

# Land Law

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**Berkeley v Poulett**

**1**

**Relevance:** Set out the tests to apply to determine whether objects are fixtures or chattels

**Relevant facts:**

Pictures held to be chattels although fixed; sundial detached from its pedestal and small held to be a chattel; statue easy to remove from plinth and sitting not architecturally important held to be a chattel although heavy; plinth fixed firmly and its sitting architecturally important held to be a fixture.

**Ratio:**

Test 1: Degree of physical annexation Test - If an object has been affixed in such a way that it cannot be removed without causing serious damage to the realty, then it will be presumed to be a fixture; if it is easily removed, it will be presumed a chattel.

Test 2: Reason for annexation Test - If an object must be fixed to be enjoyed, it may still be a chattel; if an object is only lightly affixed but is an important element to the decor, it may still be a fixture.

**D'Eyncourt v Gregory**

**1**

**Relevance:** Application of chattel/fixture tests

**Relevant facts:**

The following freestanding items considered to be fixtures: tapestries; a particular portrait; carved kneeling figures and sculptured marbled vases; lions at head of stairs and 16 stone garden seats.

**Ratio:**

Freestanding items will be considered fixtures where they are part of the architectural design of a property.

**Leigh v Taylor**

**2**

**Relevance:** Application of chattel/fixture tests

**Relevant facts:**

Tapestries fixed onto canvas and then tacked to a framework of wood nailed to the walls held to be chattels; the only way for them to be properly displayed was for them to be fixed to the walls in this manner.

**Ratio:**

Fixed items will be considered chattels if annexation is the only way for them to be properly displayed/enjoyed.

**Elitestone Ltd v Morris and another****2**

**Relevance:** Application of chattel/fixture tests

**Relevant facts:**

Dispute regarded Bungalow; held to be a fixture - it rested on concrete foundation blocks set into the ground and removal would have caused substantial damage, indication it was not intended to remain a chattel.

**Ratio:** A house that is constructed so as to be removable, whether as a unit or in sections, may well remain a chattel. A house constructed in such a way that it can be removed except by destruction cannot have been intended to remain a chattel.

**Botham v TSB Bank plc****2**

**Relevance:** Application of chattel/fixture tests

**Relevant facts:**

Fitted carpets and curtains, as well as light fittings and gas fires connected to the building only by a gas pipe all held to be chattel.

**Ratio:**

White goods manufactures to standard sizes will be considered chattels; fitted kitchen units will be considered fixtures.

**WS2 & 3 Registered & Unregistered Systems and Enforceability****Strand Securities v Caswell****3**

**Relevance:** Enforceability - actual occupation

**Relevant facts:**

Caswell had a lease which should have been registered but wasn't; Strand Securities purchased the property; Caswell's daughter occupied the property rent-free as a licensee; held that Sched 3 para 2 didn't apply to those with a license.

**Ratio:**

Licenses do not constitute overriding interests; for schedule 3 para 2 to apply, the interest must be proprietary in nature.

**Kingsnorth Finance v Tizard****2**

**Relevance:** Enforceability - unregistered system - notice of actual occupation

**Relevant facts:**

Surveyors were informed by holder of legal title of the house that he was separated from his wife; held (i) wife had trust interest because she had contributed equally to matrimonial home; (ii) actual occupation did not have to be exclusive or continuous; (iii) that once surveyor was informed of this situation, a duty was placed upon him to inspect for any signs of actual occupation on her part (which he failed to do).

**Ratio:**

To avoid having imputed or constructive notice, the purchaser or his agent should investigate the seller's title and should follow up anything that appears inconsistent with that title. If not all inquiries are made that ought to have been made, the purchaser will not be Equity's Darling.

**Williams & Glyn's Bank v Boland****2**

**Relevance:** Enforceability - actual occupation

**Relevant facts:**

Wife had equitable interest in the property; husband took out a mortgage; question arose whether the bank's mortgage took effect subject to the wife's equitable interest. For this to be possible it had to be shown that she had a right or interest in the land and that this right was protected by actual occupation of the land.

**Ratio:**

Actual occupation under Sch 3, para 2 requires there to be physical presence on the land by the claimant, not just the right to occupy.

<b>Thomas v Clydesdale Bank plc</b>	<b>2</b>
<b>Relevance:</b> Enforceability - actual occupation	
<b>Relevant facts:</b> Property's legal title solely owned and a mortgage taken; legal owner defaulted; his partner Ms Thomas claimed an overriding interest via actual occupation while the house was being renovated.	
<b>Ratio:</b> An interest will override only if <i>occupation</i> would have been obvious on a reasonably careful inspection at the time of sale or the purchaser had actual knowledge of the <i>interest</i> at the time of the sale. Regarding visible signs of occupation - the reasonable inspection need not uncover the full extent and nature of the occupation (i.e. whether it is actual or not).	

<b>Abbey National Building Society v Cann</b>	<b>2</b>
<b>Relevance:</b> Enforceability - actual occupation	
<b>Relevant facts:</b> Mother had an equitable interest in the property; sent her son to move in her furniture and put up curtains; not held to be actual occupation.	
<b>Ratio:</b> Actions amounting to 'no more than taking the preparatory steps leading to the assumption of actual residential occupation' do not amount to actual occupation.	

<b>Lloyds Bank plc v Rosset</b>	<b>1</b>
<b>Relevance:</b> Enforceability - actual occupation	
<b>Relevant facts:</b> Mrs. Rosset held to be in actual occupation by visiting the property regularly while it was being renovated in order to supervise the building contractors; this was the only occupation possible in a semi-derelict property.	
<b>Ratio:</b> Actual occupation will be considered with regards to what is actually possible given the state of the property.	

<b>Link Lending Ltd v Bustard</b>	<b>2</b>
<b>Relevance:</b> Enforceability - actual occupation	
<b>Relevant facts:</b> Ms. Bustard deemed in actual occupation despite being absent for over a year in residential psychiatric care: possessions still in the property, made regular visits, bills paid on her behalf and she regarded it as her home and intended to return there (an option not ruled out by her doctors).	
<b>Ratio:</b> Person may still be in actual occupation when absent from the property if actions indicate an intention to return and a continued attachment to the property.	

<b>Thompson v Foy</b>	<b>2</b>
<b>Relevance:</b> Enforceability - actual occupation	
<b>Relevant facts:</b> Mrs. Thompson's possessions were still in property, but this did not amount to actual occupation given that she had decided she was never going to return to live there.	
<b>Ratio:</b> Person will not be deemed in actual occupation if person is absent and never intends to return.	

<b>Kling v Keston Properties Ltd</b>	<b>2</b>
<b>Relevance:</b> Enforceability - actual occupation	
<b>Relevant facts:</b> A car parked regularly in a garage held to amount to actual occupation given that this was the normal use of the property.	
<b>Ratio:</b> What amounts to actual occupation will depend upon the nature of the property itself.	