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Property and the Law of Finders. By Robin Hickey. [Oxford: Hart Publishing, 2010. xvi, 168 and (Bibliography and Index) 15 pp. Hardback £40. ISBN 9781841135755.]

Emma Waring

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law to be "not mere custodians of a body of arid prescriptive rules but…the guardians of an all but sacred flame which animates and enlightens the society in which we live." This book is a timely final testament to one such dedicated guardian of this flame.

YVONNE TEW

Property and the Law of Finders. By ROBIN HICKEY. [Oxford: Hart Publishing, 2010. xvi, 168 and (Bibliography and Index) 15 pp. Hardback £40. ISBN 9781841135755.]

APTLY DESCRIBED as a "juridical minefield" (A. Tettenborn, "Gold Discovered at Heathrow Airport" (1982) 41 C.L.J. 242), it is much to Robin Hickey's credit that *Property and the Law of Finders* provides such a clear guide to the complex and overlooked common law of finding.

Hickey's work carefully unpicks the confusing interplay between crime, tort and property rules underlying the well-known maxim of "finders keepers". As he notes, the law of finding lacks coherence when viewed solely from a property perspective. It is only when concepts of possession are also viewed in the light of rules relating to conversion and theft that we discover that the law can be viewed as practically and theoretically coherent.

From the outset, *Property and the Law of Finders* highlights the historic interplay between "finding allegations" and criminal liability for theft offences (p. 18). The summary in chapter 1 of rules governing finders until 1722 is valuable in its own right and provides useful background to *Armory* v. *Delamirie* (1722) 1 Stra. 505. The briefly reported case of the chimney sweep's boy who found a jewel ring is well-known, but often misconstrued. Despite later dicta asserting that *Armory* established general principles relating to finders, Hickey emphasises that the report itself did not create any propositions or "laws about finders" (p. 27) separate from more general rules relating to trover and conversion.

Chapter 2 continues this valuable reassessment of significant historic finding cases such as *Bridges* v. *Hawkesworth* (1851) 15 Jur. 1079 and *S. Staffs Water Co* v. *Sharman* [1896] 2 Q.B. 44, amongst others. Hickey's criticism of *Parker* v. *British Airways Board* [1963] 1 WLR 982, which concerned a gold bracelet found on the floor of an executive lounge at Heathrow Airport, is measured and convincing. Donaldson L.J.'s broad-brush reliance upon an "ancient common law rule" relating to finders, his strictly *obiter* formulation of a "restatement" of the law (p. 44) and the reliance upon *Armory* as support for the approach taken in *Parker*, are usefully laid bare. As later noted, *Parker* contains several "apparently definitive propositions which are neither germane to the facts nor demonstrable on the authorities" (p. 92). Despite these serious and compelling criticisms of this leading finding case, the policy of seeking to return items to the loser remains valid (p. 94).

The analysis of the unhelpful distinction drawn in *Parker* between a finder's rights relating to objects found in land and those found on land, is adroit. The location of finding should not be "the determining cause of rights acquisition" (p. 49), but rather is significant due to the differing evidentiary requirements faced by finders and land possessors in establishing possession of the item. This must be right, and it would be better to view the "apparent rule" giving

possessors of land a better right than a finder to items found on the land to be seen as "no more than the most widely recognised example of this evidentiary concession" (p. 52).

This leads to a central contention of the book that the finder of goods has a binding property right except against those who can assert prior possession, and the "correlative proposition" that the finder's right is a consequence of possession is explored (p. 52). Chapter 3 develops this theme arguing that the facts of finding (loss, absence of control, discovery) have no impact on the creation of a finder's right, unless they offer evidence relating to possession. Chapter 4 demonstrates, contrary to assertions in *Parker*, that there is no common law authority requiring the imposition of positive obligations on finders since it is doubtful that they can be classed as bailees and that the content of the supposed obligations are "not necessarily entailed" by tortious duties or unjust enrichment (p. 92).

The concept of possession is integral to the law of finding. Various facets of this "hopelessly vague" (p. 162) notion are skillfully explored throughout the book. Whilst this work will be of interest to a wide audience, property lawyers will be most interested in chapter 5 and the Epilogue. Building on chapter 2, Hickey notes that finding cases contain sparse references to the nature or extent of finders' rights (p. 96). This makes the discussion of Pollock's influential and pervasive premise that a possessor acquires a full property right "attracting the standard advantages of ownership" (p. 96) all the more valuable. Subjecting Pollock's assimilation of the actions of trover and ejectment to careful scrutiny (p. 111), reveals (as elsewhere in the book) many of the underlying and mistaken assumptions and fictions governing finding cases. This approach facilitates a re-evaluation of the rules and their context.

One of the major problems bedeviling an analysis of this area has been the range of sources and the need to "transgress traditionally discrete categories of legal thought" (p. 2). *Property and the Law of Finders* would be a useful piece of scholarship if only for the admirable job it does in laying out the relevant property, tort and criminal rules which apply to finders in chapters 6 and 7. One minor quibble is that the treatment of conversion and theft is brief, perhaps necessarily given the central property thrust of the book's argument. It would have been enjoyable to read more about the impact of these doctrines on finders and the concept of possession.

However, it is Hickey's treatment of the policy issues in this area in chapter 7 which is particularly worthwhile. Contrary to initial expectations, it appears that the English law of finders pursues similar policy concerns to Scotland and American states in applying a sensible two-tier policy with the result that the adage "finders keepers" is not wholly true. Whilst a finder acquires property rights unconstrained by specifically imposed obligations, their behaviour *is* curtailed by other rules of property, crime and tort" (p. 94). It would thus be more accurate (if less snappy) to restate the adage of "finders keepers" as requiring that "[l]osers must be sought first, but finders have an entitlement in the alternative if that process fails." (p. 157). In reaching this conclusion Hickey provides a stimulating and well-argued overview of the law of finders.

EMMA WARING