

## Basic Concepts

**Personal Property:** Chattel. Can be physically moved, destroyed, loaned and sold easily. Ownership is generally easy to acquire and maintain. Examples: water bottle, cell phone, mattress.

**Real Property:** Land. Cannot be moved or destroyed. Ownership generally means a right to exclude others from being on or using the land.

**Intangible Property:** Money in the bank, electronic data etc. Rights easy to create and difficult to enforce.

**Cultural Property:** Statues, manuscripts, burial sites etc. Difficult to create and enforce rights. Questions arise as to who is entitled cultural property.

## Non-Private Property

**Res Nullius:** Things belonging to no one. Examples: unclaimed land, garbage.

**Res Communis:** Things belonging to everyone equally. Examples: international ocean waters, the atmosphere.

**Res Sacrae:** Holy things. Original includes things like Churches, relics, crosses. Can also include things like body parts. What links these together is that people technically have access but society agrees that no one has a right to simply convert or destroy these. So these things are either owned by no one, by society as a whole, by an abstract ethical framework, or by God.

**Public Goods:** Includes things such as public roads, police, and clean air. These goods cannot by definition belong to a singular person or entity. Public goods are:

- Nonrivalrous: Any use by individuals does not deplete the supply for others. In other words, A's use has no impact on B's use or the overall good in question.
- Nonexclusive: Use cannot be limited to a certain set of individuals. When police fight crime, everyone benefits from a crime free society.

## Development of Private Property

**At a glance:** Prior to John Locke's influence many people saw all property as universal common property. A person may have an ability to exclude, but only because they have the power to enforce this exclusion (possibly because God wants it that way). Locke theorized that some property **belongs** to certain individuals by right. Locke made two main arguments for private property:

- Private property is necessary
- Labour gives the labourer a distinct relationship with the resulting good

**The tragedy of the commons:** Garrett Hardin argues for private property from an economic efficiency point of view. Hardin points out that in early England there were common tracts of land on which ranchers could graze cattle. If too many cows are allowed on the land then it becomes overgrazed and unuseable. All the people have an equal interest in preserving the commons. There is not an equal interest however, in introducing more cattle. The relative benefit to a rancher of introducing more cattle outweighs his portion of loss in the degradation of the land. Thus, having things owned in common creates perverse incentives. Examples of this include pollution and global warming.

**Tragedy of the anticommons:** Michail A. Heller pointed out that private property can create perverse incentives as well. After the dissolution of the Soviet Union, shop spaces were opened for rent to shop owners. The landlords charged prohibitive prices for their own gain. Many shop spaces went unused while shop owners moved their wares outside in the frigid cold. The benefit of an indoor shop was worth less to shop owners than the cost of rent. Private property thus led to the disuse of perfectly good facilities.

## Trespass and License

**At a glance:** The rules around trespass are on the one hand severe but also limited. Trespass is grounds for tort regardless of any harm suffered by the landowner or the severity and duration of the trespass. On the other hand, landowners are assumed to grant implicit license in a variety of cases. If someone routinely trespasses land without protest, the owner grants implicit license.

**Jacque v Steenberg Homes Inc:** Steenberg homes had to deliver a mobile home to a customer's land. The road was icy and difficult to traverse. The size of the mobile home also limited mobility. There was an easy path for the driver through a field owned by the Jacques. The Jacques asked the driver not to trespass even though the trespass would be brief and cause no harm or loss. The driver crossed anyway. The Jacques sued for trespass and won.

- Land owners have legally recognized interests in preventing trespass however minor.
- If trespass is not thoroughly rebuked it may ripen into an implicit license or even adverse possession. This gives land owners an interest in absolutely disallowing trespass.

**Dwyer v Staunton:** A public highway became impassable because of heavy snowfall. When the defendant came to the impasse in his car he took a reasonable route going over the plaintiff's land. The plaintiff let him pass on the condition that he find another route back. The defendant tried to find another way back but could not. He then crossed the plaintiff's land again. The plaintiff sued for trespass. The plaintiff lost, there was no grounds for trespass.

- Where a public road is impassible, a driver has the right to cross private land.
- The rights of society (to get around and conduct business) can outweigh the rights of a private landowner.
- *salus populi est suprema lex*: private mischief shall be endured, rather than a public inconvenience.

**Limited trespass:** Some jurisdictions such as Sweden and Norway have statutory limitations on trespass. In these jurisdictions, a person may trespass private land for the purpose of enjoying nature (right to roam). The principle is that the right to roam overrides the right to exclude where there is no reasonable purpose for exclusion.

