

# **LAWS4104: *Property Law***

Question 1: 24 minutes (*12 marks*)

Question 2a: 12 minutes (*6 marks*)

Question 2b: 12 minutes (*6 marks*)

Question 2c: 12 minutes (*6 marks*)

Question 3: 20 minutes (*10 marks*)

Question 4: 40 minutes (*20 marks*)

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**Total: 120 minutes (60 marks)**

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# IMPORTANCE OF POSSESSION

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## The Two Elements of Possession

1. **Factual Possession**
2. **Intention to Possess**

### Factual Possession

- Factual possession means physical possession or control
- Law will consider what type of control is possible based on:
  - Nature of property
  - Required control to possess it
- ***The Tubantia* [1924]**
  - 15-month period where divers tried to recover cargo from a sunken ship
  - Given the nature and location of the ship – this was sufficient for factual possession

### Intention to Possess

- Only requires intent to possess for the time-being
- ***Young v Hitchens* [1844]**
  - Fish nearly enclosed in a net were not deemed to be the possession of the plaintiff

## Abandonment

1. **Factual Abandonment**
2. **Intention to Abandon**

### Factual Abandonment

- True abandonment by leaving the item behind
- ***Re Jigrose* (1984)**
  - Contractual provision stated that items not moved from land prior to sale would become the possession of the new property owners
  - Bales of hay were not removed – significantly valuable item
  - Court held these bales had been abandoned

# FINDER'S RIGHTS

<i>Case Facts</i>	<i>Issue</i>	<i>Held/Reasoning</i>
<i>Parker v British Airways [1982]</i>		
<ul style="list-style-type: none"><li>• P found gold bracelet in flight lounge – handed it in expecting to receive it should TO not claim it</li><li>• D sold bracelet</li><li>• P sued for the proceeds</li></ul>	<ul style="list-style-type: none"><li>• Who had the best right to the property?</li><li>• Did D manifest an intent to exercise control over the lounge and all things in it?</li></ul>	<ul style="list-style-type: none"><li>• Held they did not and that the bracelet was unattached</li><li>• P therefore claimed the proceeds from the sale</li></ul>

- ***Armory v Delamirie (1722)***

1. Jeweller refuses to return ring handed to him by chimney sweeper
2. **Finder has rights against all the world, EXCEPT for the true owner**
3. Sweeper (finder) therefore has better rights than the jeweller (subsequent possessor)

## Finder's Rights and Obligations in *Parker*

1. The finder will have rights to property if:
    - The item is abandoned or lost; AND
    - They take the item into their care and control
  2. An occupier of a building has rights superior to those of a finder over chattels upon or in, but not attached to, that building if, but only if, before the chattel is found, he has manifested an intention to exercise control over the building and the things which may be upon it or in it
  3. The manifestation of intention to control may be express or implied from the circumstances
    - If the occupier accepts or is obliged accept liability for chattels lost upon his premises
    - The nature of the premises
  4. Occupiers of chattels that are vehicles (ship, car, aircraft) should be treated as if they are occupiers of a building
- Most importantly – the occupier-finder **must take reasonable measures to find the true owner and to care for the chattel**

## Rights of Occupiers

1. An occupier of land has superior rights to a finder over something **attached** to that land, even if unaware of its presence
  - **Elwes** – Submerged ship
  - **Sharman** – Rings found in mud at bottom of pond being cleaned
  - **Waverley** – Broach found 9 inches deep in public park by man with metal detector

2. If the chattel is **unattached**, an occupier has superior rights if he has manifested an intention to exercise control over the building and the things upon or in it
- Nature of the premises is highly relevant, if private (vault/private property) more likely to have manifested intent, if public (public park/unfenced gardens of homes) less likely
    - **Parker** – Lounge with no signage to assert control over lost articles
      - No Intent
    - **Hibbert** – Golf club with patrols to warn off trespassers
      - Intent
    - **Bridges** – Notes found on floor of public shop
      - No Intent
    - **Flack** – Items found in private residential property, illegal items that she did not know about, found in cupboard she had not entered for 13 years
      - Intent

### Rights of Trespassers

- **Hibbert v McKiernan [1948]**
  - Golf course not open to general public
  - Signs indicating ownership of balls found within
- **Bird v Fort Francis [1949]**
  - Boy found \$1400 underneath a pool hall
  - No one claimed the money and so it was rewarded back to the boy
    - **Trespassers have rights to property, but they are FRAIL**

### Rights of Employee/Employers

- **City of London Corporation v Appleyard (1963)**
  - Finder employee bound by contract
    - COL had a contractual provision that any valuable item found must be handed back
    - Term of the contract can change the common law rights as to the finding of items
- **Byrne v Hoare (1965)**
  - Officer on duty at a drive in theatre when he found a gold ingot lying on the surface of the land
    - Privately owned land but where he found ingot was where public exited the drive-in
  - Held that the police officer had a superior right over his employer
    - The police officers employment provided the opportunity for the finding but that was not the real or effective cause of the finding
      - The finding was incidental to the police officer's employment
- **Employer has better right if found during course of employment**
- **Employee has better right if found incidentally**