

LEGAL INTERESTS

Is there Legal Ownership?

The Acquisition of Ownership: Consider: transfer from owner (eg: sale or gift); passing of title by operation of law (eg, bankruptcy, probate, forfeiture to the Crown); finding of abandoned goods; composing a literary work or creating or constructing an article; capturing a wild animal.

Title is derived from being either the **original owner** or the **true or derivative owner**.

"NEMO DAT QUOD NON HABET" - The transferee of goods receives **no better title** than that of his or her transferor = "chain-of-title" idea. **You can't give a better title or get a better title. Your title is only as strong as the preceding chains in the links of ownership.** Although nemo dat is a fundamental rule as to the transfer of title to personal property, it is subject to exceptions (most being statutory) - **SGA 1896 ss 24-27**

CASE STUDY IN LEGAL OWNERSHIP:

ROMALPA CLAUSES (Common Law)

ANSWER STRUCTURE:

1. Is there a Retention Clause? State ss20
2. What kind of Clause is it?
3. What category do the goods fit into?

- a) Identifiable
- b) Incorporated into new goods.
- c) Proceeds of sub sale.

Reminder: mention conversion/detinue if it arises.

- Contracts for the sale of goods: **ss 20 and 22 SGA:** "Despite A parts with possession of the goods, he/she purports to retain title (ownership) until B has paid for the goods. Such a clause also usually provides that risk passes to B upon delivery."
- This ensures that the original owner is insured because when a Romalpa clause is effective, the asset that the bankrupts is trying to take, they can't take it **because it was never apart of it.** Such an arrangement is possible because of "freedom of contract".

"20 - property passes when intended to pass: (1) when there is a k for the sasle of specific or ascertained good in prop in them is transferred to the buyer at such time as the apties to the k intended to it to be tsnferred. (2) for the purpose to ascertaining the intention of the parties regard is to be had to the terms of the k, the conduct of the apties, and the circumstances of the case."
"22 Reservation of Right of Disposal."

STEP 1: WHAT KIND OF CLAUSE IS IT?

- (1) **Simple Romalpa Clause - Possession** and usually **risk**, passes on delivery but property (ie, ownership) remains in A until the price is paid in full. (This one only retains title until the price is paid).
- (2) **All moneys retention-of-title- clause** - A retains title until **ALL** outstanding **debts** are paid. (this one tries to retain ownership until EVERYTHING is paid for)
- (3) **Extended retention-of-title clause:** A retains title even after B has **used** the goods in the manufacturing process; or A asserts title to **funds received** by B after **selling** the goods to a **third party** (Retain ownership interest in proceeds of re sale).

STEP 2: WHAT CATEGORY DO THE GOODS FIT INTO?

- The clause is effective in the First scenario, not the 2nd (cuz you cant retain ownership of something that doesn't exist yet) and 3rd is a question mark.

(A) DO THE GOODS REMAIN UNALTERED, IN THEIR ORIGINAL FORM & IDENTIFIABLE?

- ROMALPA CLAUSES are particularly effective in this, the simplest, scenario.

Aluminum Industrie Vaassen VC v Romalpa Aluminum Ltd: supplied aluminium and subject to the clause it stipulated the aluminium title only transfers once seller was paid by buyer. The buyer went broke and receiver went in to manage the business and sell the assets. But then realized the debts of the company. The seller claimed two things: **(1)** The unused foil = this was successful as the goods were in original state to retain title. **(2)** Proceeds of sub sale **(#3)**.

Clough Mill Ltd v Martin - supplied yarn and used it to be in the manufacture of carpet (producing new product). Yarn hadn't been used, so in original form. Clause said they retain ownership until paid in full even if sold to bona fide purchaser. Also, **receiver claiming charge, but buyer was never in a position to have a charge so supplier had security. CHARGE = equitable interest** that is created in personal property in favour of the creditor upon fault of debtors debts. (Security for a debt). In order for they're to be a charge you must have **ownership. If buyer never got ownership then you can't create a charge and it is void.**

Armour v Thysson - (supply of steel for use in manufacturing process). Some of the steel has been cut into sheets and some started for the manufacturing process but most is still in original state. **Romalpa Clause = "all moneys clause (#2)"** - all goods remain "our" property until ALL debts owed to us on any legal grounds are settled. **Question arose: if buyer has a charge on the steel? No. Buyer needed ownership.** Court also said that is the market value of the goods increased then the unpaid sellers are entitled to the extra value. Valid clause.

Len Vidgen Ski & Leisure Supplies Ltd v Timaru Marine Supplies Ltd - (supply of ski equipment to a retailer for on-sale). Goods are unlikely to change in the buyers hand until sold. **"All moneys clause"**: ownership and such goods is retained by the company and by all other goods until all is paid for by the buyer. Receiver refused to give stock (detinue) and sold the stock. Supplier claiming damages and suing the receiver (Conversion). Seller = successful in terms of the goods that were still with the buyer, which weren't sold. **Romalpa clauses they work effectively.**

Pongakawa Sawmill Ltd v NZ Forest Products Ltd (supply of logs for sawing into timber) - Logs retained their **held their essential character because they haven't been converted into furniture or whatever else. It is a question of DEGREE** whether goods have been **irretrievably incorporated** into a new product. Look at the **nature and extent** of the work permitted to be done and actually done. Once the progress started the ownership passed then the buyer would have a charge over the thing. **Court said no. Logs hadn't changed they've just been modified. = Question of degree.**

WHAT DO WE USE TO DETERMINE WHEN GOODS ARE CHANGED?

