



Consumer Law Group

You Be the Judge: Explorations in Jewish Civil Law

Lesson 2: Finders Keepers?

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- The C.c.Q. states how property rights are created, namely:

Article 916.

« Property is acquired by contract, succession, occupation, prescription, accession or any other mode provided by law.

No one may appropriate property of the State for himself by occupation, prescription or accession except property the State has acquired by succession, vacancy or confiscation, so long as it has not been mingled with its other property. Nor may anyone acquire for himself property of legal persons established in the public interest that is appropriated to public utility. »



Things Without an Owner

Divided into:

- 1) Wild Animals (*res nullius*)**
- 2) Abandoned Things (*res derelictae*)**
- 3) Treasures**



Wild Animals

- Important to distinguish Wild Animals from Domestic Animals, which have been owned by people for centuries
- These include: insects, gaming animals, aquatic fauna (fish and other things from the sea), and leaves falling from trees
- Subject, of course, to particular laws that regulate fishing and hunting which may prevent or restrict appropriation of these things



Abandoned Property

- Things where the owner has renounced to possession and his property rights thereto
- Examples being: garbage or recycling left outside someone's house
- Act of abandoning must have the following characteristics:
 - 1) Unilateral act by the owner
 - 2) Voluntary
 - 3) Unequivocal expression of intent



- Since the law requires specific proof of this intent to abandon by the owner, the law creates an absolute irrefutable presumption, namely:

Article 934 par. 2

« Movables of slight value or in a very deteriorated condition that are left in a public place, including a public road or a vehicle used for public transportation, are deemed abandoned things. »



Treasures

- Undefined in the C.c.Q., but old definition still applicable:

Article 586 par. 2 C.C.L.C

« A treasure is any buried or hidden thing of which no one can prove himself owner, and which is discovered by chance. »

- 3 essential characteristics:

- 1) Hidden in the ground, walls, floor, etc. -- not visible, to be uncovered at a later date
- 2) No known owner at the time that it is found, usually due to the passing of time
- 3) Discovered by chance – not a systematic search



Finders Keepers

- Things without an owner are acquired by occupation

Article 935 C.c.Q.

« A movable without an owner belongs to the person who appropriates it for himself by occupation.

An abandoned movable, if no one appropriates it for himself, belongs to the municipality that collects it in its territory, or to the State. »

- Occupation: simple possession with the intention to be the thing's owner (art. 914 C.c.Q.)



Variation of Rule of Finders Keepers for Treasures

- The rule of occupation (that applies to wild animals and abandoned property) changes in the case of treasures depending on where the treasure is found

Art. 938 C.c.Q.

« Treasure belongs to the finder if he finds it on his own land; if it is found on the land of another, 1/2 belongs to the owner of the land and 1/2 to the finder, unless the finder was acting for the owner. »



Lost, Forgotten, and Stolen Movables

- This type of property may only be acquired by prescription (as opposed to by occupation)
- In these cases, the things continue to belong to their owners

Art. 939 C.c.Q.

« A movable that is lost or that is forgotten in the hands of a third person or in a public place continues to belong to its owner.

The movable may not be acquired by occupation, but may be prescribed by the person who detains it, as may the price subrogated thereto. »



- There are 2 obligations on the finder:
 - 1) To attempt to return the thing to its owner (if possible and if he is able to ascertain the person's identity) [art. 940 C.c.Q.]
 - 2) To report to a peace officer in the municipality that the thing is found [art. 941 C.c.Q.]
- If the finder fails to follow these 2 obligations, he will be barred from ever acquiring ownership by prescription as it states “the finder of a lost thing, in order to acquire, by prescription, ownership of it ..” (art. 941 C.c.Q.)



Distinction Between Property that is Abandoned, Treasure, Lost, or Forgotten

Boivin v. PG du Quebec, EYB 2000-16881 (C.A.)

