

PERSONAL PROPERTY

THE MEANING OF PROPERTY

'Property' in Everyday Speech: Refers to things that are owned and which therefore make up wealth, e.g. 'a person of property' or a 'propertied person'. Property can be either an object or thing, which is capable of being owned by a person, or the proprietary rights (rights of ownership) to that object or thing.

'Property' as a Legal Term: When lawyers use the word 'property' they may be referring to an object of ownership but they may also be referring to the rights of ownership. **Examples of property in the first sense are land, cars, ships, shares in a company, government bonds, copyrights and patents.**

- Property can be either an object or thing, which is capable of being owned by a person, or the proprietary rights (rights of ownership) to that object or thing. (**Osborne**, 1983)
- Property can refer to a 'thing' or to legal rights in respect of a 'thing'.
- The 'thing' may be **tangible** (goods) or **intangible** (copyright or patents).
- Even a legal right to sue someone else is an item of property in law.

THE DISTINCTION BETWEEN REAL AND PERSONAL PROPERTY

There are effectively 2 categories of property:

1. Real Property (Realty) comprises **land**, and all things embedded or attached to it with an intention to remain fixed (**fixtures**), such as minerals, trees and buildings.

2. Personal Property is all property that is not real property; includes **tangible things** that are movable such as a car, books etc. which are generally referred to as *chattels*. These are also referred to as **choses in possession** as they are capable of actual physical possession.

It also includes property of an **intangible nature**, that is, property which does not exist in a physical form but which has economic value such as *intellectual property rights, debts, shares* in a company and *negotiable instruments*. These are referred to as **choses in action**, as they are not capable of actual physical possession yet give rise to rights that are enforceable by taking legal action (*the legal right to sue somebody*).

The distinction between **Real Property** (lands, tenements and hereditaments) and **Personal Property** (goods and chattels) developed from the different remedies available to the owner.

<u>Real Property</u>	<u>Personal Property</u>
<ul style="list-style-type: none"> • Indestructible • Immoveable • Unique – contractual remedy specific performance rather than damages • Appreciates 	<ul style="list-style-type: none"> • Impermanent • Moveable • Temporal • Fragile • Often depreciates in value • Common/not unique (relating remedies)

	damages unless unique (e.g. work of art)
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CLASSES OF PERSONAL PROPERTY

1. Choses in Possession

Are **tangible forms** of *personal property*, which have physical form, e.g. a car, a piano, and typewriter. They also give rise to legal issues such as acquisition of title by finding, fixtures, and reservation of title clauses, bailments and the creation of security interests in goods.

Ownership of goods in possession is most commonly acquired by purchase. However, transfer may also be effected by will or by gift.

2. Choses in Action

Are 'all personal rights of property which can only be claimed or enforced by action, and not by taking physical possession': [*Torkington v Magee* \[1902\] 2 KB 427](#).

A **chose in action** is often described as a bundle of rights. Examples of choses in action are *intangible property* such as:

- A partner's interest in the assets of the partnership
- Shares in a company
- Debts
- Payments - Negotiable interests (cheques, promissory notes, Bills of Exchange)
- An insurance policy
- The benefit a creditor enjoys under a guarantee given by a guarantor

Intellectual Property – Patents – a monopoly right to exploit an invention

- Designs
- Copyrights
- Confidential information
- Trademarks

3. Equitable choses in Action

In addition to **legal choses in action**, there are **equitable choses in action**, that is, claims enforceable only in courts of equity as distinct from rights enforceable by action in the common law courts. Examples of equitable choses are:

- An interest of a beneficiary in a trust estate
- A reversionary interest under a will
- A legatee interest (receiving property from a will)
- A share or interest in a partnership

Only courts of equity gave effect to assignments of equitable choses in action.

Possession & Title of Personal Property

DISTINCTION BETWEEN OWNERSHIP & POSSESSION

Contrasting Property Rights (*in rem*): property rights enforceable against the world at large v Personal Rights (*in personam*): personal rights enforceable against other party in the contract or individual only, e.g. tort claim).