**Victoria Park Racing and Rec. Grounds Ltd v Taylor:** Taylor owned a property next to the horse racing track owned by the plaintiff. The races were popular and therefore tickets to watch as well as rights to broadcast the spectacle were worth a lot of money. Taylor built a tower on his property and charged fans to watch the race from his property. He also watched and rebroadcast the events over radio. The plaintiff sued Taylor for breaking their monopoly. The plaintiff lost.

- A person has the right to avail themselves of any value that can be extracted from their land.
- The racetrack also has the right to build a Trump-wall to block outside view of the race; with Taylor having the right to build a higher tower.
- The court also applied the economic principles of competition and land usage (things with value should as much as possible be used for their economic benefit)

**Chicago National League Ball Club, Inc. v. Sky Box on Waveland, L.L.C:** This is an almost identical case to the above but from the US. Waveland paid homeowners to build bleachers on their homes and charge admission to baseball fans to view the game in the adjacent stadium. Waveland was allowed by US law to do so.

- Same principles as above.
- The court focused more on freedom and private property.

**Fontainebleu Hotel v Forty-Five Twenty-Five:** Two competing hotels existed side-by-side in Miami. The distance between the two hotels was only a few feet. One hotel built a rooftop hotel. The competing hotel built several more levels in order to block the sunlight reaching the pool. The sunblockers won.

- No one has an inherent right to the free flow of sun and air.

**Davidson v Toronto Blue Jays:** Davidson bought a ticket to a baseball game. After entering the stadium Davidson was 'ticket-checked.' Davidson obstinately refused to answer questions or produce a valid ticket, even though he had it with him. Davidson was held by security and then

ejected from the stadium. Davidson sued for wrongful imprisonment, inter alia. Davidson won.

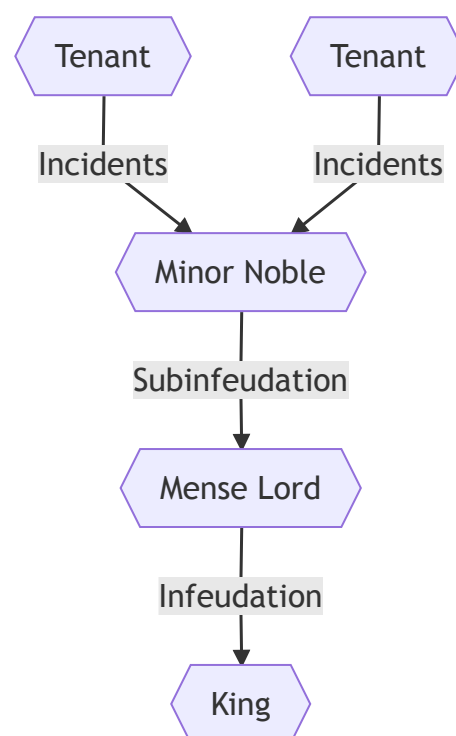
- By the terms of the ticket, Davidson had a right to be in the stadium during the game. Holding and then ejecting Davidson was a breach of contract.
- The license (ticket) Davidson purchased did not require him to produce proof of license.

## History Of Canadian Land Ownership

### Feudalism

**At a glance:** William the conqueror took England in 1066. William's feudal system of land ownership set up the rules that govern land ownership via common law today.

- **King:** Holds absolute ownership over all land, the legal owner of a plot of land has their right ensured by the Crown's assent.
- **Mense Lord:** Given the rights to administer land (infeudation) in exchange for providing valuable services to the king (ex: military service).
- **Subinfeudation:** The mense lord can further delegate rights to land to other nobles. This step isn't necessary, the mense lord can directly administer the land if they choose.
- **Tenant:** The lowest class. These people actually work the land and pay a portion of what they make to the mense lord or noble that gives them access to the land itself.



**Decline of feudalism:** When nobles died, their lands returned to the Crown by escheat. As the Crown needed personal favours less and less, this land stopped being infeudated to men and lords. Those that were infeudated provided monetary compensation (taxation) rather than personal services. Eventually, this system became one of simple land sale and taxation.

## Aboriginal Law

**At a glance:** Aboriginal law is the legal relationship between the Canadian state and indigenous peoples. *Indigenous Law* is the distinct concept of the legal theories and systems of Canada's indigenous people. The founding document of the Aboriginal law tradition is the *Royal Proclamation of 1763* which recognized the indigenous people's claim to the land they inhabited.

