

LETTER of THE LAW

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SOLUTIONS THROUGH RESEARCH

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ABANDONMENT of PROPERTY

A sticky issue for both REAL AND PERSONAL PROPERTY

Confusion abounds concerning abandoned property. Deserted, run-down farmsteads appear on the countryside. Scattered houses and lots nationwide remain vacant and unkept for years. Easements crossing another's land are not used or maintained for decades at a time. Tenants leave property on leased premises after the lease expires.

In each situation, it is easy to assume the property or the property rights have been abandoned. Confusion stems from the layperson's definition of the term versus the legal one. Many are surprised to learn that, from a legal point of view, not all property can be "abandoned."

The legal definition is two-part; one objective, the other subjective. The objective part is what most people typically associate with abandonment. It is the intentional relinquishment of possession without vesting ownership in another. The relinquishment may be manifested by absence over time.

The subjective test is more difficult. Owners must have no intent to return and repossess the property or exercise their property rights. Owners may testify as to intent but cannot evade the effect of their conduct.

THE ABANDONMENT QUESTION

Abandonment, if litigated, boils down to a question of fact for a jury, not a question of law for a judge. A person who claims property by

abandonment must prove all the elements by clear and satisfactory evidence, not by the preponderance of the evidence applicable in civil suits. The jury ascertains the owner's intent by considering all of the facts and circumstances.

Mere non-use of property is insufficient to prove abandonment. However, evidence of long and unexplained non-use is admissible as to intent. Likewise, the passage of time in and of itself cannot constitute abandonment. For example, the non-use of an easement for 22 years was insufficient alone, to raise the issue of intent to abandon (*Strauch v. Coastal State Crude Gathering Co.*, 424 S.W. 2d 677). The failure to remove oil field equipment was not technically abandoned, even though it remained unused on the leased premises for four years after the lease expired (*Morgan v. Fox*, 536 S.W. 2d 644).

Similarly, the failure to maintain and repair property will not in itself establish abandonment. However, it is admissible evidence.

A summary of abandonment was presented in the case of *Anson v. Arnett*, 250 S.W. 2d 450. "To abandon is to give up, desert, or to relinquish voluntarily and absolutely. The question of abandonment is one of fact to be determined in each case from all the evidence in the record.

"An essential element of abandonment is the intention to abandon,

and such intention must be shown by clear and satisfactory evidence. Abandonment may be shown by circumstances, but they must disclose some definite act showing intention to abandon. The non-use of a right is not sufficient in itself to show abandonment, but if the failure to use is long, continued and unexplained, it gives rise to an inference of intention to abandon."

ABANDONMENT of PERSONAL PROPERTY

Except for title to land, all rights and interest in property may be lost by abandonment. Personal property in all forms may be abandoned. Automobiles are subject to statutory abandonment (Texas Property Code Section 80.001 et seq).

Title to abandoned personal property vests in the first person who reduces it to "possession." What constitutes possession depends on the property. Because abandoned personalty belongs to no one, it cannot be stolen. But does someone have to own the personal property before it can be abandoned? Texas courts nearly addressed the issue.

On March 22, 1998, seven youngsters were playing basketball in Monahans, Texas, when a meteorite crashed nearby. Firefighters took the soccerball-sized rock to check for radioactivity. They promised to return it to the youngsters. Meanwhile, people began calling, offering as much as \$31,000 for the rock. The city

then refused to return it, claiming ownership because it fell on city property.

Is a meteorite personal property that can be abandoned? Does it belong to the first person who reduces it to possession or to the person on whose property the meteorite falls? For now, this controversy will not answer these questions. The city returned the meteorite.

Abandonment of Real Property

While title to real property cannot be lost by abandonment, it can be lost in other ways. Land title can be lost by adverse possession when another possesses and uses the property without permission for a specified time (Texas Civil Practices and Remedies Code Sections 16.024 et seq). Likewise, title can be lost by forced sales when a:

- sheriff sells the property for delinquent taxes,

- trustee sells the property for delinquent mortgage payments or
- homeowners' association sells the property for unpaid assessments.

Under Texas law, a person cannot acquire title to real property by merely paying another's delinquent taxes.

While title to land cannot be lost by abandonment, various interests in the property can. For example, if the proper elements are established, an easement may be abandoned (*Kearney & Son v. Fancher*, 401 S.W.2d 897). An easement terminated by abandonment reverts to the landowner.

Issues surrounding abandonment of railroad easements may soon reach Texas courts. A railroad company ceased using a line in northern Texas. It sold its interest to another company for the salvage value of the improvements.

After removing the rails and usable crossties, the salvage company sent notices to all parties crossing the line or renting property from the company. The rates for crossing the line by landowners, utility companies, pipeline companies, and others were significantly increased.

Renters, such as grain elevators, received a 30-day notice of lease termination. The elevators had 30 days to remove their improvements, or alternatively, purchase the leased property at several times its fair market value.

The central question is abandonment. Does the act of removing the salvageable property constitute abandonment under the circumstances? If so, the company has no right to demand anything because easement rights have reverted to the landowners. ☐

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