The Test is Question of Degree and Fact from which comes from ICI + Alloys:

- Reversible process
- Economic value
- Physical characteristics
- Extent of work done
- "Common sense"

Associated Alloys Pty Ltd v Metropolitan Engineering and Fabrications Pty Ltd (supply of steel for manufacture of complex steel products) - Court looked beyond **physical principles** and considered **economic quality** as well. M sold the steel to a third party who gave proceeds of the sale to M. A claimed the steel that was sitting in the warehouse and tried to recover the proceeds of the sale. The problem is that the steel had already been committed to the manufacturing process - the steel **CHANGED ITS CHARACTER.** Whether or not something is changed original character **is a question of fact and degree. ASK: if the proceeds can be reversed and be left with the original product? They asked this here: if you unrolled the cylinders would you wouldn't have steel. Cant just look at the physical; it would be steel but it would be scrap metal. The goods changed.**

ICI New Zealand Ltd v Agnew (supply of plastic pellets for manufacture of transparent plastic jars and bottles): **"common-sense answer doesn't just look at physical and economical.** ICI claimed 3 things. 1. *Unused pellets - liquidator took no objection to this.* 2. *Finished products - jars and bottle.* 3. *Proceeds of sale immediately before the receivership. Can they get ownership?* No. 1. **Cant retain ownership in something that has changed (#2). The best you can do is future property in your contract (property that will come into existence).** The pellets ceased to exist. Court said it's quite obvious that the pellets are no longer pellets they've lost their identity. No problem when you have ownership in a new product and vest ownership in that.

Problem is "what if the seller tries to vest ownership in ALL the new products" - obiter in cough mill = **winfull ownership = unfair.** You cant vest - if you are doing this, its just a CHARGE/SECURITY. If you have ownership over the new product because theres a debt = then that's a security/charge for the seller. But courts said - the goods haven't stayed in their original state - so u can't do this but you can have ownership in the new product so you can do it to the extent of your debt. And then there's steps to monitor the debt because if you don't do this then it looks like a floating charge (hovers over business assets).

(B) ARE THE GOODS INCORPORATED INTO A NEW PRODUCT AND HAVE LOST THEIR IDENTITY?

(1) Accession (adjunto, accession):

- small goods, affixed to bigger goods. A's goods affixed to B's goods (A installs her engine into B's Car). If the smaller thing cannot be reversed then the owner of the bigger thing owns the new thing. If the wiring becomes apart of the car, then seller loses bigger thing.

(2) Specificatio:

- raw material mixed with labour to become a new thing. Cant retain ownership back.

(3) Intermixture - "confusion liquids" = liquids or "commixtio" = dry goods: By consent:

- simply mixed into one indistinguishable whole (A's oil is mixed with B's Oil). The resultant product is presumed to be owned by A and B as "contributing owners" in common in proportion to the value of the original owners contributions.
- Consensual or not result is the same. **Co-ownership** = general solution when it loses its identity (look at alloys)

Coleman v Harvey: Intermixture - Intermixture situation. Harvey was co owner of the whole of the silver to the extent of his total contribution Where the intermixture is wrongful (one of parties didn't consent) **the mixture is held for the respective owners in common in proportion to the original quantities owned by them.** -> Each party becomes a party in common in the whole pool in respect to their proportion. (ex: 50/50 or 30/50). It Doesn't matter if its consensual or not - result = same. **Co-ownership = general solution when it loses identity.**

Gerard McCormack, "Mixture of Goods - Co-ownership" - The general view: When the materials supplied **LOSE THEIR IDENTITY**, S no longer has any **proprietary rights** over them. So, a Romalpa clause will, at best, create a **CHARGE** only. Good supplied under romalpa clause and the clause tried to retain ownership in new product.

In re Bond Worth Ltd: (supply of raw fibre for manufacture of carpet). Supplier lost ownership. Clause didn't work b/c the goods lost their essential identity. Clause then only works by way of **Charge Only**. Security interest. But the charge is void because it is not registered.

Borden Ltd v Scottish Timber Products Ltd: (supply of resin for manufacture of chipboard). **"Specificatio"**: where a raw material is altered by labour to produce something of a different identity.

Re Peachdart Ltd - supply of leather for manufacture of handbags.
Hendy Lennox Ltd v Grahame Puttick Ltd (supply of diesel engines for incorp into diesel generator sets) - **"accession" or "adunsnctio"**

(C) CAN A GET THE PROCEEDS OF SUBSALE?

- The Goods (or new product) is money (proceeds of sale) sitting in B's bank account. (common).
- Can the seller assert ownership over the money? Once the money is in the bank, it's the banks money. So you have to show the buyer was trading for own personal account. This is highly unlikely. There is a general judicial resistance in allowing S to claim the proceeds of sub-sale. Ownership is usually EXTINGUISHED by a sub-sale.

What is an ABSOLUTE EQUITABLE BENEFICIAL INTEREST?

