

ISSUED ON BEHALF OF THE SCOTTISH LAW COMMISSION
NOT FOR PUBLICATION OR BROADCAST
BEFORE 0001 HOURS ON 9 MAY 2012

REPORT ON PRESCRIPTION AND TITLE TO MOVEABLE PROPERTY

The Scottish Law Commission today publishes its Report on Prescription and Title to Moveable Property.

The Commission recommends changes to clarify the law about the effect of the running of time on ownership of corporeal moveable property (ie physical things other than land and buildings).

If you possess an object like a painting or an antique for many years, without actually having ownership, do you eventually become the owner? The present law is unclear. This makes Scotland contrast unfavourably with the position in most other countries.

The Commission recommends two new rules which would convert possession to ownership.

The first would apply where the person possessing the object reasonably believes that he or she is the owner, but turns out not to be – usually because the person from whom the object was bought was not the true owner. Provided that the possessor is in good faith (and does not, for instance, have reason to believe that the object was stolen), he or she would become owner after possessing the object for a continuous period of 20 years.

The second rule applies to lent or deposited property where the owner can no longer be traced. Although the rule is general in application, it is particularly aimed to help museums and galleries. Under the new rule, the holder of the object would be able to claim ownership if the owner had not been in contact for 50 years and could not be traced using reasonable diligence. This certainty of ownership will assist museums and galleries in cataloguing and managing their collections.

Dr Andrew Steven, the lead Commissioner on the project, said:

"Our reforms will bring clarity and certainty to the law. This will increase the marketability of long-lived moveable assets and should bring economic benefit too. Scots law will have two new rules which let possession of an object eventually mature into ownership, but with appropriate safeguards to protect the original owner. This will replace the vacuum in the existing law."

NOTES TO EDITORS

1. The Scottish Law Commission was set up in 1965 to promote the reform of the law of Scotland. The Commissioners are Laura J Dunlop QC, Patrick Layden QC TD, Professor Hector L MacQueen, and Dr Andrew J M Steven. The Chief Executive is Malcolm McMillan.
2. Further information can be obtained by contacting Alastair Smith, Scottish Law Commission, 140 Causewayside, Edinburgh EH9 1PR (Tel: 0131 668 2131, Fax: 0131 662 4900, email: info@scotlawcom.gsi.gov.uk).
3. The paper may also be viewed on our website at <http://www.scotlawcom.gov.uk/> or purchased from TSO (<http://www.tsoshop.co.uk/>).