**Terra Nullius:** This is the internationally recognized doctrine that uninhabited land belongs to the first person or nation to claim it. The British empire claimed the territories of British Columbia and Australia by citing this doctrine. Most of Canada was not acquired by reference to this doctrine. Britain made several treaties with indigenous people which gave the British government the right to administer lands they acquired in return for duties (usually monetary compensation and infrastructure).

## Colonization

**At a glance:** Near the end of the nineteenth century, Britain became increasingly concerned with populating the land that is now Canada. In order to push back against American expansion, the Canadian government implemented a system of cheap land distribution to settle the Canadian west.

**Settlement:** The majority of Western Canada belonged to the HBC, which used the land for trading but did not settle it. The Canadian government claimed the land and split western Canada into townships made up of roughly equally sized sections, subdivided into quarter sections. The government then distributed the sections as follows:

- 1/20 Hudson's Bay Company: as compensation for transfer
- 2/36 Future Town: to build schools
- 1/2 Railway Construction Companies: to build the trans-Canada railway

The remaining land could be acquired by settlers through three methods:

- Outright purchase at \$1 an acre with a maximum of 160 acres.
- Military bounty: serving in the force a sufficient time.

- Scrip: metis peoples were given scrip which entitled them to land out west. This land was given for free to encourage cultural assimilation.

**Immigration:** Canada needed immigrants to populate the land. The Canadian government preferred culturally similar people for the population of the west. The Canadian government preferred immigrants in the following order:

- Most preferred: English, Scottish, Irish, American.
- Less preferred: Northwest European (French, German, Nordic), Eastern European
- Barred from immigration: All non-Caucasians (including black Americans).

## Boundaries

**Describing Land:** There are two main systems for describing the boundaries of land.

- Metes and Bounds: describe landmarks which demarcate the edges of land. Sometimes these can shift which leads to major problems. The courts will favour demarcations which are the least likely to be mistaken or change over time, such as the location of a road or mountain.
- Longitude/Latitude: Much simpler system. Major issues are simply in determining where the "correct" longitude and latitude are.

**Robertson v Wallace:** An argument arose as to the correct interpretation of the boundary between the two quarter sections. The court found that there was no primary evidence to determine the actual boundary. There was however, a fence near the disputed boundary which had been in place for some time.

- The court determined that the fence should be the boundary.
- A fence is an objective indicator of agreed-upon boundaries.

**Blewman v Wilkinson:** Wilkinson owned a large plot of land. He hired contractors and surveyors to subdivide his land. In the course of the earthworks a hill was partially excavated. After several years, Blewman purchased land near the partially excavated hill. The hill eroded further, causing damage which Blewman could have been anticipated to Blewman's home. Blewman sued Wilkinson for damages caused by disturbing the land. Blewman lost.

- A person is entitled to any damage that comes as a result of unnatural change to the land.
- Blewman knew the condition of the land when he bought it.
- Blewman had other options to stop the movement of land and did not take care to protect his own property.

## Water Law

**Ad medium filae aquae:** An owner of land adjacent to a river owns the water to the middle of the river. This only applies to non-navigable in Canada. Navigable rivers are owned by the Crown and can be used for travel by all.

**R v Nikal:** The applicant (Nikal) was fishing without a license on a BC reserve. He appealed his conviction for fishing without a license based on the fact that the river in question flowed directly through the reserve and was therefore band property. Additionally, the constitution act 1865 allows indigenous people to hunt/fish/trap freely. Nikal won on the latter point but not on the first.

- The river is navigable and therefore Crown property.
- Fishing rights are severable from travel rights.
- Indigenous people can hunt without license on Crown land.

**Extraction right:** As more people begin to extract water from a river or lake, the amount diminishes. The law therefore must have a way of dealing with whose rights to the water have priority in a shortage. The law on this topic differs by jurisdiction:

- England: Everyone has an equal claim to whatever water is needed for domestic use.
- Western US: First in time, first in right. Whoever starts using it first has priority.
- Alberta: Same as western US but the Crown grants licenses to keep track of priority. Albertans also have the English right to water for domestic use.

**Accretion:** As rivers flow, they slowly erode their own boundaries and change shape. In general, when accretion ends up giving one property owner more of the bank they have the legal right to it. If the change in shape is sudden (flash flood, dam) then the original boundaries remain in place.

