3011LAW Property Law 1 Notes

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Personal Property
Personal property means all property other than real property (land). It is split into two
categories:
1. tangibles (or chattel goods); and
2. intangibles (e.g. choses in action, copyright (Millar v Taylor), etc.)

Personal property is not very bureaucratic as it does not require registration unlike land or
intellectual property. Personal property can be acquired in a number of ways:
• bare possession (e.g. bailee, trustee, etc)
• possession (e.g. finder)
• creation
• transfer (e.g. purchasing an object, receiving an object by gift or by will, etc)
• theft
• first occupation (e.g. where someone controls abandoned or un-owned property)

Not all of the above indicated ownership though (e.g. bare possession, theft). In fact, if a
person isn’t the creator of a thing, and they haven’t received it through a voluntary transfer
(contact, gift, etc.), then it can only be legitimately acquired by occupation in either of two
senses: whether it is derelictio (a thing abandoned) or res nullius (a thing not owned by
anyone but capable of acquisition or appropriation). In other words, by the law of
abandonment or the law of finding.

A key difference between abandonment and the law of finding is that in abandonment
cases the focus of the inquiry tends to be with the intention of the original owner (did they
intend to abandon the thing?) while relativity of title tends to be the issue at stake in finder
cases.

Abandonment
For this law to apply there must be:
1. The abandonment of a thing; and
   1. Was there some overt act on the part of the owner indicative of abandonment?
   2. Was there intention to abandon?
2. An act of appropriation by another person.

The onus of proving intention to abandon is on the subsequent occupier.

Moorehouse v Angus & Robertson (No 1) Pty Ltd [1981] 1 NSWLR 700 - case re author
giving publisher manuscripts which were lost, issue was whether author ‘abandoned’
manuscripts. Held for the author. Other important obiter:
• mere failure to demand the return of a chattel does not amount to abandonment
• even if chattels can be lost by abandonment, the evidence necessary to prove
  abandonment must establish facts from which an unequivocal intention to abandon can
  be inferred or established

Re Jigrose Pty Ltd [1994] 1 Qd R 382 - case re cattle feed left on land which was sold
under normal contract. Rule in favour of new land owner.

Finding chattels
The attention in these cases is on the relative strength of title (or relativity of title) between
a finder and other parties who assert some form of title to the chattel other than as the
original owner. Such cases are commonly finder v owner, finder v occupier, or finder v employer.

Ownership is superior to possession. In other words, a person who has possession because they found a thing, has better title than all other persons but the true owner: Armory v Delamirie (1722) 93 ER 664 (the jewel-finding case). One reason for this is to facilitate the return of the thing to its owner and to prevent dishonesty on the part of a finder. If a finder were granted absolute title then they would have less incentive to attempt to find the true owner: Tamworth Industries Ltd v A-G [1991] 3 NSLR 616 at 623 as per Eichelbaum CJ. The exception to this rule is of course where the original owner’s title has been abandoned or the right to recover has been lost.

Apart from the normal abandonment laws, a true owner may lose their right to recover a chattel due to the scope of a statute of limitations, e.g. Limitations of Actions Act 1974 (Qld) s10(1) & (2).

Finding chattel not attached to land
There are lots of places chattel can be found. These are located on a continuum. At one end an occupier may be expected to exert a high degree of control over the place in question (e.g. inside a bank vault), whereas at the other end there may not be an occupier at all, or the place may be public (e.g. vast rural properties, beach, etc). The common issue in all such cases is control. That is, to what extent did the occupier (whether tenant, owner or otherwise) exert control over the place in question? And, was that control sufficient to generate a property right in the occupier superior to that of the finder? This is a question of relativity of title.

Bridges v Hawkesworth [1843-1860] All ER 122 - finder has better title to occupier (person finds lost money inside private shop - holding that the finder has more control of the money than the shopkeeper).

Staffordshire Water Company v Sharman [1862] 2 QB 44 - occupier has better title than finder (pool cleaners find gold rings in person’s private pool - holding that pool owners have title to the rings as it is private land, and thus consistent with Bridges as in that case the notes were dropped and found in a public part of the shop, not on private land, like in this case).

Hannah v Peel [1945] KB 509 - finder has better title than occupier (military person using house finds brooch, issue whether actual owner of house has better title - holding following Bridges that finder has better title).

Grafstein v Holme and Freeman [1958] OR 296 - occupier has better title than finder (money in a tin in the basement - Occupier had de facto possession or control over the tin by virtue of his occupation of the place in question. Test for de facto control has two elements: 1) evidence of exclusion, and 2) evidence of an intention to control (or animus possidendi at paragraph 17).

Parker v British Airways Board [1982] 1 All ER 834 - finder has better title than occupier (jewelry lost in an airport).

Tamworth Industries Ltd v A-G [1991] 3 NSLR 616 - finder has better title than occupier (Money found beneath floorboards in a dilapidated building and inside a take-away food carton was not sufficiently controlled by the occupier of the place in question; crown as
finder. The dilapidated state of the building was indicative of an absence of manifested intention to exercise control (at 623)).

*Chairman, National Crime Authority v Flack* (1998) 156 ALR 501 - apparently occupier accorded more right to the chattel than finder, in contrast to *Tamworth* (found on residential property, thus lots of control evidenced). The police seized a bag of money from the plaintiff’s house believing the bag to belong to her son. Although Flack neither knew of the existence of the bag in her house or its contents, the court found that she had the requisite intention to control the bag.

Where a chattel is embedded or fixed in some way to the place in question, then the position is governed by different considerations. Here the law of fixtures favours the occupier over the original owner of a chattel where the chattel becomes fixed in some way. These cases tend to be tenants v landlords, mortgagors v mortgagees, vendor v purchasers, etc., rather than finder v owners.

**Finding chattel attached to land**

The starting point is that an owner of land will have better title because the court will presume that the elements of intention and physical control have been satisfied, and so the onus of proof moves to the finder. This principle comes from *Elwes v Briggs Gas Company* (1886) LR 33 Ch D 562 - land owner prevailed over finder (prehistoric boat underground).

*Waverly Borough Council v Fletcher* - found for owner rather than finder (guy using metal detector on council property, held that was not within legitimate uses of park so found for council).

“Thus the proposition rests on a fiction that an occupier in possession of the real property where the chattels are buried can have an intention to control items without even knowing of their existence.” While there might not be any moral reason to prefer an occupier to a finder, certainty is a rational reason. The overarching objective guiding courts is to reunite the article with its true owner: *Tamworth Industries Ltd v A-G* [1991] 3 NSLR 616 at 623-4 as per Eichelbaum CJ.

**Employees who find while working**

The principle is that a servant finds for their master.

*Byrne v Hoare* - found for finder (employee) over employer (on-duty policeman found gold ingot near public exit of drive-in cinema, held for policeman because he did not find it due to the scope or nature of his work, rather any public person could have found it and the fact that he was an on-duty policeman was only incidental).

Like in all finder cases, the important thing is the relative degree of control over the chattel: *Tamworth Industries Ltd v A-G* [1991] 3 NSLR 616 at 623 as per Eichelbaum CJ.

**Possession**

Often these concepts will appear in cases with some qualification as in the expression “bare title” or “bare possession” which indicates that the person in control of the object is unlikely to have any rights to ownership as a result of their control.