- A person found 2 gold bars while scuba diving at the Parc des Laurentides on the border of the Jacques-Cartier lake
- 3 days later, another person finds 3 more gold bars about 15 feet from where the other 2 gold bars were discovered
- The people hand the gold bars over to the police
- The police were unable to find the owner



- The government argued that it was a “treasure” found on their land and must be shared 50/50 with them
- The finders argued that it was “abandoned” and so it was finders keepers (100% theirs)
- The Trial Judge said that the gold bars were considered a treasure because no reasonable person would abandon 5 gold bars worth \$16,000 each (for a total of \$80,000)
- The Court of Appeal reversed and decided that there can be several other explanations as to why a person would abandon gold bars, for example because they were the proceeds of a crime



- It was an error that the Trial Judge based himself on his own opinion of what a reasonable person would do failing any proof
- Subject to the owner appearing to claim ownership, the gold bars were awarded to their finders as abandoned property

R. v. Rheume et Tessier, EYB 1999-10968 (C.M.)

- Rheume and Tessier worked as cleaners at the Montreal Casino
- They were accused of theft of less than \$5,000 in accordance with Criminal Code and fired



- The verbal procedure for dealing with money left by patrons was:
 - 1) If it was near a player, it is assumed to be his and they draw that person's attention to it
 - 2) If it is a small amount of money (i.e. 25 cents), it is collected and thrown into the fountain, which is later given to charity
 - 3) If it is a large sum, security is called to handle it
- The procedure was then written and changed so as to call security right away in all circumstances



- The casino decided to strategically place quarters in various places where the cleaning staff could see them and watched what they did on video
- The Accused were seen putting the quarters in their pockets, but at the end of their shifts they threw them into the fountain just like before
- In order to determine whether or not the Accused committed theft, the judge had to first analyze who were the rightful owners of these quarters



- If the quarters are lost then they still belong to their original owner -- however, if they are abandoned, then they belong to their finder
- Article 934 par. 2 C.c.Q. creates an irreversible presumption that where “movables of slight value or in a very deteriorated condition that are left in a public place, including a public road or a vehicle used for public transportation, are deemed abandoned things.”
- The judge concludes that the gaming area is considered “public”, therefore, the quarters found there were of “slight value” and are deemed abandoned -- they have no owner



- The casino's objective was to not have their employees keep their patron's found money
- However, considering that the money has no owner and that the Accused were not keeping the money but simply following the old rule of throwing the money into the fountain -- they did not have the requisite *mens rea* to commit theft

Pace c. Provigo Québec inc., EYB 2009-162676 (C.Q.)

- A cashier found an envelope with \$2,400 cash next to the self-service check out counter and gave it to the store



- Almost 1 year later, no one had claimed ownership of the money
- The employee sued for possession of the money claiming that it is a lost or forgotten thing (art. 939 C.c.Q.)
- The judge concluded that since the cashier found the money at work and on the premises, she can have no personal rights whatsoever to the money
- Since Provigo can be called to return the money by the actual owner until ownership has been awarded by acquisitive prescription, it should keep possession of the money



Example 1 : Saving a Painting from Fire

- The act of abandoning a thing can only be accomplished by the owner himself and not by some external factor
- Therefore, the person who saved the painting cannot claim it to be his because the original owner still retains ownership
- The situation would more likely be analogous to the “Management of the Business of Another” (art. 1482 to 1490 C.c.Q.)
- In that case, the owner of the painting would, in equity, owe the saver an amount equal to what he would have paid someone to perform that work in the situation



Acquisitive Prescription

- With respect to a thief or someone who is aware that such property is stolen, there is no possibility of ownership by prescription, but a later party in good faith can benefit

Art. 927 C.c.Q.

« No thief, receiver of stolen goods or defrauder may invoke the effects of possession, but his successors by whatever title may do so if they were unaware of the defect. »



- The general rule is 10 years, but it is 3 years for movable property only when the possessor is in good faith

Art. 2917 C.c.Q.

« The period for acquisitive prescription is 10 years, except as otherwise fixed by law. »

Art. 2919 C.c.Q.

« The possessor in good faith of movable property acquires the ownership of it by three years running from the dispossession of the owner.

Until the expiry of that period, the owner may revendicate the movable property, unless it has been acquired under judicial authority. »



Acquisitive Prescription as it relates to Lost or Forgotten Property

- Is it 10 years or 3 years?

Malette c. Sûreté du Québec, EYB 1994-28964 (C.S.)

