

Week 0 - Topic 0: Introduction to property as a bundle of rights

Podcast 0: Property “Bundle of Rights” – 8 sticks

- Right to possess, (the state of having, owning or controlling something),
- Right to use,
- Right to manage, (when to use and how to use),
- Right to income, (keep value or profit),
- Right to capital, consume or destroy the item,
- Right to security, (to exclude anybody else from using the item),
- Power to transfer that item to somebody else, and
- The right to enjoy forever or for the period.

There is also a duty of others not to use or refrain from using something that is exclusive to owner. Also there exists a liability to execute or have taken away the “thing” to satisfy any debt (sold to repay). And residual rights exist, where rights have lapsed.

Week 1 – Topic 1: Personal Property- Possession and Title

The scope of commercial law

- “commercial law [is the] body of law which governs commercial transactions, that is, agreements and arrangement between professionals for the provision and acquisition of goods, services and facilities in the way of trade”.
- Goode argued that commercial law is “concerned primarily with dealings between merchants...as opposed to consumers”

The nature of property

- Property can refer to a thing, or to legal rights in respect of a thing
- Even a legal right to sue someone else is an item of property in law (a choice in action)

Characteristics of property

‘to talk about property is to talk not about objects but about relations between human beings or more accurately about relations between persons in relation to things...private property must at least involve the right of the owner to exclude others from doing something in respect of the object of ownership’

-- Cohen, ‘Dialogue on Private Property’ (1954) 9 *Rutgers LR* 357

Finance and sale of goods issues (re title) – if you buy a car from a dealer that dealer doesn’t have title, the title has to be transferred to you via the dealer once the debts are paid off. You are protected by SOGA – possession v title

Types of property

The law has long treated real and personal property differently

Real Property

- Land (incl. fee simple)
- Fixtures (things attached to land with an intention to remain fixed)
- Native Title
- Mining rights

Personal Property

- Property other than real property
- Choses in possession (chattels---things)
 - Choses in action (rights enforceable by law)---IP, shares in a co, debts, negotiable instruments

Distinction between real property and personal property

Real property

- Indestructible
- Immoveable
- Unique—contractual remedy specific performance rather than damages
- Appreciates – good security for finance
- Emotional connection
- Form of trade – e.g. diamond (could be person too)

Personal property

- Impermanent
- Moveable
- Temporal
- Fragile
- Often depreciates in value
- Common/not unique (related remedies damages unless unique eg work of art)

Property, ownership and possession

- Contrast property rights (*in rem*) v personal rights (*in personam*)
 - Key risks: insolvency, secured finance
- Property rights enforceable against the world
- Personal rights enforceable against other party in the contract or individual only (eg tort claim)

Ownership and possession

- Ownership: may include right to use, sell, give away, put into a trust, use as security for a loan, share with co-owners, leave in will or have the right to transfer,
 - Title gives rise to certain rights
- Possession: to have exclusive control (or dominion) over the item: *Parker v British Airways*
 - Can still create enforceable rights
- Types of Possession: de facto, legal, right to immediate possession

Finding cases

Category One: Items found attached to land:

- **RULE:** Where an article is found in or attached to land, then as between the owner or the possessor of the article, the owner or lawful possessor of the land has better title. Owner must show *intention to control the property*.
 - **Attached** – bolted or buried in the land.

Hannah v Peel: broach in house not used by owner

South Staffordshire Water (rings found in mud)

Facts: P, a water company, owned land containing a pool and employed the defendant with other workmen, to clean it. While doing so, a workman found two gold rings in the mud at the bottom of the pool. He gave the rings to the police who could not find the true owner and later handed them back to him. The water company sued to recover the rings.

Held: The court held that the plaintiff company, as owner of the land containing the pool, was entitled to the rings.

Armory v Delamirie (1722) --- Ownership v possession

Facts: A chimney---sweeper boy found a ring whilst on a job. He took it to the jeweller to get it valued and the jeweler subsequently did not return the jewel, claiming that the boy had no right to the jewel. The boy sues the jeweller.

Held: boy has certain rights arising out of possession. Since the original stone could not be located, the remedy was any stone that would fit within that setting.

- ‘That the finder of a jewel... has such a property as will enable him to keep it against all but the rightful owner’
- [cf conversion] – Possessory title/ a right that arises out of a finding. You can then bring an action under conversion.

Category Two: Items found on land (i.e. not attached):

RULE: Where an article is found unattached on land, then between the owner or lawful possessor of land and the finder of the article, the owner of lawful possessor of the land has a better title **only if he/she exercised such manifest control over the land as to indicate intention to control** the land and anything that might be found on it.

- No evidence of a **manifest intention** the finder will be entitled to possession as against the occupier in the event that the true owner cannot be found.

Parker v British Airways – leading case

Facts: Parker finds a gold bracelet in a BA first class departure lounge. You need a boarding pass and a first class ticket to get in. Parker gives a BA staff member his contact details and instructions to return the bracelet to him if owner is not found. The owner was never found and British Airways sells bracelet for £850. The Passenger sues British Airways.

Held: There was no evidence that BA had manifested an intention to exercise control over all things that might be upon or in the premises. Parker was not a trespasser, he behaved honestly; took the bracelet into care and control; so gained finder's rights; was not an agent so rights not displaced in favour of principal.

- The case approaches this from two perspectives
 - The perspective of the finder and
 - The perspective of the occupier where the goods are found, because both have conflicting rights.
- If British Airways was able to demonstrate that it was constantly looking for lost items and that if there were any lost items found, they had some mechanism for getting them to the true owner, they maybe Parker would not have had a case. They didn't prove they had control over everything that could be found on that property.

Rights and obligations of finder per Donaldson LJ *Parker v BA Board* (1982)

1. Finder acquires no rights, unless a) item abandoned or lost and b) is taken into finder's care and control (possession)
 - Abandoned means that a person has given up all rights and title to goods (Law is reluctant to find that).
2. Finder has very limited rights if taken with dishonest intent or while trespassing [R v

MacDonald --- larceny by finding]

3. Finder of a chattel acquires rights against all, but the true owner.