Personal property is divided into chattels real and chattels personal. More commonly, it is dealt with in more specific categories. For the use of this term, see Canada Deposit Insurance Corp. v. Canadian Commercial Bank, [1986] A.J. No. 361 (Alta. Q.B.).

(1) Definition of Personal Property

**HPS-1** Difficult to define. Personal property does not have a satisfactory positive definition. Personal property is best defined as property that is not land.

**Note**

(2) Categorization

**HPS-2** More specific categorization. Personal property is usually not dealt with as a single category at common law. More commonly, it is dealt with in more specific categories.

Chattels real and chattels personal. Personal property is divided into chattels real and chattels personal. Chattels personal (like personal property itself) is a residual category that includes personal property that does not constitute chattels real.

(a) Chattels Real

**HPS-3** Mixed quality. Chattels real is property of a mixed quality in that it is in some respects connected to real property law and in other respects it is like other personal property.1 The most common instance of this category is a lease of land.2 Chattels real includes interests in land that have a limited duration.3

**Notes**
3. Re Fraser, Lowther v. Fraser, [1904] 1 Ch. 726 (C.A.).

(b) Chattels Personal

**HPS-4** Residual category. Chattels personal include property that is not real property or chattels real.

(i) Choses in Possession / Choses in Action

**HPS-5** Two-fold categorization. A property interest in chattels personal can be a chose in possession or a chose in action.1

**Note**

(ii) Chose in Possession

**HPS-6** Tangibles. A chose in possession is a tangible. Included are corporeal chattels where there is not only a right to enjoy but also actual enjoyment. This category is largely composed of goods.1

**Note**

(iii) Chose in Action

**HPS-7** Intangibles. A chose in action is an intangible.1 Like the categories personal property and chattels personal, the category chose in action is a residual category of property. Intangible property is enjoyed through the obligations attached to it that can be enforced not through possession but through legal action.2 For this reason, the common law (as opposed to equity) did not characterize it as property at all.3 Included in the category of choses in action are shares and other investments, intellectual property, good-will, negotiable instruments, debts and so on.4

**Notes**

A. CATEGORIES OF INTANGIBLES

**HPS-8** Two-fold categorization. Some property is both in possession and in action – for example, many documentary intangibles can actually be possessed but include a debt that is a chose in action.1 This leads to a second division of this type of property: a pure intangible and a documentary intangible.2

**Notes**

B. PURE INTANGIBLES

**HPS-9** Typical forms. The most common forms of pure intangibles are debt and intellectual property rights.1

**Note**

C. DOCUMENTARY INTANGIBLES

**HPS-10** Characterization. Though documentary intangibles are choses in action, they also have characteristics typical of choses in possession because of their tangible form. They can be possessed and therefore can be the subject of bailment interests.1

**Note**
D. LEGAL / EQUITABLE CHOOSES IN ACTION

Historical categorization. Choses in action are historically either legal or equitable ("chooses in equity"), but the distinction matters little today. The most common legal chose in action is debt. Other legal choses in action are a right to damages, a bill of exchange and a share (this latter originally, however, an equitable chose in action). The equitable choses in action are those connected to other equitable devices. So a pecuniary legacy or a trust entitlement is an equitable chose in action.

Notes

(c) Movable / Immovable Property

Civil law distinguishes movable and immovable property. A moveable is an object which can be reasonably used by that person. The Crown retains all rights to mines and minerals either expressly or impliedly. At common law, a grant of land by the Crown into private hands carries with it an estate in all mines and minerals, with the exception of silver and gold. Today, in Alberta, a Crown grant is taken to reserve mines and mineral impliedly. Any mineral rights which are conferred are limited and regulated under highly elaborate statutory frameworks. The Crown in British Columbia also enjoys an implied reservation of all rights to mines and minerals attached to Crown land; however, the reservation only attaches to minerals which occur naturally in the land. The reservation does not apply to those minerals which may have been moved artificially — until such time as those minerals artificially moved became part of the land itself.

