

Personal Property

‘Personal property is often defined by reference to what it is not; personal property is not real property’: *The North Shore Gas Company Ltd. v The Commissioner of Stamp Dut. (NSW) (1940)*.

Personal property can be classified into two general categories:

1. **Chattels real**- confined to interests closely concerned with real property, and traditionally included leasehold interests.
2. **Chattels personal**- choses in action (rights enforceable by legal action) or choses in possession (chattels with a physical existence).

Problem Question: Possession

State – Possessory title is good against every other person other than the true owner: *Russell v Wilson (1923)*. Interference with possession of personal property is the basis standing to sue for remedies in detinue, conversion, and trespass. In order to **establish possessory title**, one must substantiate the following elements:

1. **Factual possession- State** – the person must have physical possession of the property or must have done everything possible in the circumstances to demonstrate the exercise of sufficient control over the chattel: *The Tubantia [1924]*; *Young v Hitchens (1844)*.
2. **Intention to possess- State** – the person must intend to possess the property- often proven by claimant’s acts of control and surrounding circumstances, as state of mind is difficult to establish. Persons need not intend to possess the property permanently, need only demonstrate intention at the time: *Buckinghamshire County Council v Moran [1990]*

NB, State – the possessor need not know that the chattel exists to intend to possess it. In *Flack v National Crime Authority (1998)*, the plaintiff owned the house and intended to possess it therefore it was presumed that the cash found inside, of which she was unaware, was also intended to be possessed as contents of her home.

Category of possession	Authority
<u>Actual</u> - person has actual physical possession and control of X to the exclusion of all others	
<u>Custody</u> - will occur where a party is holding the goods but they do not have ownership or possession at law	<i>FCT v ANZ Banking Group (1979)</i>

<u>De facto</u> - involves the 'complete present personal physical control of the property to the exclusion of others'	<i>Moors v Burke</i> (1919)
<u>Constructive</u> - person has right to, or means to acquire, possession of X without legal possession	See <i>Ward v Macauley</i> (1791)
<u>Legal</u> - person has a legal right to possess- may not have actual possession (i.e. employee with work equipment)	

Problem Question: Law of Finders

State – Possessory title is good against every other person other than the true owner: *Russell v Wilson* (1923). If goods are abandoned, then a finder (**in possession**) will have the best claim – will need to show true owner had actual or presumed intent to abandon. **Abandonment** can be demonstrated by the express or implied intention to relinquish title and any claims to property: *Hibbert v McKiernan* [1948].

1. The **true owner** will always have superior title: *Armory v Delamirie* (1722);
2. Where **true owner** cannot be identified, **finder** has best claim. **But**, **finder** must make *reasonable efforts and enquiries to locate true owner*. Also another party's claim may take precedence (e.g. owner of the land where property was found; employer where property found in course of employment);
3. **Subsequent possessor's** claim may triumph- **finder** may lose priority (e.g. where property found while trespassing on land, in which case police have best claim).

Illustrative principle	Authority
Finder had best claim to the jewels as rightful owner could not be found	<i>Armory v Delamirie</i> (1722)
Plaintiff succeeded- British Airways had not <u>shown sufficient intention to control/possess</u> anything found on floor of the lounge- defendant could have erected signage asserting ownership of anything found etc. Court also influenced by plaintiff's honesty	<i>Parker v British Airways Board</i> [1982]
Plaintiff succeeded, court held there is a presumption something buried beneath or attached to landowner's land belongs to landowner ; This was different to <i>Parker</i> , where the bracelet was found above ground;	<i>Waverley Borough Council v Fletcher</i> [1995]

<p>Person who finds something as an employee finds that thing for their employer; but Where employment merely incidental to finding, an exception will be found to the general rule above</p>	<p><i>Hanna v Peel</i> [1945]</p> <p><i>Byrne v Hoare</i> [1965]</p>
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