Basic Concepts

Introduction

The main dichotomy is between property as a physical thing to which various legal rights are attached, and the legal interest pertaining to a physical object. The latter is the current preferred view in legal academia.

The legal meaning of property has three aspects, which is known as the bundle of rights. None of them are prerequisites – and all of them can be subject to qualifications:

1. The right to use or enjoy.
2. The right to exclude others.
3. The right to alienate.

Right to Use

Self explanatory. This is very fundamental, but can be subject to restrictions such as:

- Zoning laws and building regulations restricting the use of a fee simple.
- Restrictions by agreement, such as negative covenants or easements:
  - Negative covenants: a contract between two bits of land (as opposed to people) – the owner of Block A will contract with owner of Block B not to do something with his or her land; even if the land is sold later on, the new owners are still bound by the covenant and cannot build on B until the covenant expires.
  - Easements: definition from the textbook required.

Right to Exclude

In basic terms, the right to prohibit others from using something.

- This right is protected/facilitated by property torts (i.e. claims for trespass, conversion and detinue).
- It applies even though a trespass does not interfere with the owner’s enjoyment of his property.
- An exception to this rule is when plane fly over property (at a high enough height).
- This right is also restricted by agreements such as negative covenants or easements.

Right to Alienate

In basic terms, the right to sell, gift or otherwise assign proprietary rights (selling one’s right, not the thing itself).

- The extent of one’s right to alienate depends on the nature of one’s interest:
  - Fee simple - biggest interest in land, can sell the rights completely.
  - Leasehold - a leaseholder can only sell the rights that he has (ie, he can only sublet).
  - Life tenant (family & personal trusts: A gives property to B as life tenant; when B dies, their interest in property extinguishes; passes to C the remainderman; if B passes interest to D, when B dies, D’s interest passes to C – called a pur autre vie)
- S 51 (xxxi) of the Constitution: the Commonwealth can take property on just terms, as long as compensation has been adequate

Rights In Rem and Rights In Personam

When a person has legal rights, they can be either:

- Rights in personam: rights against a person.
  - For example, rights arising from a contract can only be enforced against the other person in the contract.
  - A license is an example of right which is in personam - because it belongs to a specific person.
- Rights in rem: these are rights which are assignable and enforceable against the whole world.
For example, when one has a leasehold, he has a right to the house which is enforceable against anyone in the world who trespasses, not just the landlord with whom the contract is signed. Problems arise when dealing with shares – right to dividend, right to vote, right to excess capital in case of liquidation, but they look more like rights in personam.

Licenses and Third Parties

A license is a permission for the licensee (license holder) to do an act on the licensor's (person giving the license) land which would otherwise constitute a trespass.

- A license is really a contract - ie, buying a movie ticket means you enter a contract, and receive a license to watch the movie and not be trespassing.

As mentioned, property rights are enforceable against the whole world whilst licenses are contractual rights that are enforceable against specific persons. However, property rights can often arise from such personal (contractual) rights.

- Thus, the licensee has some limited property right in the contract.
- However, this does not confer a full proprietary interest: the correct measure is whether the proprietary interest is independently enforceable against third parties.
- If the license is so enforceable, it has assumed a concrete proprietary identity.

This is discussed in King v David Allen & Sons Billposting Ltd:

**Background facts**
- The licensor had a property on which he intended to construct a theatre.
- The licensor formed agreement in the form of a 'license' with the licensee allowing the licensee put up posters on the property walls.
  - License: Minimum 4 years from date of theatre construction and thereafter terminable by either party on 6 months’ notice; 12p rent per annum; licensor would not allow any other company to put up posters.
- The licensor then leased the property to another company, which did not refer to original agreement with licensee.
- After completion of the theatre, the licensee attempted to put up posters, but was forcibly stopped by the other company from doing so; licensor protested to no avail.
- Licensee commenced action against licensor, claiming damages for breach of agreement.

**Legal issues**
- Licenses and third parties - could the licensor bring in the other company into this claim (so as to pay less damages)

**Judgement**

**Lord Buckmaster LC: (for licensee)**
- Despite the situation being beyond his control, the licensor is in breach of his obligation to the licensee. He must thus be made responsible.
- The agreement (between the licensor and licensee) did not give the licensee an interest in land (in rem) which would be enforceable against anyone (like the other company), but merely created a personal obligation on the part of the licensor to allow the licensees the use of the wall for advertisements. The rights can only be enforced against the licensor.
- As the licensor was now unable to fulfill his obligation under the agreement, he was liable in damages for breach of contract.

