Law of Real Property 1
2018-2019

Lecture 6

Fixtures

- **LEARNING OBJECTIVES**
- By the end of this lesson, you should be able to:-
  - **Define the terms "chattel" and "fixture".**
  - **Explain the significance of the maxim "*quicquid plantatur solo, solo cedit*".**
  - **Define and explain what is meant by "tenants' fixtures".**
  - **Explain and critically discuss the tests for determining whether an object is a fixture.**
  - **Apply the tests for determining whether an object is a fixture.**
  - **Apply the tests for determining whether a fixture can be removed.**

- Megarry and Wade has a nice section on fixtures (in the chapter on leases). I recommend reading this for a background and then turning to Professor Owusu for further elaboration and the Caribbean perspective on chattel houses. Make sure that you read the chattel house cases to see why they were decided in particular ways.

- Picture this: you as student rent a room in West Terrace, or move into one of the dorm rooms on campus. Your parents (or significant other) arrive and decide that it is not good enough for you. Before the week is out, they have installed built-in shelves, carpets, curtains, security bars, and chandeliers. When you move out, are you entitled to take all these things with you?

Defining fixtures

- Land = anything attached or affixed to the land. This includes houses and buildings.
- Chattels = objects which are not attached to the land in any way and may be removed by their owner.
- Fixture = a chattel which has become so merged with land so as to become part of it.

Defining fixtures

- Fixtures pass with ownership of the land.
- A chattel does not.
- Whether a thing is a chattel or fixture is relevant:
    i. on sale of the property;
    ii. succession; and
    iii. at the end of a tenancy.

Chattel or fixture?

- It is not always easy to determine whether an object is a fixture.
- Per Blackburn J. in **Holland v. Hodgson** (1872) L.R. 7 C.P. 328, 335: "It is very difficult if not impossible to say with precision what constitutes an annexation for this purpose (of distinguishing what is a chattel or fixture on land)."

Chattel or fixture?

- It depends on the facts of each case: **Leigh v Taylor**.
- It depends on the intention of the annexor.
- Intention is considered objectively.
- Two major tests emerged over time to determine intention:
  1. The degree (mode) of annexation
  2. The object (purpose) of annexation

- The first test is the nature of annexation. The general principle is that anything which is substantially annexed to the land becomes the property of the land owner. However, with advances in technology so that affixing and removing has become much easier, this test is no longer as important.

Chattel or fixture?

The nature of annexation test:

- If an object is resting on its own weight, it is presumed to be a chattel unless there is evidence of a contrary intention.

Chattel or fixture?

The test involves considering:

A. the mode and structure of the annexation (**Holland v Hodgson)**.

B. would the removal of the object damage the building or land to which it is attached (**Berkeley v Poulett)**.

C. whether the removal would destroy or damage the attached object (**H. E. Dibble Ltd. v. Moore)**.

Chattel or fixture?

The purpose of annexation test:

- Once it is determined that the item is substantially annexed, the next question is whether the chattel owner has the right to remove it.
- The cases suggest this is **the primary or substantive test**.

There are two situations where the right to remove arises

- Where the chattel is affixed for its more convenient use as a chattel rather than for the permanent improvement of the land or building: Cheshire and Burn, Modern Law of Real Property (16th ed.), p. 152.

- Where the chattel owner is a tenant (life or lease) and the chattel is a *tenant's fixture*, attached for certain purposes.
  - For decorative domestic use, e.g., bells
  - For trade or industrial use, e.g., stills, vats, shrubs planted by market gardener, and the fittings of a store or pub.
  - Agricultural use (this is by statute only).

- So where a tenant rents an empty space in the mall and brings in everything to outfit his store, he can take it all back with him when he is leaving.

- Remember that exception #2 only applies to tenants. They must be a life tenant or a leasehold tenant. Where Jack gives Blackacre "to my darling Wife Jill for life and then to my children John and Jenny", then, when Jill dies, her estate can remove her tenant's fixtures in exactly the same way as though she had been renting. The chattel owner must remove the item within a reasonable time after the end of the tenancy.

