

Treasure Trove

by Jon Kiddie, Advocate



Everyday Lost & Found Goods

Common goods found in places public and private fall under the Civil Government (Scotland) Act 1982, Part VI, 'Lost & Abandoned Property' (ss.67—79). In broad terms, the finder, if he chooses to take possession, invokes a duty on himself to report the find to the police, or, if found in public transport premises, to the service-operator. Retention absent reporting constitutes a criminal offence under the Act (in effect, a statutory form of theft by finding).

Special rules apply in respect of lost and found vehicles,^[1] dogs,^[2] and other animals.^[3]

The finder may either deliver the goods to the police, or retain possession pending the police making inquiry as to their owner. After two months, if the owner is traced, and if the finder himself has kept the goods, the police may require that he arrange delivery back to the owner subject to the owner paying a reward. On the other hand, if no owner is traced, then the police may offer the goods to the finder, sell them, or otherwise dispose of them. However, within one year of disposal the owner may still claim the goods back, failing which compensation.

Section 73 of the Act effectively translates as 'finders not keepers', i.e. the act alone of finding goods does not confer ownership — even where the finder owns the land on which he finds them (per the rather unusually designated s.73(c)).

Decisions taken by the police under Part VI of the Act are subject to appeal to the local sheriff by way of summary application.

The Ark of the Covenant etc.

If buying property with a venerable statue in the garden, say, it would be advisable to specify it in the missives. However, what of that ancient vault you unexpectedly discover in the dirt under the foundations of your new home, wherein it glistens by torchlight ?

Valuable artefacts, a.k.a. treasure, fall under the common law doctrine of ***bona vacantia*** (ownerless goods). Incidentally, this also regulates the assets of dissolved companies and the belongings of missing persons, while the related concept of ***ultimus haeres*** regulates the belongings of persons dying intestate absent any traceable blood heir.^[4]

Bona vacantia originates from English common law, and Scots common law^[5] has effectively adopted it for the purpose of regulating rediscovered treasure. Meanwhile, English law itself has replaced the doctrine with the Treasure Act 1996^[6] for the same purpose. Thus, law north and south of the border is distinct, albeit not entirely dissimilar.

In Scotland, the default legal position is that lost, forgotten or abandoned goods of value revert to the Crown (***quod nullius est fit domini regis***) as part of the ***regalia minora***.^[7] That said, it is possible for the Crown to lose this right by operation of Part VI of the 1982 Act (s.78(2)), above.

Standing the Crown has not lost its foregoing right, in order to qualify as treasure, any such goods must: (a) be somehow hidden from sight (until rediscovered); and (b) have intrinsic value; (c) yet no evident or presumable original owner or successor. However, since the doctrine also applies to lost goods, it is irrelevant whether the original owner hid it on purpose.^[8] Thus, it applies equally to a pirate's buried treasure as well as his left behind valuables.

Anyone discovering such goods is obliged to report their find to the Crown Office, or to the Treasure Trove Unit.^[9] Upon reporting, the goods are assessed by the Scottish Archaeological Finds Allocation Panel, which makes recommendations to the Queen's and Lord Treasurer's Remembrancer in respect of value and suitable reward^[10] for the finder. The QLTR exercises discretion over where treasure should be placed, e.g. in a museum. If so, museums are invited to bid, and the successful bidder shall pay the finder's reward.

There Be Gold in Them Thar Southern Hills

In England, as said, the law now consists principally of the 1996 Act. While the procedure is analogous with the foregoing Scots equivalent, nonetheless the Act only applies to goods being at least 200 years old, and made of or comprising at least 10% gold or silver.

Scots Gold & Silver

As for gold and silver in Scotland, and particularly in their raw mineral forms, while these are usually specifically reserved in conveyancing dispositions in any event (along with other minerals such as coal), nonetheless they also belong to the *regalia minora*. This much is reflected by the oldest surviving Scots Act, the Royal Mines Act 1424,^[10] as amended by the Mines & Metals Act 1592. The practical effect is to impose significant constraint on the right of any landowner to prospect for these precious minerals.

Sunken Galleons

Maritime finds fall under an entirely separate UK-wide statutory regime consisting of the Merchant Shipping Act 1995, the Protection of Wrecks Act 1973, and the Protection of Military Remains Act 1986. Part IX of the 1995 Act (ss.224–255) implements the International Convention on Salvage 1989, which regulates sailors' duties in respect of aiding vessels in distress and reporting wrecks. It imposes a duty on the finder of any such wreck in UK waters to report it to the Receiver of Wreck.^[12] Where he has succeeded in salvaging the vessel and/or cargo, he may be entitled to compensation. The owner may also seek to recovery, failing which any outstanding assets revert to the Crown.

The 1995 Act also obliges finders of cargo washed ashore (flotsam) to report it to the Receiver or Wreck. As with the 1982 Act, retention absent reporting constitutes a criminal offence.

The 1973 and 1986 Acts make provision for conferring protected status on wrecks and/or their sites, and for restricting exploration absent authorisation.

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1. Removal & Disposal of Vehicles Regulations 1986, as laid into law in accordance with the Road Traffic Regulation Act 1984, Part VIII
 2. Dogs Act 1906, and s.75 of the 1984 Act
 3. Section 74 of the 1984 Act
 4. In accordance with the Succession (Scotland) Act 1964; the QLTR and Crown Office & Procurator Fiscal's Service together operate the National Ultimus Haeres Unit (www.qltr.gov.uk), where any unclaimed goods may ultimately be allocated to the Scottish Consolidated Fund
 5. Scots common law refers to customary law without necessarily the same sense of 'common' as English common law, where 'common' refers to the law common to the land, whereas Scots law was not unified in any similar way until centuries later under the Heritable Jurisdictions (Scotland) Act 1746
 6. Which does not extend to Scotland

7. The **regalia minora** are part of the **inter regalia**, i.e. Crown rights, where the **regalia majora** are inalienable, yet it is competent for the Crown to divest itself of the **regalia minora**, e.g. salmon fishing, shell-fishing, rights of ports and ferries, right to mine precious minerals, etc
8. For example, Lord Advocate v University of Aberdeen 1963 SC 533
9. National Museums of Scotland, Edinburgh (www.treasuretrovescotland.co.uk)
10. A proportion of the goods' market value
11. In its entirety:
 'Item gif ony myne of golde or siluer be fundyn in ony lordis landis of the realme and it may be prowyt that thre halfpennys of siluer may be fynit owt of the punde of leide The lordis of parliament consentis that sik myne be the kingis as is vsuale in vthir realmys.'
Which translates:
 'Items of any gold and silver mines that are found in any lord's lands of the realm, and it may be proved that three halfpennies may be refined of silver from a pound of lead, the lords of the parliament consent that such mines shall be the king's, as is the custom in other realms'.
12. www.gov.uk/government/groups/receiver-of-wreck