

Memorandum 92-47

Subject: Study H-501 - Quieting Title to Personal Property (Staff Draft of Recommendation)

Attached to this memorandum is a copy of the draft recommendation on quieting title to personal property. The Commission expressed concern at the July meeting that references in the statute to "occupancy" would not work well when applied to personal property, which requires "possession". The Commission directed the staff to prepare a revised draft to address this issue.

The attached draft addresses the "occupancy" issue by providing that acquisition of property by occupancy includes acquisition of personal property by possession. See proposed amendment to Civil Code Section 1000. The attached draft also makes technical amendments to Civil Code Sections 1000, 1006, and 1007 to conform to modern drafting style.

Respectfully submitted,

Nathaniel Sterling  
Executive Secretary

#H-501

STATE OF CALIFORNIA

California Law Revision Commission

STAFF DRAFT

*RECOMMENDATION*

**QUIETING TITLE TO PERSONAL PROPERTY**

September 1992

CALIFORNIA LAW REVISION COMMISSION  
4000 Middlefield Road, Suite D-2  
Palo Alto, CA 94303-4739

**CALIFORNIA LAW REVISION COMMISSION**

4000 MIDDLEFIELD ROAD, SUITE D-2  
PALO ALTO, CA 94303-4739  
(415) 494-1335

**STAFF DRAFT**

September 10, 1992

To: The Honorable Pete Wilson  
Governor of California, and  
The Legislature of California

The California Law Revision Commission recommends legislation to codify the common law and make clear that California law permits a person to obtain a judgment quieting title to personal property based on adverse possession of the property. This recommendation is made pursuant to authority of 1988 Cal. Stat. res. ch. 81, continued in 1992 Cal. Stat. res. ch. 72 (whether the law relating to real and personal property, including quiet title actions and related matters, should be revised).

Respectfully submitted,

Arthur K. Marshall  
Chairperson

#H-501

ns45  
07/15/92

Recommendation:

Quieting Title to Personal Property

California law authorizes a quiet title action for personal property.<sup>1</sup> It is not clear, however, whether under California law title to personal property may be acquired by prescription, or adverse possession.<sup>2</sup>

At common law, there is no question that title to personal property may be acquired by adverse possession.<sup>3</sup> California statutes appear to codify the common law doctrine. Civil Code Section 1007 states, in relevant part:

Occupancy for the period prescribed by the Code of Civil Procedure as sufficient to bar any action for the recovery of the property confers a title thereto, denominated a title by prescription, which is sufficient against all.

The term "property", as used in the Civil Code, "includes property

---

1. Code Civ. Proc. § 760.020(a) ("An action may be brought under this chapter to establish title against adverse claims to real or personal property or any interest therein.")

The Law Revision Commission's Comment to this section notes that, "This chapter does not limit the interests that may be determined or the persons against whom they may be quieted; it is intended to provide the broadest possible forum for clearing title to the fee or any other interest in property. The ability to quiet title as to both real and personal property may be useful in cases involving land and fixtures, as well as in cases involving personal property alone." Recommendation Relating to Quiet Title Actions, 15 Cal. L. Revision Comm'n Reports 1187, 1194-5 (1980).

2. See, e.g., discussion in 4 B. Witkin, Summary of California Law, Personal Property § 99 at p. 95 (9th ed. 1987), noting the existence of dictum in San Francisco Credit Clearing House v. Wells, 196 Cal. 701, 239 Pac. 319 (1925), questioning the right to obtain title to personal property by prescription.

3. See, e.g., discussion in Comment, 13 Cal. L. Rev. 256 (1925).

real and personal".<sup>4</sup> The statute of limitations for recovery of personal property is three years.<sup>5</sup>

These statutes, construed together, would seem to codify the common law and establish the right to acquire title to personal property by adverse possession.<sup>6</sup> However, the California Supreme Court has noted that "A careful examination of the decisions of this state has failed to disclose to our investigation a single case in which section 1007 of the Civil Code has been applied to the acquisition of title to personal property."<sup>7</sup> The court in dictum suggests the paradoxical result that although the right of action to recover personal property might be barred by the statute of limitations, title would not be in the possessor.

This result would be contrary to the fundamental purpose of the quiet title statute as well as basic common law doctrine. The dictum has been picked up by the California Court of Appeal in at least one case,<sup>8</sup> and also appears to be causing problems at the trial level.<sup>9</sup>

---

4. Civ. Code § 14(1).

5. Code Civ. Proc. § 338(c).

6. 4 B. Witkin, Summary of California Law, Personal Property § 99 at p. 95 (9th ed. 1987).

