary, superficial, or intended to move between locations, it suggests a chattel.

The nature of the chattel also matters. Some objects, like ovens or ducted systems, are inherently designed for long-term installation. If the items removal would require repairs or affect the function of the premises, this indicates permeance. In contrast, furniture or decorative pieces are often chattels, even if lightly affixed.

Counterargument- Arguments for Chattel Classification

It may be argued that the [insert item] is a chattel because [insert reason-e.g. "it is easily removable', 'it was installed for personal use', 'the contract stated it was not part of the land"]/. However, removability is not conclusive. In Coroneo, the theatre seats were removable, but were still fixtures because they were necessary for the operation of the premises. Similar, subjective labels such as "removable" are not determinative unless they align with the objective facts.

On the Facts, the chattel argument is [weak/moderate/strong], but it ultimately [likely/ unlikely] to succeed given the degree of attachment and objective purpose of use.

Conclusion

It is [likely/ unlikely] that the [insert item] is a fixture. Applying the two-step test from Holland v Hodgson, and considering case law including Belgrave, Coroneo, and Leigh v Taylor, the item's degree of annexation and it's objective purpose strongly suggest that it [does/ does not] form part of the land and therefore [will/ will not] pass the title.

Doctrine of Tenure and Estates

Issue: What type of estate does [insert party] hold in the land

The issue is where [insert party] holds a valid recognised proprietary interest in the land, and if so, whether that interest is correctly characterised as a fee simple, life estate, remainder or reversion. This requires application of the doctrines of tenure and estates.

Doctrine of Tenure- All land ultimately derives from the Crown

Under the doctrine of tenure, all land in Australia is ultimately held from the crown, which retains radical title. Individuals cannot "own" land obsoletely; rather, they hold estates carved out of the Crown's title.

→ In Mabo v Queensland (No 2) (1992) 175 CLR 1, the High Court confirmed that while the Crown holds radical title, estates granted under the common law convey beneficial ownership.

On the facts, [INSERT PARTY]'s title originates from a Crown grant or registration under the Torrens system, meaning the interest is consistent with the doctrine of tenure.

Doctrine of Estates- Interests are categorised by duration

Under the doctrine of estates, proprietary interests in land are classified according to their duration. In Victoria, the recognised estates include:

A. Fee simple

A fee simple is the largest estate recognised at law. It grants potentially perpetual ownership and carries full rights of alienation and inheritance.

coupled with a grant, or a contractual licence. If it is a contractual licence and was wrongfully revoked, [INSERT PARTY] may pursue contractual remedies, but lacks proprietary standing to enforce it against third parties.

Can a Contractual Licence be Revoked?

Issue:
Can [INSERT PARTY] revoke the contractual licence, or will equitable remedies prevent this?

Rule:
At common law, a contractual licence is revocable, but this revocation may give rise to a breach of contract claim by the licensee (Cowell v Rosehill Racecourse). However, equity may intervene and restrain revocation by granting injunctions, specific performance, or damages if discretionary factors support it (Heidke v HR Productions).

Discretionary Factors to Guide Equitable Relief:

1. Express or implied promise not to revoke: Courts may enforce this promise even if informal (Cowell).
2. Adequacy of damages: If damages are not an adequate remedy, specific performance or injunction may be appropriate (Heidke).
3. Continuing relationship between the parties: Ongoing dealings may support equitable protection (Heidke).
4. Other discretionary factors: Public interest, clean hands, undue hardship, or triviality may influence the court's decision.

Application
On the facts:

- If the licence was granted under an express or implied term not to revoke **it** prematurely, equity may enforce that term
  → [INSERT FACT – e.g., "licensor agreed in writing the stall could remain for 6 months"].
- If damages are not sufficient to remedy the loss caused by revocation
  → [INSERT FACT – e.g., "the licensee invested in infrastructure based on continued access"],
  this supports granting an injunction or specific performance (Heidke).
- If there is a continuing relationship between the parties
  → [INSERT FACT – e.g., "monthly licences for a recurring event"],
  equity is more likely to intervene to preserve that relationship.
- However, if the breach is trivial, or enforcement would cause undue hardship to the licensor
  → [INSERT FACT – e.g., "the site is needed urgently for redevelopment"],
  courts may deny equitable relief**.**

Conclusion:
While [INSERT PARTY] may legally revoke the licence, [INSERT OTHER PARTY] may

express release, unity of title, or satisfy the statutory threshold in s 73 TLA. If none of these apply, the easement likely remains enforceable**.**

Easement and the Torrens System

Issue:
Does the easement over [INSERT ST LAND] remain enforceable under the Torrens System, and is it protected despite the principle of indefeasibility?

Rule:
Under the Torrens System, registration of an interest in land provides the registered proprietor with indefeasible title (s 42(1) Transfer of Land Act 1958 (Vic) ('TLA')). However, there are exceptions under s 42(2) TLA that allow certain unregistered or equitable interests to bind the registered proprietor.

Relevantly, s 42(2)(d) TLA provides that easements, whether registered or unregistered**,** can bind the registered title if they are implied under statute or created by prescription or long use, or otherwise protected by statute.

Therefore:

- Registered legal easements are enforceable against successors in title due to their appearance on the title register.
- Unregistered or equitable easements may also bind a registered proprietor if they fall within an exception to indefeasibility under s 42(2), such as implied easements (e.g. s 12(2) Subdivision Act 1988 (Vic)) or prescriptive easements (e.g. long user for 20+ years under *Sunshine Retail*).
- Even equitable easements arising from estoppel, part performance, or an enforceable contract may bind successors if they fall within s 42(2)(d) or are protected by caveat.

Application:
Registered Easement
On the facts: If the easement benefiting [INSERT DT OWNER] is duly registered on the title of [INSERT ST LAND], it will clearly bind the servient land under s 42(1) TLA, as registered interests enjoy indefeasibility. [INSERT ST OWNER] cannot defeat this easement claim.

Equitable or Unregistered Easement
On the facts: If the easement was not registered, but arose from implied rights (e.g. necessity, common intention, or under the Subdivision Act), or from long use exceeding 20 years (Sunshine), it may still bind [INSERT ST OWNER] under s 42(2)(d). For example, [INSERT DT OWNER] may rely on an implied easement under s 12(2) SDA if the right is necessary for reasonable use and consistent with the common property use.