**Earl Loreburn: (for licensee)**
- If the agreement between the licensor and licensee was an easement (which is a property right), the licensor would not have been responsible for trespass by the licensees.
- But looking at the document itself, there is no land interest.
- The licensor has executed the lease with the company, and thus prevented the licensee from having the right to put up posters.
- There may be a case against the company, but they are not here – no point deciding either way. Nonetheless, such a remedy does not release the licensor from his liability 'to answer for breaking the contract which he made'.

**Ratio:**
- A license does not qualify as a proprietary right. This is because it delivers insufficient control over the land.
- Only proprietary rights are enforceable against third parties. However, an interest is not proprietary simply because it is enforceable against third parties.
- A proprietary interest could have been created through clear wording in the contract as a lease – shows importance of construing the document.

- A license does not qualify as a proprietary right. This is because it delivers insufficient control over the land.
- Only proprietary rights are enforceable against third parties. However, an interest is not proprietary simply because it is enforceable against third parties.
- A proprietary interest could have been created through clear wording in the contract as a lease – shows importance of construing the document.
And in Georgeski v Owners Corporation Strata Plan 49833:

**Background facts**
- Plaintiff held a licence from the Crown over riverbank, upon which they built a jetty & slipway.
- Defendant held an easement from western edge of plaintiff's land to riverbank.
- The Plaintiff sought an order declaring her rights over the jetty & slipway, and to forbid the Defendant (neighbours) from trespassing on them.

**Arguments**
- The Defendant argued that the Plaintiff doesn't have a lease or any property right on the jetty and slipway, she just has a license from the Crown to enjoy the jetty & slipway.

**Legal issues**
- Licenses and third parties - does the Plaintiff have property rights over the jetty & slipway?

**Judgement**
Barrett J: applying *numerus clausus* principle.

1. An easement or lease both qualify as a fully-fledged proprietary interest, which then binds an incoming tenant.
2. A licence does not qualify as a proprietary interest.
   - Accordingly, a licensee (as opposed to a lessee) does not have a right of possession.
   - Where the licence also has a 'grant of interest' (e.g. a 'profit a prendre'), then the licensee may – because of the interest – sue 'in trespass for direct interference with the subject matter of the grant'.
   - However, the remedy is based on interest, not the contractual right.
- In other words, a license only grants a right *in personam* which means a licensee can only sue the person who gave him that right if his right is breached. He cannot sue the rest of the world for trespassing etc, (he would need to have a lease, or a right in rem to do that).
- Thus, the Plaintiff (who is a licensee and has no proprietary rights) cannot sue for trespass to land: *WA v Ward*.
- The Plaintiff may have a *profit a prendre*, which is a right to enjoy the 'profit' of the jetty & slipway - in this case, just simply enjoy them. If she does, she acquires a proprietary interest which would allow her to sue for trespass only if one sought to remove the jetty & slipway and thus end her enjoyment of them.
- Since the Defendant(s) have no intention of removing the jetty or slipway, the Plaintiff doesn't have any proprietary interest to exclude, and thus cannot sue for trespass. The Plaintiff fails.

The court reached the above conclusion by discussing (and rejecting) *Manchester Airport plc v Dutton*:

- Facts: An airport owner planned to build a flight path over wooded forest owned by the National Trust. The construction would require the felling of trees. The National Trust granted the owner a licence to fell the trees. Before its grant, protestors moved in to stop it.
- Held: There is no logical distinction between an owner and licensee in what they can claim, although the licensee cannot exclude the licensor. Possession can be made available to licensees with de-facto occupation.
- Dissent (Chadwick LJ): An approach consistent with traditional trespass jurisprudence, that the protestors had a right to occupy under license, but did not have any right to exclusive possession. Trespass is founded in possession. Mere presence can never satisfy that test.
- This court does not accept the majority ruling of *Manchester*. It prefers Chadwick LJ’s dissent (which was the traditional view) meaning that licensees do not have proprietary rights to exclude.

- A licensee (as opposed to a lessee) does not have a right of possession.
- Where the licence also has a 'grant of interest' (e.g. a 'profit a prendre'), then the licensee may – because of the interest – sue 'in trespass for direct interference with the subject matter of the grant'.
- However, the remedy is based on that interest, not the contractual right.
- In other words, a license only grants a right *in personam* which means a licensee can only sue the person who gave him that right if his right is breached. He cannot sue the rest of the world for trespassing etc, (he would need to have a lease, or a right in rem to do that). If one wishes to exclude others, he needs to do it on the basis of an interest.