7. San Francisco Credit Clearing House v. Wells, 196 Cal. 701, 708, 239 Pac. 319 (1925). This gratuitous observation was made even though the court found it unnecessary "to consider the question whether or not it was the intention of the legislature, by the enactment of section 1007 of the Civil code, that it should be applied to personal property." 916 Cal. at 707.

8. Bufano v. City & County of San Francisco, 233 Cal. App. 2d 61, 71, 43 Cal. Rptr. 223 (1965) ("the application of section 1007 of the Civil Code to personal property is not as well established as the City contends").

9. See, e.g., correspondence between Gerald B. Hansen, San Jose, and the California Law Revision Commission (April 18, 1991) (copy on file in the Commission's office; see Memorandum 92-2). Mr. Hansen indicates that in his action to quiet title to securities, even though there were no adverse claimants, the judge would not enter a quiet title judgment because it is not clear that California law authorizes title to personal property based on adverse possession.

The Law Revision Commission recommends that the law be made clear that it is permissible to quiet title to personal property on the basis of adverse possession. The purpose of the quiet title statutes is to settle contested title to property, whether real or personal. Where a person has had possession of personal property for so long that the law protects the person's right to possession, prescriptive ownership should be recognized in a quiet title action.

The Commission's recommendation would be implemented by the following amendments.

Civil Code § 1000 (amended). Property, how acquired

1000. ~~Property, how acquired.~~ Property is acquired by the following means:

1+ (a) Occupancy+ . Acquisition of property by occupancy includes acquisition of personal property by possession.

2+ (b) Accession+ .

3+ (c) Transfer+ .

4+ (d) Will+~~or~~+ .

5+ (e) Succession.

Comment. Section 1000 is amended to make clear that the provisions of this part relating to acquisition of property by "occupancy" apply to possession of personal property. See Sections 1006-7 & Comments. The other changes in this section are technical.

Civil Code § 1006 (amended). Title by occupancy

1006. ~~Occupancy~~ (a) Subject to subdivision (b), occupancy for any period confers a title sufficient against all except the state and those who have title by prescription, accession, transfer, will, or succession+~~but the~~+ .

(b) The title conferred by occupancy is not a sufficient interest in real or personal property to enable the occupant or the occupant's privies to commence or maintain an action to quiet title, unless the occupancy has ripened into title by prescription.

Comment. Section 1006 is amended to make explicit the rule previously implicit in the statutes--that title to personal property may be based on adverse possession. See Sections 14(1) ("property" includes real and personal property) and 1000 (property, how acquired);

see also 4 B. Witkin, Summary of California Law, Personal Property § 99 (9th ed. 1987). This overrules a contrary query in San Francisco Credit Clearing House v. Wells, 196 Cal. 701, 239 Pac. 319 (1925).

The amendment to Section 1006 also reverses the statutory implication that an action to quiet title based on possession of personal property need not satisfy the requirements for title by prescription. See Section 1007 (title by prescription); see also Code Civ. Proc. §§ 760.020(a) (quieting title to real or personal property) and 761.020(b) (quieting title to property based on adverse possession). The prescription period for, or statutory bar of an action for recovery of, personal property is three years. Code Civ. Proc. § 338(c).

The other changes in this section are technical.

Civil Code § 1007 (amended). Title by prescription

1007. ~~Occupancy~~ (a) Subject to subdivision (b), occupancy for the period prescribed by the Code of Civil Procedure as sufficient to bar any action for the recovery of the real or personal property confers a title thereto, denominated a title by prescription, which is sufficient against all, ~~but no~~ .

(b) No possession by any person, firm, or corporation no matter how long continued of any land, water, water right, easement, or other property whatsoever dedicated to a public use by a public utility, or dedicated to or owned by the state or any public entity, shall ever ripen into any title, interest or right against the owner thereof.

Comment. Section 1007 is amended to make explicit the rule previously implicit in the statutes--that title to personal property may be based on adverse possession. See Sections 14(1) ("property" includes real and personal property) and 1000 (property, how acquired); see also 4 B. Witkin, Summary of California Law, Personal Property § 99 (9th ed. 1987). This overrules a contrary query in San Francisco Credit Clearing House v. Wells, 196 Cal. 701, 239 Pac. 319 (1925). See also Section 1006 (title by occupancy) and Code Civ. Proc. §§ 760.020(a) (quieting title to real or personal property) and 761.020(b) (quieting title to property based on adverse possession). The prescription period for, or statutory bar of an action for recovery of, personal property is three years. Code Civ. Proc. § 338(c).

The other changes in this section are technical.