

## GENERAL PRINCIPLES

- Property rights: rights that can be enforced against the world at large – ability to bind strangers to its creation.
  - o *Numerous clausus*: limited number of property rights at CL.
- Personal rights: enforceable against certain people.
- Real property = land, personal property = not land.
- *In rem* = action in or against a thing, exigible against third party.
  - o Not proprietary bc not rights against others in relation to things.
- *In personum* = action between people.
- *Chose in possession* = right to exclusive possession of a physical thing.
- *Chose in action* = right to sue in a court of law, intangibles eg IP.

## Honoré – bundle of rights

- Possess = exclusive physical control
  - o Right to be put in and remain in exclusive control.
  - o Right in rem prevailing against all others.
- Right to use incl. rights to management and income
- Right to capital = power to alienate, waste, consume, destroy
- Right to security = immunity from expropriation
- Transmissibility/lack of a fixed term – perpetuity but interest can't outlast death.
- Prohibition on harmful use
- Liability to execution – can be taken away bc of debt.
- Residuary character – e.g when a lease is up property comes back

## Roman shit idk thanks matteo

- English CL looks at outcomes (i.e relief), roman looks at actions.
- Action *in rem* gives u specific relief (i.e the thing back)
  - o Became real property at CL
- *In personum* didn't, became personal property/other property.
  - o Monetary reward
- In Rome you would get paid back or have it given back – P decided value. Difference between actions not about the relief.

## Numerus Clausus

- *Hill v Tupper (1893)* – canal company: can have personal rights connected to use of land but **cannot create new property rights enforceable against others w/o legislation/CL support.**
- *Escrow Holdings [2016]*: ownership not always necessary to restrict another – questions need for NC where we have property register, requires people to make inquiries into existence of property rights.
- Covenant does not limit property right (use of driveway).

## POSSESSION/OWNERSHIP

- Possessory title is RELATIVE to parties to the proceedings.
- *Yanner v Eaton (1999) HCA* – crocs harpooned, no licence, native title Result: Found for Yanner
- Property is a description of a legal relationship - degree of power that is recognised in law as power permissibly exercised over the thing.
- 'Property' Not full ownership under Fauna Act – bundle approach
  - o Fauna moves, wild animals not considered owned by anyone, no actual possession, animals can be taken in certain conditions.
- Rights under Act aggregates of other rights e.g right to regulation.

- Native title is extinguished by the creation of rights that are inconsistent w native title holders continuing to hold their rights and interests – must be established.
  - o Regulation under act not inconsistent w native title.
  - o Native title as an 'other instrument' s 211 allowing it to exist.
- Dissenting said no the Act vested full ownership in the Crown.
  - o Property = 'full ownership'

## Test of exclusive possession – BOP on person challenging possessor

- Exclusive possession generates title – no special law of finders and occupiers (*Roberts*).
- *Armory v Delamirie* – chimney sweep boy: Prior possession has best possessory title where original owner unknown.
- Must have:

### 1. Exclusive physical control.

- Partly public? Or private land?
  - Parker*: finder entitled against all person's except real owner. Regulating people entering different from controlling stuff  
**Possession immediately before it was found.**
  - Tamworth* – weed under floorboards: need to physically occupy/control stuff on the land e.g in *Hannah v Peel*, person never went to house so couldn't assert possession of things found inside.
    - Also literally anyone could've gotten into the building.
  - Bridge* – found money on shop floor: public part of the shop, loads of ppl came and went so finder entitled to keep.
    - No knowledge is irrelevant, affirmed in *Tamworth*
  - Flack* – briefcase: dwelling house possession presumed.
- Is it buried in the land? (*Sharman*)
  - Whoever own's land has possession of things *attached to or in* the land.
  - Expectation of relinquishment to employer.

### 2. Intention to possess

- Parker* – manifest intention to control
    - Sign/lost property policy?
    - Implied from circs? E.g a bank
  - No knowledge thing was there? – *Flack*
    - Majority: yes, intend to possess everything in private dwelling  
Intention assessed at point in time immediately prior to finding.
    - Minority: no, **rebuttable presumption** on the facts.  
Applied presumption incorrectly – assumed that no knowledge meant no intention but *this is incorrect.*
  - Manifestation can be express or implied – *Tamworth*.
    - Intention to control the land AND intention to possess.
    - Look at circs: people allowed to come/go, locked, derelict
3. Obtained illegally or trespass? (*Roberts* criticisms)
- Apply the above BUT do we wanna let them benefit?
  - Article clearly being not lost makes no difference – *Flack, Tamworth*
  - Foster J in *Flack* (marginal comments):
    - Complicates laws in different considerations when thing might be illegally obtained – similar to *Parker* criticism  
No knowledge does not negate intention to possess

Property doesn't care ab how you came upon stuff.