- **Absolute:** means there is no condition
- **Equitable:** because equity says its fair
- **Beneficial:** because you get a benefit of the money buyer got paid
- **Interest:** you have an interest in that money because once its over the fence the sausage isn't yours, but you still have an interest in the money.
- **Equitable ownership** - powerful sense of ownership (trumps legal ownership) - nothing against anyone else who doesn't have notice of your equitable ownership. **If it wasn't an overdraft** account then the money can be traced because all the money was put in together when it shouldn't have, using the tracing principle in Re Hallett's. **S can not assert equitable beneficial ownership over the proceeds if B is subject to the normal incidents of a 'trustee' (fiduciary agent) dealing with trust property - possible but unlikely. -- Tracing remedy.**

Re Hallett's Estate - Fiduciary: holding something (money) for someone else's purposes. Tracing.

Bisley Ltd v Gore Engineering & Retail Sales Ltd: (Overdrawn bank account + bailment). No successful tracing through proceeds of sale. The clause said the proceeds don't pass until all is paid. The seller said the assertion creates fiduciary relationship due to bailment but the bailment ended when it was sold. **Court:** seller had no direct interest in proceeds of sale. **The key was the buyer was in title of the proceeds of sale but it went into an overdrawn bank account. Even if there was a duty to account for the buyers part of the sale the fact the money gone to the overdrawn bank account illustrates the principle about "Equitable Property" - its not good at all against innocent ppl (like the bank) = "bona fide purchaser rule"**

Associated Alloys v Metropolitan Engineering (above) - The amount of new product being sold is deemed to be sold in equal value. **HCA = it's a trust - express assertion of trust. It's a trust over future acquired property. Trust crystallizes when the new product is made. Except court said - if your only asserting ownership on part of the debt - then you have to take steps of to identify of which part of the proceeds are coming into your bank account relates to your product - this is crucial - because you have to prove what the trust property is. They didn't do this here - the money in bank account wasn't asserted to the amount of steel.**

AA v CAN 001 452 106 Pty Ltd (In Liq): clause was a agreement to create a trust of future-acquired property and therefore not a charge.

Re Anrabell Ltd: (supply of travel bags to retailer). Court rejecting the claim of proceeds of sale first no requirement of the buyer to restore the goods separately (no assertion to keep it separate). Buyer was just a debtor to a seller (not a trustee or a fiduciary).

STEP 2: IS THERE POSSESSION?

Answer Structure:

1. Is there ownership? And Can you own the thing?
2. Is there Actual Possession? Requirement of two elements:
- 3: Physical control
- 3A: Abandonment
- 4: Intention
4. Is there possession just because it's on the property?
5. Is there intention to control?

Is there Ownership?

- cant control "bees"
- Can you own the thing?**
- you can own the honey, it's a deposit of nature

Is there Actual Possession?

Requirement of TWO elements:

Questions:

1. *To what extent does (or should) it matter than an item that you are asserting 'title' over happened to come into your possession 'dubiously' (eg, it was, on the balance of probabilities, obtained by you through unlawful means.*
- *Law doesn't like 'free for all'; look into question of law and take into all the circumstances of the entire situation as a whole.*
2. *Need you know that something has come into your possession in order for it to be in your possession? Depends on where it is (circumstances) and on the "general classification of things you would take control of).*

Castello v Chief Constable of Derbyshire Constabulary: C was in possession of a Ford, when the police detained it and refuse to return it back as the car was stolen (but the true owner is not known) and because the claimant had knowledge that it was stolen. **Issue: 1. Question of Fact: Ford was to the knowledge of the claimant stolen? If issue is resolved in favour of police, then: 2. Question of Law: can the claimant recover the ford from the police for wrongful detention, notwithstanding the fact that it was stolen? Held: Claimant entitled to return of the ford and damages.** In terms of question of fact: judge held the claimant knew the car was stolen after looking at all the evidence as a whole (looked at the fact the claimant sold vehicles/restored them/knew a lot about them/inspected the car before his gf bought it from Spenser [who sells stolen cars]). **In terms of question of Law:** you cant retain someone's possession even if its illegal if the person has not been convicted of a crime. 3 general propositions of law: 1. Possession remains with

possessor even if obtained illegally until proof of a title superior to his is made. 2. Party with better title is entitled to succeed. 3. The police stat power only vests for the period of detention, and nothing permanent.

Chairman, National Crime Authority v Flock: F owns house in which a briefcase full of money was found by the police who has a suspicion the money was attained through illegal means. The police took the money and now she wants the money back. **Issue:** Is she entitled to the money even though she wasn't aware of being in possession of it until a finder found it? **Held: Question of law:** she's in possession of all chattels on the premises because she's a tenant of the residential house. Majority ruled that the councils appeal is dismissed bc F has possession over the contents in house and police no longer needed them. She has better possession than a finder. However, dissenting said no, because what if it possession of unwanted goods, and that if she had no idea and didn't do anything "to manifest control over the possession" (ex: didn't check then cupboard, know about the briefcase) then she has no possession

1. Is there Actual Physical Control of the property "corpus possessionis"

What you have to do to assert control depends on the nature of the subject matter (Pierson). Must be exclusive for the purpose of establishing actual possession: there must be a complete taking – a sufficient occupation to exclude strangers from interfering with the property. However, what constitutes control is relative and depends on the kind or nature of the property involved.

