

Legal Net

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Law of Tsunami Debris: Finders Keepers?

Of the estimated twenty-five million tonnes of debris washed off Japan's coastline by the March 2011 tsunami, 1.5 million tonnes of it are expected to reach the west coast of North America between now and the spring of 2014. The first celebrity of this floating hoard was the 50-metre Japanese fishing vessel *Ryou-Un Maru*, which appeared off Haidi Gwaih in late March, and was sunk by the U.S. Coast Guard on April 5, 2012, as it floated into fishing territory claimed by the United States.

What items will arrive next, and what claims, if any, can be made to these items raises many interesting legal questions that involve a mix of marine salvage law, and what is known as 'finders law'. Some debris will be found floating at sea, and other debris may be found on the beach or rocks, or imbedded in sand. In this *Legal Net* series, we will describe what law applies to tsunami debris based on what, where, and how it is found.

Finders Law (items lost on land)

Before describing the marine aspect of claims to tsunami debris, it necessary to describe the law that governs claims to items found on land. The reason this law is relevant to tsunami debris is because many items will be washed ashore (and embedded in sand) before they are found, and if a finder cannot assert a salvage claim, they may be able to assert possession as a "finder".

The general rules that govern the rights of a finder of items lost and found on land are:

1. The finder has entitlement to the item over all other people, except the true owner of the item or a person who found the item first, if the item is not attached to the land or embedded in it.
2. If the item is attached to the land or embedded in the sand/soil, and the owner of the land has an intention to exercise control over the land and the item, the owner of that land is presumed to have possession of the embedded item, whether they had knowledge of the item's existence or not.
3. The presumption that the owner of land has superior possession of an embedded item (over the finder's possession) can be rebutted if the finder can show the occupier of the land had no intention to exercise control over the item.

4. If the finder is trespassing on the land when the item is found, the finder will not have a better claim to the item than the owner of the land, even if the owner of the land had no intention to exercise control over the item.
5. Lastly, if the finder is acting in the course of their employment or agency (such as a contractor) of another person when they find the item, the finder's claim to the item belongs to their employer or principal, and not to the finder.

Applying these rules to an example might look like this: a wooden crate of diamonds (you have to dream) washes ashore in the intertidal zone of Long Beach (land owned by the Crown) when it is found by a beachcomber prior to becoming embedded in the sand. The beachcomber has a finder's claim to the diamonds second only to the true owner of the crate because the crate is not embedded in the sand, and the beachcomber is not trespassing (the finder also has a salvage claim; see below). If the crate had become embedded in the sand before the beachcomber found it, the Crown would have a better claim to the diamonds than the disgruntled beachcomber, even though the Crown did not know the crate was there. However, if the beachcomber can demonstrate the Crown had no intention to assert control over the crate, the lucky beachcomber will have a better claim to the diamonds than the Crown.

It is important to remember that simply because the owner of the land does not intend to assert control over an embedded item does not mean the beachcomber has a better claim to the diamonds than their actual owner of the diamonds. An owner that unintentionally parts with the item (such as being washed out to sea by a tsunami) clearly has the strongest claim to ownership. The law is unclear whether the finder has a legal duty to attempt to find the owner of the item where the owner cannot be readily identified, such as by markings on the item; although the finder undoubtedly has a moral duty to try to make reasonable efforts to find the true owner (assuming the owner did not intentionally dispose of the item); whether the finder chooses to exercise that moral duty is another story.

Salvage Claims and the Receiver of Wrecks

Where the law of items found on land begins to blend with marine salvage law is when the item found on land arrived there by sea, as would be the case with all tsunami debris arriving from Japan. Notwithstanding the rules of finders law set out above, the finder of an item at sea or washed ashore has a right to a salvage claim if they provide a "*useful result*" in preserving the item. The amount of the salvage reward will be based on several factors including: the value of the item, the degree of success in saving the item from harm, the expertise of the salvor, the value of the salvage equipment used, the risk involved in the effort, and the environmental damage averted. Ultimately, a finder who is not successful in making a claim for salvage may

still succeed claiming ownership as a finder, provided the item is not a “wreck”, as discussed below.

What steps must be taken when an item is found will vary depending on the nature of the item. The *Canada Shipping Act 2001* (“*CSA 2001*”) defines a “wreck” as “*jetsam, flotsam, lagan and derelict and any other thing that was part of or was on a vessel wrecked, stranded or in distress*”. Briefly and generally, *jetsam* is material intentionally thrown from a vessel, *flotsam* is material unintentionally thrown from a vessel, *lagan* is material tied to the seabed for later retrieval, and *derelict* is a vessel or part of a vessel abandoned by its owner (these definitions vary somewhat).

The definition of “*wreck*” is important because if the debris found is an item fitting within the definition of *wreck*, the *CSA 2001* technically requires the finder to report the wreck to the Receiver of Wrecks before any claim to ownership can be made by the finder. The Receiver of Wrecks, an agent of the Minister of Transport, will, if the item is of sufficient value to justify the search, attempt to find the owner. If the Receiver’s search proves unsuccessful the Receiver will sell the wreck, at which time the finder can assert a salvage claim for their efforts in saving the item. If the item is worth less than the finder’s salvage claim, the Receiver typically releases the item to the finder. If the item has value in excess of the finder’s salvage claim, the excess is paid into the Federal general revenue fund.

It is important to note that significant amounts of tsunami debris will have been washed from coastal and inland areas out to sea, and not have actually been part of a vessel or from a vessel. These items need not be reported to the Receiver as they are not *wreck*, and indeed the Receiver would likely not want such items reported to their office due to funding constraints in dealing with reports of items found and resulting salvage claims. Despite there being no obligation to report tsunami debris to the Receiver if the debris is not within the definition of “wreck”, there is no automatic right to ownership of these items, but the rules of finders law would apply. In future editions of the *Legal Net* we will review specific examples of claims to tsunami debris.

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