

UNIVERSITY OF THE WEST INDIES FACULTY OF LAW REAL PROPERTY I
Worksheet 4
2018-2019
FIXTURES

LEARNING OBJECTIVES

By the end of this lesson, you should be able to:-

- Define the terms “chattel” and “fixture”.
- Explain the meaning and significance of the maxim “*cuius est solum eius est usque ad caelum ad inferos*”.
- Discuss to what extent the maxim “*cuius est solum eius est usque ad caelum ad inferos*” reflects the modern state of the law.
- Outline the meaning and application of the *ad medium filum* rule;
- Define the term “fixture”.
- Define and explain what is meant by “tenants’ fixtures”.
- Explain the significance of the maxim “*quicquid plantatur solo, solo cedit*”.
- 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.
- 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.

Required General Readings:

- S. Owusu, *Commonwealth Caribbean Land Law*, Chap. 1, pp. 1-3 and 2, pp. 25-44 and 49-53
- G. Kodilinye, *Commonwealth Property Law*, Chap. 1, pp. 5-8
- Riddall, *Land Law* (7th ed.), pp. 57-69
- Honore on Ownership (see worksheet 1)

THE CONCEPT OF OWNERSHIP OF LAND AT COMMON LAW

Honore defines “ownership” as “those legal rights, duties and other incidents which apply, in the ordinary case, to the person who has the greatest interest in a thing admitted by a mature

legal system. Note the rights of ownership described by Honore. These include the right to possess, use and enjoy the land.

FIXTURES

The term 'fixture' is used to describe an object which has been brought unto land and is so attached to it that it has been merged with the land. The chattel loses its character as a personal property and becomes in law, a "fixture" and part of the land. Thus, Professor Kodilinye states that fixtures are "those material things that are physically attached to land so that they become part of the realty and the property of the land owner."¹ It has become "part and parcel"² of the land. Where a chattel has been so converted, the maxim "*quicquid plantatur solo solo cedit*" (or whatever is affixed to the land becomes part of it and thereby becomes the property of the landowner) applies.³

Distinguishing between a fixture and a chattel

Cases:

- **D'Eyncourt v. Gregory** (1866) LR 3 Eq.382
- **Holland v. Hodgson** (1872) L.R. 7 C.P. 328, 335 per Lord Blackburn
- **Hulme v. Brigham** [1943] 1 KB 152 at 154
- **Leigh v. Taylor** [1902] AC 157
- **Mitchell v. Cowie** (1964) 7 WIR 118 (C.A.)
- **Melluish (Inspector of Taxes) v. B.M.I.** (No. 3) [1995] 4 All ER 453
- **Simmons v. Midfords** (1969) 2 Ch. 415
- **Smith v. City Petroleum** [1940] All ER 260
- **Appiah v Dawson** (1939) LRBG 123

Is there a place for a three-fold classification?

In **Elitestone Ltd. v Morris, Clyde and Lloyd LJ** reject the two fold classification between chattel and fixture when examining the bungalow in that case. According to Lord Lloyd at page 516 of the case:

"... in framing the issue for decision I have avoided the word fixture. There are two reasons for this. The first is that "fixture", though a hallowed term in this branch of the law does not always bear the same meaning in law as it does in everyday life. In ordinary language one thinks of a fixture as being something fixed to a building. One would not ordinarily think of the building itself as a fixture."

¹ Kodilinye, *Commonwealth Caribbean Property Law*, p. 5

² Per Berkitt J. in **Hulme v Brigham** [1943] KB 152, 154 approving the definition in Adkin and Bowen on Fixtures.

³ Owusu, p. 26

Instead in the **Elitestone Ltd.** case, Lloyd LJ adopts a threefold classification: “[a]n object which is brought onto land may be... (a) a chattel; (b) a fixture; or (c) part and parcel of land itself.”

The relevant tests for determining whether an object is a fixture

It is a **question on fact** to be determined on the facts of each case whether a chattel on land is a fixture. The decision turns on the intention of the annexor. Intention is to be assessed objectively. It is to be ascertained from the particular circumstances of the case and upon an application of the following tests (see per Lord Blackburn in **Holland v Hodgson** and Wooding CJ in **Mitchell v Cowie**): (i) the degree of annexation test and (ii) the object or purpose of annexation test. These tests are used as a guide to determining whether there was **an intention** on the part of the annexor to create a fixture.

