



Weekly Information Sheet 04

Intro to Property Terms and Rights

Why Do We Recognize Rights in Property?

- **First in Time First in Right**
(A way to allocate resources not yet owned);
- **Labor**
(People should be entitled to fruits of their labor);
- **Utilitarianism**
(Private Property exists in order to maximize the overall happiness and utility of all citizens – i.e. People respond to incentives);
- **Economics**
(Private Property exists to maximize the overall wealth of society – i.e. Society responds to incentives); and
- **Liberty and Personhood**
(Private Property is essential to the development of a free society and individuals).

Private Rights of Action in Property Cases

Election of Remedies

One who destroys, misuses, misdelivers, or otherwise wrongfully deprives the owner of chattel of his possessory rights, may be liable to the owner under various theories of recovery.

- 1) **Replevin** - Replevin is an action to recover the chattel itself;
- 2) **Trespass** - The action in trespass is to recover money damages incurred by reason of the dispossession; and
- 3) **Trover** - The action in trover is to recover the value of the chattel along with damages for dispossession.

Escheatment

When property “Escheats” it:

Returns to the State

Property Terms and Rights Continued

Title to Personal Property

Rights and title to personal property are acquired or lost by:

- 1. Transfer – Sale;**
- 2. Occupancy;**
- 3. Adverse Possession;**
- 4. Accession;**
- 5. Confusion;**
- 6. Judgment;**
- 7. When the chattel is lost, mislaid, or abandoned; or**
- 8. Gift.**

Plants and Crops

Fructus Naturales

Plants that grow spontaneously on land, e.g., trees, bushes, and grass, are described as fructus naturales and are considered to be a part of the land, and therefore real property. Title to the land includes such Plants.

Fructus Industriales

Crops that are the result of annual planting, labor, and cultivation, e.g., grains, vegetables, and other crops, are described as fructus industriales. These crops are, as a general rule, regarded as personal property.

Lost, Mislaid and Abandoned Property

Lost or Mislaid Property:

Can be kept by the finder if it is under \$20 in value and a reasonable attempt has been made to find the owner.

Abandoned Property:

Can be kept by the finder no matter what its value.

Domesticated Animals

Are considered personal property under the law (they are moveable).

Special Rules: Wild Animals

Wild animals (ferae naturae) in their natural state are unowned.

They become private property upon being reduced to possession.

Acquisition of Title and Possession

An animal in its natural state is unowned.

The first person to exercise dominion and control over such animal becomes, with possession, the owner of it.

To become the owner, the claimant must establish that they have exercised dominion and control over the animal. (Pierson v Post)

Special Rules: Wild Animals - Continued

Acquisition of Title - Constructive Possession

Animals caught in a trap or net belong to the one who owns and has set the trap or net.

By setting such a trap, one is said to constructively possess those animals snared.

Mere Pursuit

Mere pursuit does *not* constitute the exercise of dominion and control sufficient to give the hunter a property right in the animal.

However, where an animal has been *mortally wounded* so that actual possession is practically inevitable, a vested property right in the animal accrues and cannot be divested by another's intervening act in killing the animal.

Violation of Statute

One who violates a statute (e.g., fails to have a hunting license) forfeits his title in animals caught pursuant thereof.

One who violates a statute (e.g., fails to have a hunting license) forfeits his title in animals caught or killed.

Trespass

While a landowner is *not* regarded as the owner of all wild animals found on their property, a trespasser who kills game on another's land forfeits title in favor of the landowner.

This rule does not change the fact that the animal is unowned until reduced to possession.

In order not to give a benefit to the act of trespassing, however, the possessor will be forced to surrender title in favor of the landowner

Escape

If a wild animal, captured and held in private ownership, escapes and resumes its natural liberty, the former owner loses their property right in it. The animal is once again unowned and the first person thereafter to capture it becomes the owner.

Habit of Return

If a wild animal escapes and, although wandering about without restraint, retains a habit of periodic return to its master's home, or if, although endeavoring to escape, is still pursued by the owner or is by other means liable to be recaptured by its owner, title is not lost.

Marked Animals

When animals have been captured and reduced to private ownership, it is common for the owner to mark or brand them for purposes of identification.

If the animal escapes and resumes its natural liberty, the question becomes if title is lost.

Normally, modern courts will allow title to be retained in the former possessor as long as the animal is marked and the owner exercises all possible effort to recapture the animal. (3)