

## Topic 1 Part B Possession & Personal Property

### 2. Doctrine of Relativity of title

*Jeffries v The Great Western Railway Co*

- All that mattered before the court is that A had a superior claim than B, didn't matter that somewhere else there was someone with greater claim than A

### 3. Losing and Finding

*Parker v British Airways Board*

- No actions to infer that British Airways ever intended to exercise control over the things in the building (didn't check belongings/do lost property searches)

*Chairman of the National Crime Authority v Flack*

- Mrs Flack was entitled to the briefcase and the money because as tenant/occupier of the premises she had manifested an intention to possess all chattels found on those premises
- It did not matter that she had no prior knowledge of the briefcase

*South Staffordshire Water Co v Sharman*

- Water company owned the land and engaged the services of plaintiff to clean bottom of a pool, plaintiff found valuable rings
- Held: the company had a better claim to the rings

*Byrne v Hoare*

- Discovery may have been accidental/incidental and not done in the course of his service to his master
- Temporal connection v causal connection between employment and finding the thing

## Topic 2 Fundamental concepts of Real Property

### 2. Doctrine of Fixtures

- Rebuttable presumption - what is annexed to the land is part of the land, when attached to the land by no more than its own weight then a chattel (*Holland v Hodgson*)
- Presumption allocates burden of proof to person claiming something against presumption (*Coroneo*)
- Objective intention test - what a reasonable bystander would assume the intention was taking into account the surrounding circumstances

*Belgrave Nominees v Barlin-Scott*

Factors to consider in applying objective intention test

1. Extent of physical attachment
2. Ease of removal
3. Nature of chattel and its relationship to the realty
  - o Clearly very large units not meant to be moved
4. Common understandings and practices
  - o Expect a stove to be in a house but not a fridge
5. Whether the attachment contemplated is permanent/substantial or merely temporary
6. The interest in the realty held by the attachor
7. The purpose of attaching the chattel
8. Subjective intention (including contract)

*Lee v Taylor*

Example of a case where something was clearly affixed but held to be a chattel

- Tennant affixed some valuable tapestries to wall
- Reed v Smith, May v Seevide*

Example of something not fixed yet still a fixture

- Houses not fixed to real estate, eg shipping containers and granny flats

### 3. Possession as a good root of title; Action for the recovery of possession of land

*Asher v Whitlock*

- You can buy, sell and gift possessory title!

*Perry v Clissold*

- Squatter entitled to compensation when govt reposessed land to build school

Action of ejectment – modern form – s20 CPA

### 4. Adverse Possession

1. When does time begin to run?

- When owner out of possession (s28) and land is in adverse possession (s38(1))

2. Is the possession adverse?

- a. acts of possession
- b. intent to possess

3. Has the limitation period expired?

- NSW 12yrs, Vic 15 (No adverse possession ACT/NT)

*Whittlesea City Council v Abbatangelo*

- Dispute over land that was gifted to the council, Abbatangelo bought the surrounding land
- On the council's land, they installed a gate onto their property, installed and maintained fences on the council land, used the council's land to graze animals, installed a trough, maintained trees and vegetation, kids played in it, held bbqs, eventually completely removed boundary fence and took over
- So long as you can show you have acted like an owner of the land that is sufficient

*Powell v McFarlane*

- Intention = intention to exclude the world at large (**intent to possess not intent to own**)

## Topic 3 Real Property: Tenure and Estates

It is possible to grant any form of estates with strings attached/with conditions

Two main types

- Conditional grant ("but if" "on condition that" "provided")
  - o If a conditional grant and the limiting event declared void for public policy reasons - person now has a fee simple with no strings
- Determinable ("until" "while" "during", "so long as")
  - o If a determinable grant - cannot strike off a limiting event as it's a fundamental part of grant itself: if the condition =void the whole grant is void/person gets nothing