Ownership

- The legal rights called 'property' refer to ownership. **Ownership** – “the right to exclusive enjoyment of a thing” (Austin)
- **Ownership** may include the right to use, sell, give away, put into a trust, use as security for loan, share with co-owners, and leave in will.
- To possess property means to have exclusive control (or dominion) over the item and an intention to exclude all others, subject to the rights of the owner or person who holds title.

Possession

1. **INTENTION**: animus (mental element)
2. **CONTROL**: corpus (physical element)

The physical and mental elements must coincide if there is to be possession in law. (*Button v Cooper*)

- **Possession** describes a physical relationship between a person and a thing. This is often referred to as **actual possession**.
- Burden rests on the intending dispossessor to prove a better right than the presumptive right of the present possessor.
- A person has possession of an object **if he has control of it and intends to exclude others from the exercise of control**. Possession confers a right to retain control of an object against any other person except the person who has rights of ownership in the property. This is often referred to as legal possession or possessory title.
- Possession signifies **ownership**, the entitlement of lost property.
- It is a source of remedy once the right of possession has been interfered with, e.g. **detinue**, **trespass** and **conversion**.

TYPES OF POSSESSION

There are three types of possession of goods:

1. Actual possession (also called 'constructive' possession).
2. A right to immediate possession.
3. A future or reversionary right to possession.

ATTRIBUTES OF POSSESSION

- Possession is exclusive and indivisible.
- Possession can be shared in the community.
- Possession implies the power to exclude.
- Possession can be transferred entirely.
- Possession is a root of title.
- Possession is nearly the same as title. Often a person will be able to demonstrate a claim to ownership of goods by proving possession of them.
- Possessory title is good against the whole world except the absolute owner.

Hierarchy of Possession

- I. Owner
- II. Possessor
- III. The rest of the world

POSSESSORY OWNERSHIP MAY RIPEN ABSOLUTE OWNERSHIP

- Early title documents may be hard to find and decipher, this gave reason to why the courts established a rule that required **vendors of land to trace back a chain of title only for 60 years**. This was one way of satisfying the task of proving ownership beyond all doubt.
- Another way was the notion that a possessory interest can ripen into a title – which cannot be challenged even by the historical owner, after a sufficient period of time has passed. In this case, *the possessory ownership becomes unchallengeable and someone in possession cannot be sued for recovery of the property*. This was expressed in the statement by the Privy Council in ***Perry v Clissold*** at 79:

'It cannot be disputed that a person in possession of land in the assumed character of owner and exercising peaceably the ordinary rights of ownership has a perfectly good title against all the world but that rightful owner. And if the rightful owner does not come forward and assert this title by process of law within the period prescribed by the provisions of the Statute of Limitations applicable to the case, his right is forever extinguished, and the possessory owner acquires an absolute title.'

Perry v Clissold [1907] AC 73

FACTS: Land in NSW was resumed by the Minister for public instruction. The issue in the case was whether compensation was payable to the person who was in possession at the date of resumption. At this date the rightful owner was unknown but the person in possession had entered into possession of the vacant land 10 years earlier, had enclosed it with substantial fencing, and after that held continuous exclusive possession without notice of adverse claims and received rents paid rates and was recorded as the rateable person in the Council's books.

HELD: The Privy Council held that the person was not a mere trespasser but had possessory title:

1. Which was valid against all but the rightful owner; and
2. Which was in the process of becoming (by reason of the passing of time) valid even against the rightful owner.

Accordingly compensation was payable to that person by the resuming authority, the Minister. These two principles were accepted in Australia in *Wheeler v Baldwin (1934)* and *Allen v Roughley (1955)* as applying to land under the 'old system title'.