Pierson v Post (ferae naturae: a dead fox) - Post was hunting a fox, Pierson jumps out and kills the fox. Post sues Pierson for the value of the fox on the theory that his pursuit of the fox gave him a property right. Court considered a wild animal is capable of capture and control. But its all about if there is a physical control of the fox. Court said: possessing of a wild animal goes to the person who kills/wounds it. These are the unequivocal actions to assert physical control over a wild animal. Post "nearly" getting there isn't good enough.

Young v Hichens (ferae naturae: a school of fish): Fisherman circled a school of fish and the net hasn't quite physically closed. Just before it closed, D came along and throws his net over this net. D sues P for the value of the fish saying it was his. But until there was a complete entrapment, which made the fish inescapable, then he doesn't have control. "near enough isn't good enough"

The Tubantia (a sunken vessel) – Have to do what is sufficient in the particular circumstances. T was a vessel that was sunk – Uk salvage company (P) refloats it and recovers the cargo; they removed obstacles (that's all they could do) so they went away for the winter and came back for spring. P came back and to start when D came along to take over the salvage company – they started interfering with what P had already done. P sued in trespass – in order to do this – you have to show property rights (sufficient possession to be taken must be shown). So question: was P in possession? Cr: P did what was necessary and there wasn't anything more they could do – so they got the injunction – Note: Its all about assertion of control – depends on the subject matter/circumstances.

Note: A lack of possession does not negate title unless there has been abandonment (an act of deserting property without hope of recovery or the intention of returning to it), or loss of the right to recover possession through effluxion of time (ss 10 and 12 of the Limitations of Actions Act 1974 Qld) (Limitation of actions in conversion and detinue).

IS THERE ABANDONMENT?

ANSWER STRUCTURE: Factors in determining abandonment has occurred:

Step 1: Was there a clear Renunciation of Abandonment? Look at factors:

- What is the value of the item?
- What are the Circumstances under which it was lost (eg, the nature of the place; public vs private);
- The length of time for which it has been lost or of the owners possession; and
- The attempts the owner has made to ascertain its whereabouts.

STEP 1: WAS THERE A CLEAR RENUNCIATION OF ABANDONMENT?

There is a general presumption against "ABANDONMENT", the rebuttal of which requires "clear and convincing" objective evidence.

Columbus-America Discovery v Atlantic mutual Ins Co: (Salvagers – law of subrogation: – insurance paid out on the claim, they now stand on the shoes of original entitlement. P discovered ship and retrieved the gold. Original owners of the gold not in the pic b/c they were paid out by insurance company. In order for them to be finders there has to be evidence of abandonment and that the original owners had to abandon their gold. Once its abandoned and the first person that takes it into their care and control own it. Court said: strong presumption against abandonment and needs clear and convincing evidence to relinquish control. But there was no evidence – you couldn't show that someone stopped looking for the ship because no one could find it anyways. So the finders were salvagers only.

Law of Salvage:

- Original owners still retain their ownership interests in such property, although the salvers are entitled to a very liberal salvage award.
- Salvage laws aims assumptions, and the rules are more consonant with the needs of marine activity and because salvage law encourages less competitive and secretive forms of conduct than find law.
- The purpose of salvage law is for saving it from destruction, damage, or loss, and to retain it until proper compensation has been paid.
- Requires party must have the intention and capacity to save the property involved but the party need not have the intention to acquire it.
- In salvage the only right to compensation for service, not to title (which results in possession).

Law of Finds:

Primary concern is title. Application assumes that the property involved either was never owned or was abandoned.

- The law requires a finder to demonstrate not only the intent to acquire the property involved, but also possession of that property, which = a high degree of control over it.
- If either intent or possession is found lacking, the would-be finder receives nothing; either effort alone nor acquisition unaccompanied by the required intent is rewarded.
- Successes are only through obtaining possession of specific property.
- They should act secretly and hide what they have found otherwise it brings up claims of prop owners, which would deprive them of the property.
- When you apply finds law: if an article has been lost at sea lapse of time and nonuser are not sufficient in and of themselves to constitute an abandonment.

Re Jigrose: rare but successful case of abandonment. Vendor sold property and left hay. K said any items of personal prop not taken by the vendor are deemed to have been abandoned. So purchaser claimed ownership of the hay. Court: abandonment is very rare – it means that there is declaration that you have no interest in the subject matter anymore and the abandoner loses title. Mere failure to collect something is very hard to infer abandonment in these situations. The mere fact he lost ownership of the hay due to the clause – doesn't mean the purchaser owns it – you have to look at appropriation.

Moorhouse v Angus Rovertson Pty Ltd: couldn't show abandonment. There must be a clear renunciation of not wanting to own and you don't get that in "mere failure" to collect the work (the manuscripts) so no abandonment.

Keene v Carter: criminal case. Girl found a gold nugget and instead of trying to find the true owner she went to the respondent to sell it but he said he cant buy from her. She got another lady to sell it (so she committed conversion) because she didn't take reasonable steps to see whose it was. The respondents criminal liability was whether he had reasonable belief that the girl had reasonable belief to know the actual owner couldn't be found. So all he knew was that he got the nugget half hour after and this infers that no she didn't take reasonable step. Court said: don't have enough evidence – where the nugget was found or lying loose on the ground or was it was in some crevasse. Didn't no enough about the circumstances.

