THE LAW OF PROPERTY

SUPPLEMENTAL READINGS

Class 18

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barbri

Review

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Outlines:

PERSONAL PROPERTY
REAL PROPERTY
CONSTITUTIONAL LAW
NEW YORK TRUSTS
NEW YORK WILLS

III. FIXTURES

A. IN GENERAL

A "fixture" is a chattel that has been so affixed to land that it has ceased being personal property and has become part of the realty. For example, S and B contract to sell and buy a house. Before vacating, S removes a "built-in" refrigerator. B claims that the item was "part of the house." Is the refrigerator a "fixture"? If so, B is entitled to its return or appropriate compensation.

It is important in dealing with "fixture" problems to distinguish between ***common ownership*** cases and ***divided ownership*** cases. Courts treat them differently even though they often purport to apply the same tests. "Common ownership" cases are those in which the person who brings the chattel onto the land owns both the chattel and the realty (*e.g.*, X installs a furnace in her own home). "Divided ownership" cases are either ones where the person who owns and installs the chattel does not own the land (*e.g.*, T installs a furnace in her rented home, which belongs to L); or the person owns the land but does not own the chattel (*e.g.*, it is subject to a security interest held by the seller). In addition, there are cases involving more than two persons (*e.g.*, conflicting claims are made by the person having a security interest in the chattel and the mortgagee of the land).

B. CHATTELS INCORPORATED INTO STRUCTURE ALWAYS BECOME FIXTURES

In both common ownership and divided ownership cases, where the items become incorporated into the realty so that they lose their identity, they become part of the realty. Examples include bricks built into a building or concrete poured into a foundation. Similarly, where identification is possible, but removal would occasion considerable loss or destruction, the items are considered fixtures, *e.g.*, heating pipes embedded in the wall or floor of a house.

C. COMMON OWNERSHIP CASES

1. Annexor's Intent Controls in Common Ownership Cases

In all common ownership cases where a chattel is not incorporated into a structure, whether an item is a "fixture" (*i.e.*, part of the realty) depends upon the ***objective intention*** of the party who made the "annexation." This intention is determined by considering:

(i) The ***nature of the article*** (*i.e.*, how essential the item is to normal use of the premises);

(ii) The ***manner in which it is attached*** to the realty (the more substantially attached, the more likely it was intended to be permanent);

(iii) The ***amount of damage*** that would be caused by its removal; and

(iv) The ***adaptation*** of the item to the use of the realty (*e.g.*, custom window treatments, wall-to-wall carpet).

a. Constructive Annexation

In some cases, an article of personal property is considered a fixture even though it is not physically annexed to the real estate at all. This is because it is so ***uniquely adapted*** to the real estate that it makes no sense to separate it. Examples include the keys to the doors of a house; curtain rods that have been cut and sized to the brackets on the walls of a house, even if the rods themselves are not presently installed; and a carpet that has been cut to fit an unusually shaped room, even if the carpet is not nailed or glued in place.

b. Vendor-Purchaser Cases
The typical situation is where the owner of land affixes chattels to the land and subsequently conveys the land without expressly providing whether the chattels are to pass with the realty. The intention test works fairly well. The question boils down to whether an owner bringing the disputed chattel to the realty would intend that it become part of the realty. Or to put it another way, ***whether a reasonable purchaser would expect*** that the disputed item was part of the realty.

c. Mortgagor-Mortgagee Cases
The intention test is universally applied to determine whether the owner (mortgagor) intended the chattels to become "part of the realty." Where the mortgagor has made the annexation ***prior*** to the giving of the mortgage, the question is what the "reasonably objective" lender expects to come within the security of her lien. However, where the annexation is made ***after*** the giving of the mortgage, the same considerations arguably should ***not*** apply because each item that is "added" to the lien of the mortgage represents a ***windfall*** to the mortgagee should foreclosure occur. Nevertheless, courts universally apply the same intention test regardless of when the annexation was made. (Courts also usually apply the intention test where items are annexed by one in possession of land under an ***executory contract*** to purchase.)

2. Effect of Fixture Classification

a. Conveyance
If a chattel has been categorized as a fixture, it is part of the real estate. A conveyance of the real estate, in the absence of any specific agreement to the contrary, passes the fixture with it. The fixture, as part of the realty, passes to the new owner of the real estate.

b. Mortgage
To the extent that the owner of the real estate mortgages the realty, in the absence of an agreement to the contrary, the mortgage attaches to all fixtures on the real estate.

c. Agreement to Contrary
Even though the concept of fixtures may apply and a chattel becomes a fixture, an agreement between a buyer and seller (similarly, between a mortgagor and mortgagee) can cause a severance of title. For example, a buyer and seller may agree that the seller will retain the right to remove fixtures. Similarly, a mortgagor and mortgagee can agree that the mortgage lien shall not attach to specified fixtures. The effect of such an agreement is to de-annex, so far as relevant, the chattel from the realty and reconvert the fixture into a chattel.

D. DIVIDED OWNERSHIP CASES

In divided ownership cases, unlike the ones just discussed, the chattel is owned and brought to the realty by someone who is not the landowner (*e.g.*, a tenant, a licensee, or a trespasser). The question is whether the ownership of the chattel has passed to the landowner. Courts often say that the intention test (C.1., *supra*) is to be applied in these cases too. But the exceptions disprove the rule.

