

## Property Law – LAWS4104

### Topic List

- Finders Law
- Adverse Possession
- Physical Dimensions
  - Subsurface & Minerals
  - Airspace
  - Water
- Fixtures
- Interests
  - Equitable interests
- Disputes
- RODA
- Registration of Deeds Act 1856
- Co-ownership

## Finders law

1. True Owner best right (**Armory, Parker**) unless:
2. Factually abandoned - actual physical control necessary to possess
3. Intention to abandon - acts of control showing intention to possess
4. If neither = abandoned. **Re Jigrose**
5. F must take item into **care & control and try to find TO**. **Parker**

Quick ref for disputes: **Parker**

- o F v subsequent possessor = finder. **Armory**

### Shops and public spaces

- o F v shop owner (uncontrolled space) = finder. **Bridges: cash shop floor. Need intention to exercise control**
- o F in public property (park) but dug into ground = park owner bc attached. **Fletcher: metal detector, interfered with property**

### Property owner v lessee/F

- o F lessee v owner lessor = owner if item is **attached** **Elwes: buried boat**.
- o F lessee v owner lessor = F lessee if item is **unattached** and owner has not manifested intention to exercise sufficient control (liability or nature of premises).
- o F v non-occupying owner = F if unattached. **Hannah: brooch in war**
- o Owner/occupier even if didn't know if was there. **Residential home rebuttable presumption: private residence manifest control over all items in the home. Flack**

### Employee/Employer

- o F employee in course of work = employer. **Sharman: ring in pond mud**
- o F employee incidental to work v employer = finder. **Byrne: cop on way to work**
- o Contractor finder = term of contract can change rights. **Appleyard: safe**

### Trespass

- o Trespassing = no rights (**Hibbert: golf**)
- o Trespasser = frail rights (**Bird: cash under pool hall**)

### Bailment – duties to:

1. Redeliver chattels to bailor at end of bailment in accord with instructions.
2. Take care of bailed chattels.
3. Carry out terms of bailment.

**Jus Tertii** – df cannot raise the superior right of a 3<sup>rd</sup> party unless the 3<sup>rd</sup> party bailed the item to the df.

## Adverse possession

Titled Owner has the best right unless. **Perry, Clements**

1. Factually abandoned - actual physical control necessary to possess
2. Intention to abandon - acts of control showing intention to possess
3. If neither = abandoned. **Re Jigrose**  
**or**
  - They're Adversely Possessed

### Elements of AP

1. Has TO been dispossessed or discontinued possession and followed in by AP? *Limitation Act 2005* s 66; **BCC v Moran**
2. Has adverse possession been taken by APer? *LA* ss 65(1), 3(6)(a)
  - Factual possession
    - **Mulcahy v Curramore**: open, not secret, peaceful not by force, no consent
    - **Powell v McFarlane**: an appropriate degree of physical control
    - **Clement v Jones**: single and exclusive
  - Intention to possess
    - **BCC v Moran**: unequivocal intention to possess (not own)
    - **Petkov**: intention to exclude all the world including TO
  - Adverse (without consent)
3. Has AP continued for 12 years *LA* s 19(1)
  - **Mulchay v Curramore**: Continuous possession by AP'er or number of AP'ers
  - Is there a gap in possession or factual/intention to abandon?
4. Has the limitation period been extended?
  - Void - Mental disability s 35(1) – (2) – doesn't work if 12y have lapsed.
  - Under 18y s 32, s 41
  - Fraud s 38
5. Has the clock been stopped?
  - TO formally (via court action) asserts rights: s 84, **Symes**
  - Confirmation of title ss 45-50, **Abbatangelo, BCC v Moran** = mere writing to TO acknowledging title is not enough. Payment to TO will stop clock **Pye** (*paid to cut hay*).
6. State if TO's right to recovery extinguished s 75 and the date when  
\*Crown cannot be adversely possessed ss 76, 19(2), **Goodwin** (*AP'd prior to Crown taking title*)
7. If more than one person is claiming AP who has the best right?
  - First AP has the best right unless they:
    - Factual/intention to abandon. **Re Jigrose**
    - Devises/conveys or
    - Has been AP'd themselves? – Apply above analysis to each AP'er.