Property Law A Answer Templates:

**FIXTURES:**

*Determining a fixture:*

1. If the item is affixed to the land in any other way than resting on its own weight then the burden of proof lies on the person who is trying to prove that it is not a fixture – **Holland v Hodgson (1872)**

2. If the item rests on its own weight then it is presumed not to be a fixture and the burden of proof lies on the person trying to prove it to be a fixture.

3. Is the item for better use of the land or for better use of the item (intention)
   a. **Australian Provincial Assurance Company Ltd v Coroneo (1938)** – was the item attached for a permanent or indefinite or substantial period of time
   b. **Leigh v Taylor** – [1902] – better use of the land then likely to be a fixture
   c. **Alcan (NT) Alumina Pty Ltd v Commissioner of Taxes (2007)** – take into consideration the intention of the time in which the item was installed

4. The degree of annexation also must be considered:
   a. **Spyer v Phillipson** [1931] – whether removal would cause significant damage to the land or buildings to which the items are attached.
   b. **Litz v National Australian Bank Ltd** – would the removal of the item destroy or damage it
   c. **Metal Manufacturers Ltd v Commissioner of Taxation** – whether the cost of renewal would exceed the value of the attached property
   d. **Attorney-General (Cth) v RT Co Pty Ltd (No 2) (1957)** – where printing presses were secured by nuts and bolts in order to keep them steady in operation

*Removing a Fixture:*

1. At common law tenants are able to remove fixtures that they have installed themselves providing that the fixture was for either trade, domestic or ornamental purposes – **Bain v Brand (1876)**

2. The right to remove tenant’s fixtures only applies to articles brought onto the land and affixed by the tenant. The right does not extend to fixtures already...
forming part of the land at the commencement of the tenancy - Cottee Dairy Products Pty Ltd v Minad Pty Ltd (1999)

3. Metal Manufacturers Ltd v Commissioner of Taxation – whether the cost of renewal would exceed the value of the attached property

4. Litz v National Australian Bank Ltd – would the removal of the item destroy or damage it

Agricultural Tenancies Act NSW (1990):
Lessor and lessees can remove some agricultural fixture if it involves a farm property. Lessor and lessees like life tenants can remove fixtures, which have either ornamental, domestic and trade purposes.

THE RULE AGAINST PERPETUITIES
Where there is a future interest in the estate and will not vest until the contingent is satisfied.

Before 31/10/1984: - any instrument that takes effect before then (when will comes into effect i.e. the testator dies)

1. Identify the date the interest was created and the interests that have not yet vested.

2. The perpetuity period = life in being + 21 years + gestation period in the womb for the child

3. Identify the life in being. They must satisfy the following: - Cadell v Palmer (1833) and Duke of Norfolk’s Case (1681)
   a. Must be human
   b. Must be living at the date of the creation of the interest
   c. Must be casually connected with the vesting
   d. If it is a group then they must not be able to increase in number and must be ascertainable at the date of the interest
   e. Must be expressly mentioned in the interest or implied

4. Must consider all possibilities in regards to when the interest may vest (people can have children very young and old)

5. If there is a chance that the interest may vest outside of the perpetuity period then the gift fails and the interest is void.
6. Gifts can be saved using the class closing rules: Must apply first
   a. Simple Class Gifts: An immediate class gift with no contingency as to age or otherwise
      i. The class will close when the instrument creating the interest comes into operation if at least one of the class members is alive
      ii. If there are no members, it will wait until members come into existence
   b. Class gift at prescribed age or event – an immediate class gift with a contingency as to age or otherwise
      i. The class will close when one of the members satisfies the contingency and all those in existence at the time of this event will be included within the class. They will receive the gift upon satisfying the contingency. If they are born after the date, they will not be included.
   c. Class gift after a prior estate
      i. The class will close when the life or other interest determines and only when at least one class member is in existence.
   d. Class gift at a prescribed age or other event after a prior estate
      i. The class will close when the life or other interest determines or when the first class member satisfies the contingency, which ever is later.

Age reduction:

S36 Conveyancing Act 1919:
It is now repealed but preserved under section 20(2) of the Perpetuities Act 1984 (NSW) for settlements taking effect before 31/10/1984.
If the instrument is postponed vesting to age that exceeds 21 and it would cause the gift to be void then the age can be reduced to 21 years old.

After 31/10/1984 – statute – applies to instruments or wills taking effect on or after (the will may had been made before but comes into effect after therefore statute will apply)
   1. Identify the date in which the interest was created and identify the interests that have not vested yet.