IMP: When Finder's Law Gets Used (LOOK BELOW AT FINDERS).

- Cases where owners have expressly and publicly abandoned their property
- Items are recovered from ancient shipwrecks and no owner appears in court to claim them, such circumstances may give rise to an inference of abandonment, but should an owner appear in court and there be no evidence of an express abandonment, then the law of salvage must be applied.

2. Intention To Control It "animus possidendi"

Intention purposes "knowledge" and knowledge in two senses:

(A) Knowledge of controlling something; and B. Knowledge of its contents.

Warner v Metropolitan Police Commissioner - can you control things, which you are unaware of? Court said: you don't have to know of the contents – the mistake has to go with the nature of the control and not the quality. Control is strong evidence of possession (ie: it raises a presumption), but ABSENSE OF KNOWLEDGE (eg: mistake) may negate inference. Any mistake must go to the NATURE of the contents and not merely to their QUALITY

Moukattaf v BOAC - the loader stole packages containing the goods in the airline – and sued the airline because they were a bailee. In order for airline to be a bailee – the airline had to show control and intention to control. (They said they didn't have intention to control because they didn't no what in the packages). Court said: you are bound as a bailee because you took the packages as your care and control. "Money fell within the general class of things you took to take control of." One need not have knowledge of the contents, provided that they fall within the general class of things of which the defendant is prepared to take charge. **IMPORTANT**

IS THERE A FINDER OF THE ITEM?

ANSWER STRUCTURE:

- Who are the parties?
- Is there an absence of any de facto control by someone else at the moment of finding?
- Split up the items found if more than 1.
- Where were the items found? (On the land/In the land) + [private place/public place]
- What are the obligations of each party as a finder depending on their title. Did they do what was reasonable?
- Was it actually abandoned or did person just become bailee for that time period when taking it into care and control?
- Is there conversion/detinue?

Hannah v Peel: -If the item lying on the ground/unattached to the land, the occupier will only have better title if exercised manifest control over land as to indicate intention to control land; otherwise finder will win - Presumption that employees find items for employers

STEP 1&2: Who are the parties and was there an absence of any de facto control?

- Remember: the finders right starts from the absence of any de facto control by someone else at the moment of finding.
- Finders cases involve an evaluation of the relativity of the respective rights of a finder and rival claimants, such as:
 - The original owner;
 - A subsequent true or documentary derivative owner;
 - A subsequent possessor;
 - The occupier of the premises where the item was found; and/or; The employer or principal of the finder

Armory v Delamirie: Principle: "person who is in possession of personal property has a good title that is defensible against the whole world unless someone else has a better title than him". D didn't want to give the ring back so kept the stones and gave the ring back. Boy sued the D in conversion. He succeeded due to the principle above. This possessory title is good enough to maintain an action in the tort of trover.

STEP 3: WHERE WAS THE ITEM(S) FOUND?

(1) WAS IT FOUND ON THE LAND?

De facto control is NOT automatic: must be specifically proved. The occupier must manifest an intention to control things that may be on the land. Note: if the land owner has de facto ownership of the land then he or she has the control of the land regardless if their ignorant of what's on the land or not. But if the landowner is not manifesting control then the finder has better control but is only a bailee.

(A) PUBLIC PLACE?

Parker v British Airways Board (public place): Rule: Occupier of public space who has less physical space of the land has to do more to show intention to control the land. P found gold bracelet in executive lounge. Airways didn't do enough to manifest control. Parker is entitled to it.

DOES THE FINDER FIT THE PARKER PRINCIPLES?

FINDERS RIGHTS:

- No right unless its abandoned and takes it into care/control (Ask: Was it Abandoned?)
- Limited right if trespassed/dishonest
- Can keep against all but true owner
- Cannot keep it in course of employment

OCCUPIERS RIGHTS:

- Occupier of land/building has superior rights even if not aware
- building occupier has sup rights if in or on but not attached but only if manifested control over build and things on/in it.
- Build. Occ. Must take such measures in all circum = reasonable and to acquaint true owner and care for it (express/implied).
- Occ of ship/car/aircraft = treated as occ of build.

Bryne v Hoare: cannot keep during course of employment UNLESS "wholly incidentally or collaterally thereto". Court said he can keep it because he was only there to do security and not look for lost items – there wasn't a sufficient enough connection – basically lucky – your in the right place at the right time.

(B) WAS IT A PRIVATE PLACE?

Tamworth Industries Ltd v Attorney General: (PRIVATE place): Rule: emphasizes that the mere right to control is INSUFFICIENT – the right must actually be exercised. Police executing search warrant over the farm property came across cannabis found beneath the floorboards and \$52,000 cash. The building on the property was leased by T and there was a sole director (Dodds). The police were finders of lost property because the true owner wasn't in the picture. Court: thought that it doesn't matter how the true owner came into possession of the thing. Issue: does dodds have superior title over the police? He only has this if on the parker principle if he was manifesting control over the land. How to exert ownership over the land? Depends on the land and the greater the steps you have to take. You can't be passive about it, which Dodds was, so he never got claim over the land.