ELEMENTS OF ACTUAL POSSESSION

ACTUAL POSSESSION is constituted by **exclusive physical control and an intention to exclude others**. The legal question is: was the occupier of the land in actual possession according to the legal tests of **physical control** and an **intention** to exclude others of the goods found, even though unaware of their presence? Some of the decided cases are:

Waverley Borough Council v Fletcher [1996] QB 334

English Court of Appeal

FACTS: A brooch was found buried in the ground of a public park owned by the council by a member of the public, using a metal detector. The Coroner decided that it was not treasure trove. The issue was then who could claim the brooch – the claimant or the defendants.

HELD: The Court of Appeal held that the council had the better right to the brooch, as it had been found within or attached to the land rather than on the surface it belonged to the person who owned the soil. The finder was trespassing. The English Court of Appeal reiterated the general principle that 'the lawful possession of land includes possession of everything in the land.' The court then restated the two main principles: 1. Where an object is found in or attached to the land, the owner or lawful possessor of the land has better title to the object than the finder. 2. Where an object is not in or attached to the land, the owner or lawful possessor of the land has a better title only if he has exercised such control over the land as to indicate an intention to control it and anything found on it.

Chairman, National Crime Authority v Flack (1998) 86 FCR 16

Shows that Parker is good law in Australia.

FACTS: The National Crime Authority (NCA) executed a search warrant to search Mrs Flack's rented premises to search for stolen goods suspected of being connected with her son. The NCA found a briefcase containing \$433,000. When asked, Mrs Flack said she did not know who owned the bag. The bag was confiscated but no other action was taken by the NCA. Mrs Flack then asked for the money back.

ISSUES: Whether Mrs Flack, as occupier and tenant, manifested the sufficient intention to exercise control over all chattels – and in this case the briefcase – found on her premises. The NCA argued that Mrs Flack had no possessory title, and although the rules of possession generally state that Mrs Flack by virtue of her residential tenancy, would have possession and control over the premises and all chattels within them – even without having an awareness of all chattels within her property. However, in this case, the NCA argued that based on the facts and the circumstances, Mrs Flack had no title over the briefcase or the cash.

HELD: The Court held that the rights of the owner/occupier of premises on which goods are found will prevail over the rights of the finder, regardless of whether the occupier knew of the existence of the goods. However, the occupier must have demonstrated an intention to exercise control over the premises

in which the goods are located. Ultimately, the Federal Court found in favour of Mrs Flack and ruled that she had a superior title to the briefcase and its contents when compared with the NCA. Furthermore, the briefcase could have only been retained up until the completion of a police investigation, and since no legal action was ever initiated against, Glen, Mrs Flack was then entitled to have the briefcase and its contents returned to her according to the Federal Court. What this case illustrates, is the importance of control over a thing when determining possessory rights. Despite the fact that Mrs Flack was not the true owner of the suitcase, or that she had knowledge of the briefcase and its contents, this did not change the fact that her rights to possession were superior to the NCA, and the Federal Court ruled accordingly.

CONSTRUCTIVE POSSESSION is more abstract. It is used to describe a situation where an individual has actual control over chattels/real property without actually having physical control of same assets. At law a person with constructive possession stands in the same legal position as a person with actual possession.

Distinguish from mere custody over goods – where there is no intention to retain control there is no possession: *Knapp v Knapp*.

PRINCIPLES APPLIED IN FINDING CASES

FINDING: Who has better possessory title – **finder** or **occupier** of land upon which goods are found?

1. Goods must be **lost/ abandoned**;
2. Finder takes goods into **care and control**.

The old case of *Armory v Delamirie* established the **basic principle at common law that the finder has best title against all except the true owner**. Not absolute title, merely *possessory*.

Armory v Delamirie (1722) 1 Strange 505 (93 ER 664)

FACTS: A chimneysweeper's boy, while cleaning a flue, discovered a jewel and took it to a goldsmith to have it valued. He left it there with the goldsmith's apprentice. When he returned, he was offered a small amount of money, which he would not accept, insisting instead, that he be given back the jewel. The apprentice delivered back to him the socket from which the jewel had been removed. The boy sued the goldsmith. The goldsmith's defence was that the boy was not the owner but only had physical possession of the jewel; and that only the true owner could sue.

