

Chattels

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Original acquisition of property

Original acquisition by taking possession

Possession requires proof of facts (1) AND (2): JA Pye

(1) Factual possession: a sufficient degree of physical control (i.e., custody) over the goods: JA Pye

Sufficient control is 'of that **character of which the thing is capable**': Lord Advocate

- Depends on the nature of the thing

The Tubantia

'A thing **taken** by a person of his own motion and for himself, and subject in his hands, or **under his control, to the uses of which it is capable**, is in that person's possession'

- Ask: What are the kinds of physical control and use of which the things in question were **practically capable**?

Here, **attaching buoys** to indicate its position + establishing **moorings** (like anchors) from which they accessed its hull and holds = sufficient control of the ship

- Ps were in **effective control** of the ship as a whole
- Ps were in position to **prevent any useful work by newcomers**
- No newcomers could, **without violence**, have exercised the kind of control that the Ps' had on the wreck OR made any valuable use of the wreck
→ Ps had sufficient control – they did what a purchaser would prudently have done to wreck
- ... **Does NOT matter that the Ps' divers worked on the ship in short spells with long interruptions** – because access to the holds of the shipwreck was often prevented by **weather** and great **depth** of the wreck (can only be entered for short periods of time)

Federal Commissioner of Taxation

Two keys to safety deposit box → bank had one key, taxpayer had the other

Bank has sufficient physical control over the contents of deposit box) (by owning one of the keys to the deposit box) – even if it is bound by contracts to refrain from exercising the power

- Bank's **legal relationship** with contents of deposit box **does NOT affect bank's physical control** over them

→ Bank had physical possession; taxpayer had legal possession

(2) Intention to possess: an intention to exercise such custody and control on one's behalf and for one's own benefits: JA Pye

Often inferred from the nature of the factual possession / physical control

... OR by the law of natural increase

E.g., Owner of cow → owns the cow's calf; owner of apple orchard → owns the apples falling from tree

Destruction of property rights

By physical destruction of the item

A right in rem cannot survive the extinction of its res: **Birks, *An Introduction to the Law of Restitution***

OR by accession, specification, and fixtures

Accession

E.g., sewing buttons on coat → buttons become part of coat: ***Holland***

Specification (Manufacture)

E.g., grapes made into wine → wine is now owned by winemaker

See 'Fixtures' scaffold.

OR by statute

E.g., ***Limitations Act***, s 65(1) title is extinguished on expiration of limitation period

OR by abandonment

Jigrose

Generally, title remains with original possessor until an **intention to abandon** arises → chattel becomes **res nullius** [chattel does NOT need to have an owner] → **whoever next takes possession of the object has property rights**

- For title to pass, there must be **abandonment** and then act of **appropriation** by another person (i.e., taking possession)
- For abandonment, intention is the critical issue – did the owner intend to dispose themselves of possession and any right to reclaim it in the future?
- Appropriation requires the next person's exercise of control over the chattel AND their manifest intention to exercise control over it [see Step 2 of 'Original Acquisition' scaffold above]

Held: Title had passed from vendor to purchaser

- **Abandonment:** vendor's intention to abandon the hay on their land could be inferred from a clause in K for sale of land, stating that **any such property NOT removed shall be deemed abandoned by the vendor** → makes it clear that vendor has **NO further interest** in the hay
- **Appropriation:** purchaser took possession of the hay by **placing a lock on the paddock** where the hay lay → manifest intention to exercise control over the hay

Mere inactivity will NOT cause the original owner to lose priority: ***Moorhouse***

If item is of low value --> more likely to have been abandoned

If it has been long time --> more likely to have been abandoned