CHAPTER 2
PERSONAL PROPERTY – ACQUISITION OF POSSSSION AND TITLE
I. RIGHTS OF POSSESSORS

A. Rights from possession generally:

Normally, one obtains title to goods by acquiring them from, and with the consent of, their prior owners (e.g., a purchase or gift transaction).

There are a few situations, however, in which one may obtain title, or its rough equivalent, by the mere fact of ***possessing*** the article.

The best examples of title from possession are: (1) ***wild animals***; (2) the ***finding*** of ***lost articles***; and (3) ***adverse possession***.

B. Wild Animals (*ferae naturae*):

Wild animals (often referred to in court decisions by their Latin name, *ferae naturae*) are normally not owned by anyone, of course.

Therefore, it is not surprising that the courts have held that once a person has ***gained possession*** of such an animal, he has rights in that animal superior to those of the rest of the world.

1. What constitutes "possession":

However, it is not always easy to tell when a person has obtained "possession" of a wild animal.

Obviously, the ***capture*** of such an animal is sufficient. But where less than outright capture has occurred, the line between possession and non-possession becomes blurry.

a. Chasing:

The mere fact that one has ***spotted*** and ***chased*** an animal is not sufficient to constitute possession.

Thus in the classic case of *Pierson v. Post*, 3 Cai. R 175 (Sup. Ct. N.Y. 1805), P found and chased a fox as part of a hunt; D then stepped in, killed the fox, and carried it away.

The court held that "mere pursuit" gave P no legal right to the fox, and that D thus had the right to interfere.

b. Business competition:

The courts are more likely to be sympathetic to the interfering defendant if he acts out of ***business competition*** with the plaintiff, rather than out of spite or malice.

Example:

P claims that after he set some decoys on his own pond to lure ducks in order to hunt them, D fired guns nearby to drive the ducks away.

Held, P is entitled to recovery, because D's act was a violent and malicious interference with P's livelihood.

But if the ducks had been lured away from P's pond by D's use of the same type of decoys for his own business purposes, P would *not* have been entitled to recover. (See *Keeble v. Hickeringill*, 103 Eng. Rep. 1127 (K.B. 1707))

2. Return to natural state:

If a wild animal is captured, and then escapes to ***return to its natural state***, the courts have generally held that the finder's ownership is ***extinguished***.

The animal then becomes the property of whoever recaptures him.

C. Finders of lost articles:

The saying "finders keepers, losers weepers" is ***not accurate***.

The finder of lost property holds it, at least for a certain time, ***in trust*** for the benefit of the true owner; thus he is a custodian, or "bailee" for the true owner.

What is important for our purposes here, however, is that the finder has rights ***superior to those of everyone except the true owner***.

Example:

P, a chimney sweep, finds a jewel, and carries it to the shop of D, a goldsmith. He asks D's apprentice to examine it and tell him what it is.

The apprentice takes out the stones, and refuses to return them.

P sues for the value of the stones.

Held, for P.

The finder of an object, although he does not by finding acquire absolute ownership, is entitled to possess it as against anyone but the true owner. (See *Armory v. Delamirie*, 1 Strange 505 (K.B. 1722))

1. Possession derived from trespass:

The rights of finders are an example of the broader principle that a possessor of personal property has rights superior to those of anyone except the true owner.

Thus even if the possessor has obtained his possession ***wrongfully***, he will be entitled to recover from a third person who interferes with that possession.

2. Measure of damages:

Most courts allow the possessor the right to recover the ***full value*** of the object from the third party who has taken it.

That is, the old common-law action of ***trover*** (which entitles the plaintiff to the object's value, and lets the defendant keep the object) is allowed.

3. Article lost by possessor:

As a corollary of the rule that a possessor has rights superior to those of everyone except the true owner, the courts hold that a possessor who ***loses*** the property after finding it or otherwise acquiring it may nonetheless recover it from the third person who subsequently finds or takes it.

4. Conflict with the owner of real estate:

When the person who finds the item is not the owner of the real estate on which it is found, a conflict between the ***finder*** and the ***real estate owner*** is likely to develop.

The courts have not devised very clear rules for resolving such conflicts.

a. Trespasser:

If the finder is a ***trespasser***, the owner of the real estate where the object is found will be preferred.

b. Other cases:

But if the finder is on the property with the owner's implied or express ***consent***, the cases are divided and confused.

