

LAWS4104: PROPERTY LAW

key

Start of offence

Section in code

Element

case

or (case)

Concept of property

1. A property right always relates to, and depends upon the existence of, some particular thing. This thing can only be 'contingently' related to us.
2. A property right can be enforced not just against a specific person, but against a wide range of persons (the whole world). It is a 'right in rem', ('rem' meaning 'thing').
3. If you don't have a right in rem, you will have a right in-personam – eg Money, a right to the amount owed but not the specific thing

International news v associated press: The plaintiff and the defendant were competitors in the business of gathering and distributing news for sale to newspapers throughout the US. The defendant was taking the plaintiff's news from bulletin boards outside of the plaintiff's offices in NY and from earlier editions of the plaintiff's newspapers. The defendant then sold the news as its own to newspapers in the western states of the US. The plaintiff sought an injunction to restrain the defendant from pirating the news.

Is there any property in the news?

- The defendant's activities constituted unlawful competition in business.
- In relation to the defendant the plaintiff had a 'quasi property' right in the news.
- The defendant was restrained from taking or gainfully using the plaintiff's news until its commercial value as news to the complainant had passed away.
- 'When an uncopyrighted combination of words is published there is no general right to forbid other people repeating them – in other words, there is no property in the combination or in the thoughts or facts that the words produce.

Moorgate Tobacco Co Ltd v Philip Morris Ltd (No 2)(1984)156 CLR 414: 'The rejection of a general action for 'unfair competition' involves no more than a recognition of the fact that the existence of such an action is inconsistent with the established limits of the traditional and statutory causes of action which are available to a trader in respect of damage caused or threatened by a competitor. Those limits, which define the boundary between the legal or equitable restraint and protection and the area of untrammelled competition, increasingly reflect what This boundary should not be obliterated by – 'the importation of a cause of action whose main characteristic is the scope it allows, under high-sounding generalisations, for judicial indulgence of idiosyncratic notions of what is fair in the market place.' the responsible Parliament ... ha[s] determined to be the competing claims and policies.'

Victoria park racing v Taylor: The P was the owner of land upon which there was a racecourse for the running of horse races. A radio station persuaded the owner of adjoining land to have erected on their property a 16 foot high scaffold to enable a radio broadcaster to broadcast the race contemporaneously with the running of the race. The effect of this was that fewer people went to the races and the P suffered financial damages.

Is there property rights in a sceptical?

- The defendants had not infringed any legal right of the plaintiff.
 - The damage must relate to the land the dfd had not interfered with the land or the plf's use and enjoyment of the land
 - Copyright did not exist in the information posted by the plf.
 - = there is NO PROPERTY in a spectacle
- Quasi Property:
 - The crux of the argument was that by the expenditure of their money the plf created a spectacle and that spectacle is quasi-property that the law will protect.

ABC v Lenah Game Meats (2001) 185 ALR 1: The respondent was a processor of brush tail possums. Trespassers broke into the respondent's premises and filmed the respondent's possum processing operations. The appellant, the ABC, obtained copies of the video and intended to broadcast the video on TV. The respondent sought an injunction to restrain the broadcast and this was granted by the Full Court (Tas). The ABC (appellant) appealed to the High Court.

Was Lenah Game meats able to receive an injunction for rights to privacy and trespass?

- [T]he Full Court erred in the exercise of its discretion in failing to give proper weight to the constitutional consideration favouring discussion in the appellant's television program of animal welfare as a legitimate matter of governmental and political concern.
- This was a matter of federal concern in the present case because the product involved was wholly exported and the appellant was the national broadcaster, established by federal law with national functions.
- When the constitutional consideration favouring free discussion of governmental and political issues of animal welfare in this context was given due weight, a proper exercise of the discretion obliged that the interlocutory injunction be refused.

Licence to be on land

- A licence to be on land can be revoked by the owner
- Remedies can be gained for trespass on land

Cowell v Rosehill Racecourse (1937): The plaintiff had paid money to enter the defendant's racetrack to view the races. During the races, D asked the P to leave, the P refused to do so and so the D had him forcibly removed. The P sued the D for assault.

Did Rosehill have the right to revoke the licence or did they commit assault by asking cowell to leave?

