

Court Commentary on Chattels and Fixtures

Fixtures & Chattels

By Brian Madigan LL.B.

There are a number of fundamental principles in Ontario law concerning the issue of chattels, improvements made to real property by reason of the affixation or annexation of chattels and the consequence of such becoming fixtures. Here are some statements and comments made by the Courts:

- buildings constructed on leased land become part of the freehold property of the landlord, leased to the tenant
- fixtures are part of the freehold
- a building becomes part of the land and is the property of the landlord
- whatever is affixed to the freehold becomes part of it and is subject to the same rights of property as the lands itself
- whatever is fixed to the freehold of land becomes part of the freehold of inheritance
- The parties cannot by agreement change this result, which occurs automatically by operation of law
- A chattel becomes a fixture by implication of law and this conversion of it into realty does not depend upon agreement and is not accomplished by conveyance. A chattel is converted to realty at common law even if it is affixed without the consent of the owner
- Although an agreement or conveyance between the parties may determine their rights as between themselves, it does not override the common law in so far as the rights of third parties are concerned
- The parties can, however, make an agreement regarding their rights in the buildings effective only as between themselves, though such an agreement will not affect the rights of third parties
- Even if a contract cannot resolve the legal classification of a chattel or fixture, it can affect the rights of the contracting parties inter se. An agreement may operate between the parties to allow one of them to restore a fixture to its chattel status and remove it
- these provisions cannot on their own bind third parties such that the

contractual labelling of an item as a chattel or a fixture will govern

- The parties may by a special contract make a law for themselves as to fixtures
- The effect of such an agreement "as between a landlord and tenant" is typically to allow the tenant to sever the buildings or equipment from the land and thus convert them back to chattels and remove them, if done so before the end of the lease. It may also affect the right to insurance proceeds
- Once a building has become affixed to the land and therefore the property of the landlord, the landlord may grant or convey the building or an interest in it to someone else, and the land may be owned separately from a building on the land
- buildings and other fixtures are in law "land", i.e. they are real property, not chattels
- There will also become the property of the owner of the land, unless otherwise granted or conveyed; they may be sold separately from the land
- There is nothing unusual in buildings being owned separately from the land under it, if an agreement has granted or conveyed fee simple in the building from the owner to another party
- a building can be owned separate and apart from the land under it
- If a grant or conveyance of title is intended, it is important to use appropriate conveyance language that makes clear that the fee simple in buildings is to be transferred, rather than simply using language which "deems" certain rights "as between" the parties.

So, be careful and know the rules!

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