1. Landlord-Tenant
Early English law favored the landlord. However, American law created a trade fixtures exception under which tradesmen-tenants could remove an item that otherwise would have been a "fixture." Later, this exception was expanded to include all tenants generally. Some courts have treated the trade fixtures exception as consistent with the annexor's-intention test; *i.e.*, a tenant's annexations are removable because "it was not the intention of the tenant to make them permanent annexations to the freehold and thereby donations to the owner of it."

a. Agreement
An agreement between the landlord and tenant is controlling on whether the chattel annexed to the premises was intended to become a fixture. To the extent that the landlord and tenant specifically agree that such annexation is not to be deemed a fixture, the agreement controls.

b. No Intent If Removal Does Not Cause Damage
In the absence of an express agreement to the contrary, a tenant may remove a chattel that he has attached to the demised premises as long as the removal does not cause substantial damage to the demised premises or the virtual destruction of the chattel. In other words, the tenant will ***not*** have manifested an intention to permanently improve

the freehold (and the concept of fixtures will be inapplicable) as long as the removal of the chattel does not cause substantial damage to the premises or the destruction of the chattel.

c. **Removal Must Occur Before End of Lease Term**
Generally, a tenant must remove his annexed chattels before the termination of his tenancy or they become the property of the landlord. If the duration of the tenancy is indefinite (*e.g.*, tenancy at will), the removal must occur within a reasonable time after the tenancy terminates. Similarly, a tenant has a reasonable time for removal if he holds over during unsuccessful negotiations for a new lease.

d. **Tenant Has Duty to Repair Damages Resulting from Removal**
Tenants are responsible for repairing damages caused by removal of "fixtures."

2. **Life Tenant and Remainderman**
The same rules should apply here as in the landlord-tenant cases. Historically, however, results have been more favorable to the remaindermen (or reversioners). Apart from statute, the removal privilege has been unrealistically limited to the duration of the term.

3. **Licensee and Landowner**
Licenses to bring items onto land usually contain agreements respecting removal. In the absence of agreement, licensees are permitted to remove the items subject to a duty to repair damages caused thereby.

4. **Trespasser and Landowner**
Trespassers (*e.g.*, adverse possessors before the running of the statute of limitations) normally lose their annexations whether installed in good faith or not. Moreover, the trespasser can be held liable for the reasonable rental value of the property on which she annexed the item.

a. **Trespasser's Recovery Limited to Value Added to Land**
Some courts allow a good faith trespasser to recover for the improvement, but the recovery is measured by the value added to the land, not the cost to construct the improvement.

E. THIRD-PARTY CASES

Any of the foregoing cases is complicated by the addition of third-person claimants. The situations can be classified under two headings.

1. **Third Person Claims Lien on Land to Which Chattels Affixed**
Suppose Landowner mortgages her land to Mortgagee. Landowner then leases the land to Tenant, who annexes an item (*e.g.*, a machine) that is a "trade fixture" and thus removable at the end of the term. Landowner defaults before the end of the term, and Mortgagee forecloses. Is the item subject to the lien of the mortgage?

(i) Generally, no. In this situation, the mortgagee has no greater rights than the mortgagor, provided only that the original sufficiency of the security is not impaired (*e.g.*, removal would not substantially damage a building in existence when the mortgage was given).

(ii) The same result occurs where a buyer under an installment land contract leases to a tenant, the tenant makes annexations, and the buyer then defaults. The seller is treated in the same manner as the mortgagee in the first example.

If, in the above example, the land mortgage is made ***after*** the lease and after the tenant has annexed an item that is a "trade fixture" as against the landlord-mortgagor, and, as is usual, the land mortgagee has ***notice*** of the tenant's rights, the mortgagee is in no better position than the landlord-mortgagor. If the mortgagee does not have notice, he wins if the item would have been considered a fixture as between the mortgagee and the mortgagor. (The same result pertains in cases where the landlord ***sells*** the property after the making of a lease.)

2. **Third Person Claims Lien on Chattel Affixed to Land**
Suppose Landowner purchases a furnace from Seller and installs it in her house. She owes a balance on the purchase price of the furnace, and therefore grants Seller a ***security interest*** in the furnace (in accordance with Article 9 of the Uniform Commercial Code). Suppose further that Landowner also executes a ***mortgage*** on her house, to Mortgagee. If Landowner subsequently defaults on her payments, both on the furnace and the house, is Seller or Mortgagee entitled to priority? (Same issue where Landowner ***sells*** the house without mentioning the security interest.)

a. U.C.C. Rules
Normally, the rule is that whichever interest is ***first recorded*** in the local ***real estate records*** wins. (Thus, if the chattel security interest was recorded first, it constitutes "constructive notice" to all subsequent lenders or purchasers.) However, an ***exception*** allows a ***"purchase money security interest"*** in an affixed chattel (here, the interest given Seller to secure payment on the furnace) to prevail even over a ***prior recorded*** mortgage on the land, as long as the chattel interest is recorded ***within 20 days*** after the chattel is affixed to the land. [U.C.C. §9-334]

The document used to record the chattel security interest is known as a ***"fixture filing."*** (This is a separate instrument from the "financing statement," which is required to be filed to perfect the chattel security interest in the first place.)

b. Liability for Damages Caused by Removal
In the above example, if Seller were entitled to priority, she would be entitled to re-move the furnace. However, she would have to reimburse Mortgagee for any ***damages or repair*** necessitated by the removal (but ***not*** for diminution in value of the property due to the lack of a furnace).