HELD: The court held however that while a finder of goods does not acquire absolute property in or ownership of them, *his actual possession is some evidence of ownership and will be effective against the whole world except a person who can prove that he has a better title*. Since the goldsmith could not prove a better title than the boy's he failed.

Moffat v Kazana [1969] 2 QB 152

FACTS: The defendant purchased a house from the plaintiff in 1961. Three years later, in the course of renovation, workers hired by the defendant found the tin with 1,987 pounds. The plaintiff claimed the tin and its content. The defendant argued that the sale of the house should include a sale of any items in it.

HELD: The court held in favour of the plaintiff for the reason that *he had proved that he was the true owner of that money*. The finders or occupiers have the best title to the 'found' items against the whole world except the true owners.

1. GOODS FOUND IN BUILDING/ ON LAND

- The owner of the land has better title **ONLY** if he exercised such **manifest control** over the land as to indicate an **intention to control** the goods.
- Where there is no evidence of a manifest intention on part of the owner, then the finder will be entitled to possession against the occupier of the land in the event that the true owner cannot be found:

Bridges v Hawkesworth (1851) 21 LJ QB 75

FACTS: The plaintiff found a bundle of banknotes on the floor of the public area of a shop. He handed the notes to the shopkeeper in order that the owner of the notes might be found. Although the owner was never found, the shopkeeper refused to return the notes to the finder.

HELD: The court found for the finder, holding that there is a "*general right of a finder to any article which has been lost as against all the world except the true owner*". It was further noted that the banknotes had never been in the custody of the shopkeeper nor within the protection of his house since the true owner had not intentionally deposited or hid the notes in the shop.

Parker v British Airways Board [1982] 1 QB 1004

FACTS: An airline passenger found a bracelet on the floor of the executive lounge – handed to employee of licensee of premises. Left his contact details in the event that the owner did not reclaim. Licensee sold the bracelet – the finder sued for value. The airport was open to the public but invitation – more control than in Bridges case. But the defendant has no system for searching owners.

HELD: The court held that the defendant had to have shown a manifest intention to exercise control of all that had come into the premises. It was held that **Parker had better possessory title** than occupier at the time of finding. *Donaldson LJ* principles at 1017-18:

Rights & obligations of the **FINDER**;

1. The finder of a chattel acquires **no rights** over it *unless* (a) it has been **abandoned** or **lost** and (b) he takes it into his **care** and **control**.
2. The finder of a chattel acquires very limited rights over it if he takes it into his care and control with dishonest intent or in the course of trespassing.
3. Subject to the foregoing and to point 4 below, a finder of a chattel, whilst not acquiring absolute property or ownership in the chattel, acquires rights to keep it against all but the true owner or those in a position to claim through the true owner or one who can assert a prior right to keep the chattel which was subsisting at the time when the finder took the chattel into his care and control.
4. Unless otherwise agreed, any servant or agent who finds a chattel in the course of his employment and not wholly incidentally or collaterally thereto and who takes it into his care and control does so on behalf of his employer or principle who acquires a finder's right to the exclusion of those of the actual finder.
5. A person having a finder's right has an obligation to take such measures as in all the circumstances are reasonable to acquaint the true owner of the finding and present whereabouts of the chattel and to care for it meanwhile.

Rights and obligations of the **OCCUPIER**;

1. An occupier has rights superior to those of a finder over chattels attached to that land and an occupier of a building has similar rights in respect of chattels attached to that building, whether in either case the occupier is aware of its presence.
2. An occupier of a building has rights superior to those of a finder over chattels on or in, but not attached to, that building if, but only if, before the chattel is found, he has manifested an intention to exercise control over the building and the things which may be on or in it.
3. An occupier who manifests an intention to exercise control over a building and the things which may be on or in it so as to acquire rights superior to those of a finder is under an obligation to take such measures as in all the circumstances are reasonable to ensure that lost chattels are found and, on their being found, whether by him or a third party, to acquaint the true owner of the finding and to care for the chattels meanwhile. The manifestation of intention may be express or implied from the circumstances including, in particular, the circumstances that the occupier manifestly accepts or is obliged by law to accept liability for chattels lost on his 'premises'.
4. An 'occupier' or a chattel – e.g. a ship, motorcar, caravan or aircraft – is to be treated as if he were the occupier of a building for the purposes of the foregoing rules.

