

Property Law in New South Wales

LAW216 Macquarie University

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1. Introduction to Property

WHAT IS PROPERTY?

CATEGORIES OF PROPERTY

Real Property

Personal Property

SOURCES OF AUSTRALIAN LAND LAW

- *Conveyancing Act 1919* (NSW)
- *Real Property Act 1900* (NSW)
- Common law

LIMITS OF LAND

PHYSICAL BOUNDARIES OF LAND

Rights above the surface

- *Davies v Bennison* (1927) 22 Tas LR 52
- *Bernstein of Leigh (Baron) v Skyviews and General Ltd* [1978] QB 479
- *Woollerton v Costain* [1970] 1 WLR
- *LJP Investments Pty Ltd v Howard Chia Investments* (No 2) (1989) 24 NSWLR 490
- *TCN Channel Nine Pty Ltd v Ilvari* (2008) NSWLR 323.
- The Conveyancing Act NSW s 88K

Rights below the surface

DOCTRINE OF FIXTURES

FIXTURES AND CHATTELS

- *Holland v Hodgson* (1872)
- *A-G v RT Co Pty Ltd* (1957)
- *Vopak Terminal Darwin Pty Ltd v Natural Fuels Darwin Pty Ltd* [2009] FCA 742.
- *Re Cancer Care Institute of Australia Pty Ltd* [2013] NSWSC 37.

WHAT IS PROPERTY?

- Undecided and a lot of issues.
- Not about the 'thing' itself.
- Instead, about the rights associated with that 'thing' e.g. to exclude others from it.

CATEGORIES OF PROPERTY

1. Real Property

2. Personal Property

Real property

- Includes Land.
- Land cannot be moved and is permanent.
- Ownership can be split (physically and according to doctrine of estates).

Personal property

- Moveable, tradeable and generally valuable in monetary terms.
- Includes tangible and intangible property (e.g. intellectual property).

- Most forms have a limited life (even intellectual property like trademarks).

SOURCES OF AUSTRALIAN LAND LAW

- *Conveyancing Act 1919* (NSW)
- *Real Property Act 1900* (NSW)
- Common law of contract, tort and equity

LIMITS OF LAND

Courts refer to Latin Maxims- *Cujus Est Solum Ejus Est Usque Ad Coelum Et Ad Inferos* (land is owned from the heavens above to the centre of earth).

How can something be considered land?

1. It can fall within the legal definition of land or real property.
2. It can have acquired legal status as part of land through doctrine of fixtures.

PHYSICAL BOUNDARIES OF LAND

Rights above the surface

Davies v Bennison (1927) 22 Tas LR 52

- Defendant had shot neighbours cat and owner brought action in trespass.
- Trespass occurred irrespective of shooting, damages given.

Bernstein of Leigh (Baron) v Skyviews and General Ltd [1978] QB 479

- Baron objected when defendant flew over his property and took photos.
- Baron's claim dismissed, justice talks about balance b/w owner and public.
- 'Such height as is necessary for the ordinary use and enjoyment of his land and structures on it.' - No set limit.

Woollerton v Costain [1970] 1 WLR

- Considering whether a crane 15 metres above P's land was trespass.
- Intrusion was a trespass but delayed the injunction until after the building was completed.
- This is because P had been offered money and there was also no precedent (now there is).

LJP Investments Pty Ltd v Howard Chia Investments (No 2) (1989) 24 NSWLR 490

- Mandatory injunction of scaffolding.
- Injunction granted.
- Not that intrusion actually interferes, but that it may.

TCN Channel Nine Pty Ltd v Ilvari (2008) NSWLR 323.

- Exemplary damages awarded against Channel Nine for conduct of a couple of their journalists from A Current Affair.
- Didn't matter that what they were saying was false.
- Problem was that they wouldn't leave when asked.

