

SHOULD IT STAY OR SHOULD IT GO? CHATELS VS. FIXTURES

Presentation by Tracy Loconte and Carly Caruso

Chattel: a moveable possession and personal property that can be removed without injury to the property

Fixtures: items that have effectively become a permanent part of the property. They typically require tools and hardware to remove.

“Old School Approach” – Stack v. T. Eaton Co. Test¹

1. Articles not otherwise attached to the land than by their own weight are not to be considered as part of the land, unless the circumstances show that they were intended to be part of the land;
2. Articles affixed to the land even slightly are to be considered part of the land, unless the circumstances show that they were intended to continue as chattels;
3. That the circumstances necessary to be shown to alter the prima facie character of the articles are circumstances which show the degree of annexation and object of such annexation which are patent to all to see; and
4. That the intention of the person affixing the article to the soil is material only so far as it can be presumed from the degree and object of the annexation.

Stack also confirmed as settled law that a tenant's fixtures (trade fixtures) are nonetheless still fixtures, although a landlord and a tenant, as between themselves, can contract otherwise.

Royal Bank² – 6-Rules

1. Any item which is unattached to the property, except by its own weight, and can be removed without damage or alterations to the fixtures or land that will need repair, is a chattel.
2. Any item which is plugged in and can be removed without any damage or alteration is a chattel.
3. Any item which is attached even minimally is a fixture (ex. requires removal of screws, pipes, etc.)
4. If a piece of equipment is attached to a structure, a part of which could be removed but which would be useless without the attached part, then the entire piece of equipment is a fixture (i.e. an item is a fixture if it loses its essential character on removal because it is of no use unless attached to a permanent and substantial improvement to the premises.). Conversely, if an item can be detached without damage or alteration and if the item retains its essential character without the attached part, then it will be a chattel.
5. Where an object is determined to be a fixture, it may be removed if it can be shown that it is a tenant's fixture provided the tenant leaves the premises in exactly the same condition that he or she received them.
6. A purpose test is only used in exceptional circumstances (in relation to very large or expensive items) where, after applying rules 1-5 above, there is no clear determination if an object is a fixture or chattel.

¹ 1902 CarswellOnt 399, [1902] O.J. No. 155 (Ont. Div. Ct.);

² *Royal Bank of Canada v. Maple Ridge Farmers Market Ltd.*, [1995] BCWLD 2244 (BCSC)

Recent Case Examples

Case	Object	Chattel or Fixture
<i>CMIC Mortgage Investment Corp. v. Rodriguez</i> ³	2 tent-like buildings as barn and riding arena. Tent 1 bolted to concrete foundation. Tent 2 rested on blocks on the ground	Tent 1 – Fixture Tent 2 - Chattel
<i>Clarke v. Johnson</i> ⁴	Prefabricated "camp" now assembled and finished internally	Fixture
<i>GRJ Holdings Ltd. v. GBM Trailer Service Ltd</i> ⁵ :	Underground anchored storage tank, part of a moveable steam rack	Chattel (the tank was installed for an uncertain duration to work in conjunction with the steam purging system to make it more efficient and safe as opposed to an improvement to the land)
<i>Foley v. St. Mary's (Town)</i> ⁶	Original features (wall clock, showcases, counters and mirrors) of a proposed heritage property	Fixtures (though easily removed, they are affixed to the property)
<i>Scott v. Filipovic</i> ⁷	Blueberry Bushes	Fixture (even though at the end of the lease, the plants were to be removed and may return them to status as chattels)
<i>Long v. Van Burgsteden</i> ⁸	Tree with root systems encased in wire baskets for storage until sold	Chattel
<i>Walburger v. Lindsay</i> ⁹	Mobile home	Fixture
<i>dos Reis v. Ring</i> ¹⁰	Stone wall	Chattel
<i>Zellstoff Celger Ltd. v. British Columbia</i> ¹¹	Production Machinery	Fixture
<i>Royal Bank of Canada v. Messenger (Trustee of)</i> ¹²	Mini-home	Chattel

The authors would like to thank Rachael Andrew, student-at-law, for her assistance in preparing this handout.

³ 2010 BCSC 308

⁴ 2014 ONCA 237

⁵ 2017 ABQB 731

⁶ 2015 ONSC 6214

⁷ 2015 BCCA 409

⁸ 2014 SKCA 115

⁹ 2015 BCSC 341

¹⁰ 2012 BCSC 122

¹¹ 2014 BCCA 279

¹² 2014 NSSC 4