**Shoreline:** The Crown in Alberta owns all rights to water usage (AB Water Act s. 3(2)). The Crown also owns the shoreline of all rivers, streams, and lakes. The shore extends as far as the natural change in vegetation which marks the shore in common understanding extends. Basically, this is the area where the soil is sandy and cattail grows.

## Title

**At a glance:** Title is a way of ensuring that a person actually owns a property. Title is a way of solving the problem of determining ownership. There are four basic ways of dealing with ensuring ownership in land sales:

- No registration (wild west)
- Deeds registration (US, proof without guarantee)
- Title registration (Canada, mirror principle)

- No registration + title insurance (parts of the US)

**Deed and title priority:** When an owner of a plot of land is sold or the current owner becomes insolvent there are several systems for deciding whose interests come first.

- **Race:** whichever interest is registered first.
- **Notice:** second interest has priority if they were not notified of the first
- **Race-notice:** second interest has priority if it was registered first and there was no notice of the first. This is the system in Canada.

**CIBC v Rockway Holdings Ltd:** Katmos Farms owned farmland. In 1989 they signed a contract to give Rockway Holdings the right to extract gravel from the farm. In 1991 Katmos used the farm as collateral for a loan from CIBC which was registered immediately on the title. In 1992 Rockway registered a caveat on the title for extracting gravel. Katmos went insolvent. CIBC saw documentation about the Rockway contract but skimmed over it and looked only at the title instead. CIBC wanted to have the rights to the entire farm. CIBC claimed that they did not have “actual notice” as required by law. CIBC lost, they had actual notice.

- Actual notice is not precise documentation on the nature of an interest.
- Actual notice of an instrument is information that would cause a reasonable person to make inquiries into the prior instrument (even if they don't).

**Torrens System:** This is the title system used in Canada. Sometimes, disputes arise over the legitimate owner of a property. Occasionally, fraudsters will sell someone else's land to a good faith buyer and that good faith buyer must litigate with the defrauded owner. The torrens system solves these problems by making the title legally binding. This means that whoever is registered as the owner on the title is the legal owner.

- Mirror principle: the title is a mirror image of reality.
- Curtain principle: the title draws a curtain over the past, defeating any prior claims.

## Indefeasibility

**At a glance:** When a property is sold, the new owner registers their title to the property. The registrar will attempt to make sure that the sale is completely legitimate. Sometimes the registrar is fooled and registers a sale where the previous legitimate owner did not intend to sell. There are two ways of dealing with this in a torrens system:

- Immediate indefeasibility: any good faith purchaser who registers title is the real owner, the previous owner will be compensated for the loss.
- Deferred indefeasibility: the buyer is the real owner as long as they did not ‘touch’ the fraud (one sale removed from fraud).



**Lawrence v Wright:** Susan Lawrence was the real owner of *the home*. A fraudster posed as Lawrence and offered to sell her home. A second fraudster, going by the name Thomas Wright, agreed to buy the home from the imposter. Wright asked CIBC to give him a mortgage for the home. CIBC made out the mortgage loan and paid the imposter. CIBC then claimed title to the property. Wright then disappeared and CIBC tried to take possession of the home. CIBC argued that they should have the home as they have the title. Lawrence argued that the sale was fraudulent and she was therefore the true owner. Lawrence won.

- Canada is deferred indefeasibility.
- Deferred indefeasibility is preferable from a policy perspective as it gives homeowners recourse against fraud.
- A home is non-fungible (sentimental value and moving costs). A mortgage is fungible. Therefore, title insurance should pay the good faith lender and leave the home to the defrauded owner.

**Conditional indefeasibility:** Conditional immediate indefeasibility is legislated in Alberta by the *Alberta Land Titles Act*. This means that as long as the purchaser took all reasonable measures to ensure that there was no fraud, immediate indefeasibility applies. Additionally, the registrar has the authority to reject any title that they suspect is being fraudulently filed.

**Alberta v McColloch:** The AB Forestry Ministry sold land to Svedberg to be used only as a millsite. The appropriate caveats were filed. Svedberg went bankrupt and the land was sold to McCulloch. There was an error with the filing and the caveats weren't filed. McCulloch then sold the land to a numbered company which he owned. This sale would put distance between the "new" owner and the fraud (registrar's mistake). McCulloch could then develop the land and make a huge profit. Alberta sued to block McCulloch's conversion of title. Alberta won, the sale from McCulloch to McCulloch was fraudulent.

- For there to be fraud, knowledge of an error must be used for an unjust purpose.
- The timing was more than a mere coincidence.
- McCulloch's sale to himself is clearly fraudulent.

