
ACTIVITY 15

A third category? (allow 45 minutes)

In this activity you will demonstrate the skills of using IT and of analysis and synthesis.



Using LexisNexis Butterworths (Cases), please find the decision of the House of Lords and read the speech of Lord Lloyd of Berwick in *Elitestone Ltd v. Morris*. When you have completed your reading, please answer the following questions.

1 Why did Lord Lloyd of Berwick avoid using the word 'fixture' in relation to the bungalow and what classification did he adopt?

COMMENT

Lord Lloyd put forward two reasons for avoiding the use of the word fixture. The first was that most people would think of a fixture as something fixed to a building and not think of the building itself as a fixture.

The second reason was that some chattels that had become fixtures could nevertheless be removed if they were what are known as 'tenants' fixtures'. There was, therefore, a danger of referring to tenants' fixtures as chattels, thus causing confusion. Such confusion had arisen in the judgment of the Court of Appeal in *Elitestone* where Aldous LJ had referred to *Webb v. Frank Bevis Ltd* [1940] 1 All ER 247 as a case that decided that a large shed was a chattel. In fact, the decision was that the shed was a fixture, but one that the tenant was entitled to remove.

Lord Lloyd chose therefore to adopt a threefold classification, namely that an object brought on to land may be (a) a chattel; (b) a fixture; or (c) part and parcel of the land itself. Objects in (b) and (c) are treated as part of the land itself.

2 What was the decision reached by the House of Lords and on what basis was it reached?

COMMENT

The House of Lords decided that the bungalow was part of the realty. Lord Lloyd considered the test of whether an object had been fixed to property in order to enhance the property or merely to enable it to be enjoyed more fully as an object was useful when considering items attached to a house. However, it was less useful when considering whether or not the house itself was a chattel. In the case of a house, it was more a matter of applying common sense. If a person assembled a building in such a way that it could not be removed, save by destruction, that person must have intended the building to form part of the realty. Lack of attachment to the land did not, therefore, prevent the bungalow being classed as realty.