2. GOODS EMBEDDED OR ATTACHED TO LAND

- A matter of whether the owner of land exercised possession over everything in the land.
- Law stated by English Court of Appeal in [*Waverly Borough Council v Fletcher*](#).
 - **General Principle:** Lawful possession of land includes possession of everything in the land.
 - Where an object is found embedded or attached to the land, the owner or lawful possessor obtains better possessory title than the finder.
 - Where the object is *not* attached then the owner must show they exercised control over the land in a way that indicated to control it and anything found in it.

[*Elwes v Brigg Gas Co \(1886\) 33 Ch D 562*](#)

FACTS: A tenant under 99-year lease asked the landlord for permission to excavate. Some workmen, in the course of excavating a hole on the land found a prehistoric boat buried 6 feet below the surface and wanted to take it as the GOD's gift to them. The defendant refused to let them take it from the land. The landlord had **no knowledge** of the boat.

HELD: Landlord was entitled to the boat. The boat was held by court to belong to the landowner. The reason given was quite amazing: "*Obviously the right of the original owner could not be established. [The defendant] was in possession of the ground, not merely of the surface, but of everything that lay beneath the surface down to the centre of the Earth, and consequently in possession of the boat.*"

[*Hannah v Peel \[1945\] 1 KB 509*](#)

FACTS: The defendant's manor was requisitioned by the military for use in World War II. A soldier staying there found a brooch. He turned it in to the police. When the owner couldn't be found, the brooch was turned over to the owner of the manor instead of the soldier. The manor owner sold it. The soldier sued the manor owner for the value of the brooch, claiming "finders keepers". The manor owner's defense is that he has superior title to the brooch because it was found on his property.

RULE: A landowner owns everything *attached to* or *under* the land, but not necessarily stuff lying on the surface of the land even though the stuff is not possessed by someone else.

HELD: The court eventually comes to the rule above, and thus finds for the plaintiff. The soldier gets the value of the brooch as he had a better claim to the brooch as the owner of the house didn't know of its existence and true owner of the brooch could not be found.

South Staffordshire Water Co v Sharman [1896] 2 QB 44

FACTS: Plaintiffs hired Defendants to clean a pool situated on Plaintiff's land, within which, during the cleaning, Defendants found two gold rings and thereafter refused to give the rings to Plaintiffs.

RULE OF LAW: There is a presumption that whenever something is found on a person's land, possession of that object is maintained by the landowner.

HELD: Judgment for Plaintiffs; P's as freeholders of the land upon which the pool was situated, had the right to forbid anyone from coming on to their land, and also, had the right to direct exactly how the pool was to be cleaned. Further, that they had the right to direct the disposition of any item found during the pool's cleaning. The Court found this case to be one in which an item was found upon private property when the property owner was unaware of its existence. This case is decided and distinguished from the decisions of *Armory v Delamirie* and *Bridges v Hawkesworth*, infra, by the principle that possession of land carries with it a de facto possession of everything that is upon the land, so long as the landowner exercises his general power of ownership over the land and expresses intent to disallow interference from others. Thus, the location of the pool, being private rather than public, was never outside of P's general power of ownership. In the case of *Bridges v Hawkesworth*, infra, the item in dispute was found in a place that was opened to the public. In this case the pool and the land on which it sat was not opened to the public, but was under the control of P. The Court found that where a person has control over land and manifests an intention to prevent interference by others, any objects found on such land should be presumed to be in the possession of the owner, regardless of whether the item is found by an employee of the owner or by a stranger.