## Rights Above and Below

**Cujus est solum:** Short for the Latin phrase meaning that whoever owns the surface owns everything above and below. This is the law in most common law jurisdictions including Canada. There are exceptions made for air travel.

**Mineral Rights:** By law, owners of land own the mineral rights below their property. In Alberta however, most of the land was sold to homesteaders with a caveat that the seller (government, HBC, Rail Cos.) retained mineral rights. Current ownership:

- 81% Provincial Government
- 9.2% Federal Government
- 9.8% HBC/Rail Companies
- 0.55% Individuals (purchasers)

**Borys v Canadian Pacific Railway:** Borys bought land from the CPR when he immigrated. The title had a caveat that all "coal and petroleum" belongs to the CPR. Borys found natural gas mixed with dissolved hydrocarbons. Borys separated and sold the hydrocarbons. CPR and Borys then had a dispute over what constitutes oil and natural gas.

- If it is gas at the time of capture it is 'natural gas'
- If it is liquid at the time of capture it is 'petroleum'

**Glencore International AG v Metro Trading International Inc:** MTI was engaged in the business of buying, blending and selling fuel oil. It bought fuel oil of various grades and other oil products from a variety of sources which it stored temporarily and then re-sold, after carrying out any necessary blending. MTI bought oil from Glencore and various other companies and this oil was blended and refined. MTI went bankrupt and the various companies which had stored oil with MTI wanted their oil returned. Their oil was no longer crude, it had been processed into something else. The judge found the companies all had equal rights to a portion of the refined oil.

- When goods are mixed and changed, they belong to the owners of the parts of the mixture in proportion to what each contributed to the mixture.

**McKeown v Cavalier Yachts:** McKeown owned the hull of a yacht which was not worth much money. He passed the yacht to Cavalier to fix it up into a working boat. Cavalier subcontracted to Spartan who spent an immense amount of time and money finishing the work. Spartan thought that the boat would be theirs in the end. Spartan tried to keep the boat, claiming that their work constituted the principal of the boat (it was worth much more) and the hull was only an accessory. McKeown won, the boat was his.

- Trite law that owner of principal owns the entire object.
- Monetary value does not decide what is the principal of an object.
- The hull is what the other parts attach to, it is the principal in this case.

**Stock v Stock:** Plaintiff took defendant's hay and mixed a bit of it with a larger sum of his own. The defendant came and took the whole mixture. The defendant got to keep all of it.

- Wrongful actor loses everything
- English law of mixture stresses intent

**Jones v De Marchant:** A husband had a coat made for his mistress. He used 4 of his beaver skins and stole 18 from

his wife. The coat was made and given to the mistress. The mistress was innocent and knew nothing of the theft. The wife sued over the stolen skins. The wife won.

- The wife gets the entire coat as the wronged party.

## Fixtures

**At a glance:** A physical building is always to be considered the principal in a matter of accession. Therefore anything affixed to the property is acceded to the property. When the property is sold, the new owner gains all of the fixtures.

**Stack v Eaton:** This case established the concept of fixtures in Canadian law. The test for whether an item is a fixture is:

- If a thing is not attached, but rather held down by its own weight then it is not a fixture.
- If a thing is attached to the land, even slightly, then it is a fixture.
- Exception: both these rules do not apply when the degree of annexation militates in the other direction **and** that degree of annexation is patently obvious **without** reference to the intentions of any parties.

**La Salle Recreations Ltd v Canadian Camdex Investments Ltd:** A hotel business leased a hotel to operate as such. The hotel paid a third company to install carpets. The carpets were not paid for upfront. The tenants signed an agreement to pay for the carpet in instalments. The contract further specified that the carpet company could remove the carpet if the operators couldn't pay. The operators went bankrupt and the carpet company tried to get the carpets back. The owners of the hotel argued that they were fixtures. The owners won, carpet stays. The court defined sever factors in determining whether something is a fixture:

- Permanent vs occasional use
- Ease of detachment
- Whether the purpose of the fixture is to improve the property. If the purpose of the property is to improve the fixture then it will not be legally considered a fixture.

**Re Davis:** This case addresses whether a bowling alley is a fixture of the building in which it resides. The answer is no.

- The bowling alley does not exist to improve the freehold.
- The building exists to improve the bowling alley.
- Basically: the bowling alley could be put in any building. The basic purpose of the building is to house the alley, not the other way around.

