Law of Real Property 1
2018-2019

Lecture 7
• https://www.youtube.com/watch?v=5XyvN80VUvc at 4:57.
Fixtures 2

- **LEARNING OBJECTIVES**
- By the end of this lesson, you should be able to:
  - Define “chattel house”.
  - Explain the significance of the decision in *Mitchell v. Cowie* in Commonwealth Caribbean jurisprudence.
  - Critically examine the law concerning chattel houses in the Commonwealth Caribbean.
  - Describe tenants’ fixtures and the common-law principles governing their removal.
  - Critically assess the statutory provisions governing the tenant’s rights to remove certain fixtures.
  - Critically examine the law concerning the classification of chattel houses in the Commonwealth Caribbean.
Chattel houses
Chattel houses

**Definition:**
“a wooden structure which was used for human habitation but which, because of its structure, modest size and lack of solid foundations, could (physically and legally) be removed to another site. So if it had been built by a tenant he could remove it at the end of his tenancy.” – para. 17, per Lord Walker in *Ramdass v. Bahaw-Nanan* [2009] UKPC 51.
Chattel houses

- Arose from the system of land tenure following the emancipation of slavery.
- They are a vestige of tenancy arrangements which developed between planters and ex-slaves in some territories.
- The origin is described by Owusu in his text at pp. 46-47. This was recognised and cited with approval by the Privy Council in [Gopaul v Baksh (2012) UKPC 1] at para. 4.
Chattel houses

In the older cases, the judges really exercised their minds as to whether chattel houses were realty or personalty.

Per Wooding CJ in *Mitchell v Cowrie*: there are two types –

1. Chattel house *sui generis* (pure personalty) and
2. Chattel houses which have merged with the land and are fixtures.
Chattel houses

• Six considerations must be borne in mind per Wooding CJ in **Mitchell v Cowie**:  

1. Intention – a house may be a chattel or a fixture depending upon whether it was intended to form part of the land. This intention is objectively ascertained.

The considerations (listed as 2-6 below) which follow this determine intention.
2. Physical annexation – whether or not the house is affixed to the land.

3. If the house rests on its own weight, it will generally be held to be a chattel (Holland v Hodgson) unless the circumstances show a contrary intention.

4. If it is even slightly affixed to the land, the presumption arises in favour of it being a fixture. This presumption will only be displaced, if the facts show an intention that it remains a chattel.
Chattel houses

5. Where the house has been affixed to land by a tenant, the primary consideration is the purpose or object of the annexation (purpose of annexation test) i.e. the purpose served by the annexation NOT the purpose intended by the tenant.

6. Is the affixation temporary for the use of the house as chattel or permanent for the better enjoyment of the land (Leigh v Taylor). The tenant’s intention to remove the house at the end of the tenancy does not make the affixation temporary.
• In more recent cases, however, this particular analysis has not been necessary.
• The court has been helped by the fact that, in line with modern usage, recent statutes expressly provide for “chattel houses” that are really permanent structures.
• E.g. In Trinidad, The Land Tenants (Security of Tenure) Act, 1981 provides:
  – “'Chattel house' includes a building erected by a tenant upon land comprised in his tenancy with the consent or acquiescence of the landlord and affixed to the land in such a way as to be incapable of being removed from its site without destruction".
• Make sure that you read the cases carefully to see what is actually being debated.
• Mitchell v Cowie (also called Mitchell v Forde)
• **Sale of Goods Act:** item may be sold twice, second purchaser takes possession.
• **Real Property Law:** only first purchaser becomes true owner.
• DF rented land from Cowie and built house. She sold the house to Cowie but did not move out. She then sold the house to Mitchell and ran off with the money.
• Mitchell moved in. Tried to claim that house was chattel and she could keep possession. Court said it was a fixture.
• NB: Even if it was under Sale of Goods Act, M would have lost as C had registered his title.
The 2010 case *HV Holdings Ltd v Incorporated Trustees of the Presbyterian Church of Trinidad and Tobago* (Trinidad and Tobago) shows how the focus of the discussion has shifted. Because that case fell under the *Land Tenants (Security of Tenure) Act*, there was no real issue about the meaning of “Chattel house”. However, the court still considered the history of chattel houses.
• In that case, a church had rented a plot of land from a landlord since 1946. They built a wooden church, and, around 1958 a house for the minister. Rent for the entire plot was 48c per year(!).

• The landlord brought an ejectment action. The tenants claimed that they were statutory tenants as the Act protected the manse. All of the courts up to the PC agreed. There was nothing in the Act to exclude commercial use
Conveyancing
So, I have this property here to sell you.
• What are the first things you should ask?
• The price? The location? Those are all good questions, but they are not the one I am looking for. The first question you should ask is: Whether it is mine to sell!!! Caveat emptor!!!

• Does it have to be mine in order for me to sell it? Who are the people that might have legal title?
  – Owner / Co-Owner
  – Trustee
  – Mortgagee
  – Personal Representative
  – Squatter
How do you validate a right to sell?

• A ‘conveyance’ is a document which transfers title. You can think of it as a sophisticated bill of sale or invoice. In Guyana this is called a ‘Transport’.

• Conveyancing is the branch of law which deals with transferring land.

• There are two systems: Registered and unregistered
Unregistered conveyancing

A complex system which requires investigation of title. The owner is required to show how he obtained title, usually by showing the conveyance from the previous owner, and the conveyance from the owner before that, going back 20-60 years (depending on which territory you are in).

Lot 42, Enterprise, Christ Church

- 1987, Data purchased from Spock
- 2002, Data leaves to Bashir in his will
- 2008, Quark sells to Neelix
Registered Conveyancing

• A hundred years ago, someone decided that there had to be a better way: a government database of title. A government agent conducts a full investigation Quark’s title. Once satisfied that Quark is entitled to sell, the agent enters the plot of land into the database. When Quark is ready to sell the land, the purchaser can simply check the database. After the sale, Quark’s certificate of title is destroyed, and the purchaser is registered in the database. This system is called ‘Registered Conveyancing’. As you can imagine, it is much, much simpler than the other method.

• Why aren’t all properties Registered? In some islands they are. However, there is a cost to the government for registering (e.g., the legal fees involved in investigating titles), so that the process is not complete in all of the islands.