**Numerus Clausus Principle**

Landowners cannot simply create new 'types' of rights - if a person receives a type of right, it must be one of the (a 'closed list') of established categories (ie, lease, life tenancy etc - cannot create any more 'types').

- This is in contrast to contract law, which allows parties full freedom in designing the contract per their purposes. Property law, by contrast, is very restrictive, mostly because of its potential to affect third parties.
- Categories of property law that qualify as an 'interest' enforceable as property include:
1. **Possession**: fee simple, the life interest, and the leasehold.
2. **Servitudes**: easements, profits, restrictive covenants.
3. **Security interests**: mortgages and other charges.

- Notice that things like licenses do not fall within this ambit (no proprietary rights).

**Reasons for the restrictive approach to interests in land:**

1. Maximise uses for land (a result of 19th century free market economic climate).
2. Minimise difficulties for 3rd parties to purchase land (economic reasons).
3. Protecting the integrity of the ‘science of the law’ and stopping whimsical creation of property rights (systematisation of common law).

**Property Rights Do Not Inhere In All Things**

Not everything can be owned - there are things over which a person cannot claim property rights. Examples include:

- Corpses.
- Spectacles (like a horse race).
- Human stem cells.

**Equity**

Common law and equity were brought together under the *Judicature Act 1873* (Imp). Before this, equity was a distinct body of law consisting of specific remedies invented by Chancellors to ameliorate perceived deficiencies of the common law.

- While the common law supposedly existed since ‘time immemorial’, equity had a clear origin and cause.
- It is necessary to consider its history prior to 1873 in order to ascertain the present scope of its operation. The following is a brief history of its development.

**Medieval Origins**

In medieval times, when applicant were unhappy with or unable to enter the common law system (usually because of the technicalities of the forms of action (LAWS1052 - Introducing Law & Justice topic)), they could appeal directly to the King to rule on the base of morality or conscience. This informal practice grew in popularity until it was formally delegated to the Lord Chancellor.

- Equity remedied things which were technically legal, but unfair. Examples include contracts signed as a result of duress or undue influence, trust relationships which were violated etc.
- Trusts relationships for example, were not recognised by common law, but were recognised by the Chancellor through equity.
- Equity had different remedies (as opposed to just monetary damages offered by common law). These were usually an **injunction** or **specific performance**, and were possible because the Chancellor was exercising royal prerogative power.
- Eventually, the equitable jurisdiction developed into a concrete body of law with its own system of precedents.
- It did not displace the common law - the two systems were operating side by side to correct one another.
- At the time of the Tudors (16th Century), the convention of drawing Chancellors only from legal backgrounds emerged.

**Dispute Between Common Law and Chancery: 1613-16**

During the time of the Stuarts and the civil war, Common lawyers believed that equity is too close to the royal prerogative, and were based on whims (arbitrary conscience) rather than sound law.

- The argument was headed by Sir Edward Coke, then Chief Justice of the Court of King’s Bench, against the Chancellor, Lord Ellesmere.
• The dispute came to a head in The Earl of Oxford’s case and *Courtney v Glanvil* (1615). Eventually, James I stepped in to assert the rule, which still stands, that where rules of common law and equity are in conflict, **equity should prevail**.
• It was reenacted in the *Judicature Act 1873* (Imp) s 25(11), and adopted in all Australian jurisdictions.

**Emergence of the Modern Equitable Jurisdiction**

Thus, the rules of equity were settled into a rigid system bound by precedent. Equity’s jurisdiction came to include:

- Property.
- Contracts.
- Deceased estates.
- Procedure.
- Guardianship & lunacy.
- Commercial matters.

This created a nightmare for anyone wishing to litigate. Litigants had to go to both common law and equity courts due to their rigid jurisdiction (the courts were physically different courts, in different places in the city/country). This was fixed, to an extent, with the *Judicature Act 1873* (Imp), which brought the common law and equity together.

Today, there are three equitable jurisdictions:

1. **Exclusive** (exclusive to equity).
   - Trusts and fiduciary obligations.
2. **Concurrent** (both equity and common law).
   - Estoppel.
   - Misrepresentation.
   - Cases of overborne will (duress at common law, undue influence in equity).
3. **Auxiliary** (equity aids operation of common law).
   - Jurisdiction in aid of common law where common law remedies are inadequate.