3. GOODS UNATTACHED TO THE LAND

- Where goods are found unattached, the occupier must show **manifest intention** (obvious/apparent to the finder) to **exercise control** over anything lying unattached on the land or in the building. Whether or not there was a manifest intention depends of the circumstances - **question of degree**.

Rings in mud at bottom of pool: *South Staffordshire Water*

□□□□□□□□□□ boat found six feet below surface: *Elwes v Brigg Gas*

Medieval gold brooch found nine inches below surface of public park: *Waverley Borough Council*

Bank notes in old safe built into wall of demolishes building: *Corp of London*

Brooch found on top of window in house under requisition, never been occupied:

Hannah v Peel

Money found on shop floor: *Bridges v Hawkesworth*

□□□□□e□□□□□□ in airport lounge: *Parker v British Airways*

Drugs and cash found in a dilapidated, disused building: *Tamworth Industries v A-G*

4. GOODS FOUND IN THE COURSE OF EMPLOYMENT

- **General Rule:** they belong to the employer: *City of London Corp v Appleyard*.
- Where finding was **merely incidental** to the employment, it has been held that the employee is entitled to the goods as against the employer: *Byrne v Hoare*.

City of London Corp v Appleyard [1963] 1 WLR 982

FACTS: Several construction workers hired by Wates Ltd were engaged in cutting a hole into a cellar wall in order to secure a foundation when they found a safe built into the old wall. The notes were handed over to London police department who cannot find the true owner and asked the court to determine who was entitled to the possession of the notes. Wates Ltd was an independent contractor engaged by Yorkwin Investments Ltd for a construction project. The building was leased to Yorkwin by its true owner, the City of London Corporation.

HELD: The Court held that the **occupier** is, in the absence of a better title elsewhere, **entitled to the possession of objects**, which are attached to or under the land. Consequently, since the notes were in a wooden box within a safe built into the wall of the old building, the safe formed part of the building. Yorkwin, being in lawful possession of the building, were in actual possession of the safe, even though ignorant of its existence. Although Yorkwin was entitled to possession as against the finders, the City of London Corporation came forward and successfully claimed the ownership of the note based on a term in the lease which granted them the right to any valuable objects found on the premises.

Byrne v Hoare [1965] Qd R 135

QLD Case

FACTS: A police officer found a nugget of gold while walking towards where he was to supervise traffic leaving a drive in theatre.

HELD: Although his employment provided the occasion for the finding, it was NOT the effective cause. He hadn't been conducting a search at the time – nor had he been permitted access to private place. Was walking where any member of public might have walked. The fact that he was on duty at the time of the find was merely coincidental. The police officer held a better claim of possession.

TRANSFER OF PERSONAL PROPERTY (Taking Title)

1. Acquisition by Purchase

- Most common method of acquiring ownership.
- Tangible personal property bought, follows the statutory provisions of the **Sale of Goods Act**.
- Intangible property follows various statutory provisions that may require compliance with certain formalities.

2. Acquisition by Gift

- Person who gives the gift is the donor, and person who receives the gift is the donee.
 - Gratuitous transfer of title in property usually given in family context.
 - Presumption is that all family dealings are not meant to attract legal consequences.
 - Donee is entitled to full beneficial ownership of gift provided donor was not placed under any undue influence/ unconscionable dealing when delivering gift to donee.
 - **Nolan v Nolan [2003]**: *'donor must not only part with possession of property, but must relinquish all present and future dominion and control over it beyond any power on his part to reclaim it'*
 - **Three elements** need to be met:
1. **DONOR INTENDS** to make unconditional transfer of rights to property to donee.
 - **Horsley v Phillips Fine Art Auctioneers**: words of gift don't need to be contemporaneous with delivery of subject matter of the gift.
 - **Nolan v Nolan [2003]**: Intention is normally manifested and defined by words
 - However unusual circumstances may be imagined where other means fulfil those functions i.e. words are not always necessary.