

PROPERTY

CASES AND MATERIALS

Roger H. Bernhardt

American Casebook Series®



PROPERTY

CASES AND STATUTES

By

Roger Bernhardt

*Professor of Law
Golden Gate University*

AMERICAN CASEBOOK SERIES®

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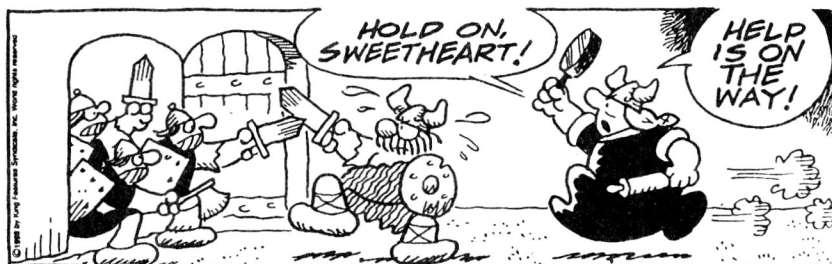
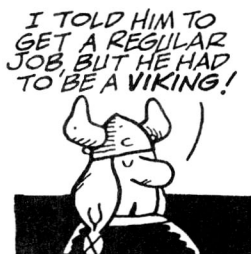
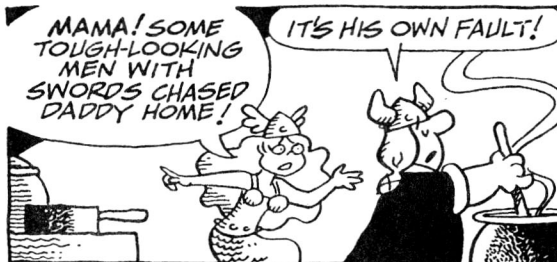
Preface

Welcome to the most exciting course you will take in law school. Don't believe those who tell you that Property is hard and dull. It may be hard, but it certainly is not dull. It is the battleground of some of the most difficult and painful (yet also most interesting) problems that society encounters. Here is where tenants and landlords take their stands on evictions, slum housing conditions, and rent control (to name only a few of their grievances). Here is where shared owners of property—business venturers, married couples or domestic partners—struggle over who makes the decisions, who owes what, and who owns how much. Here is where owners square off against their neighbors (and the government) about what they can do on their property (with the environmentalists, preservationists and the chamber of commerce all joining in the fray). And here is where sellers and buyers of houses and buildings make their deals and fight their fights over who has to do what about the unforeseen perils that can crop up (the river rising, the soil polluted). Just think about your own feelings when someone has appropriated something that belongs to you and you will appreciate how important property is to people. The criminal law system may make for interesting TV watching, but it doesn't come close to matching the intense attitudes people have about property matters.

Property law can be very complex, which often hurts its reputation among students. This book eliminates as much unnecessary difficulty as possible by including only materials which are clear and correct and current. You will have no trouble understanding what the cases or statutes say: all of them have been chosen and edited for maximum clarity. You can also trust that what they say is right: what a case states to be the rule really is the rule. And the materials deal with the current issues society confronts, not with long vanished disputations from the past. This is not a collection of ancient cases forcing you to learn hundreds of years of history, or involving Byzantine facts which take forever to get straight, or plagued by weird reasoning that only your professor can comprehend. These are thoughtful decisions by intelligent judges wrestling with contemporary problems.

Knowing the rules is where lawyers start, it is their essential first step to giving advice to clients or representing them in court. Likewise, understanding these materials is only the first step for a student learning the law. Only class can convert academic knowledge into lawyerlike understanding. But you can't understand class if you postpone reading until class is over. You need to know these principles before you walk in to the classroom if you want to start thinking and behaving like a lawyer.

ROGER BERNHARDT



PROPERTY

CASES AND STATUTES

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Chapter I

POSSESSING AND OWNING ASSETS

A. RIGHTS AND DUTIES OF POSSESSORS

GISSEL v. STATE

Supreme Court of Idaho, 1986.

DONALDSON, CHIEF JUSTICE. In 1979, officials from the Idaho Department of Fish & Game observed the respondents Lester and Conrad Gissel harvesting wild rice on land jointly owned by the state and the National Forest Service. After further observations, the department notified the county prosecutor who obtained a warrant to search Lester Gissel's residence. The search revealed 180 bags of wild rice weighing approximately 50 pounds each which the state seized. Lester and Conrad Gissel were subsequently charged and convicted of trespass.

Prior to the criminal trial, the Gissels' attorney and the county prosecutor stipulated that the wild rice itself need not be entered into evidence and agreed to the sale of the rice in order to keep it from perishing.

On December 24, 1979, the Gissels filed a Notice of Claim to the wild rice or its proceeds against the State of Idaho. The state denied liability. On February 24, 1981, the Gissels filed a complaint against the state alleging the state negligently seized and disposed of the rice and had failed to account to them for the proceeds thereof.

The district court held that the Gissels were entitled to recover only the amount of \$10,500 attributable to National Forest Service land, since the other \$10,500 was gathered from state land and rightfully belonged to the state. The court found that the Gissels are entitled to recover from the state because it unlawfully converted part of the proceeds from the sale of the rice when it refused to account for the amount it received for the rice attributable to the U.S. Forest Service land.