Just wants police to get it – don't care ab policy in prop

## Robert's Criticisms of Parker

- No separate law of finder's – complicates things
- How you come about something doesn't matter because...
- Title is relative, don't need separation to different types
- All ab possession – person w dishonest claim usually doesn't have best claim to title (Donaldson seems to also distinguish trespassers)
- Vague re finder's rights, what would happen if limited public access.
- Obligations of finder are incorrect.

**GIFTS** – onus on D to prove gift is made

### 1. Donor must own the thing being gifted

### 2. Donor to express a present intention to make a gift

- Shower v Pilck* – plate: future intention not enough.
- Thomas* – transcript: told ppl when alive so intention satisfied.
- StockCo* – cows: the specific gifts must be identified.
- Smith v Jones* – money: court reluctant to believe lump sum gift would not have strings attached
  - BUT presumption of advancement where blood relative.
  - Looking at **subjective intention of donor not understanding of donee.**
  - Don't need communication to donee, just expressed to someone – *Thomas* also authority for this.
  - Infer intention when expression isn't extremely clear.

### 3. Donee to accept the gift

### 4. Actual or constructive delivery

- Shower*: DIL had no prior possession so no delivery.
- Williams* – pianola: no delivery, "overt act" which can be treated as evidence of delivery, could be giving him key or ceremoniously placing hand on top (*Bashall*)
  - Exclusive use not enough – *Flinn v White.*
- Rawlinson v Mort* – organ: ceremony of hand on top = delivery
- Kilpin v Ratley* – furniture: verbal gifting + prior possession deemed sufficient delivery
  - Donor not in same premises as chattels = gift.
- Thomas*: instructions may amount to constructive delivery where possession is acquired.
  - Suspicious of claims where gifter not around.

## ASSIGNMENT – choses in action

- Obligation owed under contract/debt – assignment of *personal rights*
- *S48*: Definition of chose in action
  - o Payment of debt
  - o Includes part of a CIA (wasn't like this previously).
  - o Debt incl. obligation to pay money, deliver/transfer property/do or not do any other thing.
    - Assigning the benefit of a contract.
- *S50*: **Formal requirements**: in writing, signed by assignor
- *S48*: **Assignment must be absolute**
  - o Not conditional – e.g in *Durham Bros* – interest payments conditional on assignor not paying debt off, if he did CIA gone
- Used to give notice to debtor [s130 PLA 1952]
  - o *Shengala* now: **not necessary to give notice.**

If no notice, debtor can pay anyone and counts as full discharge.  
Assigned twice - person who gave notice first gets payment 54(1)

#### - S50(3)(b): subject to equities

- o i.e counterclaims or set-off that effects value of CIA itself.
  - o No one can give what they do not have – **nemo dat rule**.
  - o **Roxburgh** exception – set-offs stop the moment debt is assigned, further debt accrued vis-à-vis the other makes no difference.
- **S53: Can assign future amounts** – existing right to money that is due in future NOT mere expectancy: didn't used to w old act.
- o **McLeay v CIR**: mortgage payments NOT mere expectancy
  - o **Norman v FCT**: same facts opposite outcome to above.
  - o **Palmer v Sharpe** – building contract, Palmer asks some debt to be paid to Sharpe, Palmer then goes bankrupt, council withholds:  
Money already earned by assignor can be assigned i.e if work completed before bankruptcy.  
Under PLA07, future payment of instalments are rights already possessed.
- **Percival v Dunn**: must clearly say it is an assignment and say what is being assigned – don't have to use word just clear debt being paid
- **Linden**: can only assign benefits, contractual clause preventing assignment or contractual rights can be given legal effect.
- o Parties who contract to prohibit assignment don't distinguish between right to performance of the contract and right to the fruits (benefits incl COA) of the contract).
  - o Party to a contract cannot be liable for damages flowing from the doing of an act by other party which contract expressly forbids.

### BAILMENT

- Bailment is about POSSESSION.

#### Has initial bailment relationship been formed?

##### 1. Has bailee taken possession?

- a. Exclusive factual possession.
  - i. **Ashby**: no keys handed over, no possession.
- b. Intention to possess.

##### 2. Has bailee taken all reasonable care in the circs?

- a. Onus on bailee.
- b. What is the standard of care? AND have they met it?:
  - i. **Barton** – finshing rod: care and diligence which a careful and vigilant man would exercise in custody of his own chattel of the like in character and in the like circumstances.
  - ii. **WRC** – not enough care here: owner would be reasonably satisfied w the amount of care bestowed.
  - iii. **Perkins** – diamond ring: observed standard of care appropriate in the circs, sufficient standard of care (**Houghland**)  
Gratuitous bailee upon death bc patient's control terminated
  - iv. **Coggs v Bernard** – whisky barrels: did D undertake to hold the thing safely???
- c. Gratuitous vs paid – is BAILOR getting anything
- d. Accepted industry standards, reasonable expectations
  - i. E.g **Ashby** – in car parks no possession is handed over.
- e. Degree of control over area
- f. Third party intervention
- g. Causation of damage – if haven't met SOC will argue on this

