

## Finders Keepers

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### Possession

- 'Possession connotes a relationship between a person and some material object. It is a relation subsisting in fact. The 'right' of the possessor to the chattel arises out of the factual situation'
  - *Button v Cooper*

### Two Elements of Possession

1. Factual Possession/Control
2. Intention to Possess

### Two Forms of Possession

1. Actual Possession
  2. Constructive Possession
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### Lost, Mislaid & Abandoned Items

- Presumption: The owner of the thing has absolute right of possession to the thing
- Therefore finder's keepers have the obligation to try reunite the good with its true owner

### Exceptions

- Contractual Arrangements may extinguish the original owner's title or evidence the abandonment of the item
- Abandoned goods

### What constitutes abandoned?

- 'As a general proposition, if I throw something away I truly abandon it. I intend no longer to retain possession. I do not seek it out and I have no further interest in ownership'
    - *Re Jigrose Pty Ltd; Moffat v Kazana*
  - Abandonment cannot be inferred merely by something left behind and instead must have the requisite intention. This can be identified when:
    - Deliberately left behind without intention to retrieve
    - Item hidden or deposited in a place and a subsequent decision is made not to retrieve
  - Some categories of otherwise abandoned property may be vested in the state
    - *Robinson v Western Australian Museum*
  - Finders has prima facie claim to the property but will still be subject to exceptions => Go straight to exceptions.
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### Finders Keepers Rule

- 'The finder ... does not... acquire absolute property or ownership, yet he was such a property as will enable him to keep it against all but the rightful owner'
- A finder of a 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 (See exceptions)
  - *Armory v Delamirie*
- The finder has a 'general right of a finder to any article which has been lost as against all the world except the true owner'
  - *Bridges v Hawkesworth*
- A person having a finders 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 (except where goods are abandoned)

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#### Exceptions to 'Finders Keepers' Rule

##### **Attached or embedded in land**

- Where the item is embedded in or attached to land the occupier/owner of the land will have a better title than the finder
- This arises from the intention to possess/desire when you own land - when you have possession you have prime facie right of possession to everything attached to or in land regardless of whether they are aware
- An occupier in possession of the property where chattels are buried can have an intention to control items without even knowing of their existence
  - *Elwes v Brigg Gas Co; South Staffordshire Water Co v Sharman*
- Contractual provision may shift this presumption
  - *City of London Corporation v Appleyard*

##### **Things found unattached or lying on the surface**

- Generally the finder has a better right to possession than the owner/occupier of the land (in the absence of control)
- Subject to the exception where the owner/occupier exercises such an obvious level of control over the land and anything found on it, then they will have better title than the finder
  - *Bridges v Hawkesworth; Parker v British Airways Board;*
- May have to consider; powers of management, maintenance and control to supervise public use, existence of signs, etc
  - *Hibbert v McKiernan*
- Includes public property - owner has to exert control over the publicly accessible land.
  - *Bridges v Hawkesworth; Parker v British Airways Board; City of London Corporation v Apple-yard*

### Residential/Private Property

- Where a person has possession of a house or land, with a manifest intention to exercise control over it and the things which may be upon it, then, if something is found on that land, the possession of the thing is in the owner of the land
- *National Crime Authority v Flack; Hannah v Peel*

### **Trespassers**

- The occupier has rights superior to the trespasser because a trespassing finder is a wrongdoer and as a matter of public policy wrongdoers should not benefit from their wrongdoing
- A trespassing finder does acquire a possessory title but this title will always be subject to a competing claim by the occupier of the land were the item was discovered
  - *Webb and Webb v Ireland; Waverly Borough Council v Fletcher*

### **Employees**

- An employee who finds an item in the course of their duties takes custody not possession - the employer takes possession
  - *Willey v Synan*
- Must be in the course of their employment, not simply 'during'
  - *Byrne v Hoare*