Interests may be severed. Interests in mine and mineral rights may be severed from surface ownership. However, in the absence of legislation to the contrary, in a sale between private individuals, a reservation of those rights must be expressly made or such rights are irrevocably transferred with the land to which they are attached. Sale of the right to work the mines and minerals is possible and, as a means of access, implies the right to enter the surface lands, as well as a right to use reasonable means to recover the minerals granted.

Alberta. Despite the common law rule allowing a right of entry on surface lands, today in Alberta there must be an express grant permitting it and the transfer document must show consideration paid for the right to enter. Where these are not present, an order may be sought from an administrative tribunal establishing the terms and conditions, including compensation to the surface owner to account for the impact of the right of entry on the utility of the lands. Further, a person who owns or has an interest in the surface only has limited rights with regard to excavation and disturbance of the surface of the land without the permission of the owner of the rights to mines and minerals both of and under the land.

Mineral claims. Generally, not only is the interest of a free miner in or her claim an interest in land but an option to purchase a mineral claim also creates an equitable interest in land. In Ontario, a separate estate in fee simple may be held in mines and minerals in, on or under land, apart from the ownership of the surface. In British Columbia, for instance, it has been held that a mining claim does not amount to an interest in land, and that such an interest is a chattel only. As such, the owner of the surface of land is alone entitled to be registered as the owner of a fee simple, and either the subsurface or the airspace or both may be registered as charges on the surface of the land.

Notes
4. See also Dominion Lands Act, S.C. 1908, c. 20, s. 37.
6. Case of Mines (1967) 1 P. & D. 310, 75 E.R. 472 (Ech.).
16. (AB) Law of Property Act, R.S.A. 2000, c. L-7, s. 56(3).
17. See, for example, (BC) Mineral Tenure Act, R.S.B.C. 1996, c. 250, s. 1, where “free miner” is defined as a person who holds a valid and subsisting free miner certificate issued under the Act or former Acts.
23. (BC) Land Title Act, R.S.B.C. 1996, c. 250, s. 179.

(3) Interests in Air Space

**Right to air space.** Although air and space are not susceptible to ownership, some proprietary rights have been exerted over air space. For instance, the ownership of land confers rights in the air space above the surface. Further, rights in air space may be severed from the surface and alienated. The common law, a landowner had rights in a column of air reaching forever upward above the surface of the land, based on the ancient doctrine curius est solum eius est usque ad coelum et ad inferos.

The modern landowner is entitled to reasonable air space above the surface of the land and the public necessity for the use of the air. The modern landowner is entitled to reasonable air space above the surface of the land and he or she owns. The owner of the surface holds an entitlement to the airspace up to a certain height above the ground, that which can be used or occupied. Certain courts refer to a standard based on “ordinary use”, or define the limits on the basis that an intrusion must not interfere with “actual or potential use and enjoyment”. As such, “the owner of land has a limited right in the air space over his property; it is limited by what he can possess or occupy for the use and enjoyment of his land”. By putting up buildings or other constructions, the owner units or incorporates something to the surface of his land and that becomes part and parcel of the property.

When chattel transforms into fixture. The determination of whether a chattel has indeed transformed into a fixture is based on intention, objectively determined by examining two key factors: the degree and purpose of the annexation. Even in the case of a chattel only slightly attached to land, a rebuttable presumption is raised that the item has become a fixture. The strength of that presumption is proportionately affected by the extent of attachment and is reversed if the chattel is resting on its own weight. Successful rebuttal depends upon whether the purpose of the attachment is (a) to enhance the land, or (b) for the better use of the chattel as a chattel. These rules suggest that chattels attached to reality to some degree may nevertheless be found to have remained chattels. The opposite conclusion may also be found where items that are not physically attached will sometimes be treated as fixtures, for example, certain spare parts and tools normally used for maintenance, repair and proper functioning of a fixture, and dwellings resting on the ground.
Supplemental Readings

Property Law

- An Introduction to Real Property Law, 6th Edition (Sinclair and McCallum)
- Real Estate Practice in Ontario, 7th Edition, Student Edition (Donahue, Quinn and Grandilli)

General

- Understanding Lawyers’ Ethics in Canada (Woolley)
- Lawyers’ Ethics and Professional Regulation, 2nd Edition (Woolley, Cotter, Devlin and Law)