**The Reception of Equity in Australia**

The Supreme Court of New South Wales originally had jurisdiction to hear both common law and equity matters, decades before the *Judicature Act*. However, due to procedural restraints, this was in practice impossible.

- In 1840, the Administration of Justice Act (NSW) undid this arrangement and provided for the appointment of a judge for equitable matters.
- Until the Supreme Court Act 1970 (NSW), common law and equity matters were heard in separate courts in NSW. "Interestingly, NSW was the last state in Australia to combine common law and equity. However, even though courts can exercise both jurisdictions, the legal bodies have not been ‘fused’.
- This means that whilst they are tried in the same court, issues are still distinguished as common law issues and equity issues, and only the appropriate remedies can be awarded (ie, no equitable remedies to common law issues).

**Maxims of Equity**

There are 'maxims of equity', which are broad underlying principles which determine how equitable rules and remedies will be applied, but they are not in themselves equitable rules. However, there are many exceptions to these rules, and **the maxims of equity is no longer part of the LAWS2381 - Property, equity and trusts 1 course**.

The maxims include the principles that:

1. Equity will not suffer a wrong without a remedy.
2. Equity follows the law.
3. He who seeks equity must do equity.
4. He who comes to equity must do so with clean hands.
5. Equity assists the diligent and not the tardy.
6. Equity looks at intention rather than form.
7. Equity regards as done that which ought to be done: e.g. gifts.
8. Equity will not assist a volunteer (i.e. a person who has not paid something).

Distinction Between Real and Personal Property

Traditional Classification and Terminology

The basic and traditional distinction in property is as follows:

Real Property: Land. Divided into two sub-categories:

- Corporeal hereditaments - rights of possession (tangible real property).
- Incorporeal hereditaments - lesser rights to land (intangible real property, such as an easement of way).

Personal Property: Chattels. Divided further into:

- Chattels real - a hybrid between personal and real property. For example, leaseholds (right in property, but not complete ownership).
- Chattels personal - all other chattels. These can also be divided into:
  - Choses in Possession - tangible physical objects.
  - Choses in Action - Intangible things, such as patents, copyrights, deeds etc. Choses in action are really a ‘right to sue’ (on the basis of copyright etc)

The legal ramifications of the distinction between real and personal property are:

Real property:

- Can only enforce a contract of land if there is an agreement in writing.

Specific performance is a remedy: Land is recoverable in itself (and not merely damages) if a claim succeeds.

Personal property:

- Can enforce in the absence of a written agreement (can be oral etc)
- No specific performance, damages only: The property itself is not recoverable, the party will be compensated with damages.

The distinction shows how the law considers ownership over land as different to ownership of other things (because land is immovable).

The above distinction between real and personal (land and chattel) are, as always, not fixed. Often, the distinction between land and chattel is very difficult to distinguish. Thus, courts tend to rely on policy arguments to make the distinction. The following are some examples of the courts applying such distinctions.

Doctrine of Fixtures

The doctrine of fixtures provides that personal property may become real property if it is annexed (attached) to land.

- In other words, if a chattel is affixed to or placed on land, it may become a part of the land, and even transfer ownership (to the owner of that land, without compensation).
- This means that the doctrine resolves disputes contesting title, in the absence of an agreement.
- It applies especially to tax and stamp duty law where ownership can determine liability for stamp duty and tax payments.

In Belgrave Nominees v Barlin-Scott Airconditioning, the court was required to determine whether an air-conditioning plant was a fixture, and ruled as follows:

Background facts

- The Plaintiffs were owners of two buildings. Entered a contract with the Builder for renovation of their buildings.
- The Builder subcontracted the Defendant to supply & install an air-conditioning plant.
- The Builder was going into liquidation and stopped paying the Defendant, so the Defendant stopped his work.
- The Plaintiff, upon realising the contract with the Builder has failed, contracted with the New Contractor to finish the job.
- The New Contractor also subcontracted the Defendant.
However, shortly after, the Defendant, without the knowledge or consent of the Plaintiffs, removed the air-conditioning plant.

Arguments
- The Plaintiff argued that the plant was a fixture. He sought a mandatory injunction compelling the Defendant to deliver the plant or damages for detention, conversion and trespass.
- The Defendant claimed that there was insufficient annexation of the chillers to call them ‘fixtures’.

