

# ***PROPERTY LAW GUIDEBOOK***

## ***SECOND EDITION***

CHRIS DAVIES

### **CHAPTER 3**

#### **PROBLEM QUESTION 1**

While Mary was studying medicine at university she rented two rooms in a house owned by Jack and Joan. She liked the place and continued to live there when she started working at the local hospital. Jack and Joan then told Mary that they were going to sell the house and asked whether she would be interested in buying it. Mary readily agreed and was able to raise the finance with the bank. Mary is aware of the following items that are associated with the house:

- a dishwasher set into the kitchen benches
- a plasma television, set onto the wall by means of brackets, which is in a separate television room furnished with two lounge suites
- air-conditioners set into the walls of the lounge room and main bedroom
- a small fountain that has been screwed onto a pole on the back verandah
- six hanging baskets hanging from the roof of the back verandah
- six pot plants sitting on the back verandah.

In the back garden, meanwhile, there are the following items:

- a small portable shed
- a large decorative fountain surrounded by a good-sized fishpond
- numerous plants in the ground.

Discuss what items Jack and Joan can take with them and which ones the law would require them to leave behind when the house is sold.

## SUGGESTED ANSWER

The issue here is which of the various items are fixtures and must remain with the house, and which items have remained chattels and can be removed by Jack and Joan.

### *General law*

The doctrine of fixtures is governed by the principle stated in the maxim '*quicquid plantatur solo, solo cedit*', which means: 'Whatever is affixed to the soil becomes a part of the soil'. In *Holland v Hodgson* a two-step test was developed to determine whether an object is a fixture or not. It requires looking at the degree of fixation, and the intention relating to the annexation. The courts these days look at the objective intention of the person who has affixed the object, though the degree of fixation may help to indicate what that intention was. Ascertaining the intention requires an examination of all the surrounding circumstances, namely the degree of fixation, whether the object can be removed without causing damage, what is being done with the object and its function. Intention can also be determined by asking whether annexation is for the better use and enjoyment of the item itself, in which case it is more likely to remain just a chattel. However, if the intention is for the better use and enjoyment of the actual land or building, then the object is more likely to be a fixture. The presumption is that if the item is affixed to the land to any great extent beyond its own weight, it is presumed to be a fixture, but if it is not so affixed and merely rests on its own weight, it is presumed not to be a fixture.

### Dishwasher

The case of *Farley v Hawkins* involved a dishwasher connected to the wall by inlets and outlets for water. When it was removed, it left an unsightly gap in the kitchen. It was stated in that case that if a chattel is securely attached to a dwelling there is a strong presumption that it is a fixture, although all the circumstances of the case have to be considered. However, the dishwasher's status as a fixture was established because of the fact that it was not only lightly connected with other fixtures, but also set into those fixtures. Therefore, although it could be easily removed after the disconnection of the plumbing, the entire fixture into which it was built was intended as an integrated whole. In the present case, the dishwasher is likewise set into the kitchen benches. It is connected with other fixtures and its removal would leave an unsightly gap in the kitchen. It is therefore likely that the dishwasher is a fixture.

### Plasma TV

Based on the degree of fixation, a plasma TV attached to a wall would likely be considered a fixture. However, the intention would be for it to remain a chattel, as the annexation contributes to the enjoyment and use of the TV itself as opposed to the building. It would therefore likely be considered a chattel unless the surrounding circumstances indicate that it may fit into an overall architectural design of a house. In *Re Whaley*, a portrait and a tapestry were held to be fixtures because of the way they were intended to become part of how the room was presented. The television in the present case is described as being in a separate room, but the mere existence of a separate television room is not sufficient for the TV to be

considered part of the architectural design of the house and it is therefore likely to have remained a chattel. The two lounge suites would likewise be chattels.

#### Air conditioner

In *Belgrave Nominees v Barlin-Scott Air-conditioning*, platforms were constructed to hold air conditioners that stood on their own weight. Despite this, it was held that because the air conditioners were connected to water pipes by means of bolts and nuts, there was some connection with the building. This meant they were intended to be permanently fitted and were therefore fixtures. In the present case, the air conditioners are described as being set into the walls, which means that there is some connection to the building that indicates an intention for them to be permanent. The air conditioners are therefore likely to be fixtures.

#### Small fountain

The small fountain is described as being screwed onto a pole on the back veranda, which, while showing a small degree of fixation, also indicates that it can be easily removed without causing any real damage. It is therefore likely to be a chattel unless it fits into an architectural design of the house, which, on the facts given, does not seem likely.

#### Hanging baskets, pot plants and garden plants

The intention with hanging baskets and pot plants is for them to remain chattels as they are, in the case of the pot plants, not affixed, or, in the case of hanging baskets, only lightly affixed, which means that they can be easily removed without causing any damage. However, the garden plants are considered to be fixtures as the intention is for them to become a permanent part of the soil.

#### Fountain

The fountain in this case is described as being large and surrounded by a good-sized fishpond. The intention appears for it to become part of the architectural design of the garden and for it to be enjoyed as a part of the garden. It is therefore likely to be considered a fixture.

#### Shed

In *Farley v Hawkins* a shed that was used to store earth-moving equipment was bolted into large concrete blocks in the ground. It was held that due to its size and relative permanence the shed was intended to be a fixture. It was further stated that a shed would normally be a fixture, unless the structure was light and easily portable. In the present case, however, the shed is described as being 'small and portable' and therefore it could be considered to be a chattel.

## Conclusion

The dishwasher, air conditioners, garden plants and fountain are definitely all fixtures and must remain with the property, while the plasma TV, small fountain, hanging baskets and pot plants are all chattels that can be removed from the property. The fact that the shed is described as small and portable indicates that it may be a chattel despite the fact that most sheds will be considered fixtures. More information would therefore be required about the shed before a conclusion can be reached.

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## COMMENTS ON THE ANSWER

The first thing that should be noted in this answer is that the general rules are stated and then applied to the specific items mentioned in the problem. More rules in the form of fact-specific cases are then added during the application stage. It is therefore an example of an answer that merges to some degree the rules and application stages of IRAC. This prevents the need for the general principles to be repeated throughout the answers and also allows the specific rules to be placed in better context by being mentioned adjacent to the facts.

As a law student you should by now be used to the fact that there are some cases which set out general principles, and some cases which are specifically relevant to the facts of a particular problem. If a fact-specific case is relevant to your answer, then it needs to be applied directly or distinguished on the facts. Note that in an area like fixtures there are many cases from various jurisdictions that cover many specific fact situations. However, in this answer, only cases from the text have been used unless there was no case on point, in which case general principles have been applied. If you knew of a case on point from sources other than this text, then it could also have been incorporated into your answer. While a conclusion has been reached in regard to each item, it is also a good idea to make a brief, overall conclusion at the end of the problem. It is mentioned that more information is required in regard to the shed and there will be times when it is appropriate to make such a statement. However, it is essential that you first of all refer to, and use, whatever facts you have been given.

The answer has incorporated headings and these can be very useful in an answer, but only when material can be readily split into material that fits neatly under those headings. When referring to a case, the name but not the full citation has been used. Due to the time restraints involved with an exam answer, this is usually acceptable. However, you should check with your lecturer whether full citations are required in the exam answer as some lecturers will require that they are used.