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Is it property?

Yanner v Eaton (1999) 201 CLR 351: Describes property as a legal relationship with a thing. It refers to a degree of power that is recognised in law as power permissibly exercised over the thing

Milirrpum v Nabalco (1971) 17 FLR 141: the right to use and enjoy, exclude others from use and enjoyment, alienate, rights can be shared/fragmented.

King v David Allen & Sons, Billposting Pty Ltd [1916] 2 AC 54 : Allowed someone to post posters, on their wall. It was declared a personal right as opposed to proprietary.

Doodeward v Spence [1908] 6 CLR 40: No human body is property when you are alive, but body parts when you're dead or extracted may be subject to private ownership. However if you work on something you may have ownership over it e.g. genes

Moore v Regents of the University of California (1990) 793 P 2d 479: Doctor used cell line from Moore and made a treatment and made money from it. However, Moore had not rights, but Regents did cause they worked on it.

Fixtures

Holland v Hodgson (1872) LR 7 CP 328: what is annexed to the land becomes part of the land. Must consider all circumstances, in particular, the degree of annexation and the object of the annexation.

Belgrave Nominees v Barline-Scott Airconditioning (Aust) Pty Ltd (1984) VR 947: Barline-Scott were subcontracted to install air-conditioning for Belgrave. However, Barline-Scott ended up not being paid by contractor so went into building to remove air-conditioners. Court ruled that the chillers were fixtures hence belonged to Belgrave. Because (**citing Holland**) if something is attached to the property, no matter how slightly, it is a fixture, only when it is resting there on its own weight is it a chattel. Here it was connected to water pipes and electricity so it was enough.

Onus/Burden of Proof

Belgrave cites Australian Provincial Assurance Co Ltd v Coroneo (1938) 38 SR (NSW) 700: The burden is on anyone who asserts the asset is not a fixture if the object is fixed and fulfils the presumption. Conversely, if the object is not fixed and is supported by its own weight, then the burden is on anyone who says it is.

Objective/Intention Test

Belgrave Nominees v Barlin Scott: Look at the following factors , relevant not determinative

- extent of the physical attachment; (somewhat examined in presumption)
- ease of removal;
- nature of the chattel, and its relationship to the realty;
- common understandings and practices;
- whether the attachment contemplated is permanent/indefinite/substantial or merely temporary;

- the nature of the interest in the realty (if any) held by the attachers;
- the purpose of attaching the chattel (objective)
- subjective intention (including contract about ownership)

Elitestone v Morris [1997] 1 WLR 687: Both parties had the subjective intention that the houses would be chattels, but courts said that objectively the house was a fixture.

Reid v Smith (1905) 3 CLR 656: House was rested on pillars and not land because of termites. Presumption says not a fixture, but court decided it is a fixture because the reasonable bystander would assume so.

Leigh v Taylor [1902] AC 157: Tenants securely fixed some tapestries, however, the court decided it was a chattel, because there was no other way to enjoy this chattel unless you fixed them. Also noted it was securely fixed but as lightly as the nature of the chattel would allow it.

Possession

Jeffries v The Great Western Railway Co (1856) 5 E & B 802: Jus tertii argument, invalid. Court is only interested in who has a better claim between those in the case, this is the doctrine of relativity of title and is a comparison of who has a better right to the property (prior rights trump later possession rights). Furthermore the third party first sold the trucks to J, thus the transaction with TGWC was void because there was nothing to transfer. Responsibility is on the buyer to make sure the seller has title.

Henry Berry v Rushton [1937] QSR 109: This is a case that looks like Jus tertii but is not, they referenced a third party to show that HB had neither actual or right to immediate possession. The referenced the fact that the contract between HB and the storekeeper required a notice which HB did not provide, so the scales were still storekeepers and thus Rushton could take them after he defaulted.

Costello v Chief Constable of Derbyshire Constabulary [2001] 3 All ER 150: example of a wrongdoer being able to end up with actual possession and owning the good. Costello stole a car and the owner could not be found, he was the latest person in possession and the police had no right to it because the legislation that gave them possession over it had expired as the investigation was over. Thus, Costello got the car.

Young v Hitchens (1944) 6 QB 606, 115 ER 228: Plaintiff had nearly caught fish, but the defendant's boat disturbed the fish and he didn't catch them. D was sued in trespass, but P could not prove actual possession because P had yet to actually obtain the fish, the fish were disturbed by D in the process of attaining possession. Needed actual power over fish, i.e. physical control of the property to have actual possession. Second element is intention to possess, need both to prove possession.

Note: Law also thinks that making something gives you rights of ownership, possession or occupancy is the origin of property not selling or buying papers, but it is possession.

Lost and Found

Armory v Delamirie (1772) 1 Strange 506, 93 ER 664: Chimney sweep's boy, finder has a good title against the world except rightful owner. Armory can ask for conversion here. As a remedy was given maximum value of gems to prevent wrongdoer from gaining from his misdeeds.

Elwes v Brigg Gas Co (1886) 33 ChD: Property was an old boat found several feet beneath the earth by the tenants. Court decided that the owner was in lawful ownership of everything on the surface and below the earth and thus was in possession before granting the lease. Does not matter that he is not aware of its existence. Thus, owner had prior possession and ownership of boat. Furthermore, lease gave tenants right to excavate but no right to keep (implied or express) what they excavated. Because it was buried in the land, it is considered to be a part of the land.

Bridges v Hawkesworth (1851) 21 LJ QB 75: The finder won this case because he found the property in a public section of the defendant's shop. Furthermore, B also took the property into his possession before giving them to H to ask him to find the owner. H never had the property in his custody or protection because it was found in a public section (could have been a different story if found in a private section), it is unclear however what custody and protection meant because court didn't define it. (Question here for modern courts is the lack of intention by B to possess).

South Staffordshire Water Company v Sharman (1896) 2 QB 44: Defendant found 2 gold rings at the bottom of the pool under some mud which was owned by the plaintiff. However Defendant refused to give it back, the decision favoured the owner of the land because the possession of land with a manifest intention to exercise control over it and the things upon or in it was enough to declare if something is found on that land it belongs to the owner. Whether the finder is an employee, owner or stranger, the presumption is that the owner of the land will own the found property. The ratio is not clear but it could be because 1) P won because he was an employer thus the employer > employee 2) owner had manifest intention to exercise control over the land 3) it was in the mud/under the surface of the property.

Parker v British Airways Board [1982] QB 1004: Parker found a gold bracelet on the floor of the executive lounge in an airport. Parker explicitly says that if the defendant can't find the owner, he wants it back. However defendant sells the bracelet and keeps the money. Court held that finders only acquire rights to found chattels if chattel is abandoned or lost and chattel is taken into care and control. P had prior possession and so thus a stronger right, BA argued that it was their property however court rejected the argument because it was airport's property. This case makes it hard for an occupier who invites the public onto its land to win, the occupier can only win over a finder if they explicitly show they have a manifest intention to exercise control over the building and the things that maybe on or in it. The occupier had restricted entrance into the executive lounge but that was not enough to be manifest intention. Further held BA didn't do anything so manifest such an intention e.g. regular inspections for lost articles. (most likely would need a sign that states that lost property box will claim ownership if the owner is not found for the occupier who has invited in the public to win)

Chairman, National Crime Authority v Flack (1998) 156 ALR 501: A briefcase was hidden behind a cupboard which belonged to Flack's son, Flack did not know about its existence. NCA took away the briefcase and refused to return it to Flack. NCA argued that Flack had to know about it to exercise