(i) The degree of annexation test

Initially the question of whether a chattel had become a fixture was determined by whether it had been physically affixed to land, that is, for example, by nails, screws or cement. This is the **degree of annexation** test.

- **H.E. Dibble Ltd. v. Moore** [1970] 2 Q.B. 181
- **Billing v. Pill** [1953] 2 All ER 1061
- **Mitchell v. Cowie** (1964) 7 WIR 118
- **Elitestone Ltd. v Morris** [1997] 2 All E.R. 513
- **Aircool Installation v. British Telecommunications plc.** [1995] C.L.Y. 821
- **Chelsea Yacht & Boat Company Ltd. v. Justin Pope** [2001] 2 All ER 409

Is there damage to land and/or to the attached chattel on removal?

- **Leigh v Taylor** [1902] A.C. 157
- **Elitestone Ltd. v Morris** (supra)
- **Fields v. Modeste & Joseph** (1966-69) 19 Trin. L.R. 251
- **O’Brien Loans Ltd. Missick** (1977) 1 B.L.R. 49

The answer to the degree of annexation test determines the burden of proof. If something is fixed to land, it is prima facie a fixture. The burden of proof (proving that it is a chattel) will rest with the party seeking to show that it is not a fixture. If he fails to discharge the burden of proof, the item is held to be a fixture. On the other hand, if the thing is not fixed to the land, it is prima facie not a fixture and the burden of proof rests with the one seeking to establish that it is a fixture.

(ii) The purpose of annexation test

This test is now considered the principal test (**Berkley v Poulett**) for determining intention. This test is in essence – whether the chattel has been brought unto the land for the purpose of being enjoyed in and of itself, or for the purpose of improving the land permanently.

- **Leigh v Taylor** (1902) AC 157
- **Smith v City Petroleum Co. Ltd.** [1940] 1 All ER 260
- **Berkeley v. Poulett** (1976) 214 E.G. 911
- **D'Eyncourt v Gregory** (1866) L.R. 3 E.Q. 382
- **Jordan v. May** (1947) K.B. 427
- **O'Brien v. Missick** (1977) 1 B.L.R. 49, 58
- **Matthew v. Bruno** (1954) 14 Trin. L.R. 95
- **Botham & Ors. v. TSB Bank plc.** (1996) 73 P. & CR

How relevant is the annexor's relationship with the land to a determination of intention?

- **Botham & Ors. V. TSB Bank plc.** (supra)
- **Burke v. Bernard** (1930) LRBG 55
- **O'Brien Loans Ltd. Missick** (1977) 1 B.L.R. 49
- **Mitchell v. Forde** (1963) 5 WIR 409
- **Mitchell v. Cowie** (1964) 7 WIR 118
- **Reid v. Smith** (1905) 3 C.L.R. 656
- **Elitestone Ltd. v Morris** [1997] 2 All E.R. 513
- **Mew v. Tristmire Ltd.** [2011] EWCA Civ. 912, [2011] All ER (D) 27, [2012] 1 WLR 852

HOUSES AND BUILDINGS

Read:

- Liverpool, Commonwealth Caribbean Legal Essays, Chap. 10, p. 202
- Matthews and Toppin-Allahar, "Chattel Houses and Mobile Homes: Fixtures in the Caribbean and Canadian Law" (1997) 7 Carib. L.R. 368
- W.O. Marshall, ""West Indian Land Law: Conspectus and Reform" (1971) 20 Social and Economic Studies 1
- M. Gibson, "Pluralism and Social Engineering and Some Aspects of Law in the Caribbean" (1984) 10(3) Bulletin of Eastern Caribbean Affairs 56-87 and 70-75
- Stuart Bridge, "Part and parcel: Fixtures in the House of Lords" [1997] Cambridge Law Journal 498

The chattel house problem

A chattel house has been described as "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 legal) be removed to another site. So if it had been built by a tenant he could remove it at the end of his tenancy." (Per Lord Walker in **Ramdass v. Bahaw-Nanan** [2009] UKPC 51.

