

# Legally Speaking

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## Chattels or Fixtures - New Test?

A number of tests have been developed by the courts to decide whether an article is a chattel or a fixture, but the difficulties in applying the tests to specific articles continues. For example, signs rented by a former tenant and embedded in concrete, which however could be removed and sold by the landlord as chattels, were held to be fixtures. On the other hand, a heavy concrete block manufacturing machine bolted to a floor and which could only be removed by taking out a wall was held to be a chattel.

In its simplest terms, the first step in deciding whether an article is a fixture is to find out whether it is attached to the real property. If it is attached, even slightly, it is presumed to be a fixture. If it is only slightly attached does its intended use defeat this presumption? Its intended use is to be discovered by examining the extent and the purpose of the attachment.

A judge of the Supreme Court of British Columbia, who was trying to determine whether a trustee in bankruptcy or a mortgagee was entitled to restaurant equipment of a bankrupt, decided to restate the rules classifying an article as a fixture or chattel, with examples. His rules are summarized as follows:

1. An item unattached to property except by its own weight, which can be removed without damage or alterations, which will require repair to the fixture or land to which the item is attached, is a chattel. A walk-in freezer, or a large item built inside a structure that cannot simply be taken out of a door or window is a fixture, unless it can be removed without damage or alteration to the premises. Removal or replacement of a doorjamb or window would not constitute damage or alteration.
2. An item such as a telephone, toaster, or computer that can be removed by merely taking the plug out of the outlet is a chattel, while the electrical outlet, telephone or computer jack attached to a wall is a fixture.
3. An item that cannot be unplugged and which is attached even slightly so that it requires the, "removal of screws, nails, bolts, detachment of plumbing or the cutting or capping of hardware," is a fixture.
4. If a piece of equipment which is attached to a structure can be removed, but would be useless in its separate state, then it is a fixture. Conversely, if it could be removed without damage or alteration and could be used even though not part of the structure to which it was attached, then it will be a chattel. An example is that of a crane which moves along tracks permanently attached to the structure. The crane can be removed, but without the tracks the crane would be useless and it is therefore a fixture.

Pictures hanging onto the walls suspended by their own weight by a hook, a television set or stereo speakers mounted upon brackets attached to the wall are chattels. The nail or bracket is the

fixture.

5. An item that is a fixture, but which is shown to be a tenant's fixture, can be removed during the tenancy, "provided that the tenant leaves the premises in exactly the same condition as he or she received them."

6. It is only in exceptional circumstances not covered by these rules that the purpose for which the object is affixed to property be examined. The example given by the judge was a mobile home that may be resting on land by its own weight, but it may also be clearly established that it was intended to be a fixture. The judge seemed to conclude that the purpose test would be used rarely and only in relation to very large or expensive items.

The judge's reasons for formulating these rules was that they provide commercial certainty and therefore reduce expensive litigation involving financially troubled or bankrupt companies or individuals. He also recognized that not all of those rules are consistent with previous BCCA decisions. He expressed the hope that the Court of Appeal would accept his reasoning and agree that the consequent reduction of litigation, often at a cost exceeding the value of the goods in dispute, justifies the support of these rules.

Time will tell - rigid rules and hard facts create inequities. Until we know whether this decision will be followed, reversed or ignored, licensees who are obtaining new listings should keep these tests in mind when they are discussing with their sellers the list of items which may be considered to be fixtures, but which the seller wants to exclude from the property offered for sale. Since we tend to take the printed part of forms for granted, this may be a good opportunity to review paragraph seven of the Contract of Purchase and Sale.<sup>1</sup>

Gerry Neely, B.A., LL.B.  
Pearlman & Lindholm  
Victoria, BC

<sup>1</sup> *Royal Bank of Canada v. Maple Ridge Farmers Market Ltd.*, S.C.B.C., Vancouver Registry #A950858, Reasons for judgment, March 28th, 1995.

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