

## Favourite Cases: *Parker v British Airways Board*

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Call: 2018

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Natalie was called to the Bar in 2018 by Lincoln's Inn with a Lord Denning Scholarship, Hardwicke Award and Buchanan Prize, and was graded 'outstanding' on the Bar Professional Training Course.

### Reported at [1982] QB 1004

It is a shameful admission that, in the days before lockdown when we did not think twice before travelling by air, I found a \$50 note on the floor of the airport lounge and panicked. Was it mine? Could I keep it? If not, what should I do with it? Obviously, I should know the answer; Donaldson LJ helpfully gave the answer in *Parker v British Airways Board* in 1981, or at least the guiding principles to get me most of the way there. But I did what all good property lawyers do and thought, "it depends".

The question of title to items found bothered the courts (and academics) long before *Parker*. A combination of most cases turning on their very fact-specific nature, and very few progressing to an appellate jurisdiction, left the common law with little beyond general sweeping statements of principle.

The unifying theme of most cases, *Parker* included, is that the protagonists to the dispute are often the finder of an item and the owner of the land upon which the item was found. The owner of the item would have a better title to it than all others and, for these disputes to play out, it is often the case that the owner cannot be identified or located. Further, most cases begin with the statement of a finder's common law right as set out by Pratt CJ in *Armory v Delamirie* (1722) (sadly no relation, but maybe my second favourite case, just in case I have misread the family tree):

"That the finder of a jewel, though he does not by such finding acquire an absolute property or ownership, yet he has such a property as will enable him to keep it against all but the rightful owner, and consequently may maintain trover."

Consequently, in the years before *Parker*, the accepted law was at least that, when a 'finder' took possession of an item, theirs was not a claim of ownership (unless the item was abandoned, the test for which is another headache best avoided), but instead a title that

was good against all others except for the true owner. However, rarely will the question in hand be so simple. For example: what if the finder is an employee of the owner of the land upon which the item was found; what if the item was attached to the land; what if the finder was trespassing at the time of the finding?

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In obiter, after surveying the authorities, Donaldson LJ summarised those authorities and set out the guiding principles as to when finders really will be keepers. As to the rights and obligations of finders, his Lordship said:

1. The finder of a chattel acquires no rights over it unless (a) it has been abandoned or lost and (b) he takes it into his care and control.
2. The finder of a chattel acquires very limited rights over it if he takes it into his care and control with dishonest intent or in the course of trespassing. [Although it is questionable as to whether this is in fact correct in light of cases such as *Costello v Chief Constable of Derbyshire Constabulary* (2001)].
3. Subject to the foregoing and to point 4 below, a finder of a chattel, whilst not acquiring any absolute property or ownership in the chattel, acquires a right to keep it against all but the true owner or those in a position to claim through the true owner or one who can assert a prior right to keep the chattel which was subsisting at the time when the finder took the chattel into his care and control.
4. Unless otherwise agreed, any servant or agent who finds a chattel in the course of his employment or agency and not wholly incidentally or collaterally thereto and who takes it into his care and control does so on behalf of his employer or principal who acquires a finder's rights to the exclusion of those of the actual finder.
5. A person having a finder's rights has an obligation to take such measures as in all the circumstances are reasonable to acquaint the true owner of the finding and present whereabouts of the chattel and to care for it meanwhile

As to the rights and liabilities of an occupier his Lordship said:

1. An occupier of land has rights superior to those of a finder over chattels in or attached to that land and an occupier of a building has similar rights in respect of chattels attached to that building, whether in either case the occupier is aware of the presence of the chattel.
2. An occupier of a building has rights superior to those of a finder over chattels upon or in, but not attached to, that building if, but only if, before the chattel is found, he has manifested an intention to exercise control over the building and the things which may be upon it or in it.
3. An occupier who manifests an intention to exercise control over a building and the things which may be upon or in it so as to acquire rights superior to those of a finder is under an obligation to take such measures as in all the circumstances are reasonable to ensure that lost chattels are found and, upon their

being found, whether by him or by a third party, to acquaint the true owner of the finding and to care for the chattels meanwhile. The manifestation of intention may be express or implied from the circumstances including, in particular, the circumstance that the occupier manifestly accepts or is obliged by law to accept liability for chattels lost upon his "premises," e.g. an innkeeper or carrier's liability.

4. An "occupier" of a chattel, e.g. a ship, motor car, caravan or aircraft, is to be treated as if he were the occupier of a building for the purposes of the foregoing rules.

So, when Mr Parker found a gold bracelet in the British Airways business lounge at Heathrow Airport, and Donaldson LJ made the factual finding that airline, as the occupiers of the land, had not sufficiently manifested an intention to exercise control over lost property before it was found, the only conclusion that could follow was that Mr Parker had a better title to the bracelet. Accordingly, British Airways were wrong to sell the bracelet and retain the profit of £850; Mr Parker was entitled to the sale proceeds.

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I choose *Parker* as my favourite case for three reasons. First, as an academic property lawyer by background, any case that acknowledges theoretical principles, such as the relativity of title applied in *Parker*, will be a hit with me. Second, any decision in which a judge goes to the trouble of setting out an accessible statement of the relevant guiding principles, especially where no such statement exists elsewhere, is always welcome. Third, *Parker* serves as a useful tool when assessing whether finders really are keepers – a question which arises in everyday life, and not just before the courts (not that it helped me much when the time came).

I should add that I did not take the money; I left it on the floor. However, I would happily bet another \$50 that the next person picked it up.

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