- the plaintiff had become a trespasser when he refused to leave and he had the right to eject them when they breached the contract – the high court upheld this defense
- P would get his money back that he paid to enter but nothing else
- Not a right to an actual thing but an inpersonum right – can sue for damages

Heidke v Sydney City Council (1952): Forbes was an excellent punter who had regularly attended races for over 10 years and had a considerable income from betting. The New South Wales Trotting Club (Trotting Club) managed the race tracks in NSW and were the controlling body of the sport in NSW. Forbes was informed by letter while attending a race track that he was required to leave the course immediately and in the future not enter any course owned or occupied or under control of the Trotting Club. Forbes left the course, and at a later date attended another course and was again asked to leave. Forbes effective banning from the race courses affected his livelihood.

Same as Cowell?

- Distinguished from Cowell
- The Trotting Club was not in a position of normal householder with a right to arbitrarily exclude whoever they wished. The Trotting Club was a public body admitting its members of the public for a fee to a public racecourse, it could not arbitrarily exclude persons from the race meeting by revoking their licence.
- **An administrative law issue can be claimed when your livelihood is challenged**

Other rights in relation to property

- the interest of a beneficiary under an unadministered deceased estate:
 - The beneficiary's interest under an unadministered estate is limited to personal rights against the administrator to ensure due administration of the estate. At this point the beneficiary does not have rights to any specific property in the will. (***Commissioner of Stamp Duties v Livingstone* [1965] AC 694**)
 - However, the beneficiary's rights are sufficiently 'proprietary' in that they can be transferred by will and these rights can 'vest' as property in the official receiver (***Bankruptcy v Shultz* [1990] 170 CLR 306**)
- The interest of a beneficiary under a discretionary trust
 - A discretionary trust is one in which the trustee has the power to decide how to apportion the trust estate among the beneficiaries.
 - A beneficiary under a discretionary trust has no entitlement to any part of the trust property until such time as an allocation is made in favour of the beneficiary.
 - Until the allocation is made, the beneficiary has the right to require the trustee to exercise the power properly.
 - If you are named as a trustee, you cannot also be a beneficiary

Remedies

- Trespass – The wrongful interference with other people or with possession of their goods or land.
- Nuisance – the wrongful interference with the use and enjoyment of property
- Conversion – The unauthorised interference with another's possession or right to possession of goods.
- Detinue – The wrongful detention of goods from a person with a right to immediate possession

• At Law

(i) damages

(ii) possession

• In equity

(i) specific performance

(ii) injunction

(iii) rectification of titles

Direct enforcement

- Restore the item to the plaintiff or prevent the continued interference

Compensation

- Compensate the plaintiff for any loss or damage caused to the plaintiff

Restitution

- Award damages to the plaintiff based on the benefit to the defendant

Factual possession

- Factual possession—physical control

The Tubantia (1924) – sunk in 1916, the plaintiffs began salvage operations including spending \$40,000 pounds, spending over 15 months recovering the ships cargo only spending 8 minutes at a time due to oxygen conditions.

Did the plaintiffs have possession right to the Tubantia ship?

- Given the location and nature of the ship, these acts of control were sufficient to give legal possession

Young v Hichens (1844) – plaintiff was in the process of enclosing fish in a net, defendant rowed his boat between the ends of the net and netted the fish instead. Plaintiff claimed wrongful interference.

Who had rights to possession?

- ‘It does appear almost certain that the P would have had possession of the fish but for the act of the D: but it is quite certain that he did not have possession.’
- All you need is the intention to possess something for the time being – it is not necessary to intend to own it or possess it permanently.
- Intention to possess a thing depends on the acts of control and the surrounding circumstances
-

Intentional possession

- Intention to possess— ‘animus possidendi’

Re Jigrose (1984) – A sold farmland to R, contract had a condition requiring A to remove all items from land prior to sale, items weren’t removed. A left \$20,000 worth of hay bales on land which was surrounded by a fence padlocked by R.

Did A have rights to hay bales despite abandoning them?

- Yes, for abandonment to occur you have to **factually abandon and intentionally abandon** both had been satisfied

Abandonment

- Abandonment: The true owner relinquishes their property rights
- Two elements
 - o Factual abandonment and;
 - o Intention to abandon (without intention it is just lost)