In general, the English courts tend to award possession to the property owner, and the American courts tend to grant possession to the finder.

But these are by no means hard-and-fast rules, and the presence of other factors will often be dispositive.

c. "Lost" vs. "mislaid" property:

Courts have frequently distinguished between ***"lost"*** and ***"mislaid"*** property.

i. Mislaid:

An object has been ***"mislaid"*** rather than lost when it was ***intentionally put in a certain place***, and then forgotten by its owner.

Such mislaid objects are usually held to have been, in effect, placed in the ***"custody" of the landowner***; therefore, the ***finder does not obtain the right to possession***.

Example:

P, a customer in D's barbershop, finds a pocketbook that has been left there by some other customer.

Held, possession goes to D, because the owner (whoever it is) intentionally placed the pocketbook on D's table, and thus entrusted it to D's care.

Therefore, P is a finder of mislaid property (not lost property) and isn't entitled to possession. (See *McAvoy v. Medina*, 11 Allen 548 (Mass. 1866))

ii. "Lost property":

Conversely, property that has clearly *not* been intentionally deposited by the owner (i.e., is ***"lost"*** rather than "mislaid" property) is likely to be ***awarded to the finder.***

d. Statutory solutions:

Many states have enacted ***statutes*** governing the disposition of lost and mislaid property.

These statutes, sometimes called "estray" statutes, typically require the finder of lost or mislaid property to notify a designated government official who enters a description of the item in a registry.

These statutes have often rendered less significant the distinction between property found in a "public" place and that found in a "private" place.

D. Ownership of bodily tissues:

Does a person "own" her own organs, blood and other ***bodily tissues***?

To the extent that by "ownership" we mean the right to ***sell*** the object, the answer under present American law is mixed — some bodily tissues may be sold, for some purposes, but for the most part a person is not permitted to sell her organs or other tissues.

1. Transplant:

The question arises most commonly in the case of ***organ transplants***.

Here, American law is clear: a person may ***not*** sell his organ to be used in a transplant.

A federal statute, 42 U.S.C. §274(e), makes it "unlawful for any person to knowingly acquire, receive, or otherwise transfer any human organ for valuable consideration for use in human transplantation if the transfer affects interstate commerce" (as virtually any organ transfer would be found to do).

This ban applies even to direct donor-donee deals, so you commit a federal crime if you sell, say, your kidney directly to a donee who desperately needs it.

a. Policy determination:

In essence, Congress has made a policy determination that a person should not have the right to sell her organs for transplantation.

b. Other sales allowed:

But other types of tissue sales are implicitly allowed, both by the federal statute and by most states.

For instance, most states allow a person to sell his ***blood*** to a ***blood bank***.

2. Use of cells in research:

The other "hot topic" relating to ownership of bodily tissues is this: When a person's tissues are extracted as part of a medical procedure, does the patient continue to "own" the extracted materials, so as to control how they are used for ***scientific and commercial purposes***?

The main case to have considered the issue so far, ***Moore v. Regents of the University of California***, 793 P.2d 479 (Cal. 1990), has answered ***"no"*** to this question.

a. Facts:

The plaintiff in *Moore* was John Moore, who had been a leukemia patient at the UCLA Medical Center.

The defendants were the Center, and UCLA, which owns the Center. The defendants, in the course of treating P, removed his spleen with his consent.

They then used cells from P's spleen to establish a "cell line," which they patented.

The cell line turned out to have great medical and commercial value — products derived from the cell line are expected to have sales in the billions of dollars, and at the time of suit, UCLA had already earned hundreds of thousands of dollars in royalties.

P sued the Ds on a number of theories, including conversion — he asserted that by taking his spleen, without telling him that his cells had commercial value or that they would be used for commercial purposes, the Ds had converted P's "property."

b. Claim rejected:

A majority of the California Supreme Court ***rejected*** P's conversion claim.

The court held that once P's cells had been removed from his body, he simply ***did not retain any ownership interest in them***.

c. Dissents:

Two members of the court dissented from the majority's conclusion that P did not "own" his cells and thus could not recover in conversion.