Legal issues
- Distinction Between Real and Personal Property - Doctrine of Fixtures

Judgement
- According to Holland v Hodgson, the general rule is that if an article is annexed (attached) to land by something more than its own weight, it is a fixture, unless the intention shows it was intended ‘all along’ to be a chattel (and vice versa - if not attached, then chattel unless intention shows otherwise).
- This established degree of annexation and intention as the things which the judge considers in determining whether something is a fixture.
  - Attachment or annexation gives rise to a presumption that the object is a fixture (and vice versa). Intention can then overpower this presumption, but the burden of proof lies with the party trying to disprove the presumption.
- Intention ‘all along’ is hard to define, and it has been considered in many cases. In determining this intention, the court considers:
  - (a) the nature of the chattel;
  - (b) the relation and situation of the two parties;
  - (c) the mode of annexation;
    - Secure fixing, such that the chattel cannot be removed without significant damage, provides strong, but not conclusive evidence that the chattel was intended to be a fixture.
    - Insecure fixing likewise provides strong, but not conclusive evidence that the chattel was not intended to be a fixture.
  - (d) the purpose for which the chattel was fixed.
    - If the chattel had been proved to be fixed for a temporary purpose, it is not a fixture
- In this case, the plant was of an essential nature to the building, and was positioned and fitted in such a way as to form as essential part of the building. The units were sufficiently annexed to the buildings to make them fixtures.
- Even slight fixing to the land is sufficient to raise the presumption that a chattel is a fixture so that the onus of proving otherwise rested upon the defendant who failed to discharge it.
- In this case, an order for damages is not an adequate remedy. The Plaintiff may obtain a mandatory injunction compelling the defendant to complete the plant.

In determining whether an object has become a fixture, one employs a two step process - examining degree of annexation and intention of the person who affixed the chattel.

1. Degree of annexation: if the object is attached to the land by more than its own weight, then it raises the presumption that it is a fixture. If it is not, then it raises the presumption it is a chattel.
2. Intention: after the presumption has been raised, the party seeking to refute it has the onus of proving that the intention (of the party which affixed/didn't affix the object) was that the object be a fixture/chattel despite being unattached/attached respectively.

In determining the intention of the parties, the court considers:
- (a) the nature of the chattel;
- (b) the relation and situation of the two parties;
- (c) the mode of annexation (how well attached was it); and
- (d) the purpose for which the chattel was fixed.

In the judgment of Belgrave, the court discusses Hobson v Gorringe:

Facts:
- A gas engine was let out on a hire and purchase system. The agreement in writing provided that the engine will not become the hirer's property until the payment of all installments.
- The engine was strongly affixed to the land of the hirer.
- The hirer went into liquidation and defaulted on his installments. He also defaulted on his payment to his mortgagee, who came in and repossessed the hirer's land, including the affixed engine (claiming it was a fixture).
- The Plaintiff [Hobson] tried to get his engine back, since the agreement specifies that it did not become the hirer's property, and therefore the mortgagee [the Defendant, Gorringe], cannot repossess it as a fixture.
The hire-purchase agreement was an incidental agreement made without the knowledge of the mortgagee. It is unfair for a third party (such as the Defendant) with an interest in the land, and therefore does not bind a third party.

Since the engine was sufficiently annexed to the land to become a fixture, it is therefore a fixture which can be repossessed by the Defendant.

It seems that both subjective and objective circumstances have to be examined in determining the intention of the party removing the chattel or fixture. A subjective test was used in Ball-Guymer v Livantes, but an objective test was used in Permanent Trustee Australia v Esanda Corporation.

Other examples include:

1. A-G (Cth) v RT Co Pty Ltd (No 2)
   - In RT, two printing presses attached by bolts to the building were held not to be fixtures, as the purpose of the bolts was merely for efficient operation of the press.

2. Reid v Smith
   - In Reid, a lessee built a house that rested on its own weight on brick piers. Upon termination of the lease, the landlord sought to restrain the lessee from removing the house as he claimed it had become a fixture. The house was held to be a fixture. Even though it was intended to be a temporary dwelling, the building was held to be intended to be part of the freehold. However, Griffith CJ clearly pointed out this was not to become a general rule. An unattached house was not necessarily a fixture; in most other circumstances, a temporary dwelling might remain a chattel.

