

FIXTURES AND FITTINGS:

Our law regarding fixtures and fittings dates back to the Roman law principle ***SUPERFICIES SOLO CEDIT***, i.e. That what is on the surface yields to the land. Therefore, buildings and structures that have been permanently attached to land cease to exist as independent things & become part of the immovable property to which they are attached.

The well-known rule of thumb which is widely used to determine whether an object is a fixture, or a fitting is to postulate that if the property were to be turned upside down, that which would remain attached, is a fixture or a fitting.

BEWARE of blindly using this rule of thumb, as in practice it is not always this simple. For example, pool water would then be removable! Our courts have identified 3 factors to consider when determining whether a movable is a fixture or fitting:

1. **The nature of the movable (thing).** The object must be capable of acceding to the land or becoming part of the property itself. Furthermore, is the object intended to serve the land or immovable structure?
2. **The way (manner) in which the movable is fixed to the property.** Did the object lose its own identity and become an integral part of the immovable property and would separation of the object from the immovable property cause damage to the immovable or movable property?
3. **The intention of the person who affixed it at the time.** Was it the actual subjective intention of the owner of the property who attached the object that it would remain fixed and be considered part of the immovable property?

One of the tests which the courts apply, is also whether removal of the item/s in dispute would cause severe damage to the building itself if it had to be removed, and whether it was essential for the operation of the building.

Interestingly there was a case once where lifts had been installed into a building, and here the court held that they did not form part of the fixtures, but because of an underlying intention which was found to exist in an agreement between the parties.

It is therefore not always clear-cut whether an object can be regarded as a fixture or fitting. Some typical problems that arise relate to gas bottles, pot plants, water tanks (*jo-jo tanks*), bar stools, roll-up lawn, pool cleaning equipment, mobile kitchen tables; mirrors, chandeliers, water features, and the list goes on. Even pool water has been pumped out of a pool because it failed the “turn it upside down” test!

We strongly advise to do a thorough check on the house and specify everything possible that the buyer wants to remain behind, to avoid any problems.