Cases:

- **Marie Makhoul v. Cicely Foster and Anor.** (No. AHUHCVP2009/0014, unreported judgment, February 23, 2015)
- **Mitchell v Cowrie** 1964) 7 WIR 118
- **O'Brien Loans Ltd. v. Missick** (1977) 1 BLR 49
- **Elitestone Ltd. v. Morris** [1997] 2 All E.R. 513
- **Chelsea Yacht and Boat Co. Ltd. v. Pope** [2000] 1 WLR 1941
- **Royal Bank of Canada v. Beyak** (1981) 119 DLR (3d) 505

TENANTS' FIXTURES

Read : Gray, Elements of Land Law (5th ed.) at pp. 38-39

The common law has evolved to permit the removal of fixtures by a tenant. The object may be removed if it is affixed for certain purposes. Therefore, a fixture used for trade, for ornament or domestic purposes may be removed by a tenant at common law. There are rules which govern whether the tenant may remove these items.

Cases:

- **Peel Land and Property (Ports No.3) Ltd v TS Sheerness Ltd.** [2014] EWCA 1658, [2013] All ER (D) 160
- **Climie v Wood** (1869) LR 4 Ex 328, 329-330
- **New Zealand Government Property Corp. v HM & S Ltd.** [1982] QB 1145
- **Re British Red Ash Collieries Ltd.** [1920] 1 Ch. 326
- **Mancetter Developments Ltd. v Garmanson Ltd.** [1986] QB 1212
- **Spyer v Phillipson** [1931] 2 Ch. 183, 199-201, 208 – 210
- **Appia v S. Dawson & Co. Ltd.** (1939) LRBG 123

THE STATUTORY RIGHT TO REMOVE "TENANT'S FIXTURES" IN THE CARIBBEAN

(Read with chattel houses in mind as well)

- Barbados, Property Act 1979, s. 163
- Belize, Landlord and Tenant Act, 2000, Cap. 189, s. 13
- Guyana, Landlord and Tenant Act, 1973, Cap 61:01, s. 15(1)
- Trinidad and Tobago, Landlord and Tenant Act, s. 27

Civil Law

- St. Lucia Civil Code, Articles 338 and 369-379

Cases:

- **Dibble v. Moore** (170) 2 QB 181
- **Botham & Ors. v. TSB Bank plc.** (1996) 73 P. & CR D1

1 QUESTIONS FOR TUTORIAL DISCUSSION:

Dec 2013, q1.

The judicial authorities tend to the view that a chattel-house is a fixture. But the various tests for the determination of the question whether a structure is a fixture or not do not bear out this judicial view ... The statute law has only removed the doubt on a tenant's right of removal of a chattel house, but has failed to provide an answer to the question whether a chattel house is a fixture or not.

Critically examine this statement.

Dec 2014, q4

Discuss the rights of a purchaser against the vendor of a sugarcane plantation with an executive type mansion which has been transferred to the purchaser without an express provision on the status of the following:

- (a) a cart on a sugar plantation and a work-bench in the garage, bolted to the floor.
- (b) a wall-to-wall carpet measure and cut to fit the living room of an executive type house.
- (c) a mirror affixed to a wall in a bedroom, and an eighteenth-century tapestry fixed to the walls of the living room by tacks to a framework of wood and canvas which were nailed onto the walls.
- (d) lamp shades and chandeliers suspended from the ceiling; and
- (e) desktop computer with a giant tower connected to the building with an electric flex only.

How, if at all, would your answer differ if a tenant who had been in occupation of the premises immediately before the sale to the purchaser laid claim to the ownership of items and sought to remove them after the transfer to the purchaser had been effected?

December 2017, q1

Jim recently purchased "Blue Gables" from Tom. "Blue Gables" has an ornate 18th century plantation house and a garden which is surrounded by large Grecian columns labelled with the names of the Greek gods. The Sale Agreement for the property contained no express provisios

regarding the status of these items. "Blue Gables" is currently being occupied by Bob, a tenant. Jim expects to take possession of the property next month when Bob's lease expires.

Advise Jim concerning his rights to the following:

- (a) a large work-bench bolted into the floor of a garage at the back of the plantation house;
- (b) brightly coloured Chinese tapestries which were stretched onto canvas and affixed by nails to the dining walls of the plantation house;
- (c) two large statues of Zeus and Apollo resting on stone plinths in the centre of the garden at "Blue Gables"; and
- (d) a wooden house bolted to a cement block foundation, fitted with a flush toilet and connected to the sewer mains which is used to house guests.

Would your answer be different if Bob claims that the items are his and that he is entitled to remove them at the end of the tenancy?