Conversion is any distinct act of dominion wrongfully exerted over another's personal property in denial or inconsistent with his rights therein, such as a tortious taking of another's chattel, or any wrongful

exercise over another's goods, depriving him of the possession, permanently or for an indefinite time. It is an intentional exercise of dominion or control over a chattel which so seriously interferes with the rights of another to control it that the actor may justly be required to pay the other the full value of the chattel. Restatement (Second) of Torts, § 222A, (1965). The state's refusal to account for the money received unlawfully interfered with the Gissels' possessory rights.

The state argues that it is not required to account for the proceeds of the sale as the Gissels could never have acquired any possessory right to entitle them to the proceeds. The state correctly points out that "one who steals or converts property to his own use does not thereby acquire title thereto. (citations)" But these cases are not controlling here. In each of the cited cases, the parties alleging the conversion were the true owners or assignees. Therefore, it was held that the thief or the party who had converted the property to his own use or someone who had acquired property from the thief or converter of the property, could not gain title or retain possession of the property as against the true owner, and in each case the property was returned to the true owner or assignee.

By contrast, in the case at bar, the Gissels do not seek the return of property which rightfully belonged to the state—but only that portion which belonged to the Forest Service. The Gissels, as prior possessors, have a superior right as against the state to possession of the proceeds attributable to Forest Service land. In Restatement Second of Torts § 895, it states, "One who is otherwise liable to another for harm to or interference with land or chattel is not relieved of the liability because a third person has a legally protected interest in the land or chattel superior to that of the other." Mere possession alone is sufficient to sustain a trespasser's cause of action for conversion against all but the true owner. The Gissels, though trespassers and without legal title, which title rests with the Forest Service, still by mere possession have greater rights superior to that of the state, and the Gissels are, therefore, entitled to recover that share of the money, \$10,500, which belongs to the Forest Service.

BAKES, JUSTICE, dissenting. The issue in this case is whether one who has admittedly trespassed and taken wild rice which does not belong to him can maintain an action for conversion based on an alleged status as a prior possessor. The wild rice was not abandoned, lost or mislaid property, which would implicate certain rules of law.¹ Rather, it was wrongfully taken from the owners.

1. Even if the concept of prior possessor, as borrowed from "abandoned and lost property" law, could be logically applied to theft situations where the property owner is known, the law imposes an obligation upon the finder (Gissel) of lost goods who takes goods into possession to use due care

in keeping the goods and requires the finder to deliver the goods to the owner upon demand. If the state owes \$10,500 to Gissel, Gissel then owes that money to the United States Forest Service and is under an immediate duty to deliver.

Gissel claims the proceeds to the rice based solely on a prior possession theory. Gissel was a trespasser who had no title or claim to title. The district court, characterizing Gissel's conduct as analogous to a "thief" at common law, erroneously accepted Gissel's argument by ruling that "the possessory title of the thief is good against all the world except the true owner or somebody acting on behalf of the true owner as their agent or assignee." This assertion is not supported by any legal citation. Prosser, in discussing a "thief's" interest in allegedly converted property, states: "No court has ever allowed an admitted thief without claim of right to recover and it seems improbable that one ever will."

The only claim that Gissel can demonstrate in the rice is that of one who "knowingly" and "wrongfully" took property which did not belong to him. Gissel's tenuous claim to the rice rests only on the status of prior possession by a "thief." When the rice was taken from Gissel pursuant to the valid search warrant, Gissel lawfully lost possession, which was his only claim to the property. No conversion could have occurred when possession was taken from Gissel because that taking was pursuant to a valid search warrant, and therefore was not "an unauthorized and wrongful assumption of control, dominion or ownership."

One must be entitled to immediate possession of a chattel before he can successfully contend that the actor's failure to yield possession constitutes "conversion." Gissel has not demonstrated a right to immediate possession of the rice. A "thief" is not entitled to bring an action for conversion. It is elementary that one who steals or converts property to his own use does not thereby acquire title thereto.

The California case of *Suttori v. Peckham* (1917), is on point. In that case, the plaintiff Suttori was captain of a fishing boat operating off the California coast. The plaintiff was arrested at sea by a deputy sheriff for fishing with a net within three miles of the coastline, in contravention of a California statute which prohibited this. The defendant Peckham was the magistrate who charged Suttori and who ordered the fish seized during the arrest and distributed to the poor. When the charges were later dropped, Suttori brought suit claiming conversion. Suttori lost at trial; the appeals court affirmed, holding that there was sufficient evidence produced to prove that Suttori had taken the fish within the three mile limit. The court stated: "This fact was sufficient to justify the court in finding that the plaintiff was not the owner nor entitled to the possession of the fish, if the taking of the fish with a net and within three miles of that island was prohibited by law and was a criminal act." The court went on to conclude that: "It should need no citation of authorities to establish the proposition that no person can acquire title or right of possession to property of the state by the act of taking possession thereof illegally. But the plaintiff cannot maintain this action if at the time of the alleged conversion he had neither ownership nor right of possession in the goods alleged to have been converted. It is clear that neither theft nor illegal taking of property can give rise to the type of 'property right' required to maintain an action for the tort of conversion."