Rights to lost property

- **The true owner has the best right**
 - o Need to prove they have abandoned it
 - o If lost, the true owner has the best right
- who else has rights to property?
 - o A finder (control rights i.e. picking it up)
 - Cant act in wrongdoing (trespass or not hand in to find true owner)
 - The finder does not acquire absolute right to own. It is a right to keep it against all but the true owner or someone who can assert a prior right at the time the finder took it into his care and control.
 - o An employer of the finder
 - An employee or agent who finds a chattel in the course of their employment (not incidentally to their employment) and takes it into their care and control, does so on behalf of their employer, who acquires the finder's rights.
 - o An occupier of the premises
 - An occupier of land and buildings has rights superior to those of a finder over chattels in or attached to land or attached to buildings, even when the occupier is unaware of the presence of the chattel.
 - 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.
 - o The owner of the premises
 - The land owner has the right to protect their land: any interference with their land is trespass
 - Even if the finder has a licence/permission to dig in the land, this does not include detaching and removing
 - The owner has the better right to what is in the land because it is part of the real estate also includes having exclusive rights over all the contents in their home
- The duties of the bailee:
 - o to redeliver the chattels to the bailor at the end of the bailment, or in accordance with instructions;
 - o to take reasonable care of the bailed chattels; and
 - o to carry out the terms of the bailment.

Parker v British Airways (1982) - The plaintiff found a gold bracelet on the floor of an international lounge at Heathrow Airport. He handed the bracelet to an employee of the defendant with a note of his name and address so that the bracelet could be returned if the true owner was not found. The true owner was not found and the defendant sold the bracelet and refused to give the plaintiff the proceeds. The plaintiff sued the defendant for the proceeds.

Who had the best rights? The plaintiff or the airport?

- Finder has best rights against everyone in the world except true owner
- Plaintiff therefore had best rights because
 - o Owner had abandoned/lost item and had not claimed it
 - o Plaintiff did not do any wrongdoing (i.e. they handed it in so that the true owner could be found)
 - o The plaintiff took it into their care and control (physical control)

FINDER V TRUE OWNER

Armory v Delamirie (1722) - A chimney sweep finds a ring while cleaning a chimney. They take the ring to a jeweller. The jeweller offers to buy the ring but the chimney sweep wants the ring returned. The jeweller refuses to return the ring.

Who had the better right?

- The finder has rights against all the world except the true owner.
- The sweep (finder) has a better right than the jeweller (subsequent possessor) FINDER WINS

Cf bird v Fort Francis – boy finds \$1400 sitting on the ledge of a pool, spends the money. The police take the money but no one comes forward to claim, the boy's mother wants to claim the money back?

Can the boy claim finders rights?

- The boy was a trespasser but neither the owner of the cash or the owner of the property came forward to collect therefore FINDER WINS

National Crime Authority v Flack – Mrs Flack rented a house, NCA were investigating her son as a drug dealer, they found \$433,000 dollars in a high cupboard Mrs Flack couldn't reach who also appeared to have no idea about it, police took the money into custody as evidence. After 3.5 years Mrs Flack asked for money

Who has rights?

- Mrs Flack owned the house and an owner manifests possessive intention to all contents of their home
- Mrs Flack had better rights than NCA OWNER WINS

Keene v Carter – girl found a gold nugget and sold it at a pawn shop immediately. Charged with theft.

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FINDER V OWNER

Bridges v Hawkesworth - Mr Bridges, found a wad of money on the floor of a shop owned by Mr Hawkesworth. Mr Bridges asked Mr Hawkesworth to keep the money until the true owner was found. Mr Hawkesworth advertised for the owner, but after three years no one had claimed the money. Mr Bridges sought the money from Mr Hawkesworth and who refused to return it.

Who had better rights? Owner or finder?

- The shop was open to the public and the location the money was found could not reasonably said to be the shop owners, therefore, FINDER WINS

South Stafford Water v Sharman – defendant (employed by the plaintiff) found 2 gold rings in mud from a pond and claimed them.

Who has rights? Owner or finder?

- In this scenario, the rings were embedded in the land therefore OWNER WINS

Hibbert v McKiernan – individual 'finds' golf balls on a golf course. Golf club had erected signs warning trespassers off, had security patrol the grounds and had fenced off the grounds to make it not public.

Who has rights? Owner or finder?

- Golf course not open to general public therefore, 'finders' were trespassers and OWNER WINS

Waverly borough council v Fletcher – defendant used a metal detector in a public park and dug 9 inches in the dirt to find a medieval brooch. He argued finders keepers.

Who has best rights? Owner of land or finder?

- Interference with land that isn't for 'recreational use' is a trespass (metal detecting not recreational)
- Owner has the best right to items below surface because it's attached to the real estate **OWNER WINS**

OWNER V OCCUPIER

Hannah v Peel – Peel owned a house but never occupied, plaintiff found a brooch in the curtains and handed to police but true owner never came forward. Police gave the brooch to Peel who sold it. Hannah claimed finders rights.

