

Ownership and Possession of Personal Property

DEFINING OWNERSHIP

- Ownership is the legal relationship between a person and an object.
- Title: the owner's ability to resist the competing claims of others to a thing
 - Interest: the bundle of rights the owner enjoys in relation to the object

ACQUISITION OF PROPERTY

- The general presumption is that property in goods is transferred only when the owner *intends* it to be transferred, and this intention must be coupled with *consent* and delivery

Ownership can change through:

- **Original acquisition** – acquisition of ownerless things (abandonment principles) or creation of new property; or
- **Derivative acquisition** – transfer from a previous owner (accession, commingling, specification, sale, assignment, gift, affixing to land, death, bankruptcy_

ORIGINAL ACQUISITION

Creation

Creation of new property – original acquisition derived through the creation of something new.

Arises when the new thing is brought into existence e.g. copyright

Offspring of domestic animals are the property of the owner of the dam;

Case of Swans, approved in **Yanner v Eaton**

- [Author did not reclaim manuscript for 6 years, but contract stated that the author reserved all rights to it]

Abandonment

Acquisition of ownerless things – elements

- a. Unilateral physical abandonment; and
- b. Intention of abandonment (more than mere loss - intention to give up rights associated with property)

Result – owners title is divested, and property becomes capable of acquisition by a taker

Contractual provisions may negative an intention to abandon

Moorhouse v Angus & Robertson (No 1)

- Facts: Manuscript left with publisher for 6 years. Term in agreement reserved all rights not specifically granted to publishers.
- Held: mere inactivity cannot be abandonment (intention negated by terms)

Re Jigrose Pty Ltd

- Facts: Property subject to contract (REIQ standard form sale contract). Clause 28 provided that vendor was obliged to remove chattels and any chattels not removed were abandoned
- Held: deeded representation by vendor that he had no further interest in the chattels (bales of hay) and thus, property passed to the purchaser who could deal with it as the purchaser thought fit

DERIVATIVE ACQUISITION

Transfer from a previous owner through accession, commingling, specification, sale, assignment, gift, affixing to land, death or bankruptcy

- *Specification* – impossible to reverse the process; involves a physical or chemical alteration to the goods
- *Accession* – physical or chemical state is not altered; goods identifiable, but not separable
- *Commingling* – homogenous goods are blended; no alteration in the physical chemical state of the goods

ACCESSION

Accession: The attachment of a minor chattel to a dominant chattel, where the identity of the principal chattel is not changed. The owner of the dominant chattel becomes the owner of the principal object which not includes the accessory chattel.

The owner of the minor chattel may have remedies – damages

Injurious removal test: A chattel is added to another chattel where the accessory cannot be removed without the destruction of, or serious injury to, the chattel as a whole

Rendell v Associated Finance Pty Ltd

Intention: Ownership in a chattel generally only passes if the owner *intends*; however the effect of the doctrine of accession is that ownership of the accessory is transferred to the owner of the dominant chattel where the **necessity of the case** requires it

Two issues arise

- a. The **necessity** of the case
- b. Which is the **principal** chattel, and which is the **accessory** chattel

Necessity of the case

- Property in chattel can be deemed to have passed where ‘necessity of the case’ requires it to occur x This is a matter of practicality, where the accessory chattel cannot be identified, or has been incorporated to such an extent that it cannot be detached from the principle object

Rendell v Associated Finance Pty Ltd

- Facts: P sold an engine under a hire-purchase agreement to a man named Pell, who installed it in a utility truck he had bought from the D under another hire-purchase agreement. Pell had not paid fully for the engine or the truck and therefore merely had possession of both things. The D seized the truck and refused to return the engine to the P.
- Issue: Who owned engine?
- Held: engine had not acceded because it could be removed without damage to engine or truck (necessity of case did not require the transfer of ownership)

Which is the *principal* chattel, and which is the *accessory* chattel

Resolution of this issue does not depend on the relative sizes or values of the components

- Where two things of equal value are joined, they may be regarded as a new thing with new property rights, or as being mixed

- It is possible that a person who increased the value of the principle good may be entitled to compensation: *McKeown*
- If a corporeal substance receives an accession by natural / artificial means (e.g, pregnancy of animals), the original owner is entitled by his right into the property to its improved state: *McKeown*

