

PERSONAL PROPERTY

PROPERTY RIGHTS

Personal property is property that you have a bundle of rights over, such as the right to keep, use, sell, exclude, alienate or derive income from. Rights can be assignable (assignment of debt) or unassignable (cannot transfer right to vote). *Moore v Regents of the University of California*. A person who holds chattel is

Real property = Land

Personal Property = Goods and chattel | Tangible property can be in possession | Intangible can be in action – debt owed, shares

Hallmarks of Property – *National Provincial Bank v Ainsworth*

- Definable
- Identifiable
- Capable of being transferred
- Permanent or enduring in nature

CHATTEL OR FIXTURE?

A party can have property rights over chattels and goods but not fixture as title is lost if it becomes real property (land). Chattels can become fixture if affixed into the land *Reid v Smith*. Presumption that if it is physically attached to land, it is a fixture *Segal v Osborne, Re May Bros Ltd* – if it is not, and can rest on its own weight then it is a chattel *Belgrave Nominees v Barlin Scott Air-conditioning; Wiltshear v Cottrell*

Step 1. Is it property? *National Provincial Bank v Ainsworth*

Step 2. What presumptions apply? Was it initially a chattel or did it convert to a fixture through annexation?

Step 3. Degree of annexation *Holland v Hodgson, Wiltshear v Cottrell, Belgrave Nominees v Barlin Scott Air-conditioning*

Step 4. Object of annexation *Leigh v Taylor, Wiltshear v Cottrell, Belgrave Nominees v Barlin Scott Air-conditioning*

Step 5. All other relevant circumstances, e.g. Cost of removal, whether it's removal will damage the property - *NAB Ltd v Blacker, Holland v Hodgson*

Doctrine of Accession

Only applies to inanimate objects not living things – *Grant v YYH Holdings*

If one party acted in bad faith, the other party becomes the owner of the property. If neither party acted in bad faith, the party whose interest is more valuable becomes the owner and compensates other party for their interest.

Doctrine of Intermixture

Where two indistinguishable properties mix, the doctrine suggests an equal division where there is no issue of quality. Quality issue due to wrongdoing then the party that was the 'victim' gets all the property or priority to choose quality – *Sandeman and Sons v Tyzack and Branfoot Steamship, India Oil Corp v Greenstone Shipping*

<i>NAB v Blacker</i>	Defendant defaulted on loan Wanted to keep his 500kg pumps NAB argued that they were fixtures because they were in the land	Not a fixture as all relevant facts and circumstances must be considered. Easily removed even if it was integrated into the ground.
<i>Holland v Hudson</i>	Looms on a property when building a new mill. The reason it was built was of a permanent nature, but defendant argued that as it was not finished it was chattel.	Court held that it was a fixture due to object of annexation – had they been there incidentally or for safekeeping they would be chattel.
<i>Leigh v Taylor</i>	Valuable tapestries tacked to canvas → nailed to strips of wood → nailed to wall	Deemed a chattel due to the nature of the objects in question
<i>Farley v Hawkins</i>	Dishwasher → plumbed into wall/ground → tiled around → embedded in cabinet	Fixture due to amount of effort and money needed to take it out.
<i>Re Cancer Care Institute of Australia</i>	Linear accelerator → base frames affixed to building not device → could be easily removed → customary for removal when sold/gifted → value of equipment far surpassed cost of removal	Deemed a chattel due to the nature of the equipment and the low burden to remove the item despite it being affixed into the building.

<i>Cmr of State Revenue v Uniqema Pty Ltd</i>	Plant and equipment for power generation installed by lessee under lease → lessor sold land to D → Valuer General factored in value of plant and equipment (as part of the land)	Chattel due to the item in question being stipulated by lease agreement.
<i>Australian Provincial Assurance co v Coroneo</i>	Theatre seats bolted to floor and adjoined to one another → were often and easily removed for performances etc.	Deemed a chattel due to the nature of the equipment and the low burden to remove the item despite it being affixed into the building.
<i>Wiltshire v Cottrell</i>	A wooden granary that rested on its weight on the land was in dispute of being a fixture rather than a chattel.	When an object is not attached to the land and rests on its own weight it is presumed to be a chattel.
<i>Belgrave Nominees v Barlin-Scott Air Conditioning</i>	Air conditioners that rested on platforms on their own weight, however the platform was bolted in.	Held that the air conditioners were fixtures as there was a degree of annexation that was permanent – though there was a presumption that if it rests on its own weight it is a chattel.
<i>Reid v Smith</i>	Built small wooden sheds that rested on their own weight on top of planks and stair cases, in dispute if they were chattel because of the presumption.	Held that even if it was a chattel the degree and object of annexation of the wooden sheds had made it part of the freehold and thus a fixture.

