

Possession of goods

Claims of possession

1. Possession as title

Elements of possession: (1) Physical control (factual possession) and (2) Intention to possess (animus possidendi) – objective

- a. **Jeffries v The Great Western Railway Company**
 - i. Actions by a possessor who is wrongfully dispossessed can succeed, even if they do not have the best title
 - ii. The second possessor cannot defend their actions based on the fact that another party has a better possession (i.e. cannot use jus tertii as a defence)
 - iii. Prima facie, mere possession creates a proprietary right
- b. **The Winkfield**
 - i. As between bailee and stranger, possession gives title – does not matter if the bailee owes no liability to the bailor
 - ii. A bailee may recover the full value of a chattel even though not liable to the bailor for loss
- c. **Wilson v Lombank**
 - i. Having an immediate right to demand the return of possession also constitutes possession
 - ii. P had better claim over the D, and D's delivery to the true owner did not defeat the P's claim – no defence of jus tertii
- d. Person in possession has a right in the property better than anyone, other than someone with a better right (**Asher, Armoury**)
- e. A possessory right can be inherited, devised or conveyed (**Asher**)
 - i. Asher's right was better than Whitlock's, even though Whitlock was in current possession, because Asher inherited the prior possessory right from the deceased father-in-law and daughter (**Asher**)
 - ii. Boy's possessor right was better than the goldsmith's possessory right, as he had it earlier i.e. he had a better right than anyone except the true owner
- f. Prima facie, a paper owner of land is assumed to be in possession and to have a possessory right, unless the contrary is shown (**Abbatangelo**)

Possession by finding

2. Finding goods

- a. A finder of lost or abandoned chattel acquires a possessory right good against the whole world except someone who has a better right (usually the owner or someone claiming through the owner) – can get full value of thing converted (**Armory**)
- b. However, a finder of lost goods will also have an obligation to do what is reasonable to return the lost goods to the owner (**British Airways Board**)
- c. **LAA s 5:** 6 years to bring claim against finder
- d. Did the finder act in good faith? (**British Airways Board**)
 - i. Finder that gains possession with dishonest intent or through trespassing obtains a very weak right
 - ii. A trespasser will always have a weaker right than the occupier of the land
- e. Can the finder show that he found the thing? (**British Airways Board**) I.e. that:
 - i. The good was lost/abandoned
 - ii. The finder had taken it into his control (go through test of possession); merely being aware of the thing's presence is insufficient
- f. Has the finder discharged his obligations?
 - i. A finder of lost goods has an obligation to (**British Airways Board**) take reasonable steps to return the lost goods to the owner and take care of the goods in the meantime
- g. Competing rights to possession?
 - i. Owner, or someone claiming through the owner?
 - ii. Someone with a prior possessory right at the time of the finding?
 - iii. Employer of the finder?
 - iv. Occupier of the land on which the thing was found?
- h. Employer's priority
 - i. **Test:** The employment must have been the real and effective cause for the finding (**Byrne**)

- i. Occupier's priority
 - i. Where chattels are attached to realty (land/building), the occupier will always have a better right than the finder (*South Staffordshire Water v Sharman*)
 - ii. Where chattels are not attached to realty, the occupier will only have a better right than the finder if he has manifested an intention to the finder to exercise control over the building and all upon or in it (*British Airways Board*)
- j. *Armory v Delamirie*
 - i. The finder of a jewel, though he does not by such finding acquire an absolute property or ownership, yet he has such a property as will enable him to keep it against all but the rightful owner, and consequently may maintain trover
- k. *Parker v British Airways Board*
 - i. Where things are found lying on the surface of land unattached, the occupier of land will have a better claim to the thing than the finder only if the occupier's intention to exercise control over the items on the land is manifest to the finder
 - ii. The greater the degree of actual control, the less the need to show intention to possess
 - iii. Depends on the type of premises
 - iv. BA did not exhibit enough control
 - v. Could decide who could and could not use the lounge, but that has no relevance to manifest an intention to assert custody and control over lost articles
 - vi. No evidence that they searched for such articles regularly
 - vii. Staff instructions governed the action to be taken by employees if lost articles were found, but these were not published to uses of the lounge and not intended to do more than instruct staff
 - viii. Sufficient for the finder to hand it to airport authorities, or alternatively give it to the police or report it to the police and take care of it himself
- l. *South Staffordshire Water v Sharman*
 - i. Fixtures in the land; rings embedded in the mud
 - ii. Occupier entitled to the rings
- m. *Waverley Borough Council v Fletcher*
 - i. Occupier need not know about the embedded nature
- n. *Chairman, National Crime Authority*
 - i. Prior possessory right of the house
 - ii. Prior to the brief case being found, F must have shown an intention to exercise of control
 - iii. She had – showed that she excluded strangers from her house
 - iv. Notwithstanding she did not know about the suitcase
 - v. Expressed surprise, 'it's not mine' etc.
 - vi. Not a finder – an occupier
- o. *Byrne v Hoare*
 - i. Police found gold ingot when walking
 - ii. Possession was the employee's and not the employer's
 - iii. Finding was not sufficiently connected to his duties as an employee
 - iv. Employment must be the real and effect cause of the finding
 - v. To give the master a right to a chattel found by his servant, it is clearly not enough that the servant happened to be going about his duties when he found it, for the fact that he was performing his duties may have been accidental, and not the cause of the finding – Gibbs CJ