The Conveyancing Act NSW s 88K

- Court can make an order imposing an easement over land.
- If it is reasonably necessary for effective use or development of other land that will have benefit of the easement if:
 - Use of land won't be inconsistent with public interest;
 - And owner to be burdened can be adequately compensated for loss or other disadvantage arising from imposition of easement.

Rights below the surface

- Gold and silver are considered to be royal minerals and they belong to the Crown at common law.
- Most crown grants in NSW reserve minerals to the Crown.

DOCTRINE OF FIXTURES

There is a need to distinguish between a Fixture and a Chattel

Fixture- Part of Land.

Chattel- Take with you.

Sale of Land

- 'Inclusions'- air conditioners, carpet etc.
- E.g. plant and landscaping installations; pool equipment, cubby house.

Mortgagee Sale

- Mortgagee's security includes fixtures see *National Australia Bank v Blacker* (2000) 104 FCR 288.

Landlord and Tenant

- Tenant may remove some fixtures on termination of lease see *Vopak Terminal Darwin v Natural Fuels Darwin Pty Ltd* [2009] FCA 742.

Life Tenant/Remainder

- LT normally can't use up the land.

Leigh v. Taylor [1902] A.C. 157 (H.L.).

- Tapestries affixed, needed to decide if they should stay as part of it or if next of kin could take it.
- Fixing was only way to display them- no intention to benefit the estate by making tapestries part of the land.

Legatees Under a Will

Farley v Hawkins & Ors [1996] QCA 520.

- Farley died, second husband took dishwasher and tried to take garden shed.
- Question was who was entitled.
- Removal was not okay, they were fixtures.

DISTINGUISHING BETWEEN FIXTURES AND CHATTELS

'Quicquid plantatur solo solo cedit'

Whatever is affixed to the soil is part of the soil

- No firm set of rules.
- It all depends on the circumstances but the primary indicator is the intention with which person who affixed it put it there.
- Though the intention is objectively decided.
- Thus one painting may be a fixture in one case but not in another.

Holland v Hodgson (1872) LR 7 CP 328

- Whether something was affixed to soil depended on:
 - The degree of annexation and;
 - The object of annexation.
- Looms attached to the floor of a mill by nails driven through holes in their feet easily removable and attached in this manner to keep them steady in use were fixtures because their value was to enhance the mills value and usefulness.

Sanwa Australia Leasing v National Westminster Finance (1988) 4 BPR 9514

Powell J:

- Look at nature of chattel.
- Manner in which it is usually or most conveniently used.
- Degree of annexation.
- Time for which it has been annexed.
- Purpose for which it was annexed.
- Statements of intention made by, or arrangements b/w owner of chattel and owner of realty.

A-G v RT Co Pty Ltd 1957:

- Substantial printing presses, each weighing 45 tonnes and secured by nuts and bolts to a concrete foundation so as to keep them steady in operation were not fixtures because they were affixed in this way for their more efficient use as presses.

National Australia Bank Limited v Blacker (2000) 104 FCR 288

- Whether irrigation equipment were fixtures or chattels.
- Held to be chattels.

Vopak Terminal Darwin Pty Ltd v Natural Fuels Darwin Pty Ltd [2009] FCA 742.

- Tenant/Landlord relationship- normally required to remove fixtures but they didn't.
- Computer control system for biodiesel plant.
- Thus landlord entitled to keep equipment.
- Object of attachment was use of premises as a whole as a manufacturing plant on long term basis.

Re Cancer Care Institute of Australia Pty Ltd [2013] NSWSC 37.

- 8.9 million dollar machine affixed to floor for administering radiation treatment to cancer patients.
- Affixed by concreting in of a steel frame.
- Machine was not a fixture. It was affixed in the way it was for the better operation of the machine.

SUMMARY: WHAT TO LOOK FOR

- Degree to which thing is affixed.
- Whether it can be removed without damage.
- Function of item, is it attached for better enjoyment of land or better enjoyment of thing itself (e.g. printing presses attached to floor to keep steady). Intention most important consideration in these cases.
- Powell J's list.

