

Doctrine of Fixtures

- Chattels may change character from personal to real property

STEP 1: Degree of annexation test (*Belgrave Nominees*)

- *Belgrave Nominees*: If a chattel is fixed to land to any extent by any other means than its own weight, then it is prima facie a fixture and the BOP is upon any person who asserts it is not
 - If it lies on the land, raises a presumption it is a chattel
 - If it has been securely fixed, and particularly if it has been fixed so that it cannot be detached without substantial injury to the thing itself, this supplies evidence that a permanent fixing was intended
- *Leigh v Taylor*: Degree of annexation is only one circumstance, and not always the most important

STEP 2: Object of annexation test (*Belgrave Nominees*)

- *Belgrave Nominees*: look at surrounding circumstances – including:
 - The character of the object,
 - Relationship of the parties,
 - Subjective intention of the person who affixed the object in the first place
 - *Hobson v Gorringe*: A gas engine became a fixture, despite provisions in the agreement to the contrary
- Objective test, looking at these factors including subjective intention (*Permanent Trustee v Esanda*)

STEP 3: Specific Applications of the tests

1. Tapestries
 - *Leigh v Taylor*: Tapestry wasn't a fixture because there was no intention to dedicate these tapestries to the house, and the tapestries weren't able to be enjoyed without being fixed
2. Contracts
 - *May v Ceedive*: A contract may not be decisive, nor may the intention of one of the parties
 - The appellant signed a contract for sale which specified that the appellant only owned the house, and not the land
 - May's intention didn't matter – it was the intention of the person who affixed the house
 - If you moved the house you would probably ruin it ∴ fixture
3. Cinema Chairs
 - *Australian Provincial Co Lt v Coorneo* (1938): a theatre contained a row of seats bolted to the floor – held they remained chattels because the seats were regularly moved around
 - *Vaudeville Electric Cinema Ltd v Muriset* (1923) – cinema chairs were bolted in place and were fixtures
4. Irrigation equipment

- *National Australia Bank v Blacker* (2000) – items of irrigation were chattels, because they rested on their own weight and could be easily removed
- *Litz v National Australia Bank* (1986) irrigation equipment was a fixture because damage would occur if they were removed

5. Houseboats

- ***Chelsea Yacht and Boat Co Ltd v Pope*** (2001) - Houseboats that are moored – don't become a fixture unless they are moored very permanently

6. Tenant's fixtures

- Common law rule: Permits a tenant to remove any trade, ornamental and domestic fixtures affixed by the tenant during the term of the law
 - Right to remove is before the expiry of the lease, or if the lease doesn't have an expiry date within a reasonable time at the end of the lease (*D'Arcy v Burrell Investments Pty Ltd*)
- *New Zealand Government Property Corp*– If a tenant surrenders his lease and vacates the premises without removing his fixtures, he is held to have abandoned them

7. Agricultural and residential tenancies

- Statutes generally allow tenants to remove agricultural fixtures that they affixed, but with the landlord having an option to buy

8. Chattels annexed without permission

- General rule: in the absence of agreement, a person who annexes a chattel to the owner's land has no right to recover it
- *Chateau Douglas Hunter Valley Vineyards*: Neither party knew that the winery was not situated on the winery company's land, but held the winery were fixtures to the vineyard
- *Brand v Chris Building Society Pty Ltd*: The defendant accidentally built a house on the plaintiff's land instead of the adjoining block
 - Held plaintiff was entitled to possession, as long as the mistake was not induced by unconscionable or dishonest conduct of the plaintiff