Possession by gift

3. Was there a perfected gift?

Elements: (1) Intention to transfer and (2) Actual transfer (*Thomas v Times Book Company*)

- a. *Stoneham v Stoneham*
 - i. Where the chattel the subject matter of the parol gift is already in the possession of the donee at the time when the gift is made, a further delivery or a change of possession is not necessary in order to render the gift effectual
- b. *Thomas v Times Book Company*
 - i. Delivery was satisfied by pointing the guy to one of the pubs the manuscript might have been in
 - ii. Considered the context, circumstances, evidence

Fixtures

4. Is there a contractual relationship?
 - a. Could determine the nature of the thing
 - b. If not consider the next two questions

5. What is the degree of attachment?

Presumption (1): If annexed, the chattel becomes part of the real estate, the onus on the person seeking to show it is not a fixture

Presumption (2): If not attached, (i.e. resting on its own weight) presume it is not a fixture, and the onus is on the person seeking to show it is a fixture

- a. **Belgrave Nominees**
 - i. Each case to be decided on its own circumstances
 - ii. Even a slight fixing to the land is sufficient to raise the presumption that a chattel is a fixture
 - iii. Chillers were positioned on the platforms and connected up by pipes
- b. **Leigh v Taylor**
 - i. Tapestry attached to canvas by tacks, and canvas nailed to wooden supports and supports nailed to the wall
 - ii. Held to be a chattel
 - iii. Determined on the basis that the affixing of the tapestries by nails to the wall was the only method by which the tapestries could be effectively displayed as chattels and there was no intention to benefit the real estate by attaching the tapestries
- c. **May v Ceedive**
 - i. House held to be a fixture on the land as per the objective standard of the law, notwithstanding the subjective intention of the parties to the contrary
 - ii. Subjective intention of the original affixer may be helpful

6. What is the purpose for annexation?

Rule: Consider the purpose for which a reasonable person would have attached to the thing in the circumstances – was the object of attachment to improve the realty or better to enjoy the thing as a chattel?

- a. Objective intention is relevant, not subjective (**May v Ceedive**)
- b. **Belgrave Nominees**
 - i. Considered the nature of the chattel
 - ii. Mode of annexation
 - iii. Relation and situation of the parties – i.e. defendant who supplies, positions and connects airconditioning plants
 - iv. Plants when fitted formed an essential part of the buildings necessary for their use and occupancy as modern office premises
 - v. Therefore fixtures
- c. **May v Ceedive**
 - i. House held to be a fixture on the land as per the objective standard of the law, notwithstanding the subjective intention of the parties to the contrary
 - ii. Subjective intention of the original affixer may be helpful
 - iii. Intention which matters is not the parties', but the one who originally affixed the house
 - iv. Purpose for which the house was built was a residential dwelling house and was affixed with the intention that it remain in position permanently

Licenses

7. Is there a licence?

Rule: A licence is a personal right to use property in some way (i.e. to enter, occupy, use for a particular time/purpose), but they do not include a proprietary interest in land

- a. To determine what kind of licence it is, read the document as a whole (substance over form)
- b. The use of the term 'licence' is not determinative that it is a contractual licence (**David Allen; Cowell**)
- c. Difference between licence and lease is exclusive possession
- d. Bare licence
 - i. No rights at all
 - ii. No proprietary interest

- iii. Can be revoked at will
- e. Contractual licence
 - i. Can enter land for a particular purpose at a particular time, as stipulated by contract
 - ii. No proprietary interest
 - iii. Revocable, damages for breach of contract if revoked (*David Allen; Cowell*)
- f. Licence coupled with an interest in land (proprietary)
 - i. E.g. licence to harvest wood/hunt animals on someone's land
 - ii. Combines contractual licence with a proprietary interest i.e. gets protection afforded to a proprietary interest
 - iii. Irrevocable – revocation blocked my equity (*Cowell*)
 - iv. Enforceable against successors in ownership

Freehold/leasehold estates

Possession

1. Possession as evidence of title

Freehold estates

2. Fee simple
3. Life estates
4. Future interests

Leasehold estates

5. Essential characteristics
6. Fixed term tenancy
7. Periodic tenancy
8. Tenancy at will
9. Tenancy at sufferance