

THE IMPORTANCE OF POSSESSION

Two Elements of Possession

Factual Possession (Physical Control)

Factual possession means an appropriate degree of physical control. It is only possible with tangible things

The law considers what type of physical control is possible in the circumstances, and this may vary depending on the nature of the thing and its location

The Tubantia [1924] All ER 615

- The Tubantia was sunk in 1916 and lay on the seabed
- In 1922, the Plaintiffs began salvage operations:
 - Moored buoys to the ship
 - Cut a hole in its side
 - Spend about £40,000
- Over 15 months, they spent 25 days trying to recover the ship's cargo, however the divers could only spend about 8 minutes inside the ship each day

HELD Given the location and nature of the ship, these acts of control were sufficient to give legal possession

Young v Hitchens 6 QB 606; 115 ER 228

- Plaintiff was in the process of enclosing fish in a net, though the enclosure had not been completed
- Defendant rowed his boat between the ends of the Plaintiff's net and netted the fish inside
- Plaintiff claimed wrongful interference with his right to possession

HELD Lord Denham CJ:

It does appear almost certain that the Plaintiff would have had possession of the fish but for the act of the Defendant; but it is quite certain that he did not have possession

Intention to Possess (Animus Possidendi)

All that is needed is the *intention to possess something for the time being* – it is not necessary to intend to own or possess it permanently

Intention to possess a thing depends on the acts of control and the surrounding circumstances

Re Jigroose Pty Ltd (1984) 1 Qd R 382

- The appellant (vendor) sold farmland to the respondent (purchaser)
- Contract contained standard conditions of sale including a provision that required the vendor to remove the land items not sold prior to delivery of possession to the purchaser
- A further provision stated items not removed by the vendor would be deemed abandoned, and the purchaser may appropriate or remove or otherwise dispose of such property as the purchaser thinks fit
- Bales of hay worth \$20,000 not removed by the vendor. The bales have remained in position in a paddock, but the gate in the fence has been padlocked by the purchasers

Abandonment

The intention to no longer possess

- Property is generally deemed to be abandoned if it is found in a place where the true owner likely intended to leave it, but is in such a condition that it is apparent that he or she has no intention of returning to claim it
- Intention is critical – difference between losing something & giving it up
- Title on abandonment passes only with an act of appropriation