FINDERS KEEPERS

The physical possessor or founder has title until someone with better title comes along, *Rinaldi v State of W*, following the principle that 'a theft cannot have good title' – *Rowland v Divall*

True owner has best claim → where true owner cannot be identified finder has best claim → Subsequent possessor's claim

Types of Possession

Actual	Physical possession
Legal	Legal right to possess
Constructive	Means to acquire (key)
Custody	Persons holds possession no legal right

For ownership to be established, finder must clearly take possession as per *Herperu Pty Ltd v Belle*:

- 1) Factual possession: demonstrated by having complete control over it as per *Young v Hitchens* - or by doing everything reasonable to gain possession - *The Tubantia*
- 2) Mental possession/intention to possess: Must have the intention to physical control the item at the relevant time
Buckinghamshire Country Council v Maron can have intention even if unaware of item *Flack v National Crimes Authority*

Surrounding Principles & Exceptions

If goods are abandoned then goods can be attained freely, piles of stuff on footpath or found in the trash - *Hibbert v McKiernan Moorhouse v Angus & Robertson*

If found deep in the land then it belongs to the land owner *Waverly Borough Council v Fletcher*.

Reasonable efforts must be to find the true owner, handing into relevant authorities *Parker v British Airways Board*. Finder does not immediately attain title to found property until 5 years after the date it is given to the police as per *Police Regs 2014 (SA) 75(2)(a)*.

Exceptions include item being found in course of employment *Willey v Synan/McDowell* – abandonment as per *Hibbert v McKiernan, Moorhouse v Angus & Robertson* or found deep in land *Waverly Borough Council v Fletcher*

Step 1. Establish the different titles (finder, true owner, subsequent possessor)

Step 2. For ownership to be established, look at degree of control/factual possession over the property?

Step 3. Does the finder have mental possession/intention to own the property?

Step 4. Has the finder done enough to find the true owner? If yes → valid title, if no → Likely invalid

Step 5. Has the 'true owner' done enough to prove it? Any exceptions?

<i>Heperu v Belle</i>	Plaintiff given money but had no intention to possess it – realised it and tried to claim ownership.	Must have an intention to possess the goods for there to be title of finders over it.
<i>Buckinghamshire Country Council v Maron</i>	Defendant tried to take 12 year abandoned land by fencing it off and using it as his garden. Demonstrated clear possession.	By demonstrating the intention to physically possess and control the land, he established possession over it.
<i>Young v Hitchens</i>	Fishing, almost had the fish in the net but not fully. D swooped in and 'stole' it from the P.	To have ownership or possession one must exercise full control over the goods in question.
<i>Flack v National Crimes Authority</i> <small>Approved in Big Top Hereford v Thomas</small>	Police found a brief case with \$400,000 in the house. Owner did not know about that it was there. Police claimed ownership.	Court deemed that if it is on your property, there is a presumption that there is an intention to possess by the property owner even if unaware.
<i>Parker v British Airways</i>	Plaintiff finds a necklace and gives it to airport staff, requesting to claim title over it if the true owner is not found. Airport sells the goods and keeps the money.	Court found that by doing everything reasonable to find true owner, plaintiff had title over the necklace and should be given the goods or paid its value.
<i>Morgan v Kroupa</i>	Plaintiff finds a lost dog and looks after it for over a year, putting up posters and did everything necessary to find owner.	Owner eventually finds the dog and takes it, but the court deemed that it now belonged to the plaintiff.

<i>Armory v Delamirie</i>	Plaintiff was a chimney sweeping boy who found a jewel and took it to the defendant's jewel shop to have it valued. D took it and refused to return it, claiming that it was not the P's to begin with.	Deemed that as the first finder of the jewel, the plaintiff had better title than the defendant. He was awarded damages for the jewel. Finder has better title than everyone but the true owner.
<i>Leigh v Taylor</i>	Valuable tapestries tacked to canvas → nailed to strips of wood → nailed to wall	Deemed a chattel due to the nature of the objects in question
<i>Farley v Hawkins</i>	Dishwasher → plumbed into wall/ground → tiled around → embedded in cabinet	Fixture due to amount of effort and money needed to take it out.
<i>Waverly Borough Council v Fletcher</i>	Goods were deeply embedded in the council's soil and defendant had to dig it out of the ground.	Deemed that if the goods are deeply embedded into the property, then they belong to the owner of the property.
<i>Willey v Synan</i>	A sailor on board a ship travelling from NZ to Melbourne found some silver. In dispute of whether it was his or the boat company he was working for.	If found in the course of employment, it belongs to the employer.
<i>McDowell v Ulster Bank</i>	Janitor found a bundle of cash while sweeping the floors of the bank.	Found in the course of his employment, thus it belonged to the bank.
<i>Bryne v Hoare</i>	Policeman found a gold ingot on his way to work. Picked it up and kept it.	Deemed that it belonged to the plaintiff and not his employer as it was not found in his course of employment – but on his way to his employment.
<i>Egglshaw v Australian Crime Commission</i>		You can't find something that was physically handed to you.
<i>Hibbert v McKiernan</i>	Defendant taking golf balls he found on the ground, tried to argue that they had been abandoned and so he was the finder and had ownership.	He was a trespasser on their land and thus a thief, had no title over the balls – there was still an intention to possess by the golf club and thus not abandoned.
<i>Moorhouse v Angus and Robertson</i>	Manuscript left abandoned for over two years, plaintiff found and kept it.	The implicit action of not using or intending to keep the script meant that the goods could be claimed by the finder.