(2) WAS IT FOUND IN THE LAND? (easier?)

de facto control = Automatic: The land occupier has a general intent to control to exclude ppl from interfering with their land. **cuius est solum**

South Staffordshire v Sharman - Sharman was a diver and was employed to come onto the property where the pool was. He dove down and discovered two gold rings. Now there is a competition that sharman is claiming the rings and so is the land occupier. **South Stafford (land occupier) has better and genuine title** because rings were in the mud in the pool = in the land.

Webb v Ireland - 3 competitors - Father and son (trespassers) and went onto private land used metal detectors and found artefacts. The 3 competitors: Finders; The landowners; The state (museum). The landowners were bought out by the state. On appeal the owners of the land were entitled because it was in the land = automatic defacto control of it.

London Corp v Appleyard – 4 competitors During Course of Employment: 4 claimers: owner of the land (London); tenant (occupier of the land); contractor (employed by tenants to construct building on the land); workman (finders); the workers found bank notes in a safe. Parker says if you find something in course of your employment then you must pass it to your employer. The contractor: Now has the finder because he employer. But he has to deal with the land occupier and has automatically in control because its in the land. The owner: has a clause: "if the tenant ever finds anything in the land it belongs to the owner of the land" therefore, owner has superior right.

Waverly BC v Fletcher - (you can use the obiter of this case for things on the land). Park manifested enough control and they had defacto control. F went in park with metal detector and discovered a broach he dug it up and took it. Counsel sought recovery based on the mere occupation of the land. The court gave distinctions between on the land and in the land from parker. Fletchers argument is that it's a recreational park. Court said no because anything that is invasive of the park it requires permission. Obiter remarks: even if the rules were changed the council still did enough to manifest intention to control. They had a park

ranger; They had signs up about metal detectors; They had bylaws. **Council had done enough to manifest an intention to controlling terms of the size of the land.**

POSSESSION VESTED IN INTEREST BUT NOT IN FACT:

- A **right** to take actual possession, which right may be “immediate” or “qualified” (ie, a future or **reversionary** possessory interest only). Like a **LIEN**: Main imp is that if you trespass for your good you get an immediate right of possession at least to claim.

DETINUE (tort): Refusal to comply with a redelivery of goods

3 criteria:

- bailor request the return of the good and must be entitled to the request (legitimately formally request)
- bailee has to actually refuse to return the goods
- and must an unreasonable refusal But a qualified right is not enough

(B) Constructive:

- “deemed”, “symbolic” possession: no actual physical possession but I have the means of possession. Possession is effected by delivery of the **means of control** (eg, the key to a safety deposit box). Making Gifts (**Inter Vivos**)
- Simply made by expression by intention to make gifts or delivery of the gift.
- Ex: grand piano – gifted it – once it passes over = gift. How do I give you my piano if I cant pick it up? = this has to with **symbolism**.

Lock v Heath: Husband gave gift to wife – wife died and left stuff to kids – but sheriff came to take them away. But he couldn't because it was under the wife and not the husband because he passed it on to the wife as a gift and made it clear by him picking up the chair (symbolism) to give it to her. So it was the daughter's furniture as it was in the wife's will. (this doesn't always work). Delivery of one item to the transferee (X) was **symbolic** of all the items and constituted delivery of them to X.

Compare:

In Re Cole: (a Bankrupt) – no active delivery no change of possession. Husband becomes wealthy and owns a mansion and he goes bankrupt and the trustee comes in and the husband says u cant take the furniture because it goes to my wife because we played a game and I gave her the furniture (peek a boo game) – its all yours he says (this is the symbol) – the court didn't believe him.

BAILMENT

ASNWER STRUCTURE:

STEP 1 & 2: HAS BAILEE ASSUMED SUFFICIENT CONTROL AND WAS THERE CONSENT BY THE BAILOR?

STEP 3: WHAT KIND OF BAILEMENT IS THIS AND WHAT ARE THE DUTIES ASSOCIATED WITH THE TYPE OF BAILMENT (FITS INTO SHIPBUILDER TEST)

STEP 4: IF GOODS WERE RETURNED, WERE THEY RETURNED IN SPECIE?

SHIPBUILDERS TEST

- Is D a bailee?
- What is the standard of care owned by D to the bailor?
- Did D meet that standard of care and discharge it?
- Is there an exclusion clause?

Checklist:

- Is there possession?
- Was there consent (willingly and with authority in possession)
- Was reasonable care taken of the goods?

Were the good returned in specie?

Papathanasopoulos v Vacopoulos - Gave engagement ring. Took the ring off and was left on the coffee table. He changed his mind and wanted the ring back but ring is gone. The court said engagement rings are gifts in contemplation of marriage and if it doesn't work then the gift goes back. The **condition of the gift failed**. So he was entitled to cover the ring. At that point she became **bailee** of the ring. She was in **possession of it**. As the bailee she **must take reasonable steps** to take care of the ring. She was liable and couldn't return it in **specie**.

STEP 1: Has the Bailee assumed sufficient control over the bailors goods? And was there consent by the Bailor?

Ashby v Tolhurst car park facility – sufficient control of the car to constitute a bailee. The plaintiff paid a fee to leave car at the facility. The car was stolen due to the negligence of the employee who gave it to someone else. Did the defendant give sufficient control to the plaintiff? No - d was merely a licensee.

