



Knowledge Bank

What is a fixture?

Property Account
PA001

This Statement provides a guide on the differences between fixtures and chattels.

Real property

The meaning of "real property" extends to a great deal more than just land. It includes certain physical objects that are treated as part of the land itself. The general rule is whatever is attached to the soil becomes part of it. Therefore, if a building is erected on land and objects are permanently attached to the building, the building and the objects affixed to it are recognised at law as real property, owned by the freeholder of the land. The traditional approach has been to refer to objects treated as part of the land as "fixtures" and to distinguish such objects from "chattels" (a term used in law to describe assets other than real property).

The importance of distinguishing fixtures from chattels

Debentures often create legal mortgages or fixed charges over land. Depending on the business of the borrower, there may be a significant number of objects permanently attached to the land which would be classified as fixtures. In these circumstances, the legal mortgage or fixed charge would secure the fixtures, as well as the land itself.

If on the other hand the objects in question are merely chattels, it is highly likely that those chattels will only be secured by the floating charge created within the bank's debenture, if there is one. A floating charge holder only gets paid out after certain other creditors have been discharged and that can greatly dilute the amount it receives (see Corporate Account Statement CA005 on the order of priorities in administration and liquidation).

An additional issue can arise where chattels are supplied subject to retention of title clauses and are then incorporated into a building. If they become a fixture, title usually passes to the freeholder, subject to the bank's security. If they remain sufficiently unincorporated, the RoT creditor can recover its goods (subject to the validity of its RoT clause).

In borderline cases it is often difficult to decide whether an object is either a fixture or a chattel, however, case law has developed a two fold test.

Degree of annexation and purpose of annexation

An object which merely rests on the ground is prima facie not a fixture. Conversely, an object attached to the land in some substantial manner, will on an initial analysis be a fixture. Essentially, if an object cannot be removed without serious damage to part of the land, the object is likely to be construed by the Court as a fixture.

However, certain kinds of objects can remain as chattels, even after they have been annexed to the land, on the basis that the purpose of the annexation is for the better enjoyment of the chattel rather than to improve the land permanently. Courts have held that, in determining whether an object is to be treated as a chattel or as part of the land, it is the purpose that the object is serving which has to be regarded, not the purpose of the person who put it there.

The degree of annexation test is therefore moderated by the purpose for which the object is affixed to the land. Statues, vases and stone garden seats have been held to become part of a land because they were essentially part of the design of the house and grounds, even though standing merely by their own weight. Furthermore, machinery standing by its own weight has been held to remain as a chattel unless it could be shown to be installed to effect a permanent improvement of the premises.

Further information

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