

Name

Course

Date

ISSUES

1. Whether Stephen can claim ownership of the garden ornaments.
2. Whether Stephen owns the long range cooker
3. Whether Bart is bound by Peter's interest in the house.
4. Whether Bart is bound by Jayne's interest in the outbuildings.
5. Whether Fred's lease is binding on Peter.

LAW

I. FIXTURES OR CHATTELS?

i. Objects found on land

The common law meaning of land includes the surface of the earth, the soil underneath the surface up to the centre of the earth and the column of air above the surface up to the skies.¹ The statutory definition adopted under The Law of Property Act of 1925 also took after the common law definition.² Accordingly, the common law conceptions of land regarding fixtures as embodied in the *quic quid plantatur solo solo cedit* maxim, which means that all fixtures to land are a part of it, becomes operational. In this regard, following the decision in *Peel Land and Property (Ports No 3) Limited v TS Sheerness Steel Limited*³ a distinction between chattels and fixtures must be made.

¹ F Hallmann, *Legal Aspects of Boundary Surveying in New South Wales* (F K Ticehurst 2nd edn, The Institution of Surveyors Australia Inc New South Wales Division Sydney: Australia1994).

² Law of Property Act 1925, s 205(1) (ix).

³ [2014] EWCA Civ 100.

Chattels are personal property that can be easily removed without damaging them or the property onto which they are attached.⁴ Also known as fittings, chattels are often temporarily fixed.⁵ Fixtures are annexures that have become part of the land. In *Holland v Hodgson*⁶ the court had to determine whether machines fitted in a factory comprised part of the land. It was held that where a thing rests on land and attaches to it only by its weight, it would be considered as part of that land. Such physical attachment is a *prima facie* indication that the attachment is a fixture.⁷

The legal test for determining whether something is a chattel or a fixture depends on whether there is a physical attachment to the land as well as the degree or extent to which it has been attached to the land as well as its intended purpose.⁸ In *Botham v TSB Plc*⁹ it was held that things that can easily be removed are not part of the land but those that are not easily removed form part of the land. The relevance of making this distinction arises in relation to identifying the ownership of these attached objects when there is a transfer of ownership of land. In such instances, fixtures will be owned by the transferee at the moment the execution of the transfer is done and the seller loses the right to remove them from the land.

II. OVERRIDING INTERESTS

The Land Registration Act of 2002 recognises overriding interests in property even though these interests are not formally registered.¹⁰ These overriding interests are laid down in the third schedule of the Act. For an overriding interest to arise, three elements must be satisfied. First, an

⁴ Felicity Warran-Smith, 'What is a Chattel and when does it become a fixture?' (*Thomson Snell & Passmore* 2013) available at www.ts-p.co.uk retrieved on 20/8/2015.

⁵ *ibid.*

⁶ (1872) LR 7 CP 328

⁷ *Holland v Hodgson* (1872) LR 7 CP 328

⁸ *D'Eyncourt v Gregory* (1886) LR 3 Eq 382.

⁹ [1997] 73 P & CR D 1.

¹⁰ Land Registration Act 2002, s 29 (2) (a) (ii).

interest in land must exist and this interest must be proprietary rather than personal in nature;¹¹ second, such interest must not be overreached. Overreaching transfers the interest in the land to the proceeds made upon sale thereby extinguishing the interest that is amenable to protection by the act of actual occupation;¹² and third, an actual occupation must subsist at the material time. Actual occupation may be proved in two ways. First, where that occupation can be obviously deciphered upon conducting a reasonable inspection or second, where the actual occupation is within the knowledge of the person who acquires a subsequent interest in the land.¹³ Permanence and continuity are integral elements of actual occupation.¹⁴ However, the extent of the physical presence necessary depends on the nature of the land.¹⁵

i. Resulting Trust

The Land Registration Act of 2002 protects a person in such a situation by providing exemptions to instances when an interest in land must be registered.¹⁶ It provides that it is not necessary to register the interests of an actual occupant of land and that such an interest would still bind any subsequent owner of such land. The necessity of this rule was given in *Strand Securities v Caswell*¹⁷ that it is meant to offer protection to an actual occupant of land from the confusion that may result from the registration process. This provision protects those whose interests have not been formally registered although the law recognises that they have acquired an interest in the property through various monetary and non-monetary contributions or because

¹¹ *National Provincial Bank v Ainsworth* [1965] AC 1175.

¹² *City of London Building Society v Flegg* [1988] AC 54.

¹³ Land Registration Act 2002, Sch. 3 para. 2.

¹⁴ *Abbey National Building Society v Cann* [1911] 1 AC 56.

¹⁵ *Epps v Esso Petroleum* [1973] 1 WLR 1071.

¹⁶ *ibid.*

¹⁷ [1965] Ch 958.

they relied on assurances given by another person. Where such a person is in actual occupation of the land, a resulting trust arises which binds those who acquire interests later on.

A resulting trust arises where a person induces another to act in a particular way that is to their detriment in the belief that they would acquire a beneficial interest in land.¹⁸ The benefit that accrues to the person who acts to his own detriment is calculated proportionately according to his contribution to the purchase price of the land. The elements necessary for the creation of a resulting trust were laid down in *Llyod's Bank v Rosset*.¹⁹ These are that there must be inducement that leads a person to believe that they have an entitlement to ownership of the land; and that the inducement must result in the person acting in his own detriment.

The inducement must be as a result of a common intention held between the respective parties to the effect that there will be beneficial sharing of the concerned property. Therefore, as a result of this common intention, one party is induced to act in a certain way in order to acquire that benefit. Following *Llyod's Bank v Rosset*,²⁰ A common intention can either be express or inferred. For express common intention to subsist, proof of an express bargain between the parties for the beneficial sharing of the property.²¹ A common intention can also be inferred from the conduct of the parties involved. However, intention cannot be inferred from the expectations of the parties involved simply because there is a relationship between them.²² Once the common intention is established, proving detriment is the next crucial factor. In *Llyod's Bank v Rosset*.²³ The court held that a direct contribution to the purchase price of a property is sufficient to establish detriment.