Compare:

Shorters Parking Station Ltd v Johnson - Rule: Assumed control – keys. The plaintiff gave the keys to defendant and left them in the car so the defendant could move the car around. **Issue:** is he liable as bailee? **Yes.** Because he had the main thing **possession (keys) and assumed control of it. Actual possession of the car had been delivered due to the keys.**

Adams Ltd v Trust - hotel customers gave keys to a night porter. The garage service was a advertised service. **The court held:** the contract of bailment had arisen because the giving over of the keys is a give away.

Heffron v Imperial Parking: Canadian

ADD THE 6 THINGS FROM THE READINGS.

P pays the evening flat rate charge and gets a ticket in return and there's an exclusion clause. “we are not responsible of theft/contents.” Ticket also shows opening hrs of the facility. P left the keys in the car at the defendant's request. P comes back and things in his car are missing. Evidence shows that that the normal practice is to **leave the keys with the night reporter after 12 am. Court said: Differences between bailment and license:**

- Bailment involves delivery of possession
- Certain duties are imposed upon operation of law
- Licensee involves a right to occupy a space (defense to trespass)

Question: does the defendant have sufficient control? 1. Keys had been delivered. 2. The defendant operated the ticket system with serial numbers implying that is a pre condition to stay in the car park. The fact that the defendant had provided the attendant to look over the vehicles there its more than just money for the car and that the parking place is closed at midnight and **no condition that you have to move your car.** And the defendant practice of course is to deposit the keys with the night attendant = **this all shows there was a delivery of sufficient cause. Court held that the D was not only bailee of the car but also the contents in it.** So there is **constructive possession** – even though they weren't delivered like the car.

STEP 2: IS THERE CONSENT? Ask: Did the bailor authorize expressly or impliedly and authorize consent to the bailee's possession of the goods?

STEP 3: WHAT TYPE OF BAILMENT IS IT?

1. Bailments for Reward - You pay for something intern for accommodation

Southland Hospital Board v Perkins Estate - Bailment for reward? Old lady died and her rings were lost. Suing saying hospital is responsible for rings. Court said yes – regardless of what their sign says. Once someone dies its up to them to take their possessions into their hands until family/estate gets them.

Skyway Service v McDonald – Bailment for reward and a contractual bailment. P paid D a fee to park car for 14 days. Clearly a contractual bailment. If there's a continuing agreement where they becoming patiently aware of the good being stored in a particular way then there's an evidence then it be that the bailee's obligations are diminished. Pg. 301: **suggestion by justice Sinclair that a volenti type case may apply in contract** – “if there are defects in the premises where goods are to be stored it is not possible to excuse the bailee from liability merely because the bailee became aware of those defects and that concept must be looked at in the light of the fact that the bailee had no power by reason of the legislation to place the goods other than in the store in question.”

2. Gratuitous Bailment - No strings attached. Not a contractual bailment

Walker v Watson - Friends were drinking all day. They go drinking and driving and crashed. P sued for breach of bailment. Court said it's a gratuitous bailment so only can sue in contract and not tort because he gave keys to the drunk and was assuming the risk. Here because its negligence and its grat – the responsibilities in tort. Here they couldn't sue in negligence because they assumed the risk by giving the keys. But if they didn't give the keys then you can also sue and bailee can use defences such as Volenti and CN.

3. Incidental/Collateral Bailments - No specific fee charged. (coat check – coat goes missing). You didn't pay for the fee of the coat but it's a **part of the service**. If the custodial aspect of the arrangement is collateral or part of the service that you are paying.

Ex: taking a car to garage for work – storing the car is incidental because your paying for the car to be serviced on and due to that it becomes stored. Here it was apart of the service.

Note: A contractual bailment would arise when its stated in contract.

Houghland v Low – Situation where some passengers on bus were going on trip and during the course of trip one of the bags went missing and sued for breach of bailment. There was no specific charge for storing the bags. The court of appeal said it is a contractual bailment – paying for the bags is part of the service.

STEP 4: WAS THERE REDELIVERY IN SPECIE?

Chapman Vros v Verco Bros & Co: Rule: Redelivery of specie - Goods must retain their original identity original state. Once the identity is gone – then bailment ends. Chapman brothers (looks like a bailment but it wasn't). There is a practice amongst farmers that wheat would be taken to merchants and they would sell the wheat. Wheat was just stored there. Problem was that it wasn't being stored in an identifiable way. And everyone was bringing it in the same bags... etc. (**confusion type situation**). The **identity = destroyed**. The contract said the purchaser shall not be required to return the wheat. The merchant became insolvent and farmer wanted the wheat back and it hadn't yet be purchased. But the liquidator claimed wheat as it own and farmer said no it's a bailment. Farmer lost because not identifiable so you cant get it back and its not a bailment. So now the farmer is an unsecured creditor from that point on.

The South Australian Insurance Co v Randell: Rule: Not a bailment but a sale because no redelivery. Delivered wheat and it was mixed with other ppls wheat (intermixture). A fire broke out at the mill and all the stock was destroyed the insurance policy is that the goods are held at trust unless subject to specific coverage. **Have to be careful with the word “trust” in this context. Court uses the word “bailment on trust”.** Was there a sale or a bailment? If there was a sale the **ownership would be passed and it would be covered. If not; then it didn't pass and insurance didn't cover it. Answer: it was a sale – there was a transfer for ownership to farmer and it wasn't a bailment (bailment required a redelivery) – transfer of a property for value.**

Note: Bailment distinguished from other transactions.