Who has rights? Owner v occupier?

- Peel couldn't claim to be true owner because he never occupied the house and therefore **FINDER WINS**

EMPLOYEE V EMPLOYER

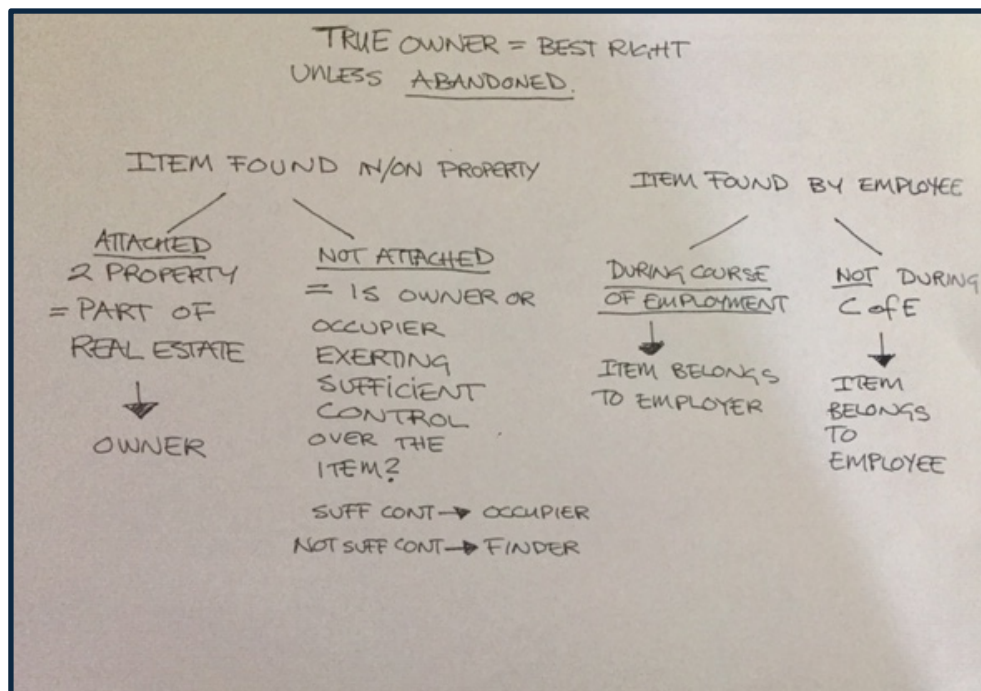
Byrne v Hoare – police officer found a gold ingot on the floor whilst working at a drive in theatre.

Did the police officer have to give his findings to his employer?

~~The finding of the item was not in the course of employment as the officer was not on duty at the time he found the item. The item was found on the floor of the drive in theatre, which was a public place. The officer was not on duty at the time he found the item, and therefore the item was not found in the course of employment. The item was found by the officer in his private capacity, and therefore the item belongs to the officer.~~

Limitation act 2005 (WA)

- Right to take an action is limited by statute
- Section 13(1) general limit 6yrs; and
- Section 38(2) can be extended a further 3 years at the Court's discretion
- So when does the cause of action accrue for finder's law?
 - o **When the item is found**



Adverse possession

- Can claim right to a property by simply possessing it (factual and intentional)
- Need to satisfy a few things
 - o True owner has abandoned (factually and legally)
 - o Adverse possessor is possessing in a proper way (open not in secret, peaceful not by force, and without consent) (**Mulcahy v Curramore**)
 - o Nothing stops the clock or restarts it (aren't kicked off or leave for too long of a time)
 - o Single and exclusive possession (cant share with the owner or anyone else) (**Powell v McFarlane**)
 - o Using it the same as a true owner would (**Powell v McFarlane**)
 - o Stay consistently for 12 years (WA)

Asher v Whitlock – Williamson owned land with wife and daughter, he died and left land to wife provided she didn't marry otherwise it would pass to daughter. A year later, wife married, 2 years later daughter died and then 2 months later wife died, new husband kept living on land until daughters heir wanted to eject him.

Had the new husband adversely possessed? Did daughters heir have right to house?

- New husband wasn't there long enough to adversely possess so no (ONLY 2 YEARS)

Mulcahy v Curramore – Mulcahy lived on land for 12 years, but not exclusively, as he shared the land with his daughter. The court found that Mulcahy did not have exclusive possession, so he did not adversely possess the land.