**Diamond Neon Ltd v Toronto Dominion Realty Co:** Signs were made by Diamond Neon and leased to Uptown. Uptown placed the signs in the ground on a property rented

from WCP. Uptown left and Deuck became the new tenant and kept using the signs. Deuck left after lease expired. WCP sold the property to Dominion. Dominion sold the signs. Diamond Neon sued for unlawful conversion of chattel. Dominion argued they were fixtures. Diamond Neon won, signs in the ground are not fixtures.

- The context is included in deciding whether something is a fixture.
- The fact that the signs indicated a certain type of business indicates that they were chattels, not fixtures.
- The fact that the signs were removed indicates knowledge that they were legally severable from the property.

**Note:** In general, signs and posters are not fixtures. When a tenant puts up signs or posters they can be removed when the tenant leaves (*Frank Georges Island Investments Ltd v Ocean*).

## Chattel

**At a glance:** Chattel are physical items owned by an individual or firm. The owner has the right to do whatever they want with the chattel. This freedom is contrasted with land, where caveats govern acceptable activity even after the land is sold.

## Nature

**At a glance:** In general, when something is taken out of nature (apple picked, animal killed) it belongs to the first person to so remove it.

**Pierson v Post:** Two wealthy men were out fox hunting in the same area. Pierson was in hot pursuit of a fox which he had been laboriously tracking. Post saw that Pierson was on to something and intercepted the fox, taking it for himself. Pierson sued, arguing that he did all the work of tracking. Pierson lost, first to take possession has absolute rights.

- There was no rights over the fox until the animal was removed from nature.
- The courts would be bombarded with cases if they ruled any other way.

**Clift v Kane:** The crew of the ship *Brothers* hunted and killed 3000 seals. The weather turned dangerous and the crew was forced to leave 1000 of the carcasses behind. They later came to recover the rest of their hunt but the crew of *Barbara* had found and taken the seals. *Brothers* sued, stating that the seals were stolen. The plaintiff's won, but had to pay a salvage fee to the *Barbara*.

- Once an animal is killed by a hunter, possession is marked and valid.

## Possession

**At a glance:** To show a legal right to possess one generally must only show that no one has a **better** title. Broadly, intention to possess and an actual exercise of power over the chattel combine to show possession.

**Popov v Hayashi:** Greatest case of all time. Popov and Hayashi attended a baseball game with the intent of catching a baseball that went out of bounds. Popov was standing in the perfect place to catch the ball. The ball touched his hand, but before he could grab it, a violent mob rushed him, knocked him to the ground and brutally fished and groped through the growing human mass to get to take hold of the prized ball. Unbeknownst to the frenzied mob, the ball had rolled just a few feet away, stopping an inch from Hayashi's feet. Hayashi took the ball. Popov sued, claiming better title to the ball. The ball was split between the two.

- Case created the concept of a "pre-possessionary right."
- Popov never took physical control of the ball, but had a legitimate interest in it.

**Charier v Bell:** Charier was an amateur archaeologist who excavated an indigenous burial ground. Charier found several artifacts buried with the dead. Charier tried to sell the artifacts but the indigenous tribe claimed ownership. Charier claimed that the burial site was abandoned as the tribe had moved from that land long before his dig. The tribe won, the dead and their possessions belong to their descendants.

- Burial indicates an intention to leave what is buried in the ground. Even if the land is vacated, the property is never abandoned due to the manifest intention.
- May not apply after a sufficient time. Think of a Mongol or Assyrian burial site, no one has claim by ancestry.

**Note:** In Alberta, the crown owns all archaeological artifacts.

## Finder's Rights

**At a glance:** Three basic rules:

- If found in a public place, the finder has less than absolute title.
- If found in a private place the finder has rights dependent on their intentions and the degree of control manifest by the occupier
- If the finder was acting as an agent or employee of a superior then the superior has less than absolute title.

**Armory v Delamirie:** A poor boy found an expensive piece of jewellery. The boy took it to a jewellery shop to be appraised. The jeweller took the item and refused to give it back, assuming that the boy had no title. The boy sued and won.

- A finder does not have absolute title.
- The first finder has title against all but the original owner.

**Parker v British Airways Board:** Parker was waiting in the lounge of an airport. He found a men's gold bracelet on the ground. Parker knew that he had finders rights but hoped to at least try to get it to the original owner. Parker gave it to airport staff and requested that if they couldn't track down the owner they give it back to him. The airport did not track down the owner. Parker asked for the bracelet, the airport refused and sold it instead. Parker sued. Parker won.

