

Summarize the legal characteristics of personal property, real property, and bail...

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Eve and Frank own twenty acres of land on which there is a warehouse surrounded by a fence. What is the most important factor in determining whether the fence is a fixture?

Personal property is anything that is not real property. Its usual characteristic is its movability but exceptions are also made with respect to 'immovable' properties that are considered as personal property by virtue of the purpose for which it was created, or by agreement of the parties.

On the other hand, real property refers to things which are commonly attached to the soil or an immovable. Its permanent nature is the usual characteristic thereof which makes it different from personal property.

However, there are things which appear to be movable but are classified as real property by virtue of the intention of the owner of the real property who placed it therein.

The most important factor in determining the classification of property is the intention of the owner.

In the situation given, the fence may be considered a fixture if Eve and Frank or the previous owners thereof who sold the same in their favor, put up the fence with the intention of placing it there permanently. This may be determined by any or all of the following considerations: (i) materials used in the fence; and (ii) nature of business being conducted in the real property/land.

If the materials used were light so that it can be easily destroyed or transferred, the owners thereof may have intended to classify the fence as personal property because the 'permanent' character cannot be seen therefrom. However, if the materials used in building the fence were strong

such as concrete or steel, it can be easily inferred therefrom that the intention was to treat the fence as real property due to its permanent character.

Also, the intention or purpose for building the fence may be gleaned from the nature of business in the area which is warehousing. Apparently, warehouse is supposed to be guarded to keep the contents thereof safe from burglars and robbers. Thus, it is quite logical to conclude that the fence may have been built by Eve and Frank for the sole purpose of giving protection to the warehouse which is within the area. The business of warehousing cannot be conducted if there will be no fence to safeguard it.

Sometimes, a thing starts as personal property but by lapse of time and change in needs of the owners or parties involved, the same transforms into a real property. In this case, if the fence was built prior to the warehouse, the fence may have been previously treated as personal property. However, upon construction of the warehouse, the fence may have ripened into a real property because it became a necessary part of the warehousing business.

Reference:

Bays, Alfred W., American Commercial Law Series, Callaghan and Company, 1920.