- A person finds an envelope with \$20,000 of cash in it on the Trans-Canada highway
- He brings it to the Sûreté du Québec to find the owner
- 1 year later the SQ has been unable to locate anyone
- The finder takes an action to force the SQ to return him the money



- The judge concludes that the money cannot be considered as not having an owner (art. 934 par. 1 C.c.Q.) nor as abandoned (art. 934 par. 2 C.c.Q.) because it has more than a “slight value” -- so it does not automatically belong to the finder
- The money is considered a lost or forgotten thing
- According to the judge, in order for the finder to benefit from acquisitive prescription, he must follow the prerequisites of:
 - 1) Art. 940 C.c.Q. -- attempt to find the owner
 - 2) Art. 941 C.c.Q. -- declare his find to a peace officer



- Since the founder satisfied these criteria, he must be given possession of the money so that he can begin to acquire proper title by acquisitive prescription
- The judge then concludes that this prescription is 10 years (art. 2917 C.c.Q.) and not 3 years (art. 2919 C.c.Q.) as a possessor in good faith, because a person who finds a lost or forgotten thing cannot be considered as a possessor in good faith, since they could not be said to be justified in thinking that they hold a real right in the thing.



- This reasoning was based on the judge's reading of art. 932 C.c.Q.

« A possessor is in good faith if, when his possession begins, he is justified in believing he holds the real right he is exercising. His good faith ceases from the time his lack of title or the defects of his possession or title are notified to him by a civil proceeding. »



- Argument for 3 years [Slyvio NORMAND, *Introduction au droit des biens*, Wilson & Lafleur, 2000]

Article 940

« The finder of a thing shall attempt to find its owner; if he finds him, he shall return it to him. »

Commentaires du ministre de la Justice

Cet article est nouveau. L'exécution de cette obligation de tenter de retrouver le propriétaire et de lui remettre le bien est un élément qui permet d'établir la bonne foi de celui qui, comme le prévoit l'article 2919, entend prescrire.



Acquisitive Prescription as it relates to Stolen Property

- Acquisitive prescription does not run in favour of a thief nor a person who knows that the property has been stolen (art. 927 C.c.Q.) -- ownership can never be granted in these circumstances
- It can, however, be granted in favour of a third party purchaser in good faith, if the true owner does not act to revendicate the property within 3 years (art. 2919 C.c.Q.)



- Since the thief or a person who is aware of the stolen property can never be the owner of the thing, then the sale of that thing to another can be annulled by the true owner

Art. 1713 C.c.Q.

« The sale of property by a person other than the owner or than a person charged with its sale or authorized to sell it may be declared null.

The sale may not be declared null, however, if the seller becomes the owner of the property. »

- If, however, the third party was in good faith and he becomes the owner after the 3 year prescription period, then the original owner has no right of action anymore



- Assuming that the original owner takes action to revendicate the property within the 3 year prescriptive period (so the purchaser in good faith has not yet acquired ownership), the question remains as to if the original owner must compensate the third party in good faith for taking the thing from him?
- Answer: only if the third party purchased the property from a seller of similar goods



- This is based on art. 1714 C.c.Q.

« The true owner may apply for the annulment of the sale and revendicate the sold property from the buyer unless the sale was made under judicial authority or unless the buyer can set up positive prescription.

If the property is a movable sold in the ordinary course of business of an enterprise, the owner is bound to reimburse the buyer in good faith for the price he has paid. »



Joyal v. Boka, J.E. 88-116 (C.S.)

- A person had a Rembrandt painting stolen from his house in 1975 and reported it to the police, but they did not find the thief
- In 1984, 9 years later, he sees a picture of the painting in an article in the Journal du Montreal
- He offers to pay the current owner \$100, which is what this person paid to an antique shop owner to buy the Rembrandt – the painting is worth \$15,000



- The antique shop owner claimed that he bought an armoire from an unidentified person and he found the painting inside one of the drawers
- Not having any particular knowledge of art, he sold it to the Defendant in 1980 for \$100 cash
- The judge concluded that, failing any evidence that the Defendant was in bad faith when he purchased the painting, that the Defendant was entitled to acquisitive prescription since more than 3 years had passed
- The painting was not returned to the original owner



Example 2 : Sale of the Looted Books

- The Slovak government having stolen these books from its Jewish citizens can never acquire ownership
- Any purchasers of these books would be aware of their defect in title (i.e. stolen goods) and could not benefit from acquisitive prescription either
- A person may feel free to purchase these books but it is at their own risk and peril because the true owner may revendicate them at any time and without giving any compensation because (a) they are not third party purchasers in good faith and (b) the government is not in the business of selling books as an enterprise