One of them argued that P should be found to have had, at the time his spleen was removed, "at least … the right to do with his own tissue whatever the defendants did with it" (i.e., contract with researchers and drug companies to exploit its commercial potential), even if society properly prevents the sale of, say, organs for transplantation.

The majority's ruling simply unjustly enriched UCLA at P's expense, the dissenters said.

E. Adverse possession:

In every jurisdiction, there exist ***statutes of limitations***, which place limits upon the time within which the owner of real or personal property must bring a suit to recover possession, or for damages for the loss of possession.

After the statutory period (and any extensions of it) have passed, the actual possessor of the goods or real estate is immune from any suit by the rightful owner.

He is said to have gained title by ***adverse possession***.

The rules of adverse possession are discussed extensively later in this outline, in a real estate context.

Here we touch briefly upon several elements relating to adverse possession of personalty.

1. Same rules traditionally applied:

Traditionally, the ***same rules*** have been applied to adverse possession of personalty as to the adverse possession of real property.

Most importantly, the possession has been required to be ***adverse*** or "***hostile***" to the rights of the true owner, rather than being in subordination to his rights.

Example:

Suppose that a painting is stolen from Owner, and the thief sells it to an art dealer, who sells it to Possessor.

Possessor and his heirs hold the painting for 100 years, during which time none of them has the slightest reason to believe that the painting is stolen.

However, Possessor and his heirs keep the painting in the family vault during the entire time.

Under the traditional rule, Owner or his heirs could come along, even at the end of the 100-year period, and recover the painting, because the statute of limitations would never have run. (Possessor would never have been an "adverse possessor," since his possession was not "open" or "hostile" due to the fact that the painting was never displayed.)

This would be true even if Owner and his heirs never made reasonable efforts to find out what had become of the painting.

2. Modern trend:

But a number of modern courts have rejected this traditional rule, in favor of a "***discovery***" rule.

By this rule, the true owner's cause of action accrues "when she ***first knew***, or reasonably ***should have known*** through the exercise of due diligence, of the ***cause of action***, ***including the identity of the possessor***." (See *O'Keeffe v. Snyder*, 416 A.2d 862 (N.J. 1980))

a. Distinction:

Under the discovery rule, if the true owner, immediately after the loss, fails to use reasonable diligence to find the possessor, and the use of such diligence would have identified the possessor, ***the statute of limitations will begin to run immediately***, even if the possessor keeps the property hidden.

Conversely, even if the possessor displays the property openly, if the owners fails to learn that the possessor has it (and this failure is not due to the owner's lack of diligence), the statute of limitations will ***never*** start to run.

b. Rationale:

The principal reason for the modern use of the "discovery" rule for personal property is that, in contrast to the possession of real estate, "open and visible possession of personal property … may not be sufficient to put the original owner on actual or constructive notice of the identity of the possessor." (See *O'Keeffe supra)*.

For instance, if jewelry is stolen from a municipality in one county in New Jersey, it is unlikely that the owner would learn that someone is openly wearing that jewelry in another county or even in the same municipality.

3. Nature of title acquired:

Once the statutory period has passed, the possessor becomes, for all practical purposes, the ***owner*** of the property.

Thus not only can the true owner no longer sue to regain possession, but he is not entitled to use ***self-help*** to recover possession.

II. ACCESSION

A. Concept of accession generally:

It may happen that a person ***improves the property of another*** by mistake.

This is known as ***accession***.

Most situations of accession involve the use of ***labor*** to improve another's property, and it is on this sort of accession that we focus.

1. Traditional rule:

The traditional rule was that the owner of the original materials had title to the finished product, unless that product was so different from the original materials that essentially a ***new species*** of object had been created.

If a wholly new product were created (e.g., wine made from another's grapes), the maker, not the owner of the materials, had title.

2. “Disproportionate value” test:

But most modern decisions have abandoned the “different species” test, and instead look at the extent to which the maker has ***added value*** to the other person's materials.

If the value added is ***wholly disproportionate*** to the value of the original materials, the maker gains title; otherwise, the owner of the original materials has title to the finished product.

a. Good Faith requirement:

Virtually all of the cases which have granted title to the person who improved another's property have imposed a requirement of ***good faith***.

A ***willful trespasser*** upon another's property will probably not be entitled to recover, no matter how much he has increased the value of the materials by his labor.