- A finder's rights are limited by the intent with which they acquired the chattel and the amount of control exercised over the space in which it is found.
- Parker had pure intentions and the airport manifested a medium intent to exercise control over the space.

**note:** The occupiers (owners) must maintain a lost and found if they wish to claim all objects abandoned or misplaced on the premises.

**Hannah v Peel:** During the second world war, the British government took control of unused buildings for military purposes. One of Peel's houses was used as a sick bay. A soldier, Hannah, found a brooch on a window frame in the house. Peel and Hannah claimed ownership. Hannah won.

- Possession must be manifest, even on the premises of one's own property.

**Bird v Fort Frances:** No pulp and paper involved. A twelve year old boy, Bird, was playing in a pool-room. He climbed under the building and found a can with \$1430 inside. The money was confiscated until the true owner could be found. The confiscation was reversed in court. Bird gets the money.

- The boy was not a "true finder" because the item had been placed there intentionally.
- No one has a better claim, least of all the police officer who confiscated the money.

**Clark v Maloney:** Clark found logs adrift in the Delaware bay. He gathered the logs and tied them to the shore. The logs went missing and were found to be in the possession of Maloney. Maloney claims to have found the logs adrift as well. The court assumed Maloney was telling the truth. Clark claimed prior ownership. Maloney argued they were both equal finders. Clark won.

- Finding does not give absolute ownership, but it does give title against all but the true owner (*Armory*).
- Once Maloney found the logs he was required to give them to Clark as the original owner, just like Clark would have to give them back if the original-original owner turned up.

**Quasi-bailee:** When someone finds a lot of money in Canada, they are a quasi-bailee. The finder must keep the money for a reasonable time, if the owner does not come forward then the finder can spend the money (*Trachuk v Olinek*)

## Bailment

**At a glance:** Following *Coggs v. Bernard*, responsibility was graded based on whose benefit the bailment was for:

- Bailment for the sole benefit of the bailor, e.g. guarding or storing something for free:
  - Bailee only has a duty of basic diligence.
- Bailment for the sole benefit of the bailee, e.g. borrowing something for free in order to use it:
  - Bailee is liable for the slightest negligence.
- Bailment for mutual benefit:
  - duty of ordinary diligence applies.

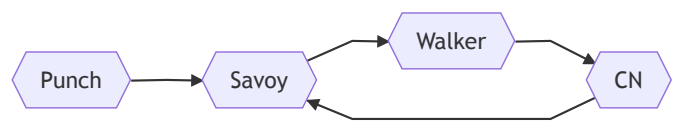
**Letourneau v Otto Mobiles Edmonton:** The Let. dropped off a trailer for Otto to repair. They left the key in the water compartment according to Otto's instructions. The trailer was stolen. Let. sued for damages. Otto claimed that because the trailer was not left in their shop, they never took possession. Let. won.

- Bailment complete when the Let. dropped off the trailer according to the instructions. After that, Otto is responsible for the property.
- Otto had "constructive" possession when the Let. left the trailer according to their instructions.

**"free" bailment:** The case law is muddled on the issue. *Martin v. Town n' Country Delicatessen Ltd.* held that free parking is for the benefit only of patrons (basic diligence). Whereas *Murphy v. Hart* held that a coat check is part of the business and therefore ordinary diligence applies.

**Punch v. Savoy's Jewellers Ltd:** Punch took a valuable antique family heirloom ring to a local jeweller (Savoy) for repair. Savoy sent the Harry walker for repair. Walker could not send the ring by normal methods and so sent it back to savoy via insecure CN rail. CN rail lost the ring. CN, Savoy, and Walker were liable to Punch.

- A bailee is not liable for wrongs committed by sub-bailees but they are severally liable
- Savoy was not diligent in accepting a new method of transport without further inquiry.
- Walker failed to discuss the proper method of transport with Savoy.
- CN failed to secure the package and investigate the theft.



**Mercer v Craven Grain Storage Ltd:** Mercer and other farmers stored grain with Craven. Mercer gave Craven 2200 tonnes of wheat and told them not to sell it until wheat was worth 160 pounds per tonne. Mercer's grain was mixed into Craven's wheat store. Craven went bankrupt before the price rose that high. Mercer claimed that the agreement was a bailment. If the agreement was characterized as a sale-and-purchase agreement (I sell to you so you sell to others) then Mercer would have to wait in line with other creditors. Mercer won, he got the entire portion of grain he put in.

- The storage agreement stated that the wheat would remain the property of farmers until the grain was sold.