Perry v Clissold – Clissold took possession of land and rented it out (even though didn't own it legally), 11 years later Clissold died and government sought to use land for school. Government say Clissold as a mere trespasser.

Can the government claim rights to the land over Clissold?

- Cant claim 3rd party rights (government wasn't owner and they couldn't claim the land on behalf of the real owner)
- Therefore, Government rights was no better than Clissolds
- Clissold even though didn't live on land, possessed it by renting it out and claimed adverse possession CLISSOLD (ADVERSE POSSESSOR) WINS

Clement v Jones – Jones owned 80 acres of land which was fenced off into 2x40 acre blocks. Clement argued that they adversely possessed the 80 acres for 15 years by using it to run cattle.

Did Clement adversely possess over Jones?

- Its not unusual in Australia for multiple owners to share a paddock to run cattle
- However, Jones had continued to use the land (cut timber, marked and pegged land etc.)
- Therefore, Clement didn't have single and exclusive possession therefore DID NOT ADVERSELY POSSESS

Buckinghamshire city council v Moran – BCC held title to land to build a by-pass road in the future. Moran owned adjoining land, no fence between the lands, Moran used BCC land to grow plants, mow lawn, added a new lock and chain on fence between the whole plot and street. Moran informed BCC he knew of there plans but would continue to use land until they needed it. Possessed land well over 12 years.

Did Moran adversely possess BCC?

- Cant adversely possess the crown HOWEVER the crown is only state and federal government not local
- Moran had showed exclusive and single possession through his acts (excluded world at large)
- Planned future for land did not show continued possession for BCC, MORAN ADVERSELY POSSESSED

(Leigh v Jack) – if the rightful owner retains land for specific purpose then actions of the adverse possessor not inconsistent with that purpose do not amount to dispossession (true owner did not intend to abandon)

JA Pye (Oxford) v Graham – JA Pye entered into a grazing agreement with Graham to allow animals to graze on JA's land. Agreement ended a year later and JA refused to renew, G continued to use land and gated with a padlock owned by Graham.

Did Graham adversely possess JA?

- Adverse possession started after the agreement for grazing ended
- From after the agreement ended, Graham stayed on land for over 12 years therefore, GRAHAM ADVERSELY POSSESSED JA

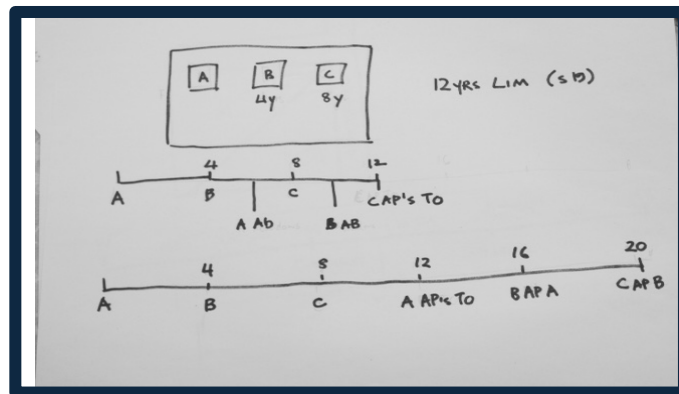
Whittlesea City Council v Abbatangelo – council owned land where the 4th side abutted a road. Abbatangelo installed a fence on road side and removed a fence between her land and councils land. Abbatangelo used to keep animals, maintain vegetation, hold social functions etc. Abbatangelo moved with partner away.

Did Abbatangelo have continuous possession of land enough to adversely possess?

- Council claimed that Abbatangelo had not fenced off land for possessory uses but instead to keep animals out
- Court denied this they also said that her leaving the land was not any different to how a normal owner would use the land therefore ABBATANGELO ADVERSELY POSSESSED

RUNNING THE LIMITATION PERIOD

- When a series of adverse possessions extinguishes the titled owners possession =
 - the prior possessor (first in time) has the superior title



Mulcahy v Curramore – oblong block and triangular land (both fenced in together). Owners of the oblong block were as follows:

- 1935 – Whyte – Gilroy
- 1948 – Gilroy – Hurley
- 1971 – Hurley to the Plf

Can you add adverse possession times so that the plaintiff has adversely possessed the true owner?

- If an adverse possessor abandons then rights are restored to true owners
- However, there was no gap in adverse possessors therefore, the time adds together