McKeown v Cavalier Yachts Pty Ltd

- Facts: D constructed a yacht (worth 24k) in a hull (worth 2k), not knowing that the hull belonged to the P. D argued “that the accretions accordingly are the major chattel, and the laminated hull the minor chattel, so that the doctrine of accession operates that the property in the laminated hull has now acceded to the later accretions rather than the other way around”
- Held: No – work was done gradually. As each piece was installed in the hull, it was clear that it acceded to the hull and belonged to the P. Thus, P entitled to possession of the entire yacht, on the condition he pay D for unjust enrichment

COMMINGLING

The mixing of goods which belong to multiple people in such a way as to produce an inextricable mixture which results in common ownership of the resultant mass or bulk. It does **not** involve a change in the physical or chemical state of the mixed or merged things

Agreed mixing

Where commingling has been *agreed*, the result will be ownership as agreed, or as tenants in common in proportion to their contribution x Contrast with joint tenants, each owns 50% and cannot take that out of the mixture

Accidental mixing

If possible to determine the contribution –

- Each party has a tenant in common in proportion to their contribution, and will bear any loss proportionately: *Coleman v Harvey*
 - This can be adjusted if there is evidence as to a limitation of one party’s contribution
- If not possible to determine contribution –
 - Each party has a tenant in common in equal shares; *Buckley v Gross*

Deliberate mixing:

As above – owned as tenants in common, proportional to the contribution of the parties

Indian Oil v Greenstone Shipping

If fault involved – any doubt about contributions is resolved in innocent party favour.

- If the proportions contributed cannot be determined, then the innocent party will be entitled to all of it, subject to any evidence of limitations
- If any of the goods are damaged or destroyed, then it is assumed that it was the wrongdoer’s goods, and the innocent party can claim the unharmed goods; *Big Top Hereford v Thomas*
- If the innocent party suffers loss by the mixing, they are entitled to claim damages from the party at fault

Indian Oil v Greenstone Shipping

- **Facts:** unauthorised and deliberate mixing of oil on vessel. Owners vessel chartered to carry cargo from Soviet Union to India. At time, there was residue from previous voyage (which was mixed).
- After delivery, oil remained on board. Oil was mixed. Buyer claims the oil.
- **Held:** no – buyer cannot claim oil – only entitled to what it had contributed (bought)
- **Reason:** “any doubt about resolving that in favour of A – A can claim damages from B in respect of any loss by reason of the added mixture”

Big Top Hereford v Thomas

- **Facts:** Mixture of cattle which had been mixed while mustering them from the property Big Top, in proportions of 60% and 40%. 4 cattle died – who bear cost?
- **Held:** parties entitled to their respective proportions, with the shortfall (caused by one party’s negligence) to be made up by the non-innocent party

Hill v Reglon Pty Ltd

- **Facts:** mixture of scaffolding without consent.
- **Held:** parties owners as tenants in common. Thus, innocent party entitled to the full value of their proportion. There is no reason to treat fluid and granular mixtures differently.

Spence v Union Marine Insurance

- **Facts:** a ship carrying bales of cotton was wrecked near Florida. Although most bales were recovered, the majority had lost the marks that indicated who owned which bales.
- **Held:** when goods of different owners become by accident so mixed together as to be indistinguishable, the owners of the goods become tenants in common of the whole, in the proportions which they have severally contributed

PPSA – Security interests associated with Commingling

If goods are subject to a security interest and then become indistinguishably mixed with other goods, the security interest attaches to the mixture, limited by the value of the secured goods at the time they were mixed

PPSA s 101

Priority – secured creditors sharing the mixture entitled pro rata with other secured creditors who have the same priority

PPSA ss 102, 103

SPECIFICATION

Process under which one product is transformed into a different state by the application of some physical, mechanical or chemical process – who owns the derived product?

- If the goods can be easily reconverted to their original form, then they are not new things; *Lampton’s Executors v Preston’s Executors*. The question is whether it is practical, with regards to economics; *Associated Alloys*
- The issue of who owns the derived product depends on whether the transformation into a different product was lawfully done