¹⁸ *Gissing v Gissing* [1971] AC 881.

¹⁹ [1991] 1 AC 107.

²⁰ [1991] 1 AC 107.

²¹ *HSBC Bank Plc v Dyche* [2009] EWHC 2954.

²² *James v Thomas* [2007] EWCA Civ 1212.

²³ [1991] 1 AC 107.

ii. Estate Contracts

An estate contract is an agreement in which a land owner may accept to convey a legal title in land, such as granting a person a valid option to purchase the land. Such an agreement creates an equitable interest accruing to the promisee, which, if registered, is enforceable against third parties. In *Midland Bank Trust Co Ltd v Green*,²⁴ a man presented an option of buying his house to his son but the son failed to register the equitable interest accruing from the offer to purchase. The man, aware that the estate contract was not registered, transferred the property to his wife for five hundred pounds. Although the wife was aware of the estate contract, the son could not enforce it because it was not registered. Similarly, in *Lloyds Bank v Carrick*,²⁵ a person had an unregistered option to buy a house which he was in actual occupation. However, he could exercise this right because it was not registered hence void.

iii. Lease

The first paragraph of the third schedule of the Land Registration Act of 2002 provides that although it is not a must to register a lease made for the duration of less than seven years, such lease still binds other third parties who subsequently acquire interests in the subject matter of the lease. This rule is justified on the basis that there is need to find a balance between the interests of a land owner who may retain the property for an extended time, and those of tenant who considers that property as home. Following *Street v Montford*,²⁶ a lease grants a right of exclusive possession of a property. Therefore, it comprises a proprietary right that continues to subsist even after there has been a disposition of land therefore binds a subsequent purchaser of land.

²⁴ [1981] 2 WLR 28.

²⁵ [1996] 4 All ER 630.

²⁶ [1985] AC 809.

APPLICATION

The garden ornaments are on the land that makes up the garden. They were put up by Stephen who was the owner of the land at the time. Being sufficiently attached to the land and having been put up by a landowner, they qualify as fixtures because the ornaments are aesthetical improvements made to the land. Therefore, they become part of the land. Although there is a possibility that they can be moved without damaging the land or the ornaments, Stephen should have moved them before transferring the land to Bart. Having transferred the land to Bart without moving them, and with a finding that the ornaments qualify as fixtures rather than chattels, Bart acquires the rights to the ornaments accruing from the transfer.

Further, the range cooker is bolted to the floor and attached to the house's power supply. The cooker is part of the house which is a fixture on the acquired land. Consequently, the cooker also qualifies as a fixture. It cannot be severed from the rest of the house because there would be damage on the building resulting from removing the bolts. There would also be a considerable expense incurred if there is an attempt to sever the cooker from the house's power supply. Accordingly, following *Botham v TSB Plc*, since the cooker cannot be easily severed from the rest of the house, it is a fixture whose ownership was transferred to Bart at the time he purchased the land from Stephen. Therefore, Stephen cannot claim the cooker.

A constructive trust exists in relation to Peter. He contributed 25% of the house's purchase price and it can be inferred that he did so in the belief that he also had a claim in the land. Accordingly, the presence of an inducement, the belief of owning a part of the house, coupled with the detriment he suffers by making a contribution create a valid resulting trust. Therefore, although Peter's interest is not registered, it is protected under paragraph two of the third

schedule because he is still in actual occupation of the house as evidenced by the fact that he has only been away for three months while visiting friends and that he left his belongings in the house. Through reasonable inspection, Bart could have discovered Peter's actual occupation because his belongings were still in the house at the time he purchased it. Consequently, Bart is bound by Peter's interests arising from the constructive trust.

Jayne had been granted the option to purchase the outbuildings in the ground of the house. This amounts to an estate contract between Stephen and Jayne. Bart can only be bound by Jayne's interests if she registered the equitable interest that she acquired from the estate covenant. In the absence of registration, the rule in *Midland Bank Trust Co Ltd v Green* shall apply and Jayne's interest cannot bind Bart in any way. In relation to Fred's lease, it qualifies as an overriding interest under paragraph one of the third schedule under the Land Registration Act of 2002 which provides that a lease made for a duration not exceeding seven years, although unregistered, it still is binding on third parties. Therefore, Bart will still be bound by Fred's interests that arise by virtue of the lease made with Stephen.

CONCLUSION

The garden ornaments belong to Bart because as fixtures, they are a permanent attachment to the land. Accordingly, the property in the ornaments passes at the time the disposition of land is made in Bart's favour. Stephen does not have right to subsequently claim ownership of the ornaments. In the same way, the range cooker is also attached to the house hence a fixture whose ownership remains with Bart. Peter's, Jayne's and Fred's interests comprise overriding interests which, although unregistered, can have a binding effect on subsequent interests.

Regarding Peter, a resulting trust exists by virtue of his familial relationship with Stephen and the fact that he has made substantial contributions towards the purchase of the house. Further, Peter is still in actual occupation of the house as evidenced by his short absence and the presence of his belonging in the house, lead to the creation of a resulting trust which comprises an overriding interest over Bart's title to the land. Jayne's interest is a result of an estate contract between her and Stephen. It is not clear whether she registered the equitable right created by the estates contract. If she did not register the interest as required by the Act, she cannot enforce the interest against Bart. Therefore, Bart is not bound by Jayne's interests. Fred's lease is covered under the Act hence constitutes an overriding interest that is enforceable against Bart.

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