

Parker found a gold bracelet lying on the floor of the international executive lounge occupied by the defendant airway. The plaintiff, lawfully in the lounge, handed the bracelet to an employee of the defendant and demanded that if the owner did not claim the bracelet, it should be returned to him.

The lounge could be entered by visitors only at the express invitation of the defendant and was not part of the terminal to which the public nor even the passengers had access as of right.

Rights and obligations of the finder: at 1017 per Donaldson LJ

- The finder of a chattel acquires no right over it unless (a) it has been abandoned or lost and (b) he takes it into his care and control.
- 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.
- Subject to the foregoing and to point 4 below, a finder of chattel, acquires a right 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.
- Unless otherwise agreed, any servant or agent who finds a chattel in the course of his employment or agency and not wholly incidentally or collaterally thereto and who takes it into his care and control does so on behalf of his employer or principal who acquires a finder's rights to the exclusion of those of the actual finder.
- A person having a finder's rights 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: at 1017-18 per Donaldson LJ

- An occupier of land has rights superior to those of a finder over chattels in or 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 the presence of the chattel.
- An occupier of a building has rights superior to those of a finder over chattels upon 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 upon it or in it.
- An occupier who manifests an intention to exercise control over a building and the things which may be upon 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, upon their being found, whether by him or by 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 circumstance that the occupier manifestly accepts or is obliged by law to accept liability for chattels lost upon his 'premises', eg, an innkeeper or carrier's liability.
- An occupier of a chattel, eg, a ship, motor car, caravan or aircraft, is to be treated as

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- An equity against a RP arising out of a transaction taking place after he became registered as proprietor may be enforced against him: at 613 (citing *Barry v Heider*).
- If the inference to be drawn is that the parties intended to create or protect an interest in a third party and the trust relationship is the appropriate means of creating or protecting that interest or of giving effect to the intention, there is no reason why in a given case an intention to create a trust should not be inferred: at 618-19.
- The availability of specific performance turns on Bahrs' ability to pay the purchase price: at 621.

Wilson and Toohey JJ: Bahrs were entitled to specific performance because Thompsons' repudiation of his recognition of Bahrs' equitable interests was 'fraud' for the purpose of ss 68 and 134 of *TLA*.

- The agreement between Bahrs and Nicolay in no way sought to restrain the latter from disposing of or dealing with the interest which he had acquired: at 629.
- *Bahr* facts are more properly dealt with under the in personam exception.

Brennan J:

- Cl 6 of the Bahrs' contract did not preclude Nicolay from disposing of or dealing with the fee simple which he had acquired and that he did not require the consent of Bahrs to dispose of or deal with it.

Barry v Heider (1914, HCA; Griffiths CJ, with whom Barton J agreed; Issacs J)	Equitable interests under Torrens system
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Barry, the RP of the land, executed a transfer to Schmidt. The transfer was unregistered and allegedly voidable on the part of Barry on grounds of fraud. Schmidt, having been delivered the transfer, applied to Heider through Gales (Heider's solicitor), for a loan on the security of the land. Schmidt produced to Heider the transfer and an order from Barry to the Registrar General to deliver to Heider's solicitors the certification of title. Heider made the loan on the faith of these documents.

Neither the transfer nor the mortgage was registered.

The Torrens system recognises equitable rights

- Section 82 forbids the Registrar General to make any entry of any notice of trusts in the register book. The section provides that the instrument declaring trust itself is not to be registered, but the Registrar General is required to enter on the register a caveat forbidding the registration of any instrument not in accordance with the trusts and provisions contained in the instrument so deposited: at 206 (Griffiths CJ).
- Section 72 provides that any person 'claiming any estate or interest' in land under the Act 'under any unregistered instrument' may by caveat forbid the registration of any interest affecting such land, estate or interest: at 206-07 (Griffiths CJ).
 - By it the caveator forbids registration of any instrument affecting the land 'until this caveat be ... [duly] withdrawn, or until after the lapse of fourteen days' from the service of notice of the intended registration: at 209-10

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analogy to deny the extension to persons in a de facto relationship.

- An adjustment of those relationships must be made by reference to logical necessity and analogy and not by reference to idiosyncratic notions of what is fair and appropriate: at 268 (Deane J).

Murphy J: Presumptions rebutted by other presumptions which may be strong or weak do not help analyse as to whether a benefit as well as nominal ownership is intended.

- There is no logical basis for distinguishing between a conveyance to another at the time of purchase and a voluntary transfer, so that a RT will arise in one but not the other: at 264-65 (Murphy J).
- Transfer of the title of property wholly or partially to another is commonly regarded as of great significance, especially by those in de facto relationships. The notion that such a deliberate act raised a presumption of RT in favour of the transferor would astonish an ordinary person: at 265 (Murphy J).

A transfer of land under the Torrens system to a stranger without consideration and without any expression of consideration, and in the absence of any evidence of intention, passes a legal estate subject to a RT in favour of the transferee

Clos Farming v Easton (2002, NSWCA; Santow JA, with whom Mason P and Beazley JA agreed)	Easement Profits a prendre
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Clos Farming developed Le Clos Verdum on the south bank of the Hastings River. In 1988, the respondents agreed to purchase lot 27 from the developer and entered a number of contracts concerning potential viticulture enterprises to be carried out on Part B of lot 27. Each lot in the estate comprised Part A, a residential component, and Part B, a farming component. The relevant restriction allowed the owner of the benefited land, Clos Farming or its delegates to enter the burdened land and carry out viticulture works, harvest the grapes and sell them. In addition, Clos Farming was entitled by the Restriction to deduct the costs associated with the harvests from any proceeds of sale.

The contract entered by the Respondents at the time of agreeing to purchase the property were consistent and supportive of this arrangement. In 1995, Clos Farming lodged a caveat on lot 27 purportedly to protect its rights as previously described in the Restriction; by 1998, the contractual infrastructure had expired. In 2000, the respondents took steps to have the caveat removed from the title to lot 27.

The restriction (‘easement for vineyard’) was not a valid easement.

- Whether the easement accommodates the dominant land: Any supposed connection between lot 86 and the supposed servient tenement went no further than to render the latter but ‘a convenient incident to the exercise of the right’.
 - Attention to what the easement entails ([30])
 - There must be a natural connection between the dominant and servient tenements. It is insufficient that the land is a convenient incident to the right ([31], [43]).
 - The right must be reasonably necessary for the normal enjoyment of the dominant tenement and not merely confer advantage on the owner