Another case considering fixtures was May v v Ceedive Pty Ltd:

- Facts: A practice had developed in mining areas, that lessees would build and inhabit houses on land. The houses would become their own property, while the land remained the property of the original owner. In this case, May acquired a mining house, and formed an arrangement with Ceedive to pay a weekly rent for the land. Ceedive increased the rent, and May refused to pay.
- Held: The house was a fixture on the land as per the objective standard of the law, notwithstanding subjective intentions of the parties to the contrary.
- Upon looking at 'all the surrounding circumstances', the presumption that the house is a fixture has not been rebutted.
- The agreement evincing an intention for the house to remain a chattel was between the parties, and not the builder who affixed the house. The intention which matters is not the parties', but the one who originally affixed the house.
- The fact that the house would have to be demolished to be removed strongly indicates that it is a fixture (chattels are movable!)
- The purpose for which the house was built was a residential dwelling house and it was affixed with the intention that it remain in position permanently.

Another case examined is Leigh v Taylor:

- Facts: Ms Taylor was a life tenant. She affixed expensive tapestries to the wall. After her death, the remainderman claimed the tapestries were a fixture, as they were 'affixed' to the wall with wood, nails and screws.
- Held: The tapestries were fixed for the purpose of ornament in the only way possible for their use and enjoyment. They could also be removed fairly easily, without causing damage to the house. Thus, they did not become a fixture the property of the remainderman, but were removable by the executor of the tenant for life.
- This case highlights the underlying rationale for the doctrine of fixtures: originally, it was to prevent people from removing chattels from freehold that would physically destroy part of the freehold. These days, it is possible to remove chattels without destroying the actual realty. Thus, it makes it difficult to determine cases that are at the margins of the rule.

It is thus apparent that recent authority strongly favours the objective standards of the law, as opposed to subjective intentions. At any rate, courts are required to look at 'all the surrounding circumstances' in deciding whether a particular item is a chattel or a fixture. Nonetheless, it is unclear where the line is to be drawn – despite the statements in Ceedive, it is apparent that cases are decided on their own facts.
Policy Decisions

The following are policy decisions with regards to what equipment is or isn't a fixture:

- Mining equipment has been held to be a chattel due to the temporary nature of mines and the transportability of the equipment.
- Irrigation equipment has been held to be a chattel where damage is would not be caused upon their irrigation. However, where its removal would cause damage, irrigation equipment has been held to be a fixture.
- Houseboats have been held to be a chattel, again because they can be moved without damage. However, if moored securely on a permanent basis, a boat can be a fixture.

Tenant's Fixtures

In certain circumstances, affixed chattels can be removed by the affixer, despite the fact they are fixtures. The most common example are tenant's fixtures.

- Tenants may install many fixtures on their leased property during their tenancy, but it would be economically unjust to forbid them from taking it with them at the end of their tenancy.
- Tenant's fixtures include shelves and counters and domestic and ornamental fixtures.
- The lease will generally specify such things.

Today, if the tenant has installed (from his own pocket) any fixtures, he may remove them any time up to termination of the lease. Upon termination, the situation is less clear.

Tenancy at Will

In cases of tenancy at will and where specified in the lease, the tenant usually has a 'reasonable time' to remove their fixtures. This right does not apply where the lease is forfeited or surrendered.

- If this lease ends and the tenant remains in possession because of a new lease, he is still allowed to remove the fixtures.

Agricultural and Residential Tenancies

The common law forbade removal of agricultural fixtures under tenants' rights of removal. Legislation in NSW has modified this rule to allow them to remove certain fixtures in specified circumstances - for more information, see Agricultural Tenancies Act 1990 (NSW), s 14 (also ss 5-7). Residential tenancies are likewise governed by legislation.

Chattels Annexed Without Permission

Generally, chattels annexed without the owner’s permission preclude recovery.

- This was the case in Chateau v Chateau, where the owner of one vineyard planted vines on a neighbouring vineyard without either party's knowledge. The vines were held to be a fixture on the neighbouring property.
- Similarly in Brand v Chris Building Society, the defendant mistakenly built a house on the plaintiff's land. The plaintiff sought a restraining order to demolish the house, but the defendant claimed that the plaintiff knew about the mistake at the beginning of construction, but took no steps to stop it, and undertook to give the plaintiff the choice to either (a) have the property removed, or (b) keep it for 2145p.
- Hudson J entered judgment for the plaintiff, holding that in the absence of something in the nature of fraud of the plaintiff's part, there was no equitable principle upon which the defendant could rely to defeat his claim.

Personal property

Introduction

This chapter considers personal property (ie, chattel) and the remedies available for a wrongful interference with personal property. The three main actions for such interference are: