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Some Aspects of the Law of Fixtures in Wyoming

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both the advising attorney and the testator when questions arise regarding implied revocations. No revocation should be permitted except on such grounds as are specifically named in the statutes and these grounds should be as few as possible.

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SOME ASPECTS OF THE LAW OF FIXTURES IN WYOMING

Fixtures are chattels annexed to real property which retain their separate identity and become realty, but which under certain circumstances may become personalty again.[1] Generally the annexation is in permanent form and the chattel becomes an integral part of the real estate. However, physical permanency is not always required to allow the chattel to become a part of the realty.[2]

Although the first paragraph above will serve the purpose of a broad general statement it would be well to consider a quote from a 1931 Nebraska case:[3] "Perhaps there are no subjects in law more difficult to deal with than the questions raised as to fixtures. . . . The cases are legion; and each new case seems only the more to disturb any fixed or certain rule that seemed deductible from former cases." Fixtures are not exclusively a landlord-tenant problem but can also arise in controversies between heir and executor; owner and his vendee; owner and mortgagee; owner and trespasser; and owner or mortgagee and a conditional vendor.

The rule of the common law was that whatever is once annexed to the freehold becomes part of it and cannot be removed except by the party entitled to the inheritance.[4] This rule was never strictly followed in America, and the following tests were laid down in an early American case to determine whether the property be a fixture or not:[5]

1. Actual annexation to the realty, or something appurtenant thereto.
2. Appropriation to the use or purpose of that part of the realty with which it is connected.
3. The intention of the party making the annexation, to make the article a permanent accession to the freehold—this intention being inferred from the nature of the article affixed, the relation and situation of the party making the annexation, and the purpose or use for which the annexation has been made.

But no precise rule can be laid down which will govern all cases as to whether it is a chattel or a fixture. This can vary with the intention of

1. Frost v. Schinkel, 121 Neb. 784, 238 N.W. 659, 77 A.L.R. 1381 (1931).
2. Teaff v. Hewitt, 1 Ohio St. 511, 59 Am.Dec. 634 (1851).
3. Frost v. Schinkel, 121 Neb. 784, 238 N.W. 659, 77 A.L.R. 1381 (1931).
4. Van Ness v. Pacard, 2 Pet. 137.
5. Teaff v. Hewitt, 1 Ohio St. 511, 59 Am.Dec. 634 (1851).

the parties' and the different relationships of the parties.[6] Also, special agreement of the parties will change the result obtained by application of the tests.[7]

An important and early exception to the rule of the common law that whatever is once annexed to the freehold becomes part of it, exists in the case of trade fixtures.[8] Trade fixtures are articles annexed to the realty by a tenant for the purpose of carrying on a trade or business and are ordinarily removable by him while he is in possession of the freehold, and such trade fixtures can be taken to pieces or even wrecked in removal, but such removal must never cause substantial damage to the freehold.[9] The reason for this property remaining personal is that the landlord contributes nothing thereto and should not be enriched at the expense of his tenant.[10] Further reasoning is that the erection of trade fixtures will encourage trade and industry.[11]

The three cases decided by the Wyoming Supreme Court, two of which will first be considered together and referred to by the year of the case[12] & [13], will show the limitations reached in cases involving trade fixtures in this state. The two cases are considered together because they involve the same parties and facts and the results obtained in two different appeals.

In the 1928 case a lease and construction agreement between landlord and tenant had specified what property put upon the premises by the lessee could be removed upon termination of the lease. Subsequently a chattel mortgage was given by the lessee as to the materials purchased in making the improvements called for in the construction agreement, and the chattel mortagee later received an assignment of the lease from the lessee. Such chattel mortgage professed to cover all the personal property within the theatre building. The controversy concerned property removed from the building by the chattel mortgagee as opposed to the rights of the lessor to the same property under the lease and construction agreement as construed together by the court. The court held that the chattel mortgagee obtained by assignment only those rights which the lessee had under the lease and construction agreement, and therefore could remove only such property as was allowed by such agreement. Anything removed not covered by said lease and agreement would be controlled by the general law of fixtures, regard being had particularly to trade fixtures.

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6. Walker v. Tillis, 188 Ala. 313, 66 So. 54, L.R.A. 1915A, 654 (1914).
7. Valdes v. Central Altagracia, 225 U.S. 58, 56 L.Ed. 980, 32 S.Ct. 664 (1912).
8. Cameron v. Oakland County Gas and Oil Co., 277 Mich. 442, 269 N.W. 227, 107 A.L.R. 1142 (1936).
9. Frost v. Schinkel, 121 Neb. 784, 238 N.W. 659, 77 A.L.R. 1381 (1931).
10. Cameron v. Oakland County Gas and Oil Co., 277 Mich. 442, 269 N.W. 227, 107 A.L.R. 1142 (1936).
11. Standard Oil Co. v. LaCrosse Super Auto Service, 217 Wis. 237, 258 N.W. 791, 99 A.L.R. 60 (1935).
12. Slane v. Curtis, 39 Wyo. 1, 269 Pac. 31 (1928).
13. Slane v. Curtis, 41 Wyo. 402, 286 Pac. 372 (1930).

In the 1930 case, an appeal from the judgment of the District Court as to damages, the court considered, in addition to the proper measure of damages, the nature of property removed by the chattel mortgagee not covered by the lease and agreement, in particular doors and windows, including transoms and transom glasses. They refused to sustain the contention of the chattel mortgagee that this property was trade fixtures, pointing out that the articles removed were those put in to take the place of others already affixed, and since the old doors and windows, including transoms and glasses, had not been replaced, the effect of the removal of these substituted fixtures would be to leave the premises in a "maimed condition," contrary to the lease agreement whereby the premises were to be returned in the same condition as when leased, ordinary wear and tear excepted. The court also approved that doors and windows, including transoms, are ordinarily a part of the realty and cannot be removed by the lessee. By the use of the word "ordinarily," the court might indicate that custom and usage in a given jurisdiction could control upon this matter.

In the third case aforementioned,[14] involving a dispute between a lessor and lessee over title to a building located upon the premises, the court again decided against the lessee as to the property being a trade fixture. Recognizing the general exception of trade fixtures they stated there were certain restrictions upon the right of removal by the lessee. Here, the lessee had used a building upon the premises, which was property owned by the lessor, to construct a new building adapted for use in the operation of a filling station. That is, he had stripped the old building to its four walls and from this basis constructed the new building. Upon termination of the lease the lessee wished to remove such structure as a trade fixture. Refusing to allow removal the court stated the following: (1) The lessee cannot remove the property as a trade fixture if he has substituted his fixture for one which was there when he took possession and this latter fixture has been injured or permanently removed, (2) He cannot remove the property as a trade fixture if it is so annexed to the realty as to be an integral part of the premises. Again the court pointed out that the lease required the lessee to return the premises as received "excepting only loss by fire, inevitabl accident or ordinary wear." The new part of the structure could not be removed without material injury even to the part of the old building incorporated, and if the new portion were removed neither part would be an integral building.

From the foregoing cases decided by the Wyoming Court it appears: (1) Trade fixtures are a recognized exception to the general rule of annexation; (2) The parties may by special agreement specify that property which may be removed by the lessee upon termination of the lease; (3) The person claiming such property as a trade fixture will not be allowed the right of removal of the substituted fixture if the original fixture has been rendered such as to make necessary the return of the

14. Rosenblum v. Terry Carpenter, 62 Wyo. 417, 174 P.2d 142 (1946).

premises in that status which is called a "maimed condition"; (4) The alleged trade fixture cannot be removed if it is so annexed to the realty so as to be an integral part of the premises; (5) Doors and windows, including transoms and glasses are ordinarily a part of the realty and cannot be removed by the lessee.

Priorities as concerns a prior real estate mortagee and a subsequent conditional seller were considered in a 1933 case decided by the Wyoming court.[15] The action was replevin to recover a furnace which had been installed by the conditional vendor while there was a prior mortgage on the premises. The vendor and vendee (mortgagor) had entered into an agreement whereby the furnace was to remain personal property until paid for by the vendee. Upon the mortgagor giving a deed to the mortgagee to avoid foreclosure, the mortgagee claimed the furnace as a fixture. Indicating they were following the majority rule, the court held that the conditional vendor could remove the furnace as personal property. The reasoning is that as the mortgage is merely security, the prior mortgagee has advanced nothing in reliance on the value of the subsequently annexed chattel, and he should not be permitted to acquire such a part of his security contrary to the intent of the annexing party and to the injury of the conditional vendor. The chattel cannot be removed, however, if will substantially damage the premises. This ruling is opposed by the so-called Massachusetts rule which holds that all fixtures are covered by the real mortgage and it cannot be changed by a subsequent agreement to which the mortgagee is not a party.[16] The furnace was set upon a cement base and held in place by its own weight, and the testimony showed that the furnace could be removed without substantial injury to the premises.

This action also determined that the legal rights arising from the removal of the old furnace could not be litigated in the action of replevin, as set-offs are not permitted. The removal of the old furnace did, however, impair the mortagee's security, and this case recognizes that he should have his remedy. This would be true even though the conditional vendor had placed in the house registers, piping, and other fixtures impractical to be removed without injury to the premises. The case shows that the conditional vendor would have the right to remove the furnace regardless of the fact that accessories such as registers, piping, etc., could not be removed without injury to the premises. The mortgagee could reap whatever benefit was bestowed upon the premises by the conditional vendor in preparing the premises for use of the new furnace.

Although not decided by the Court it has been held in some jurisdictions that a subsequent real mortgagee will prevail over a prior conditional seller, even though the chattel mortgage has been recorded, because the real mortgagee gets no notice in searching the real records books, and he

15. Holland Furance Co. v. Bird, 45 Wyo. 471, 21 P.2d 825 (1933).
16. Meagher v. Hayes, 152 Mass. 288, 25 N.E. 105, 23 Am.St.Rep. 819 (1890).

is not required by law to search the chattel mortgage books.[17] The real mortgagee has advanced something in relying on the value of the property and in the absence of personal notice will prevail.

