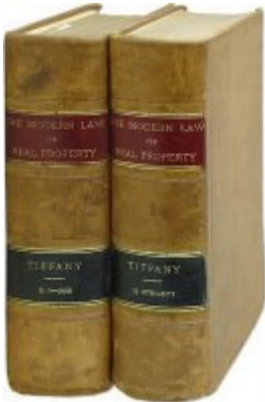


Legal Issues Related to Improvements



By Brian Madigan LL.B.

There are indeed some very significant issues related to the determination of whether a chattel has become so affixed to the realty that it is no longer a chattel but is an actual improvement to the land and has become a fixture. Consider the following:

- These basic common law principles determine competing claims to ownership of the improvement
- whether building permits would need to be applied for and development charges paid in respect of Pearson airport
- for tax purposes, depreciation could be taken on equipment (Note, in Canada, the regulations under the Income Tax Act permit a tenant to claim capital cost allowance for alterations or improvements to leased property (see sections 1102(4) and 1102(5) of the Income Tax Regulations and Interpretation Bulletins IT 324 and IT464R)
- landlord's right to distrain against a tenant or determine the priority of competing interests to the property under the *Personal Property Security Act*
- property financing, where the effectiveness of security given in the property may dependent upon the right of ownership
- A tenant's right to sue the landlord for leasehold improvements under principles of unjust enrichment may be affected
- A tenant's renewal rights in the improvements may be affected on termination of the lease. If the parties do not make renewal rights clear, the tenant could be left without rights in the new buildings which have become the property of the landlord
- Rights on expropriation may be affected, since on expropriation, an "owner" is

generally entitled to be compensated for the market value of the land

- The entitlement to insurance proceeds may also be affected by who has title to the improvements where they are partially or completely destroyed

Obviously there are other issues as well, but the above matters are noteworthy and should be considered particularly in commercial leases.

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