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Possession

- **Components** of possession = '**factual control**' and '**intention to possess**'
 - Appropriate **level** of physical control is required
- Possessor must be able to **exclude** others
 - Absolute power of control to the **exclusion of others** rather than temporary or fleeting control
 - **Nature** of control required depend upon nature of object and circumstances (dwelling, land, chattels)
- Summary of **methods** to acquire possession:
 - –Consensual possession: sale, lease, gift or bequest etc.
 - –Misplaced/lost goods (finder)
 - –Goods never previously possessed (discovery)
 - –Stolen goods - even wrongful possession is protected

Hierarchy of title

- Possession give rise to right to **defend** possession
 - **Hierarchy** of title:
 - –True owner has **proprietary** title
 - –True owner has a **superior** claim to object than possessor
 - –Possessor has **possessory** title
 - –Possessor's title is **enforceable** against the whole world, except owner
 - –Proprietary title is stronger than possessory title

Scope of possessory title

- **Possessory title** is enforceable against the whole world except for the true owner:
 - Whereas, Proprietary title is enforceable against all the world (*in rem*)
- **Possessory title** is important when goods are found in absence of owner
 - *Hannah v Peel*
 - –Finder has superior title to lost property
- Dual nature of possessory title:
 - Contains a present enforceable right upon possessor in physical control and

dormant right to enforce possession if wrongfully dispossessed (prior possessory title)

Possessory title of personal property

- Physical possession of personal property is **evidence** of title:
 - Person in possession is treated as owner save against someone with a better right to title
- Dispossessed holder has a right to **recover** chattel
 - Dispossessed holder must prove an absolute right to recover chattel from possessor
 - Problem where chattel is lost and later found by stranger

Finders Keepers Rule (CB 2.12)

- *Armory v Delamirie*
 - Finder's **prior possession** enable him to hold it against all but the rightful owner
- The **owner** only has the right to recover goods from possessor
 - The owner out of possession who seeks to recover possession, must show an absolute right
 - If the possessor can show that a third party has a better right, the owner cannot recover

Waverley Borough Council v Fletcher

- Where the object becomes **part of the land** the owner of land is awarded the object over the finder
 - If goods are discovered **on** land belonging to a third party the finder can only acquire possession (and, therefore title,) if the third party did not **manifest a clear intention to control** all goods discovered on the land
 - Same principles apply to land which is a public open space

Perry v Clissold PC (CB 81)

- If possession confers a good title, enforceable against all the world, except for the owner, such title should be compensated where it is compulsory acquired (by the government)
- The right of the prior possessor over land will **defeat** those of subsequent, physical possessor