An interesting case decided in 1952 held that the parties to a sale and mortgage can affix a real property status to chattels which are not physically attached to the real property and are ordinarily thought of as personal property and not real property.[18] The sale and mortagage covered a certain Log Cabin Club, together with all improvements, water rights, appurtenances, and all equipment and fixtures and stocks of liquor, beverages, tobaccos, etc., therein or belonging thereto. The seller-mortgagee later had to foreclose the mortgage given by the buyer-mortgagor and bought the property as a whole at the foreclosure sale. The mortgagor contended the so-called personal property was not legally sold under the sheriff's sale of the real property, as the notice should have stated the amount due on the personal property separately from that due on the real property. After noting that the warranty deed of sale as well as the mortgage purported to convey nothing except real property and the appurtenances thereto, the court stated that the separation in the notice of sale could not have been done as the mortgage secured one individual indebtedness. A foreclosure of the mortgage and purchase by the mortgagee would include the personal as well as the real property as the parties intended such. The parties can fix the character of the property and the law will enforce it so long as third parties will not be prejudiced.

The above holding should be confined to the facts and circumstances of the particular case as is so often true in fixture cases. The court pointed out that the parties were allowed to treat liquors, tobaccos, etc., as real property under the mortgage, and the mortgage could be forcelosed and a sale had selling the aforementioned articles as part of the realty as per agreement of the parties. It was further noted that this holding would not appear to harm public policy in any manner. Although this case would appear from the nature of the personalty involved to be contrary to the general rule of fixtures in that there is no physical permanency to the annexation, such is not always required as aforementioned in this article.

In the Wyoming cases discussed herein the facts and circumstances of each case have been a strong determinant in the holdings. The court has upheld written agreements between the parties, of course with regard to the relationship of those parties, which is always of prime concern in a fixture case. The cases would show that the lease agreement is strictly upheld with emphasis upon the tenant returning the premises as he received them, excepting ordinary wear and tear. The tenant will not be allowed to make substitutions and then remove these substitutions as trade fixtures without replacing the original fixture, as such removal would impair the security of the landlord. Conditional vendors will be protected

17. Eliott v. Hudson, 18 Cal. 642, 124 Pac. 103 (1912).
18. Hill v. Salmon, 69 Wyo. 1, 236 P.2d 518 (1952).

in their agreements with the mortgagor of premises as against a prior mortgagor so long as removal does not do substantial damage to the premises. And parties to a sale and mortgage may agree to make whatever personality is included in the mortgage real property for the purpose of the mortgage.

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LIABILITY OF CHIROPRACTORS FOR MALPRACTICE

Since the days of Hippocrates, there has been a constant struggle between the "regular" and "non-regular" medical practitioners. The rivalry which exists today between regular physicians and surgeons and the osteopath, the chiropractor, the naturopath, the Christian Science healer, the clairvoyant physician, and those of various other schools of healing is but a repetition of the rivalry between the allopath and the homeopath, the physio-medic, the eclectic, and the botanic physicians of 175 years ago.[1] Since the founding of the American School of Osteopathy by Dr. A. T. Still in Kansas in 1872 and the school of chiropractic by D. D. Palmer in Iowa in 1894 these two healing schools have steadily intruded themselves into the field of medicine.[2] Many legislatures have felt that such schools have a place in the modern art of healing, and now every state in the Union and the District of Columbia provide for the licensing of osteopaths, and all except Louisiana, Mississippi, New York, Massachusetts and Texas provide for the licensing of chiropractors as such.[3]

This article will be limited to a discussion of the liability of chiropractors in malpractice actions for failures in the diagnosis or treatment of serious disorders such as diphtheria, diabetes, heart conditions and fractures, and also cases of alleged malpractice in the treatment of sore backs, dislocated vertebrae and similar disorders which are usually considered by the public as within the field of chiropractic practice. The article will be directed mainly to the standard of care of the chiropractor but will include some other aspects of the broader question of liability for malpractice. The liability of members of other schools of drugless healing will be only incidentally considered. The question of the liability of a chiropractor acting as an operator of an X-ray machine presents special problems and will not be discussed.

1. In Fishbein, The New Medical Follies (1927), there is listed in Chapter I, An Encylopedia of Cults and Quackeries, an alphabetical list of cults numbering sixty-three, from "aerotherapy" to "zodiac therapy." Since the publication of that book numerous other cults have appeared. See also, Caldwell, Early Legislation Regulating the Practice of Medicine, 18 Ill. L. Rev. 225 (1923).
2. In Reed, The Healing Cults (A. M. A. pamphlet, 1932) it is stated that the A. M. A. Committee on the Costs of Medical Care estimated that as of 1932, in the United States as a whole, for every ten physicians there was one chiropractor. Wyoming had one chiropractor for every two physicians, for the highest ratio; and Wyoming was second only to California in the ratio of chiropractors to population. In Boyd, The Cult of Chiropractic (1953), published by the Louisiana State Medical Society, it is estimated that in 1952 there were 20,000 chiropractors in the United States.
3. Memorandum, Bureau of Legal Medicine and Legislation, American Medical Association (1950).