What happens if a landowner Lulu dies, leaving all her Real Property to Ricky and all her Personal Property to Peter? Peter can remove anything from the house that isn't nailed down. He cannot take anything that is nailed down unless it falls into exception #1, i.e., affixed for the purpose of enjoying the chattel. So he can remove pictures and curtains, but not built-in shelves, security bars, etc. In this case, exception #2 does not apply since the chattel owner (Lulu) was not a tenant.

- Similarly, where a vendor is selling land, it is customary that all his fixtures are sold with the property. He does not have the right to remove them unless they fall into exception #1.

- The case *Botham v TSB Bank* [1997] 73 P&CR D1 discussed the tests for removal of chattel.
- In that case, the mortgagee bank sold the property to recover the funds owed to them. There was still a shortfall. The mortgagor argued that he should be given credit for certain items which could have been sold separately. The Court went through the list and decided that the following were fixtures: bathroom fittings such as marble panes, soap dishes, towel and toilet paper holders and the kitchen sink. The Court also said, obiter, that carpet tiles which were stuck down would have been fixtures. However, the curtains, carpets, drapes, blinds, kitchen appliances and light fittings such as chandeliers and lamp shades were found not to be fixtures.

- In *Berkley v Poulett*, a house was sold by auction, following which the original owner removed certain pictures, a marble statue and a sundial. The new owner sued him, saying that those items were fixtures and should have remained. The Court found that they had been affixed for the purpose of enjoying them as chattel, and considered them very much a matter of taste rather than as items for the enjoyment of the land.

- Helpful article: http://www.falcon-chambers.com/images/uploads/articles/Battles_about_chattels.pdf

Statutory Provisions

- In Guyana and Belize, the Property Acts specify that the quicquid doctrine does not apply in landlord and tenant situations. This means that tenants are entitled to remove anything that they have brought onto the land. However, where the item is a fixture:
  - The tenant must give the landlord notice of removal.
  - The tenant can only remove if he has paid all monies owed (including for any damage which comes from the removal)
  - The landlord is ***entitled*** to pay fair compensation and keep the item
  - The Court's only jurisdiction is to determine what a fair price would be
- So the statute gives the tenant increased rights on the one hand, but then provides that his property can be acquired whether he likes it or not! Notice that the Act does not define what a fixture is – it still relies on the common law.

- In Barbados, the Act is similar, except that:
  - The tenant does not need to give the landlord notice
  - Items can be excluded by agreement (it is suggested that this would also be the case in Belize and Guyana even though it is not mentioned in the Act)
  - The Court has the jurisdiction to decide whether the landlord is entitled to the property. (And a landlord would have to give a good reason for depriving the tenant of his property!)

- Again, the Act does not define what a fixture is.

Answering Questions about Fixtures

- DO NOT jump straight in to the test for removal, or into a description of tenants' fixtures. Instead, state the doctrine of *quicquid plantatur solo solo cedit* (even if you cannot remember the Latin) and what it means. Then you can discuss what it means for a tenant, and go into the tests for removal. Mention any general principle before you tackle exceptions.
- This is one of those questions where there are not a lot of issues – it is almost like an essay question in disguise. You can discuss all the law first, and then apply that law to the items individually.

Defining fixtures

- The maxim *"quicquid plantatur solo cedit" applies.*
- The maxim in statute:

  Section 2, Barbados Property Act

  Section3, Conveyancing Act, Jamaica

- Abolished in some jurisdictions in respect of tenants' fixtures – s. 13 Landlord and Tenant, Belize

Summary of lesson

- Land includes those things which are attached to land.
- Chattels are movable items of property, not attached to land.
- Fixtures are chattels which are attached to land so as to become part of the land.
- Some fixtures known as tenants' fixtures may be removed by a tenant at the end of the tenancy.