## Adverse Possession

**At a glance:** Use it or lose it. If A stays on B's land for a statutory period of time (10 years in AB) against B's wishes then A gets title to the land. This makes sure land isn't hoarded. It includes:

- Actual possession throughout the statutory period by the claimant
- Claimant's clear intention to exclude others.
- Discontinuance of possession by title-holder
- Inconsistent use test: claimant's use is inconsistent with intentions of title-holder (must not involve violence)

**Keefer v Arillotta:** There was a paved strip of narrow road between the Keefer and Cloy properties. The Keefer's began using the strip as a driveway. The Keefer's treated it as their own land by shovelling and otherwise maintaining it. The Cloys did not park on it at all. The Keefer's tried to take adverse possession of the strip. The Keefer's lost.

- Adverse possession must be adverse: the two parties must openly disagree.
- The Cloy's were simply being courteous by not voicing disagreement.

**Teis v Ancaster:** Teis and Ancaster believed that Teis owned the land. In reality, Ancaster had title. The town never told Teis to stop using the land. Eventually, Ancaster tried to use the land and Teis sued for title. Teis won, but Ancaster and the town appealed on the grounds that the inconsistent use test was not met. Since Ancaster thought that Teis owned the land, Ancaster never objected. Teis won on appeal.

- The inconsistent use test cannot apply in cases of mutual mistake: where it is impossible.



## Adverse Possession in Alberta

The *Land Titles Act* gives the following rules for adverse possession:

- Extinction: after the ten year period, the title-holder cannot bring an action against the possessor.
- Acquisition: after the ten year period, the possessor can sue for title. If they win, they can register valid title.
- If the possessor gives written acknowledgement of title to the title-holder then the ten year period restarts.
- If the land is sold then the ten year period restarts.

**Lasting improvement:** The *Law of Property Act* dictates what happens when a person makes lasting improvements to someone else's land under the mistaken belief that it is their own:

- The improver may be entitled to a lien on the land to the extent of the value added.
- The improver may be given possession of land if the court finds it more fair. In this case, the court may direct the improver to pay the title-holder for the land.

**All or nothing:** The *Law of Property Act* mandates that adverse possession can only be used in relation to title. It cannot grant an easement.

**Big Brother big But:** The *Limitations Act* specifies that adverse possession does not apply to land owned by the Crown.

## Gifts

**At a glance:** There are a few important elements to establishing a real gift:

- Expressed intention by giver.
- Expressed intention to receive by donee.
- Delivery: the thing gifted must have been actually transferred to the beneficiary. Prior to delivery, the giver can change their mind.
- Exclusive possession (*National Trustee Executors Ltd v O'Hea*).

**Brantford General Hospital v Marquis Estate:** Mrs. Marquis donated \$200K to the hospital before her death. The hospital wanted to name the ICU after her. The estate did not allow it. The hospital argued that the money should be taken as consideration for recognition. The hospital lost.

- Gifts are not consideration, they cannot for contracts.

**Dalhousie College v Estate of Arthur Boutilier:** Arthur pledged to donate money to the college for "improving the efficiency of its teaching." Arthur died before he could donate. The college tried to get the money from the estate.

The college argued that their improvements to efficiency of teaching were consideration for the money. The college lost.

- Same as above.
- They would have improved anyway.

**Nolan v Nolan & Anor:** After the painter died, his daughter and ex-wife claimed that some of his paintings were gifted to them. The paintings physically resided in the painter's home at the time of his death. The daughter lost.

- There must be (exclusive) possession to establish a gift.

**Donatio Mortis Causa:** Gifts in contemplation of death are tentative. They only apply if the giver actually dies and delivery must be made while they are alive.

**Re Bayoff Estate:** Bayoff was dying of Cancer. Before he died he handed his buddy a key to lock box in his bank and told him "everything there is yours." The issue arose whether a valid gift was made as the lock box and its contents were never delivered. The question was asked whether the gift of the key was sufficient as "symbolic delivery."

- Symbolic delivery is insufficient in contemplation of death.
- Exception: if the donee is the executor of the dying person's estate.

**Watt v Watt Estate:** Two buds of no relation with the same last name enjoyed boating. The bud who owned the boat was dying and gave a duplicate set of keys to his bud. The boat owner also gave the other bud notice of joint ownership in writing. The living Watt wanted to claim the partial ownership over the boat against the estate. The living Watt lost, estate keeps the boat.

- There was no delivery.
- Symbolic delivery is insufficient, many people got duplicate keys.