- i. **Wilson & Horton v AG**: Bailee must prove either took appropriate care of the goods or that failure didn't contribute to loss.
- h. Contractual variation of standard of care:
  - i. **WRC** notice – 'every care will be taken'  
Not sufficient – need unequivocal disclaimer.
  - ii. Limitation of liability

#### Sub-bailment (SB)

##### 1. Was the SB authorised? Did bailor consent to SB and terms?

- a. Express or implied authorisation
  - i. Implied consent assessed if contract silent – **Pioneer Container**
  - ii. Industry standards/expectations.
- b. **Edwards** – some contracts clearly imply personal performance.
- c. **Pioneer** – bailor bound by terms of SB which he has consented to but not those which he has not
  - i. Can be implied – looking at industry standards.
  - ii. Terms must be reasonable.
  - iii. SB can rely on ostensible authority.

##### 2. If authorised, did bailee take reasonable care when sub-bailing?

- a. Pick an alg sub-bailee?
- b. What standards would you expect to see? Give examples

##### 3. In unauthorised, strictly liable – **Power Farming NZ v McCaw**

- a. By breaking contract, can't bring evidence as to what would happen if contract was personally fulfilled – **Edwards**

##### 4. Terms of the SB

- a. Does SB benefit from any clauses in original bailee-bailor contract/sub-bailment contract? Do any exclude liability.
- b. Terms of SB prevail bc SB has actual possession.
- c. Look at whether reasonable terms in circs – **Pioneer**
  - i. Industry standards.

##### 5. Liability of sub-bailee

- a. The bailor can sue SB directly if they have assumed possession
- b. Ignorant SB – **Pioneer** suggests negates intention to possess where SB doesn't know goods are not from bailee bc no consent
- c. Reasonable care taken? – Look at above (2.)
- d. What standards would you expect to see? Give examples

### ABANDONMENT

##### 1. Intention to abandon?

##### 2. Physical act of relinquishment?

##### 3. **Haynes** case: can't divest interests if you're dead.

If YES abandoned:

- Property rights are now attach to whoever has best possessory title.

If NOT abandoned:

- If intention to possess - voluntary bailee (finder)

o Take reasonable steps to find true owner – Finder's cases

- If no intention – involuntary bailee

o Duty to take reasonable care – **Robot Wars**

o Can't convert or destruct the goods – **Robot Wars**

NOT STRICT LIABILITY

Liability depends on making reasonable inquiries into the ownership of the goods (e.g reasonable time period before you can assume abandonment). – **AVX v EGM**  
Show you reasonably didn't become aware of true ownership.

### LIENS

- Technically still bailment but unique legal right.
- Right of a person to retain possession of property belonging to another or to have a charge over it, pending satisfaction of the lienholder's claim to that person.
- Contractual lien = security interest
- Common law lien = not a security interest, prevails over contractual.
- Two types:
  - o General – can retain goods for all accounts owed
  - o Particular – can retain goods for accounts specifically related to these goods.

Lien requirements:

Generally:

- There must be a debt **owing** – **Bayflight**
- Lienholder must have possession of other person's chattel
  - o Must **maintain** possession otherwise lien lost  
**Ablemarle** exception (taxis taken every morning for hire):
    - Redelivery for limited and specific purpose
    - Chattel to be returned on completion
    - Acknowledgment that lien will not be lost.
    - E.g **Rose**: race car allowed to go out for laps on track.
  - o Possession of goods held must relate to debt that is claimed.

Statutory Liens:

**Common law worker's/repairer's liens: s 341 CCLA 2017**

- Particular lien
- Occurs when work is done to another's chattels
- Must have actual improvement NOT maintenance
  - o Question of fact and degree – **StockCo**  
Exercising skill or labour on improvement or repair.
  - o **Re Southern Livestock Producers Ltd**: the supervision of pigs didn't count – needed actual improvement.
  - o **StockCo**: contract said if the cows didn't gain weight she wouldn't be paid – contract for improvement so entitled to common law lien.
- If debt remains unpaid, lienholder may sell goods after 2 months

**Inkeeper's Lien**: Inkeeper's Act 1962 - Particular lien.

**Unpaid Seller's Lien: s 175 of CCLA 2017.**

**Carrier's Lien: s 285 of CCLA 2017**

- Particular lien
- If you owe a carrier money and you don't pay, they are entitled to keep the goods.

Contractual liens:

- **Toll** – warehousing of DVDs, arguing packer's general lien.
  - o Contractual liens incl improvement ones like in **StockCo**
  - o Contract can limit application of common law lien.
- **Waitomo** – whitening wool: contract stipulated general lien because could possess till all sums paid.
  - o Prob be a security interest under PPSA that needs to be registered.

Customary Liens:

- **Toll**: "rigorous proof" required to show general custom of trade, must be consistent w general law.

- Authorities e.g. *Deeze* and *Ockenden* involved lending money.
- NZ doesn't recognise packer's general lien w/o proof of custom.
  - Opposite to English decision in *Re Witt*.
  - Contrary to reasons of enacting PPSA.