1. **Sale:** A transfers his or her ENTIRE interest to B. Both are sale and a bailment (like a rompalpa clause)
2. **License:** Consent without CONTROL. **Ashby v Tolhurst**

3. **Debt:** Relationship of debtor and creditor. ie, a personal obligation for the repayment of a fied sum of money.
4. **Trust:** “bailment on trust”

STEP 3: SHIPBUILDERS LTD v BENSON TEST:

ARE THE BAILMENT STEPS FROM Shipbuilders Ltd v Benson SATISFIED?

- Is D a bailee?
- What is the standard of care owned by D to the bailor?
- Did D meet that standard of care and discharge it?
- Is there an exclusion clause?

Step 1: Is “D” A BAILEE? Onus on Bailor

- Establish that D was a bailee (*assumed sufficient control – look at the circumstances and see if there was shared occupation – keys given... rules made... etc.*)
- Court applies a test from **Zweeres v Thibault**: whether or not person leaving the property has done so to amount to relinquishment... the court said on the facts on balance it was inconsistent with the establishment with the bailment that the P had access time to time to make changes on the boat. The reason why was because the P's actions were controlled by D (**provided keys and had rules and P couldn't unilaterally remove the boat without paying a fee**). = yes there was a bailment.

SHARED OCCUPATION? Court said: where both parties are present time to time - it requires a subtle approach for a standard of proof (onus of proof). Here Bailor was frequently on the premises and had duties himself. Court said have to be careful giving too high a burden on P.

Facts: While boat was stored fire broke out and the launch was destroyed. P sued the D for breach of responsibilities of their bailee. Usually its unambiguous if goods have been delivered. Here both parties had access to the ship so it was a **Shared Occupation of Premises = unambiguous**.

STEP 2: WHAT IS THE STANDARD/DUTY OF CARE OWED TO THE BAILOR? (Onus on Bailor)

- 1: Determine the standard/duty of care owned to the bailor.
- 2: This is working out what kind of bailment this is (gratuitous/reward/incidental)
- 3: Look at the type of negligence depending on bailment: here it was reasonable person would do in the same situation.
- 4: then look at value of goods, what kind of negligence depending on the bailment type any volenti?

(2) STANDARD OF CARE? - owed by the bailee to the bailor.

- Historically it mattered a lot how a reward or gratuitous bailment affected standard of care, because of gross negligence. **The modern approach** has been to de-emphasize the distinction and to favor a general negligence-style duty based on the particular circumstances. So consider each case on its **individual facts** and merits.

(1) NEGLIGENCE: case by case general negligence standard test.

(A) BAILEES FOR REWARD: The exercise of **reasonable care** for the safety of the chattel in the circumstances.

(B) GRATUITOUS: Care that a **REASONABLE PERSON** would use in looking after **HIS or HER OWN CHATTELS of the SAME KIND and IN THE SAME CIRCUMSTANCES**.

Southland Hospital v Perkins -

Conway v Cockram Motors – **this is the modern tendencies:** The obligations of a gratuitous bailee and reward are so nearly identical that it is unnecessary to identify to see where the respondent fell. But in turn Justice H cited a case called Port Swettenham v Wu. There's a single standard of care for all bailees. The standard although high for gratuitous at common law may be not as high for reward but there is a fine line. Case involves bmw it was left by P and D for consignment and thief broke into Ds premises and the ignition keys were on the visor. Car was left unlocked. **Court: bailee isn't negligent just because keys were left in the cars because it was common in the industry to do this. In order to see if he discharged his duty - judge said the defendants precautions have to be judged from the standpoint of an intruder that may know of this general practice. On these facts there was no alarm system. So the bailee was liable.**

Port Swettenham Authority v TW WU & Co – Reasonable care + Onus on Bailee. 93 cases were unloaded and passed into custody of the port authority (Defendants) who transferred them to a shed. Shed was under the charge of the chief clerk and looked after shed with others. Obvious that the goods couldn't have been spirited out of d's custody if due care was taken. Onus lay upon the defendants to prove goods had been lost because of their negligence or misconduct or that of their servants and failed to discharge the onus. The line between the two reward/grat. Is fine and difficult to discern and impossible to define. A man of ordinary prudence would presumably take reasonable care of his own goods. **D were clearly bailees for reward**, but regardless of grat. D must prove that the loss of the goods bailed to him was not caused by any fault of his or any of his servants to whom he entrusted the good for safekeeping.

Jackson v Cochrane - motor dealer for consignment. D let 3 strangers take the van. **Breach of contract. Not a gratuitous bailment: it's a bailment for reward as D gets 10% commission.** Doesn't matter that d thought they were authorized by P (misrep) because P never authorized anyone else to pick up the. **D = negligent because couldn't show they were not.**

Pitt Son and Badgery Ltd v Prouleco - Appellants were bailees and were storing wool for pitt son until they paid in full for the wool. On dec 5 they paid for the wool but on dec 6 a fire broke out in the warehouse and wool was set on fire. It's a bailment for reward and reasonable precautions should have been taken by the bailees. The onus is on them to prove they were not negligent. They could not do this, and did not take reasonable steps as they did not provide an adequate fence to keep out intruders. It was their responsibility to do this and take precautions to keep wool secure. Therefore, breach and negligent.

